

# SENATE JOURNAL

EIGHTY-SECOND LEGISLATURE — REGULAR SESSION

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AUSTIN, TEXAS

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PROCEEDINGS

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SIXTY-NINTH DAY

(Friday, May 27, 2011)

The Senate met at 10:31 a.m. pursuant to adjournment and was called to order by President Pro Tempore Ogden.

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

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

Pastor Eric Louis Jordan, A Breath of Praise Community Church, Round Rock, offered the invocation as follows:

Most gracious God, creator of heaven and Earth, our high tower that oversees this turbulent land, our shelter in the time of storm, I ask You to lead these men and women, these dignitaries and emissaries of freedom. I ask that Your wisdom abide with them, I pray that Your mercy stirs the compassion in them, that Your grace is sufficient for them, and Your love motivates them to love one another even as You have loved them. I ask in troubled times of economic uncertainty: restore hope, restore hope that You are able to supply our every need. I pray, despite these times of divisiveness, You are able to bring about unity. I pray that even though the threat of terrorism is still great, You are greater and able to protect this great state and country. Give our lawmakers the wisdom and ability to hear Your voice when the voice of righteousness is suppressed. Remind us that You are not the author of confusion but the progenitor of harmony. Now unto Him who is able to keep us from falling and to present us before Your glory with exceeding joy, to the only wise God and savior be glory and majesty, power and dominion, both now and forevermore. Amen.

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

The motion prevailed without objection.

### PHYSICIAN OF THE DAY

Senator Watson was recognized and presented Dr. Jim Brown of Austin as the Physician of the Day.

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

### SENATE RESOLUTION 1125

Senator Davis offered the following resolution:

**SR 1125**, Recognizing John F. Carter for his entrepreneurial success.

The resolution was again read.

The resolution was previously adopted on Monday, May 23, 2011.

### GUESTS PRESENTED

Senator Davis was recognized and introduced to the Senate John Carter, accompanied by members of his family: wife, Maria; son, James; mother, Francie Cobb; stepfather, Lance Cobb; family au pair, Amanda Melin; father-in-law and mother-in-law, Juan and Mary Hernandez; and aunt, Adelita Acosta.

The Senate welcomed its guests.

### BILLS AND RESOLUTION SIGNED

The President Pro Tempore announced the signing of the following enrolled bills and resolution in the presence of the Senate after the captions had been read:

**SB 20, SB 167, SB 176, SB 181, SB 218, SB 220, SB 229, SB 349, SB 438, SB 548, SB 683, SB 701, SB 761, SB 802, SB 804, SB 810, SB 812, SB 917, SB 1386, SB 1477, SB 1504, SB 1686, SB 1714, SCR 56.**

### SENATE RESOLUTION 1221

Senator Lucio offered the following resolution:

WHEREAS, The Senate of the State of Texas takes pride in recognizing Ian Randolph for over 20 years of outstanding service to Senator Eddie Lucio, Jr., and to the state; and

WHEREAS, A longtime Senate employee who has built a strong reputation as a dedicated and highly effective staff member, Ian Randolph has brought his keen understanding of the legislative process and his thorough knowledge of complex policy issues to bear while working to ensure that the best interests of the people of Texas are represented in the Capitol at all times; and

WHEREAS, After almost a decade of service at The University of Texas Faculty Center, Mr. Randolph began his involvement in legislative affairs in 1990 as a research assistant for the Texas Task Force on State and Local Drug Control Policy; and

WHEREAS, Over the course of his distinguished career, he has become known for his warm and outgoing nature, his friendly demeanor, and the depth and breadth of his knowledge and experience; he has performed practically all of the jobs available in a legislative office, including policy analyst, committee director, legislative director, and chief of staff; and

WHEREAS, He has worked through 11 regular sessions and 16 special sessions as a valued staff member for Senators Ted Lyon, David Cain, and Eddie Lucio, Jr.; even during the longest hours and latest nights of a legislative session, he has been noted for his generosity of spirit and his ability to see all sides of an issue; and

WHEREAS, He has worked on key legislation that has made a real difference in the lives of Texas citizens, including: Senate Bill 8, passed by the 77th Legislature, which established parity in health insurance reimbursements for women's health procedures; Senate Bill 60, passed by the 79th Legislature, which established the sentencing option of life without parole for capital offenses, previously only punishable by death or a life sentence under which the defendant would eventually become eligible for parole; and the Senate's Committee Substitute for House Bill 323, passed by the 80th Legislature, which created the requirement that school buses be equipped with three-point seat belts; and

WHEREAS, A familiar figure in the halls of the Capitol, Ian Randolph has been a valuable resource to all who seek to draw on his knowledge, whether they be veteran staffers or newcomers to the process; he goes out of his way to be friendly to everyone, regardless of their position, status, or connections, and he always gives credit where credit is due, never accepting a compliment without sharing it with his co-workers; and

WHEREAS, He is devoted to his family and encourages his fellow employees to attend to their families as well; his wife, Jane, to whom he has been married since 2006, and his daughter, Gracie, have enriched his life immeasurably, and he has been able to count on their loving support in all of his endeavors; an exceptional public servant and an even better human being, he is respected and admired by all who know him, and his presence in the Capitol will be greatly missed; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 82nd Legislature, hereby commend Ian Randolph on his outstanding service to the people of Texas and extend to him best wishes for continued success in all his future endeavors; and, be it further

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

**SR 1221** was read.

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

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

### **REMARKS ORDERED PRINTED**

On motion of Senator Ellis and by unanimous consent, the remarks by Senator Lucio regarding **SR 1221** were ordered reduced to writing and printed in the *Senate Journal* as follows:

Mr. President and Members, thank you very much for allowing me to bring this resolution to the floor today. It's an important morning for me to be able to have the opportunity to reflect on a great Texan. This resolution recognizes someone I consider one of the best public servants I've ever worked with. Ian Randolph, my chief of staff, is moving on after 21 years of service in the Texas Senate. As you know, Members, the Senate is a place governed by rules and traditions, and Ian's knowledge of these rules and traditions has made him a valuable resource to my office over the years. And yet, as one of my staff said yesterday, Ian is not the kind of person to hoard knowledge, instead he always has time for people. He is always willing to help others, and he goes out of his way to be friendly to everyone regardless of their position. Ian will be sorely missed by my staff and me. His patience and kindness shine through when you see him working with others as he shepherds them through the process, and I've seen this over the years, and I'm always so happy to see someone do this. To summarize, Ian is a lot like one of those holding midfielder captains you see on those English soccer teams like Aston Villa, that's Ian's favorite team. Ian plays that holding midfielder role extremely well, he sets others up to succeed, he tackles back when the pressure is on, and he leads his teammates through his tireless example. In addition to his work here at the Capitol, Ian is a dedicated family man. We are joined here today by Ian's very lovely wife, Jane, and his daughter, Graciella, "Gracie." They will surely testify to how wonderful a father and husband Ian truly is. There are so many stories that I could reflect on, but one that brought a smile to my face was back when Senator Cain, who joins us here in the west gallery, Senator David Cain, assistant, and the only way he was able to kill my GARVEE bonds is because he had Ian by his side, very knowledgeable of what these represented, and I thought for sure we were finding enough to build some infrastructure down in South Texas. But the only consolation I get is that now they want to use GARVEE bonds to do that. But Ian single-handedly, I think, helped kill that legislation, so it was very hard for me when Paul Cowan, my former chief of staff, Patsy, brought Ian to me and I said, this is the guy that killed my bills not too long ago. But I knew that he had an extremely kind heart, very compassionate man. And I got to know that even better when I met his dad, an outstanding American who got to be with his son for a few years before he passed on. And I can tell you one thing, Ian is more than a chief of staff to me. He's family, and he's my little brother, and I just respect and admire all of the things that he has done in the course of his life. He served with an open heart, and that's the kind of people I really care to see here in the Capitol. I always ask people, Wendy, and tell my assistants, I really don't care how much you know, I want to know how much you care, as you work in this building that represents the people of our great state. I could talk all morning about many things we accomplished together, some of those have been mentioned this morning, but there's so much more than a resolution in the life of Ian Randolph, who I consider one of the top employees ever in state government.

**GUESTS PRESENTED**

Senator Lucio was recognized and introduced to the Senate Ian Randolph, his wife, Jane, and his daughter, Gracie.

The Senate welcomed its guests.

**ACKNOWLEDGMENT**

The President Pro Tempore acknowledged the presence of former Senator David Cain.

The Senate welcomed its guest.

**GUEST PRESENTED**

Senator West was recognized and introduced to the Senate Tom Bohanan of Boy Scouts of America, Circle 10 Council.

The Senate welcomed its guest.

**HOUSE CONCURRENT RESOLUTION 165**

The President Pro Tempore laid before the Senate the following resolution:

WHEREAS, The Texas Commission on the Arts has announced the 2011 and 2012 appointments for the positions of State Poet Laureate, State Musician, State Two-Dimensional Artist, and State Three-Dimensional Artist; and

WHEREAS, Honorees are chosen for the exceptional quality of their work and for their outstanding commitment to the arts in Texas; nominees must either be native Texans or have resided in the state for at least five years; in addition, they must have received critical recognition from state, regional, and national publications, and they must have attained the highest levels of excellence in their respective disciplines; and

WHEREAS, David M. Parsons is the 2011 Texas State Poet Laureate; inducted into the Texas Institute of Letters in 2009, Mr. Parsons is the recipient of numerous awards, among them a National Endowment for the Humanities Dante Fellowship to the State University of New York and the French/American Legation Poetry Prize; he has published two collections of poems, and his work has appeared in numerous journals and magazines, including *Gulf Coast*, *The Texas Review*, and *Louisiana Literature*; and

WHEREAS, The 2011 Texas State Musician is singer-songwriter Lyle Lovett, who has blurred genre boundaries over the course of 14 albums that deftly combine elements of country, swing, jazz, folk, gospel, and blues; a four-time Grammy Award winner, Mr. Lovett has logged significant time at the top of the *Billboard* charts; he has branched successfully into acting as well, appearing in 13 feature films, including several noteworthy Robert Altman pictures, and he is active in many philanthropic causes; and

WHEREAS, Melissa W. Miller has been selected as the 2011 Texas State Two-Dimensional Artist; acclaimed for her bold, imaginative, allegorical paintings of animals, she has pursued an iconoclastic path since the mid-1970s; her works have been exhibited at many major museums across the nation, including the Corcoran Museum in Washington, D.C., and the Brooklyn Museum of Fine Arts, and they have

been featured in the Whitney and Venice Biennials; an associate professor of art at The University of Texas at Austin, Ms. Miller has also been a visiting lecturer and guest artist at more than 40 universities, colleges, and art institutes; and

WHEREAS, Corpus Christi native and Rockport resident Jesus Moroles is the 2011 Texas State Three-Dimensional Artist; more than 2,000 of his works have found a place in museums and corporate, public, and private collections; his "Lapstrake," a massive 22-foot, 64-ton abstract sculpture, is located across from the Museum of Modern Art in New York, and his work was featured in the landmark traveling exhibition Contemporary Hispanic Art in the United States; Mr. Moroles has also served on the board of the Smithsonian American Art Museum and received the 2008 National Medal of Arts; and

WHEREAS, The 2012 Texas Poet Laureate is Jan Seale, the author of six poetry volumes and several books of short fiction and essays; her writing has appeared in *Texas Monthly*, *The Yale Review*, and other periodicals, as well as numerous anthologies, and her work has been featured on National Public Radio; a popular presenter, she has given readings and workshops around the country, and she is the recipient of a National Endowment for the Arts fellowship; and

WHEREAS, Billy F Gibbons of ZZ Top fame has been selected as the 2012 Texas State Musician; a much-imitated guitarist, he is also the lead singer of the iconic band, which was inducted into the Rock and Roll Hall of Fame in 2004, and he wrote many of its blockbuster hits; he has collaborated with a wide range of artists, among them B. B. King, Queens of the Stone Age, Roky Erickson, and Les Paul; in addition, he is a car customizer and actor and plays a recurring role on the television series *Bones* as a fictionalized version of himself; and

WHEREAS, The 2012 Texas State Two-Dimensional Artist is Karl Umlauf, who grew up in Austin; after completing his master of fine arts degree at Cornell University in 1963, he began teaching at the University of Pennsylvania, and his paintings were exhibited in a number of prominent East Coast galleries and museums; his long career in higher education eventually brought him to East Texas State University and then Baylor University; he has won many prizes and purchase awards for reliefs in a variety of materials, including fiberglass and cast paper; fascinated with geological substrata and archeological burial sites as well as salvage yards and abandoned industrial sites, he has concentrated on imaginative facades since 2000; and

WHEREAS, Bill FitzGibbons has been selected as the 2012 Texas State Three-Dimensional Artist; a former Fulbright Scholar, he is known for large-scale light sculptures that transform building walls into elaborately programmed spectrums of constantly moving light; he has received more than 30 public art commissions in five countries; since 2002, he has served as the executive director of the Blue Star Contemporary Art Center in San Antonio, and he is a member of the board of the International Sculpture Center; and

WHEREAS, The men and women who have been selected to hold these prestigious posts for the next two years have all greatly contributed to the vibrant cultural life of the Lone Star State, and Texas is indeed fortunate to be home to these talented artists; now, therefore, be it

RESOLVED, That the 82nd Legislature of the State of Texas hereby honor the 2011 and 2012 appointees to the positions of State Poet Laureate, State Musician, State Two-Dimensional Artist, and State Three-Dimensional Artist and extend to each of them sincere best wishes for continued creativity and achievement.

ELTIFE

**HCR 165** was read.

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

On motion of Senator Eltife, the resolution was adopted by a viva voce vote.

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

### GUESTS PRESENTED

Senator Eltife was recognized and introduced to the Senate a Texas State Artists delegation: Musicians, Lyle Lovett and Billy F Gibbons; Poets Laureate, Jan Epton Seale and David M. Parsons; Two-Dimensional Artists, Karl Umlauf and Melissa Miller; and Three-Dimensional Artists, Jesus Moroles and Bill FitzGibbons.

The Senate welcomed its guests.

### SENATE BILL 5 WITH HOUSE AMENDMENTS

Senator Zaffirini called **SB 5** from the President's table for consideration of the House amendments to the bill.

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

### Floor Amendment No. 1

Amend **SB 5** (house committee printing) as follows:

(1) In SECTION 1.01 of the bill, in added Section 51.003(f), Education Code (page 1, line 17), strike "institution's operations in a foreign country" and substitute "institution's academic and research operations in the foreign country in which the bank is located, provided that no appropriated or tuition funds other than those collected from students enrolled in the affected programs are deposited".

(2) In SECTION 1.05 of the bill, in amended Section 1231.041, Government Code (page 6, lines 16 and 17), strike "unless the general revenue of the state is pledged to the payment of the security." and substitute the following:

if:

(1) the institution or the university system of which the institution is a component has an unenhanced long-term debt rating of at least AA- or its equivalent; and

(2) the general revenue of this state is not pledged to the payment of the security.

(3) In SECTION 4.01 of the bill, in the heading to added Section 61.0573, Education Code (page 15, line 21), strike "PROJECTS EXEMPT FROM BOARD APPROVAL" and substitute "EXPEDITED PROCESS FOR CERTAIN PROJECTS".

(4) In SECTION 4.01 of the bill, in added Section 61.0573(d), Education Code (page 16, line 24), strike "or a new higher education center" and substitute ", a new off-campus educational unit, or a new higher education center".

**Floor Amendment No. 2**

Amend **SB 5** (house committee printing) as follows:

(1) In SECTION 1.02 of the bill, in added Section 51.012, Education Code (page 4, line 24), strike "including a payment of salary or wages,".

(2) In SECTION 3.01 of the bill, at the end of added Section 51.9611, Education Code (page 13, between lines 26 and 27), add the following subsection:

(e) This section does not authorize a payroll deduction for dues or membership fees payable to a labor union or employees association.

(3) In ARTICLE 3 of the bill, add the following appropriately numbered SECTION to the ARTICLE and renumber the SECTIONS of that ARTICLE appropriately:

SECTION 3. \_\_\_\_. Subchapter E, Chapter 1601, Insurance Code, is amended by adding Section 1601.2041 to read as follows:

Sec. 1601.2041. EMPLOYEE DEDUCTION FOR AUTOMATIC COVERAGE. Each individual automatically enrolled in a uniform program under Section 1601.104 is considered to have authorized a deduction from the participant's monthly compensation in an amount equal to the difference between:

(1) the total cost of the employee's basic coverage; and

(2) the amount contributed by the system for the employee's basic coverage.

**Floor Amendment No. 3**

Amend **SB 5** (house committee printing) as follows:

(1) In ARTICLE 6 of the bill, add the following appropriately numbered SECTION to the ARTICLE and renumber the SECTIONS of that ARTICLE appropriately:

SECTION 6. \_\_\_\_. Section 51.3062(n), Education Code, is amended to read as follows:

(n) Each institution of higher education, other than a medical and dental unit, shall report annually to the board on the success of its students and the effectiveness of its Success Initiative.

(2) In SECTION 6.02 of the bill, in added Section 51.406(b), Education Code, strike Subdivision (3) (page 23, line 15, referencing Section 51.0051, Education Code), Subdivision (11) (page 23, line 23, referencing Section 2101.011, Government Code), and Subdivision (12) (page 23, line 24, referencing Section 2102.009, Government Code) and renumber the subdivisions of added Section 51.406(b) accordingly.

(3) In SECTION 6.03 of the bill, in added Section 51.914(b), Education Code (page 26, lines 2 and 3), strike "commercialization or research, or that consists of unpublished research results or data" and substitute "commercialization or a proposed research agreement, contract, or grant, or that consists of unpublished research or data that may be commercialized".

(4) Strike SECTION 6.04 of the bill (page 26, lines 9-24, amending Section 61.051(h), Education Code) and SECTION 6.05 of the bill (page 26, line 25, through page 27, line 2, adding Section 61.0582(f), Education Code) and renumber the SECTIONS of ARTICLE 6 of the bill accordingly.



(5) In SECTION 7.01 of the bill, in Subsection (a) (page 32, lines 2-17), insert the following appropriately numbered subdivisions:

- ( ) Section 61.9685, Education Code;
- ( ) Section 2056.011, Government Code;

(6) In SECTION 7.01 of the bill, in Subsection (a), strike Subdivision (7) (page 32, line 11, referencing Section 62.098, Education Code) and renumber the other subdivisions accordingly.

(7) In SECTION 7.01 of the bill, in Subsection (b) (page 32, line 18, through page 33, line 10), insert the following appropriately numbered subdivision and renumber the other subdivisions accordingly:

- ( ) Section 61.0582;

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

Amend **SB 5** (amended version) as follows:

(1) In Section 2.03 of the bill, in the introductory language (page 10, line 24) strike "Sections 51.9336 and 51.9337" and insert "Section 51.9336"

(2) In Section 2.03 of the bill (page 11, lines 10-19) strike proposed Section 51.9337 in its entirety

#### **Floor Amendment No. 5**

Amend **SB 5** (house committee printing) in ARTICLE 3 of the bill, by striking SECTION 3.02 (page 13, line 27, through page 14, line 21), and renumbering subsequent SECTIONS of ARTICLE 3 of the bill appropriately.

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

Amend **SB 5** by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Subchapter Z, Chapter 51, Education Code, is amended by adding Section 51.9741 to read as follows:

Sec. 51.9741. INTERNET ACCESS TO FINANCIAL TRANSACTIONS. (a) Each institution of higher education, as defined by Section 61.003, shall post on the institution's Internet website a copy of the institution's financial transactions to the extent necessary to provide, for each payment drawn from money appropriated from the state general revenue fund or received as student tuition or fee payments:

- (1) the amount of the payment;
- (2) the date of the payment;
- (3) a brief description of the purpose of the payment; and
- (4) the name of the payee.

(b) An institution of higher education may comply with this section by providing on the institution's Internet website an easily noticeable direct link, the purpose of which is clearly identifiable, to an Internet website maintained by the comptroller that provides information concerning the institution that is substantially similar to the information required under Subsection (a).

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

Amend **SB 5** by adding the following appropriately numbered SECTION and by renumbering the existing SECTIONS as appropriate

SECTION \_\_\_\_\_. Subchapter X, Chapter 54, Education Code, is amended by adding Section 54.552 to read as follows:

Sec. 54.552. STUDENT FEES ADVISORY COMMITTEES; OPEN MEETINGS. Any student fee advisory committee established under this chapter shall be subject to Chapter 551, Government Code.

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

Amend **SB 5** on third reading by striking the text added to the bill by Floor Amendment No. 7 by Hughes, substituting the following appropriately numbered ARTICLE, and renumbering the ARTICLES and SECTIONS of the bill accordingly:

ARTICLE \_\_\_\_\_. STUDENT FEE ADVISORY COMMITTEES

SECTION \_\_\_\_\_.01. Subchapter E, Chapter 54, Education Code, is amended by adding Section 54.5033 to read as follows:

Sec. 54.5033. STUDENT FEE ADVISORY COMMITTEE MEETINGS OPEN TO PUBLIC. (a) A student fee advisory committee established under this chapter shall conduct meetings at which a quorum is present in a manner that is open to the public and in accordance with procedures prescribed by the president of the institution.

(b) The procedures prescribed by the president must:

(1) provide for notice of the date, hour, place, and subject of the meeting at least 72 hours before the meeting is convened; and

(2) require that the notice be:

(A) posted on the Internet; and

(B) published in a student newspaper of the institution, if an issue of the newspaper is published between the time of the Internet posting and the time of the meeting.

(c) The final recommendations made by a student fee advisory committee must be recorded and made public.

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

Amend **SB 5**, on third reading, in added Subsection (b), Section 51.9741, Education Code, by striking "substantially similar" and substituting "similar".

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

Amend **SB 5** on third reading as follows:

In Section 51.406(b), Education Code, as added by SECTION 6.02 of the bill, strike Subdivision (9) referencing Section 2052.103, Education Code, (page 23, line 21, house committee printing) and renumber the remaining subdivisions accordingly.

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

Amend **SB 5** on third reading as follows:

(1) Add the following appropriately numbered SECTION to the bill, renumbering the other sections of the bill accordingly:

SECTION \_\_\_\_\_. Subtitle D, Title 3, Education Code, is amended by adding Chapter 89 to read as follows:

CHAPTER 89. THE TEXAS A&M UNIVERSITY SYSTEM HEALTH SCIENCE CENTER

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 89.001. DEFINITIONS. In this chapter:

(1) "Board" means the board of regents of The Texas A&M University System.

(2) "Health science center" means The Texas A&M University System Health Science Center.

Sec. 89.002. COMPOSITION. (a) The Texas A&M University System Health Science Center is composed of the following component institutions, agencies, and programs under the management and control of the board:

(1) The Texas A&M University System Health Science Center College of Medicine;

(2) The Texas A&M University System Health Science Center Baylor College of Dentistry;

(3) The Texas A&M University System Health Science Center School of Rural Public Health;

(4) The Texas A&M University System Health Science Center Irma Lerma Rangel College of Pharmacy;

(5) The Texas A&M University System Health Science Center College of Nursing;

(6) The Texas A&M University System Health Science Center School of Graduate Studies;

(7) The Texas A&M University System Health Science Center Institute of Biosciences and Technology;

(8) The Texas A&M University System Health Science Center Coastal Bend Health Education Center;

(9) The Texas A&M University System Health Science Center South Texas Health Center; and

(10) The Texas A&M University System Health Science Center Rural and Community Health Institute;

(b) The Texas A&M University System Health Science Center Baylor College of Dentistry may use the name "Baylor" only:

(1) in accordance with:

(A) a license agreement between the health science center and Baylor University; or

(B) other written approval from Baylor University; or

(2) as otherwise permitted by law.

Sec. 89.003. MANDATORY VENUE. (a) Venue for a suit filed against the health science center, any component institution, agency, or program of the health science center, or any officer or employee of the health science center is in Brazos County.

(b) This section does not waive any defense to or immunity from suit or liability that may be asserted by an entity or individual described by this section.

(c) In case of a conflict between this section and any other law, this section controls.

Sec. 89.004. EXPENDITURE OF STATE FUNDS. The board is authorized to expend funds appropriated to it by the legislature for all lawful purposes of the health science center and its component institutions, agencies, and programs as well as funds available under the authority of Section 18, Article VII, Texas Constitution, for the purposes expressed in that section for the support of the health science center and its component institutions, agencies, and programs.

[Sections 89.005-89.050 reserved for expansion]

SUBCHAPTER B. THE TEXAS A&M UNIVERSITY SYSTEM HEALTH SCIENCE CENTER IRMA LERMA RANGEL COLLEGE OF PHARMACY

Sec. 89.051. THE TEXAS A&M UNIVERSITY SYSTEM HEALTH SCIENCE CENTER IRMA LERMA RANGEL COLLEGE OF PHARMACY. (a) The board shall maintain a college of pharmacy as a component of the health science center.

(b) The college shall be known as The Texas A&M University System Health Science Center Irma Lerma Rangel College of Pharmacy, and the primary building in which the school is operated in Kleberg County must include "Irma Rangel" in its official name.

(2) Add the following appropriately numbered SECTION to the bill, renumbering the other sections of the bill accordingly:

SECTION \_\_\_\_\_. Section 61.003(5), Education Code, is amended to read as follows:

(5) "Medical and dental unit" means The Texas A&M University System Health Science Center and its component institutions, agencies, and programs; The University of Texas Medical Branch at Galveston; The University of Texas Southwestern Medical Center at Dallas; The University of Texas Medical School at San Antonio; The University of Texas Dental Branch at Houston; The University of Texas M. D. Anderson Cancer Center; The University of Texas Graduate School of Biomedical Sciences at Houston; The University of Texas Dental School at San Antonio; The University of Texas Medical School at Houston; The University of Texas Health Science Center–South Texas and its component institutions, if established under Subchapter N, Chapter 74; the nursing institutions of The Texas A&M University System and The University of Texas System; and The University of Texas School of Public Health at Houston; and such other medical or dental schools as may be established by statute or as provided in this chapter.

(3) Add the following appropriately numbered SECTION to the bill, renumbering the other sections of the bill accordingly:

SECTION \_\_\_\_\_. The following are repealed:

- (1) Subchapters D, F, G, and H, Chapter 86, Education Code; and
- (2) Subchapter I, Chapter 87, Education Code.

(4) Add the following appropriately numbered SECTION to the bill, renumbering the other sections of the bill accordingly:

SECTION \_\_\_\_\_. Section 89.003, Education Code, as added by this Act, applies only to an action brought against The Texas A&M University System Health Science Center, a component institution, agency, or program of that center, or an officer or employee of that center on or after the effective date of this Act.

The amendments were read.

Senator Zaffirini moved to concur in the House amendments to **SB 5**.

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

**SENATE BILL 859 WITH HOUSE AMENDMENT**

Senator Duncan called **SB 859** from the President's table for consideration of the House amendment to the bill.

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

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

Amend **SB 859** on third reading by adding the following appropriately numbered ARTICLE to the bill and renumbering subsequent ARTICLES and SECTIONS accordingly:

ARTICLE \_\_\_\_\_. EMPLOYER CONTRIBUTIONS TO INDIVIDUAL HEALTH  
INSURANCE POLICIES

SECTION \_\_\_\_\_.01. Subtitle A, Title 8, Insurance Code, is amended by adding Chapter 1221 to read as follows:

CHAPTER 1221. EMPLOYER CONTRIBUTIONS TO INDIVIDUAL HEALTH  
INSURANCE POLICIES

Sec. 1221.001. RULES; EMPLOYER CONTRIBUTIONS. The commissioner by rule, unless it would violate state or federal law, may develop procedures to allow an employer to make financial contributions to or premium payments for an employee or retiree's individual consumer directed health insurance policy in a manner that eliminates or minimizes the state or federal tax consequences, or provides positive state or federal tax consequences, to the employer.

The amendment was read.

Senator Duncan moved to concur in the House amendment to **SB 859**.

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

**SENATE BILL 1271 WITH HOUSE AMENDMENT**

Senator Duncan called **SB 1271** from the President's table for consideration of the House amendment to the bill.

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

**Amendment**

Amend **SB 1271** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to alternative dispute resolution systems established by counties.

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

SECTION 1. Section 152.001, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 152.001. DEFINITION. In this chapter, "alternative dispute resolution system" means an informal forum in which mediation, conciliation, or arbitration is used to resolve disputes among individuals, entities, and units of government, including those having an ongoing relationship such as relatives, neighbors, landlords and tenants, employees and employers, and merchants and consumers.

SECTION 2. Subsection (a), Section 152.002, Civil Practice and Remedies Code, is amended to read as follows:

(a) The commissioners court of a county by order may establish an alternative dispute resolution system for the peaceable and expeditious resolution of ~~[citizen]~~ disputes.

SECTION 3. The changes in law made by this Act apply only to a case referred to a county alternative dispute resolution system on or after the effective date of this Act. A case referred before the effective date of this Act is governed by the law in effect when the case is referred, and the former law is continued in effect for that purpose.

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, 2011.

The amendment was read.

Senator Duncan moved to concur in the House amendment to **SB 1271**.

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

### **SENATE BILL 1233 WITH HOUSE AMENDMENTS**

Senator West called **SB 1233** from the President's table for consideration of the House amendments to the bill.

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

#### **Amendment**

Amend **SB 1233** by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to the promotion of efficiencies in and the administration of certain district court and county services and functions.

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

SECTION 1. Section 144.041, Agriculture Code, is amended by adding Subsection (h) to read as follows:

(h) A county clerk may accept electronic filing or rerecording of an earmark, brand, tattoo, electronic device, or other type of mark for which a recording is required under this chapter or other law.

SECTION 2. Chapter 2, Code of Criminal Procedure, is amended by adding Article 2.31 to read as follows:

Art. 2.31. COUNTY JAILERS. A jailer licensed under Chapter 1701, Occupations Code, may execute lawful process issued to the jailer by any magistrate or court on a person confined in the jail at which the jailer is employed to the same extent that a peace officer is authorized to execute process under Article 2.13(b)(2), including:

- (1) a warrant under Chapter 15, 17, or 18;
- (2) a capias under Chapter 17 or 23;
- (3) a subpoena under Chapter 20 or 24; or
- (4) an attachment under Chapter 20 or 24.

SECTION 3. Article 20.011(a), Code of Criminal Procedure, is amended to read as follows:

(a) Only the following persons may be present in a grand jury room while the grand jury is conducting proceedings:

- (1) grand jurors;
- (2) bailiffs;
- (3) the attorney representing the state;
- (4) witnesses while being examined or when necessary to assist the attorney representing the state in examining other witnesses or presenting evidence to the grand jury;

(5) interpreters, if necessary; ~~and~~

(6) a stenographer or person operating an electronic recording device, as provided by Article 20.012; and

(7) a person operating a video conferencing system for use under Article 20.151.

SECTION 4. Article 20.02(b), Code of Criminal Procedure, is amended to read as follows:

(b) A grand juror, bailiff, interpreter, stenographer or person operating an electronic recording device, ~~or~~ person preparing a typewritten transcription of a stenographic or electronic recording, or person operating a video teleconferencing system for use under Article 20.151 who discloses anything transpiring before the grand jury, regardless of whether the thing transpiring is recorded, in the course of the official duties of the grand jury, is ~~shall be~~ liable to a fine as for contempt of the court, not exceeding \$500 ~~[five hundred dollars]~~, imprisonment not exceeding 30 ~~[thirty]~~ days, or both the ~~[such]~~ fine and imprisonment.

SECTION 5. Chapter 20, Code of Criminal Procedure, is amended by adding Article 20.151 to read as follows:

Art. 20.151. CERTAIN TESTIMONY BY VIDEO TELECONFERENCING.

(a) With the consent of the foreman of the grand jury and the attorney representing the state, a peace officer summoned to testify before the grand jury may testify through the use of a closed circuit video teleconferencing system that provides an encrypted, simultaneous, compressed full motion video and interactive communication of image and sound between the peace officer, the attorney representing the state, and the grand jury.

(b) In addition to being administered the oath described by Article 20.16(a), before being interrogated, a peace officer testifying through the use of a closed circuit video teleconferencing system under this article shall affirm that:

(1) no person other than a person in the grand jury room is capable of hearing the peace officer's testimony; and

(2) the peace officer's testimony is not being recorded or otherwise preserved by any person at the location from which the peace officer is testifying.

(c) Testimony received from a peace officer under this article shall be recorded and preserved.

SECTION 6. Article 27.18, Code of Criminal Procedure, is amended by amending Subsection (c) and adding Subsections (c-1) and (c-2) to read as follows:

(c) A recording of the communication shall be made and preserved until all appellate proceedings have been disposed of. A court reporter or court recorder is not required to transcribe or make a separate recording of a plea taken under this article unless an appeal is taken in the case and a party requests a transcript.

(c-1) The defendant may obtain a copy of a [the] recording made under Subsection (c) on payment of a reasonable amount to cover the costs of reproduction or, if the defendant is indigent, the court shall provide a copy to the defendant without charging a cost for the copy.

(c-2) The loss or destruction of or failure to make a video recording of a plea entered under this article is not alone sufficient grounds for a defendant to withdraw the defendant's plea or to request the court to set aside a conviction, sentence, or plea.

SECTION 7. Article 38.073, Code of Criminal Procedure, is amended to read as follows:

Art. 38.073. TESTIMONY OF INMATE WITNESSES. In a proceeding in the prosecution of a criminal offense in which an inmate in the custody of the Texas Department of Criminal Justice is required to testify as a witness, any deposition or testimony of the inmate witness may be conducted by a video teleconferencing system in the manner described by Article 27.18 [electronic means, in the same manner as permitted in civil cases under Section 30.012, Civil Practice and Remedies Code].

SECTION 8. Article 49.25, Code of Criminal Procedure, is amended by adding Section 13A to read as follows:

Sec. 13A. FEES. (a) A medical examiner may charge reasonable fees for services provided by the office of medical examiner under this article, including cremation approvals, court testimonies, consultations, and depositions.

(b) The commissioners court must approve the amount of the fee before the fee may be assessed. The fee may not exceed the amount necessary to provide the services described by Subsection (a).

(c) The fee may not be assessed against the county's district attorney or a county office.

SECTION 9. Section 31.037, Election Code, is amended to read as follows:

Sec. 31.037. SUSPENSION OR TERMINATION OF EMPLOYMENT. The employment of the county elections administrator may be suspended, with or without pay, or terminated at any time for good and sufficient cause on the four-fifths vote of the county election commission and approval of that action by a majority vote of the commissioners court.

SECTION 10. Section 43.007(i), Election Code, is amended to read as follows:



(i) The secretary of state may only select to participate in the program six ~~[three]~~ counties with a population of 100,000 or more and four ~~[two]~~ counties with a population of less than 100,000.

SECTION 11. Section 203.005(b), Family Code, is amended to read as follows:

(b) The first payment of a fee under Subsection (a)(5) ~~[(a)(4)]~~ is due on the date that the person required to pay support is ordered to begin child support, alimony, or separate maintenance payments. Subsequent payments of the fee are due annually and in advance.

SECTION 12. Sections 51.318(b) and (e), Government Code, are amended to read as follows:

(b) The fees are:

- (1) for issuing a subpoena, including one copy . . . . . \$8
- (2) for issuing a citation, commission for deposition, writ of execution, order of sale, writ of execution and order of sale, writ of injunction, writ of garnishment, writ of attachment, or writ of sequestration not provided for in Section 51.317, or any other writ or process not otherwise provided for, including one copy if required by law . . . . . \$8
- (3) for searching files or records to locate a cause when the docket number is not provided . . . . . \$5
- (4) for searching files or records to ascertain the existence of an instrument or record in the district clerk's office . . . . . \$5
- (5) for abstracting a judgment . . . . . \$8
- (6) for approving a bond . . . . . \$4
- (7) for a certified copy of a record, judgment, order, pleading, or paper on file or of record in the district clerk's office, including certificate and seal, for each page or part of a page . . . . . not to exceed \$1
- (8) for a noncertified copy, for each page or part of a page. not to exceed \$1.

(e) The district clerk may not charge ~~[the]~~ United States Immigration and Customs Enforcement or United States Citizenship and Immigration Services ~~[Naturalization Service]~~ a fee for a copy of any document on file or of record in the clerk's office relating to an individual's criminal history, regardless of whether the document is certified.

SECTION 13. Section 57.002, Government Code, is amended by adding Subsection (d-1) to read as follows:

(d-1) Subject to Subsection (e), a court in a county to which Section 21.021, Civil Practice and Remedies Code, applies may appoint a spoken language interpreter who is not a licensed court interpreter.

SECTION 14. Section 101.0611, Government Code, is amended to read as follows:

Sec. 101.0611. DISTRICT COURT FEES AND COSTS: GOVERNMENT CODE. The clerk of a district court shall collect fees and costs under the Government Code as follows:

- (1) appellate judicial system filing fees for:
  - (A) First or Fourteenth Court of Appeals District (Sec. 22.2021, Government Code) . . . not more than \$5;

(B) Second Court of Appeals District (Sec. 22.2031, Government Code) . . . not more than \$5;

(C) Third Court of Appeals District (Sec. 22.2041, Government Code) . . . \$5;

(D) Fourth Court of Appeals District (Sec. 22.2051, Government Code) . . . not more than \$5;

(E) Fifth Court of Appeals District (Sec. 22.2061, Government Code) . . . not more than \$5;

(F) Ninth Court of Appeals District (Sec. 22.2101, Government Code) . . . \$5;

(G) Eleventh Court of Appeals District (Sec. 22.2121, Government Code) . . . \$5; and

(H) Thirteenth Court of Appeals District (Sec. 22.2141, Government Code) . . . not more than \$5;

(2) when administering a case for the Rockwall County Court at Law (Sec. 25.2012, Government Code) . . . civil fees and court costs as if the case had been filed in district court;

(3) additional filing fees:

(A) for each suit filed for insurance contingency fund, if authorized by the county commissioners court (Sec. 51.302, Government Code) . . . not to exceed \$5;

(B) to fund the improvement of Dallas County civil court facilities, if authorized by the county commissioners court (Sec. 51.705, Government Code) . . . not more than \$15; and

(C) to fund the improvement of Hays County court facilities, if authorized by the county commissioners court (Sec. 51.707, Government Code) . . . not more than \$15;

(4) for filing a suit, including an appeal from an inferior court:

(A) for a suit with 10 or fewer plaintiffs (Sec. 51.317, Government Code) . . . \$50;

(B) for a suit with at least 11 but not more than 25 plaintiffs (Sec. 51.317, Government Code) . . . \$75;

(C) for a suit with at least 26 but not more than 100 plaintiffs (Sec. 51.317, Government Code) . . . \$100;

(D) for a suit with at least 101 but not more than 500 plaintiffs (Sec. 51.317, Government Code) . . . \$125;

(E) for a suit with at least 501 but not more than 1,000 plaintiffs (Sec. 51.317, Government Code) . . . \$150; or

(F) for a suit with more than 1,000 plaintiffs (Sec. 51.317, Government Code) . . . \$200;

(5) for filing a cross-action, counterclaim, intervention, contempt action, motion for new trial, or third-party petition (Sec. 51.317, Government Code) . . . \$15;

(6) for issuing a citation or other writ or process not otherwise provided for, including one copy, when requested at the time a suit or action is filed (Sec. 51.317, Government Code) . . . \$8;

(7) for records management and preservation (Sec. 51.317, Government Code) . . . \$10;

(8) for issuing a subpoena, including one copy (Sec. 51.318, Government Code) . . . \$8;

(9) for issuing a citation, commission for deposition, writ of execution, order of sale, writ of execution and order of sale, writ of injunction, writ of garnishment, writ of attachment, or writ of sequestration not provided for in Section 51.317, or any other writ or process not otherwise provided for, including one copy if required by law (Sec. 51.318, Government Code) . . . \$8;

(10) for searching files or records to locate a cause when the docket number is not provided (Sec. 51.318, Government Code) . . . \$5;

(11) for searching files or records to ascertain the existence of an instrument or record in the district clerk's office (Sec. 51.318, Government Code) . . . \$5;

(12) for abstracting a judgment (Sec. 51.318, Government Code) . . . \$8;

(13) for approving a bond (Sec. 51.318, Government Code) . . . \$4;

(14) for a certified copy of a record, judgment, order, pleading, or paper on file or of record in the district clerk's office, including certificate and seal, for each page or part of a page (Sec. 51.318, Government Code) . . . not to exceed \$1;

(15) for a noncertified copy, for each page or part of a page (Sec. 51.318, Government Code) . . . not to exceed \$1;

(16) fee for performing a service:

(A) related to the matter of the estate of a deceased person (Sec. 51.319, Government Code) . . . the same fee allowed the county clerk for those services;

(B) related to the matter of a minor (Sec. 51.319, Government Code) . . . the same fee allowed the county clerk for the service;

(C) of serving process by certified or registered mail (Sec. 51.319, Government Code) . . . the same fee a sheriff or constable is authorized to charge for the service under Section 118.131, Local Government Code; and

(D) prescribed or authorized by law but for which no fee is set (Sec. 51.319, Government Code) . . . a reasonable fee;

(17) jury fee (Sec. 51.604, Government Code) . . . \$30;

(18) additional filing fee for family protection on filing a suit for dissolution of a marriage under Chapter 6, Family Code (Sec. 51.961, Government Code) . . . not to exceed \$15;

(19) at a hearing held by an associate judge in Dallas County, a court cost to preserve the record, in the absence of a court reporter, by other means (Sec. 54.509, Government Code) . . . as assessed by the referring court or associate judge; and

(20) at a hearing held by an associate judge in Duval County, a court cost to preserve the record (Sec. 54.1151, Government Code) . . . as imposed by the referring court or associate judge.

SECTION 15. Section 551.0415, Government Code, is amended to read as follows:

Sec. 551.0415. GOVERNING BODY OF MUNICIPALITY OR COUNTY: 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 or county may receive from

municipal or county 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 or county; and
- (6) announcements involving an imminent threat to the public health and safety of people in the municipality or county that has arisen after the posting of the agenda.

SECTION 16. Section 551.0725(a), Government Code, is amended to read as follows:

(a) The commissioners court of a county [~~with a population of 400,000 or more~~] may conduct a closed meeting to deliberate business and financial issues relating to a contract being negotiated if, before conducting the closed meeting:

- (1) the commissioners court votes unanimously that deliberation in an open meeting would have a detrimental effect on the position of the commissioners court in negotiations with a third person; and
- (2) the attorney advising the commissioners court issues a written determination that deliberation in an open meeting would have a detrimental effect on the position of the commissioners court in negotiations with a third person.

SECTION 17. Section 61.002(5), Health and Safety Code, is amended to read as follows:

- (5) "General revenue levy" means:
  - (A) the property taxes imposed by a county that are not dedicated to:
    - (i) the construction and maintenance of farm-to-market roads under Article VIII, Section 1-a, Texas Constitution;
    - (ii) [~~or to~~] flood control under Article VIII, Section 1-a, [~~of the~~] Texas Constitution;
    - (iii) [~~or that are not dedicated to~~] the further maintenance of the public roads under Article VIII, Section 9, [~~of the~~] Texas Constitution; or
    - (iv) the payment of principal or interest on county debt; and
  - (B) the sales and use tax revenue to be received by the county during the calendar year in which the state fiscal year begins under Chapter 323, Tax Code, as determined under Section 26.041(d), Tax Code.

SECTION 18. Section 132.002(a), Local Government Code, is amended to read as follows:

(a) The commissioners court of a county may authorize a county or precinct officer who collects fees, fines, court costs, or other charges on behalf of the county or the state to accept payment by credit card or by the electronic processing of checks of a fee, fine, court costs, or other charge. The commissioners court may also authorize a county or precinct officer to collect and retain a fee for processing the payment by credit card or by the electronic processing of checks.

SECTION 19. Subchapter Z, Chapter 157, Local Government Code, is amended by adding Section 157.9031 to read as follows:

Sec. 157.9031. AUTHORITY TO REQUIRE REIMBURSEMENT FOR CERTAIN COVERAGE. A self-insuring county or the intergovernmental pool operating under Chapter 119, under policies concerning the provision of coverages adopted by the county's commissioners court or the pool's governing body, may require reimbursement for the provision of punitive damage coverage from a person to whom the county or intergovernmental pool provides coverage.

SECTION 20. Sections 270.007(b) and (f), Local Government Code, are amended to read as follows:

(b) A ~~[Notwithstanding the provisions of Subsections (f) and (g), a]~~ county may exclusively contract with a person to market the application or system. If the original contract for development of the application or system under Subsection (a) does not include a provision for marketing the application or system, a [A] contract under this subsection shall be awarded [only] in compliance with Section 262.030, [Local Government Code,] concerning the alternative competitive procedure for insurance or high technology items.

(f) Except as provided by Subsection (b), ~~[upon request of any person,]~~ a county may ~~[shall]~~ sell or license software under this section for a price negotiated between the county and the purchaser or licensee, including another governmental entity [person, not to exceed the developmental cost to the county. Developmental cost shall only include costs incurred under a contract to procure the software or direct employee costs incurred to develop the software. This subsection does not apply to any county software that protects county computer systems from unauthorized use or access].

SECTION 21. Section 352.081(e), Local Government Code, is amended to read as follows:

(e) An order adopted under this section expires, as applicable, on the date:

(1) a determination is made under Subsection (b) that drought conditions no longer exist; or

(2) a determination is made by the commissioners court, or the county judge or fire marshal if designated for that purpose by the commissioners court, that the circumstances identified under Subsection (c)(2) no longer exist.

SECTION 22. Section 387.003, Local Government Code, is amended by amending Subsections (a), (b), (b-1), (c), (e), (f), and (h) and adding Subsections (a-1), (i), and (j) to read as follows:

(a) The commissioners court of the county may call an election on the question of creating a county assistance district under this chapter. More than one county assistance district may be created in a county, but not more than one district may be created in a commissioners precinct.

(a-1) A district may ~~(to)~~ perform the following functions in the district:

- (1) the construction, maintenance, or improvement of roads or highways;
- (2) the provision of law enforcement and detention services;
- (3) the maintenance or improvement of libraries, museums, parks, or other recreational facilities;
- (4) the provision of services that benefit the public health or welfare, including the provision of firefighting and fire prevention services; or
- (5) the promotion of economic development and tourism.

(b) The order calling the election must:

(1) define the boundaries of the district to include any portion of the county in which the combined tax rate of all local sales and use taxes imposed, including the rate to be imposed by the district if approved at the election, would not exceed the maximum combined rate of sales and use taxes imposed by political subdivisions of this state that is prescribed by Sections 321.101 and 323.101, Tax Code ~~[two percent]~~; and

(2) call for the election to be held within those boundaries.

(b-1) If the proposed district includes any territory of a municipality, the commissioners court shall send notice by certified mail to the governing body of the municipality of the commissioners court's intent to create the district. If the municipality has created a development corporation under Chapter 504 or 505, the commissioners court shall also send the notice to the board of directors of the corporation. The commissioners court must send the notice not later than the 60th day before the date the commissioners court orders the election. The governing body of the municipality may exclude the territory of the municipality from the proposed district by sending notice by certified mail to the commissioners court of the governing body's desire to exclude the municipal territory from the district. The governing body must send the notice not later than the 45th day after the date the governing body receives notice from the commissioners court under this subsection. The territory of a municipality that is excluded under this subsection may subsequently be included in:

(1) the district in an election held under Subsection (f) with the consent of the municipality; or

(2) another district after complying with the requirements of this subsection and after an election under Subsection (f).

(c) The ballot at the election must be printed to permit voting for or against the proposition: "Authorizing the creation of the \_\_\_ County Assistance District No. \_\_\_ (insert name of district) and the imposition of a sales and use tax at the rate of \_\_\_ [~~of one~~] percent (insert [~~one eighth, one fourth, three eighths, or one half, as~~] appropriate rate) for the purpose of financing the operations of the district."

(e) If a majority of the votes received at the election are against the creation of the district, the district is not created and the county at any time may call one or more elections [another election] on the question of creating one or more [a] county assistance districts [district may not be held in the county before the first anniversary of the most recent election concerning the creation of a district].

(f) The commissioners court may call an election to be held in an area of the county that is not located in a district created under this section to determine whether the area should be included in the district and whether the district's sales and use tax should be imposed in the area. An election may not be held in an area in which the combined tax rate of all local sales and use taxes imposed, including the rate to be imposed by the district if approved at the election, would exceed the maximum combined rate of sales and use taxes imposed by political subdivisions of this state that is prescribed by Sections 321.101 and 323.101, Tax Code [two percent].

(h) If more than one election to authorize a local sales and use tax is held on the same day in the area of a proposed district or an area proposed to be added to a district and if the resulting approval by the voters would cause the imposition of a local sales and use tax in any area to exceed the maximum combined rate of sales and use taxes of political subdivisions of this state that is prescribed by Sections 321.101 and 323.101, Tax Code [two percent], only a tax authorized at an election under this section may be imposed.

(i) In addition to the authority to include an area in a district under Subsection (f), the governing body of a district by order may include an area in the district on receipt of a petition or petitions signed by the owner or owners of the majority of the land in the area to be included in the district. If there are no registered voters in the area to be included in the district, no election is required.

(j) The commissioners court by order may exclude an area from the district if the district has no outstanding bonds payable wholly or partly from sales and use taxes and the exclusion does not impair any outstanding district debt or contractual obligation.

SECTION 23. Section 387.005, Local Government Code, is amended to read as follows:

Sec. 387.005. GOVERNING BODY. (a) The commissioners court of the county in which the district is created by order shall provide that:

- (1) the commissioners court is the governing body of the district; or
- (2) the commissioners court shall appoint a governing body of the district.

(b) A member of the governing body of the district [commissioners court] is not entitled to compensation for service [on the governing body of the district] but is entitled to reimbursement for actual and necessary expenses.

(c) A board of directors appointed by the commissioners court under this section shall consist of five directors who serve staggered terms of two years. To be eligible to serve as a director, a person must be at least 18 years of age and a resident of the county in which the district is located. The initial directors shall draw lots to achieve staggered terms, with three of the directors serving one-year terms and two of the directors serving two-year terms.

SECTION 24. Section 387.006(a), Local Government Code, is amended to read as follows:

(a) A district may:

- (1) perform any act necessary to the full exercise of the district's functions;
- (2) accept a grant or loan from:
  - (A) the United States;
  - (B) an agency or political subdivision of this state; or
  - (C) a public or private person;
- (3) acquire, sell, lease, convey, or otherwise dispose of property or an interest in property under terms determined by the district;
- (4) employ necessary personnel; ~~and~~
- (5) adopt rules to govern the operation of the district and its employees and property; and
- (6) enter into agreements with municipalities necessary or convenient to achieve the district's purposes, including agreements regarding the duration, rate, and allocation between the district and the municipality of sales and use taxes.

SECTION 25. Section 387.007(b), Local Government Code, is amended to read as follows:

(b) A district may not adopt a sales and use tax under this chapter if the adoption of the tax would result in a combined tax rate of all local sales and use taxes that would exceed the maximum combined rate prescribed by Sections 321.101 and 323.101, Tax Code, [of more than two percent] in any location in the district.

SECTION 26. Section 387.009, Local Government Code, is amended to read as follows:

Sec. 387.009. TAX RATE. The rate of a tax adopted under this chapter must be in increments of one-eighth~~[, one fourth, three eighths, or one half]~~ of one percent.

SECTION 27. Sections 387.010(a), (b), and (c), Local Government Code, are amended to read as follows:

(a) A district that has adopted a sales and use tax under this chapter may, by order and subject to Section 387.007(b):

(1) reduce [~~change~~] the rate of the tax or repeal the tax without an election, except that the district may not repeal the sales and use tax or reduce the rate of the sales and use tax below the amount pledged to secure payment of an outstanding district debt or contractual obligation;

(2) increase the rate of the sales and use tax, if the increased rate of the sales and use tax will not exceed the rate approved at an election held under Section 387.003; or

(3) increase the rate of the sales and use tax to a rate that exceeds the rate approved at an election held under Section 387.003 after [if] the increase [~~change or repeal~~] is approved by a majority of the votes received in the district at an election held for that purpose.

(b) The tax may be changed under Subsection (a) in one or more increments of one-eighth of one percent ~~[to a maximum of one half of one percent]~~.

(c) The ballot for an election to increase [change] the tax shall be printed to permit voting for or against the proposition: "The increase [change] of a sales and use tax for the \_\_\_ County Assistance District No. \_\_\_ (insert name of district) from the



rate of \_\_\_\_ [~~of one~~] percent (insert [~~one-fourth, three-eighths, or one-half, as~~] appropriate rate) to the rate of \_\_\_\_ [~~of one~~] percent (insert [~~one-fourth, three-eighths, or one-half, as~~] appropriate rate)."

SECTION 28. Section 387.012, Local Government Code, is amended to read as follows:

Sec. 387.012. EFFECTIVE DATE OF TAX. The adoption of the tax, the increase or reduction [~~change~~] of the tax rate, or the repeal of the tax takes effect on the first day of the first calendar quarter occurring after the expiration of the first complete quarter occurring after the date the comptroller receives a copy of the order of the district's governing body [~~notice of the results of the election~~] adopting, increasing, reducing [~~changing~~], or repealing the tax.

SECTION 29. Chapter 51, Property Code, is amended by adding Section 51.0022 to read as follows:

Sec. 51.0022. FORECLOSURE DATA COLLECTION. (a) In this section, "department" means the Texas Department of Housing and Community Affairs.

(b) A person filing a notice of sale of residential property under Section 51.002(b) must submit to the county clerk a completed form that provides the zip code for the property.

(c) On completion of a sale of real property, the trustee or sheriff shall submit to the county clerk a completed form that contains information on whether the property is residential and the zip code of the property.

(d) Not later than the 30th day after the date of receipt of a form under this section, the county clerk shall transmit the form to the department.

(e) The board of the department shall prescribe the forms required under this section. The forms may only request information on whether the property is residential and the zip code of the property.

(f) The department shall report the information received under this section quarterly to the legislature in a format established by the board of the department by rule.

SECTION 30. Sections 86.022, 112.008, and 387.010(d), Local Government Code, are repealed.

SECTION 31. (a) Articles 20.011(a) and 20.02(b), Code of Criminal Procedure, as amended by this Act, and Article 20.151, Code of Criminal Procedure, as added by this Act, apply only to testimony before a grand jury that is impaneled on or after the effective date of this Act.

(b) Article 27.18, Code of Criminal Procedure, as amended by this Act, applies to a plea of guilty or nolo contendere entered on or after the effective date of this Act, regardless of whether the offense with reference to which the plea is entered is committed before, on, or after that date.

(c) Article 38.073, Code of Criminal Procedure, as amended by this Act, applies only to the testimony of an inmate witness that is taken on or after the effective date of this Act.

(d) Section 13A, Article 49.25, Code of Criminal Procedure, as added by this Act, applies only to a service provided by a medical examiner's office on or after the effective date of this Act. A service provided before the effective date of this Act is covered by the law in effect on the date the service was provided, and the former law is continued in effect for that purpose.

(e) Sections 51.318(b) and 101.0611, Government Code, as amended by this Act, apply only to a request for a certified copy of a record, judgment, order, pleading, or paper on file or of record in the district clerk's office, including certificate and seal, made on or after the effective date of this Act. A request made before the effective date of this Act is covered by the law in effect when the request was made, and the former law is continued in effect for that purpose.

(f) Section 57.002(d-1), Government Code, as added by this Act, applies only to the appointment of a court interpreter under Chapter 57, Government Code, as amended by this Act, on or after the effective date of this Act. The appointment of a court interpreter before the effective date of this Act is governed by the law in effect when the interpreter was appointed, and the former law is continued in effect for that purpose.

(g) Section 551.0725(a), Government Code, as amended by this Act, applies only to a meeting held on or after the effective date of this Act. A meeting held before the effective date of this Act is governed by the law in effect on the date the meeting is held, and the former law is continued in effect for that purpose.

(h) Sections 270.007(b) and (f), Local Government Code, as amended by this Act, apply only to a contract entered into on or after the effective date of this Act. A contract entered into before the effective date of this Act is governed by the law in effect when the contract was entered into, and the former law is continued in effect for that purpose.

(i) The board of the Texas Department of Housing and Community Affairs shall adopt the forms and rules required by Section 51.0022, Property Code, as added by this Act, not later than January 1, 2012.

(j) The change in law made by Section 51.0022, Property Code, as added by this Act, applies only to a notice of sale filed on or after January 1, 2012. A notice of sale filed before January 1, 2012, is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 32. 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, 2011.

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

Amend **CSSB 1233** (house committee report) by striking SECTION 10 of the bill, amending Section 43.007(i), Election Code (page 5, lines 15 through 20), and renumbering the remaining SECTIONS of the bill accordingly.

The amendments were read.

Senator West moved to concur in the House amendments to **SB 1233**.

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

**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 President Pro Tempore laid the bill and the House amendment before the Senate.

**Amendment**

Amend **SB 78** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to adverse licensing, listing, or registration decisions by certain health and human services agencies.

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

SECTION 1. Chapter 531, Government Code, is amended by adding Subchapter W to read as follows:

SUBCHAPTER W. ADVERSE LICENSING, LISTING, OR REGISTRATION  
DECISIONS

Sec. 531.951. APPLICABILITY. (a) This subchapter applies only to the final licensing, listing, or registration decisions of a health and human services agency with respect to a person under the law authorizing the agency to regulate the following types of persons:

(1) a youth camp licensed under Chapter 141, Health and Safety Code;  
(2) a home and community support services agency licensed under Chapter 142, Health and Safety Code;

(3) a hospital licensed under Chapter 241, Health and Safety Code;  
(4) an institution licensed under Chapter 242, Health and Safety Code;  
(5) an assisted living facility licensed under Chapter 247, Health and Safety

Code;  
(6) a special care facility licensed under Chapter 248, Health and Safety

Code;  
(7) an intermediate care facility licensed under Chapter 252, Health and Safety Code;

(8) a chemical dependency treatment facility licensed under Chapter 464, Health and Safety Code;

(9) a mental hospital or mental health facility licensed under Chapter 577, Health and Safety Code;

(10) a child-care facility or child-placing agency licensed under or a family home listed or registered under Chapter 42, Human Resources Code; or

(11) an adult day-care facility licensed under Chapter 103, Human Resources Code.

(b) This subchapter does not apply to an agency decision that did not result in a final order or that was reversed on appeal.

Sec. 531.952. RECORD OF FINAL DECISION. (a) Each health and human services agency that regulates a person described by Section 531.951 shall in accordance with this section and executive commissioner rule maintain a record of:

(1) each application for a license, including a renewal license or a license that does not expire, a listing, or a registration that is denied by the agency under the law authorizing the agency to regulate the person; and

(2) each license, listing, or registration that is revoked, suspended, or terminated by the agency under the applicable law.

(b) The record of an application required by Subsection (a)(1) must be maintained until the 10th anniversary of the date the application is denied. The record of the license, listing, or registration required by Subsection (a)(2) must be maintained until the 10th anniversary of the date of the revocation, suspension, or termination.

(c) The record required under Subsection (a) must include:

(1) the name and address of the applicant for a license, listing, or registration that is denied as described by Subsection (a)(1);

(2) the name and address of each person listed in the application for a license, listing, or registration that is denied as described by Subsection (a)(1);

(3) the name of each person determined by the applicable regulatory agency to be a controlling person of an entity for which an application, license, listing, or registration is denied, revoked, suspended, or terminated as described by Subsection (a);

(4) the specific type of license, listing, or registration that was denied, revoked, suspended, or terminated by the agency;

(5) a summary of the terms of the denial, revocation, suspension, or termination; and

(6) the period the denial, revocation, suspension, or termination was effective.

(d) Each health and human services agency that regulates a person described by Section 531.951 each month shall provide a copy of the records maintained under this section to each other health and human services agency that regulates a person described by Section 531.951.

Sec. 531.953. DENIAL OF APPLICATION BASED ON ADVERSE AGENCY DECISION. A health and human services agency that regulates a person described by Section 531.951 may deny an application for a license, including a renewal license or a license that does not expire, a listing, or a registration included in that section if:

(1) any of the following persons are listed in a record maintained under Section 531.952:

(A) the applicant;

(B) a person listed on the application; or

(C) a person determined by the applicable regulating agency to be a controlling person of an entity for which the license, including a renewal license or a license that does not expire, the listing, or the registration is sought; and

(2) the agency's action that resulted in the person being listed in a record maintained under Section 531.952 is based on:

(A) an act or omission that resulted in physical or mental harm to an individual in the care of the applicant or person;

(B) a threat to the health, safety, or well-being of an individual in the care of the applicant or person;

(C) the physical, mental, or financial exploitation of an individual in the care of the applicant or person; or

(D) a determination by the agency that the applicant or person has committed an act or omission that renders the applicant unqualified or unfit to fulfill the obligations of the license, listing, or registration.

Sec. 531.954. REQUIRED APPLICATION INFORMATION. An applicant submitting an initial or renewal application for a license, including a renewal license or a license that does not expire, a listing, or a registration described under Section 531.951 must include with the application a written statement of:

(1) the name of any person who is or will be a controlling person, as determined by the applicable agency regulating the person, of the entity for which the license, listing, or registration is sought; and

(2) any other relevant information required by executive commissioner rule.

SECTION 2. (a) Not later than March 1, 2012, the executive commissioner of the Health and Human Services Commission shall adopt the rules necessary to implement Subchapter W, Chapter 531, Government Code, as added by this Act.

(b) Notwithstanding Section 531.952, Government Code, as added by this Act, a health and human services agency is not required to maintain the records as required under that section until March 1, 2012.

SECTION 3. This Act takes effect September 1, 2011.

The amendment was read.

Senator Nelson moved to concur in the House amendment to **SB 78**.

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

### **CONFERENCE COMMITTEE ON HOUSE BILL 725**

Senator Fraser called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 725** and moved that the request be granted.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **HB 725** before appointment.

There were no motions offered.

Accordingly, the President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Fraser, Chair; Eltife, Deuell, Watson, and Shapiro.

### **CONFERENCE COMMITTEE ON HOUSE BILL 3275**

Senator Ellis 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 3275** and moved that the request be granted.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **HB 3275** before appointment.

There were no motions offered.

Accordingly, the President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Ellis, Chair; Jackson, Watson, Eltife, and West.

### **CONFERENCE COMMITTEE ON HOUSE BILL 628**

Senator Eltife, on behalf of Senator Jackson, called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 628** and moved that the request be granted.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **HB 628** before appointment.

There were no motions offered.

Accordingly, the President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Jackson, Chair; Duncan, Seliger, Van de Putte, and Fraser.

### **SENATE BILL 100 WITH HOUSE AMENDMENTS**

Senator Van de Putte called **SB 100** from the President's table for consideration of the House amendments to the bill.

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

#### **Amendment**

Amend **SB 100** by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to the adoption of voting procedures necessary to implement the federal Military and Overseas Voter Empowerment Act.

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

SECTION 1. Chapter 101, Election Code, is amended to read as follows:

#### CHAPTER 101. VOTING BY RESIDENT FEDERAL POSTCARD APPLICANT SUBCHAPTER A. GENERAL PROVISIONS

Sec. 101.001. ELIGIBILITY. A person is eligible for early voting by mail as provided by this chapter if:

(1) the person is qualified to vote in this state or, if not registered to vote in this state, would be qualified if registered; and

(2) the person is:

(A) a member of the armed forces of the United States, or the spouse or a dependent of a member;

(B) a member of the merchant marine of the United States, or the spouse or a dependent of a member; or

(C) domiciled in this state but temporarily living outside the territorial limits of the United States and the District of Columbia.

Sec. 101.002. GENERAL CONDUCT OF VOTING. Voting under this chapter shall be conducted and the results shall be processed as provided by Subtitle A for early voting by mail, except as otherwise provided by this chapter.

Sec. 101.003. DEFINITIONS. [FORM AND CONTENTS OF APPLICATION.

~~(a) An application for a ballot to be voted under this chapter must:~~

~~[(1) be submitted on an official federal postcard application form; and~~

~~[(2) include the information necessary to indicate that the applicant is eligible to vote in the election for which the ballot is requested.~~

~~[(b)] In this chapter:~~

(1) "Federal [~~,"~~ "federal] postcard application" means an application for a ballot to be voted under this chapter submitted on the official federal form prescribed under the federal Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. Section 1973ff et seq.).

(2) "FPCA registrant" means a person registered to vote under Section 101.055.

Sec. 101.004. NOTING FPCA REGISTRATION ON POLL LIST. For each FPCA registrant accepted to vote, a notation shall be made beside the voter's name on the early voting poll list indicating that the voter is an FPCA registrant.

Sec. 101.005. NOTING FPCA REGISTRATION AND E-MAIL ON EARLY VOTING ROSTER. The entry on the early voting roster pertaining to a voter under this chapter who is an FPCA registrant must include a notation indicating that the voter is an FPCA registrant. The early voting clerk shall note on the early voting by mail roster each e-mail of a ballot under Subchapter C.

Sec. 101.006. EXCLUDING FPCA REGISTRANT FROM PRECINCT EARLY VOTING LIST. A person to whom a ballot is provided under this chapter is not required to be included on the precinct early voting list if the person is an FPCA registrant.

Sec. 101.007. DESIGNATION OF SECRETARY OF STATE. (a) The secretary of state is designated as the state office to provide information regarding voter registration procedures and absentee ballot procedures, including procedures related to the federal write-in absentee ballot, to be used by persons eligible to vote under the federal Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. Section 1973ff et seq.).

(b) The secretary of state is designated as the state coordinator between military and overseas voters and county election officials. A county election official shall:

(1) cooperate with the secretary of state to ensure that military and overseas voters timely receive accurate balloting materials that a voter is able to cast in time for the election; and

(2) otherwise comply with the federal Military and Overseas Voter Empowerment Act (Pub. L. No. 111-84, Div. A, Title V, Subt. H).

(c) The secretary of state may adopt rules as necessary to implement this section.

Sec. 101.008. STATUS OF APPLICATION OR BALLOT VOTED. The secretary of state, in coordination with local election officials, shall implement an electronic free-access system by which a person eligible for early voting by mail under this chapter or Chapter 114 may determine by telephone, by e-mail, or over the Internet whether:

(1) the person's federal postcard application or other registration or ballot application has been received and accepted; and

(2) the person's ballot has been received and the current status of the ballot.

SUBCHAPTER B. SUBMISSION OF FEDERAL POSTCARD APPLICATION

Sec. 101.051. FORM AND CONTENTS OF APPLICATION. An application for a ballot to be voted under this subchapter must:

(1) be submitted on an official federal postcard application form; and

(2) include the information necessary to indicate that the applicant is eligible to vote in the election for which the ballot is requested.

Sec. 101.052 [101.004]. SUBMITTING APPLICATION. (a) A federal postcard application must be submitted to the early voting clerk for the election who serves the election precinct of the applicant's residence.

(a-1) A federal postcard application must be submitted by:

(1) mail; or

(2) electronic transmission of an image of the application under procedures prescribed by the secretary of state.

(b) A federal postcard application may be submitted at any time during the calendar year in which the election for which a ballot is requested occurs, but not later than the deadline for submitting a regular application for a ballot to be voted by mail.

(c) A federal postcard application requesting a ballot for an election to be held in January or February may be submitted in the preceding calendar year but not earlier than the earliest date for submitting a regular application for a ballot to be voted by mail.

(d) A timely application that is addressed to the wrong early voting clerk shall be forwarded to the proper early voting clerk not later than the day after the date it is received by the wrong clerk.

(e) An applicant who otherwise complies with applicable requirements is entitled to receive a full ballot to be voted by mail under this chapter if:

(1) the applicant submits a federal postcard application to the early voting clerk on or before the 20th day before election day; and

(2) the application contains the information that is required for registration under Title 2.

(f) The applicant is entitled to receive only a federal ballot to be voted by mail under Chapter 114 if:

(1) the applicant submits the federal postcard application to the early voting clerk after the date provided by Subsection (e)(1) and before the sixth day before election day; and

(2) the application contains the information that is required for registration under Title 2.



(g) An applicant who submits a federal postcard application to the early voting clerk on or after the sixth day before election day is not entitled to receive a ballot by mail for that election.

(h) If the applicant submits the federal postcard application within the time prescribed by Subsection (f)(1) and is a registered voter at the address contained on the application, the applicant is entitled to receive a full ballot to be voted by mail under this chapter.

(i) Except as provided by Subsections (l) and (m), for purposes of determining the date a federal postcard application is submitted to the early voting clerk, an application is considered to be submitted on the date it is placed and properly addressed in the United States mail. An application mailed from an Army/Air Force Post Office (APO) or Fleet Post Office (FPO) is considered placed in the United States mail. The date indicated by the post office cancellation mark, including a United States military post office cancellation mark, is considered to be the date the application was placed in the mail unless proven otherwise. For purposes of an application made under Subsection (e):

(1) an application that does not contain a cancellation mark is considered to be timely if it is received by the early voting clerk on or before the 15th day before election day; and

(2) if the 20th day before the date of an election is a Saturday, Sunday, or legal state or national holiday, an application is considered to be timely if it is submitted to the early voting clerk on or before the next regular business day.

(j) If the early voting clerk determines that an application that is submitted before the time prescribed by Subsection (e)(1) does not contain the information that is required for registration under Title 2, the clerk shall notify the applicant of that fact. If the applicant has provided a telephone number or an address for receiving mail over the Internet, the clerk shall notify the applicant by that medium.

(k) If the applicant submits the missing information before the time prescribed by Subsection (e)(1), the applicant is entitled to receive a full ballot to be voted by mail under this chapter. If the applicant submits the missing information after the time prescribed by Subsection (e)(1), the applicant is entitled to receive a full ballot to be voted by mail for the next election that occurs:

(1) in the same calendar year; and

(2) after the 30th day after the date the information is submitted.

(l) For purposes of determining the end of the period that an application may be submitted under Subsection (f)(1), an application is considered to be submitted at the time it is received by the early voting clerk.

(m) The secretary of state by rule shall establish the date on which a federal postcard application is considered to be electronically submitted to the early voting clerk.

Sec. 101.053 [~~101.0044~~]. ACTION BY EARLY VOTING CLERK ON CERTAIN APPLICATIONS. The early voting clerk shall notify the voter registrar of a federal postcard application submitted by an applicant that states a voting residence address located outside the registrar's county.

Sec. 101.054 [~~101.005~~]. APPLYING FOR MORE THAN ONE ELECTION IN SAME APPLICATION. (a) A person may apply with a single federal postcard application for a ballot for any one or more elections in which the early voting clerk to whom the application is submitted conducts early voting.

(b) An application that does not identify the election for which a ballot is requested shall be treated as if it requests a ballot for:

(1) each general election in which the clerk conducts early voting; and

(2) the general primary election if the application indicates party preference and is submitted to the early voting clerk for the primary.

(c) An application shall be treated as if it requests a ballot for[~~:-~~

~~(1) a runoff election that results from an election for which a ballot is requested[~~:-~~ and~~

~~(2) each election for a federal office, including a primary or runoff election, that occurs on or before the date of the second general election for state and county officers that occurs after the date the application is submitted].~~

(d) An application requesting a ballot for more than one election shall be preserved for the period for preserving the precinct election records for the last election for which the application is effective.

Sec. 101.055 [~~101.006~~]. FPCA VOTER REGISTRATION. (a) The submission of a federal postcard application that complies with the applicable requirements by an unregistered applicant constitutes registration by the applicant:

(1) for the purpose of voting in the election for which a ballot is requested; and

(2) under Title 2 unless the person indicates on the application that the person is residing outside the United States indefinitely.

(b) For purposes of registering to vote under this chapter, a person shall provide the address of the last place of residence of the person in this state or the last place of residence in this state of the person's parent or legal guardian.

(c) The registrar shall register the person at the address provided under Subsection (b) unless that address no longer is recognized as a residential address, in which event the registrar shall assign the person to an address under procedures prescribed by the secretary of state. [In this chapter, "FPCA registrant" means a person registered to vote under this section.]

Sec. 101.056 [~~101.007~~]. METHOD OF PROVIDING BALLOT; REQUIRED ADDRESS. (a) The balloting materials provided under this ~~subchapter~~ ~~[chapter]~~ shall be airmailed to the voter free of United States postage, as provided by the federal Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. Section 1973ff et seq.), in an envelope labeled "Official Election Balloting Material - via Airmail." The secretary of state shall provide early voting clerks with instructions on compliance with this subsection.

(b) The address to which the balloting materials are sent to a voter must be:

(1) an address outside the county of the voter's residence; or

(2) an address in the United States for forwarding or delivery to the voter at a location outside the United States.

(c) If the address to which the balloting materials are to be sent is within the county served by the early voting clerk, the federal postcard application must indicate that the balloting materials will be forwarded or delivered to the voter at a location outside the United States.

Sec. 101.057 [~~101.008~~]. RETURN OF VOTED BALLOT. A ballot voted under this subchapter [~~chapter~~] may be returned to the early voting clerk by mail, common or contract carrier, or courier.

~~[Sec. 101.009. NOTING FPCA REGISTRATION ON POLL LIST. For each FPCA registrant accepted to vote, a notation shall be made beside the voter's name on the early voting poll list indicating that the voter is an FPCA registrant.]~~

~~[Sec. 101.010. NOTING FPCA REGISTRATION ON EARLY VOTING ROSTER. The entry on the early voting roster pertaining to a voter under this chapter who is an FPCA registrant must include a notation indicating that the voter is an FPCA registrant.]~~

~~[Sec. 101.011. EXCLUDING FPCA REGISTRANT FROM PRECINCT EARLY VOTING LIST. A person to whom a ballot is provided under this chapter is not required to be included on the precinct early voting list if the person is an FPCA registrant.]~~

Sec. 101.058 [~~101.012~~]. OFFICIAL CARRIER ENVELOPE. The officially prescribed carrier envelope for voting under this subchapter [~~chapter~~] shall be prepared so that it can be mailed free of United States postage, as provided by the federal Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. Section 1973ff et seq.) [~~Federal Voting Assistance Act of 1955~~], and must contain the label prescribed by Section 101.056(a) [~~101.007(a)~~] for the envelope in which the balloting materials are sent to a voter. The secretary of state shall provide early voting clerks with instructions on compliance with this section.

#### SUBCHAPTER C. E-MAIL TRANSMISSION OF BALLOTING MATERIALS

Sec. 101.101. PURPOSE. The purpose of this subchapter is to implement the federal Military and Overseas Voter Empowerment Act (Pub. L. No. 111-84, Div. A, Title V, Subt. H).

Sec. 101.102. REQUEST FOR BALLOTING MATERIALS. (a) A person eligible to vote under this chapter may request from the appropriate early voting clerk e-mail transmission of balloting materials under this subchapter.

(b) The early voting clerk shall grant a request made under this section for the e-mail transmission of balloting materials if:

(1) the requestor has submitted a valid federal postcard application and:

(A) if the requestor is a person described by Section 101.001(2)(C), has provided a current mailing address that is located outside the United States; or

(B) if the requestor is a person described by Section 101.001(2)(A) or (B), has provided a current mailing address that is located outside the requestor's county of residence;

(2) the requestor provides an e-mail address:

(A) that corresponds to the address on file with the requestor's federal postcard application; or

(B) stated on a newly submitted federal postcard application;

(3) the request is submitted on or before the seventh day before the date of the election; and

(4) a marked ballot for the election from the requestor has not been received by the early voting clerk.

Sec. 101.103. CONFIDENTIALITY OF E-MAIL ADDRESS. An e-mail address used under this subchapter to request balloting materials is confidential and does not constitute public information for purposes of Chapter 552, Government Code. An early voting clerk shall ensure that a voter's e-mail address provided under this subchapter is excluded from public disclosure.

Sec. 101.104. ELECTIONS COVERED. The e-mail transmission of balloting materials under this subchapter is limited to:

(1) an election in which an office of the federal government appears on the ballot, including a primary election;

(2) an election to fill a vacancy in the legislature unless:

(A) the election is ordered as an emergency election under Section 41.0011; or

(B) the election is held as an expedited election under Section 203.013;

or

(3) an election held jointly with an election described by Subdivision (1) or

(2).

Sec. 101.105. BALLOTING MATERIALS TO BE SENT BY E-MAIL. Balloting materials to be sent by e-mail under this subchapter include:

(1) the appropriate ballot;

(2) ballot instructions, including instructions that inform a voter that the ballot must be returned by mail to be counted;

(3) instructions prescribed by the secretary of state on:

(A) how to print a return envelope from the federal Voting Assistance Program website; and

(B) how to create a carrier envelope or signature sheet for the ballot;

and

(4) a list of certified write-in candidates, if applicable.

Sec. 101.106. METHODS OF TRANSMISSION TO VOTER. (a) The balloting materials may be provided by e-mail to the voter in PDF format, through a scanned format, or by any other method of electronic transmission authorized by the secretary of state in writing.

(b) The secretary of state shall prescribe procedures for the retransmission of balloting materials following an unsuccessful transmission of the materials to a voter.

Sec. 101.107. RETURN OF BALLOT. (a) A voter described by Section 101.001(2)(A) or (B) must be voting from outside the voter's county of residence. A voter described by Section 101.001(2)(C) must be voting from outside the United States.

(b) A voter who receives a ballot under this subchapter must return the ballot in the same manner as required under Section 101.057 and, except as provided by Chapter 105, may not return the ballot by electronic transmission.

(c) A ballot that is not returned as required by Subsection (b) is considered a ballot not timely returned and is not sent to the early voting ballot board for processing.

(d) The deadline for the return of a ballot under this section is the same deadline as provided in Section 86.007.

Sec. 101.108. TRACKING OF BALLOTING MATERIALS. The secretary of state by rule shall create a tracking system under which an FPCA registrant may determine whether a voted ballot has been received by the early voting clerk. Each county that sends ballots to FPCA registrants shall provide information required by the secretary of state to implement the system.

Sec. 101.109. RULES. (a) The secretary of state may adopt rules as necessary to implement this subchapter.

(b) The secretary of state may provide for an alternate secure method of electronic ballot transmission under this subchapter instead of transmission by e-mail.

~~[Sec. 101.013. DESIGNATION OF SECRETARY OF STATE. The secretary of state is designated as the state office to provide information regarding voter registration procedures and absentee ballot procedures, including procedures related to the federal write in absentee ballot, to be used by persons eligible to vote under the federal Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. Section 1973ff et seq.), as amended.]~~

SECTION 2. Section 2.025, Election Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) Except as provided by Subsection (d) or as otherwise provided by this code, a runoff election shall be held not earlier than the 20th or later than the 45th day after the date the final canvass of the main election is completed.

(d) A runoff election for a special election to fill a vacancy in Congress or a special election to fill a vacancy in the legislature to which Section 101.104 applies shall be held not earlier than the 70th day or later than the 77th day after the date the final canvass of the main election is completed.

SECTION 3. Section 3.005(c), Election Code, is amended to read as follows:

(c) For an election to be held on:

(1) the date of the general election for state and county officers, the election shall be ordered not later than the 78th [70th] day before election day; and

(2) a uniform election date other than the date of the general election for state and county officers, the election shall be ordered not later than the 71st day before election day.

SECTION 4. Section 41.001, Election Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) Except as otherwise provided by this subchapter, each general or special election in this state shall be held on one of the following dates:

(1) the second Saturday in May in an odd-numbered year;

(2) the second Saturday in May in an even-numbered year, for an election held by a political subdivision other than a county; or

(3) [(2)] the first Tuesday after the first Monday in November.

(d) Notwithstanding Section 31.093, a county elections administrator is not required to enter into a contract to furnish election services for an election held on the date described by Subsection (a)(2).

SECTION 5. Section 41.0052, Election Code, is amended to read as follows:

Sec. 41.0052. CHANGING GENERAL ELECTION DATE. (a) ~~[The governing body of a political subdivision other than a county may, not later than December 31, 2005, change the date on which it holds its general election for officers to another authorized uniform election date.~~

~~[(a-1)]~~ The governing body of a political subdivision, other than a county, that holds its general election for officers on a date other than the November uniform election date may, not later than December 31, 2012 ~~[2010]~~, change the date on which it holds its general election for officers to the November uniform election date.

(b) A political subdivision that before September 1, 2011, held its general election for officers on the uniform election date in May or that is required by other law to hold its general election for officers on that date shall hold its general election for officers on the first Tuesday in April in an odd-numbered year unless the governing body of the political subdivision changes the date as provided by Subsection (a).

(c) A political subdivision [governing body] changing an election date under this section shall adjust the terms of office to conform to the new election date.

(d) A home-rule city may implement the change authorized by Subsection (a) through the adoption of a resolution. The change contained in the resolution supersedes a city charter provision that requires a different general election date.

(e) The holdover of a member of a governing body of a city in accordance with Section 17, Article XVI, Texas Constitution, so that a term of office may be conformed to a new election date chosen under this section does not constitute a vacancy for purposes of Section 11(b), Article XI, Texas Constitution.

SECTION 6. Sections 41.007(a), (b), and (c), Election Code, are amended to read as follows:

(a) The general primary election date is the first Tuesday in April ~~[March]~~ in each even-numbered year.

(b) The runoff primary election date is the third ~~[second]~~ Tuesday in June ~~[April]~~ following the general primary election.

(c) The presidential primary election date is the first Tuesday in April ~~[March]~~ in each presidential election year.

SECTION 7. Section 65.051, Election Code, is amended by adding Subsection (c) to read as follows:

(c) Section 1.006 does not apply to this section.

SECTION 8. Section 86.004(b), Election Code, is amended to read as follows:

(b) For an election to which Section 101.104 applies [the general election for state and county officers], the balloting materials for a voter who indicates on the application for a ballot to be voted by mail or the federal postcard application that the voter is eligible to vote early by mail as a consequence of the voter's being outside the United States shall be mailed on or before the later of the 45th day before election day or the seventh calendar day after the date the clerk receives the application. However, if it is not possible to mail the ballots by the deadline of the 45th day before election

day, the clerk shall notify the secretary of state within 24 hours of knowing that the deadline will not be met. The secretary of state shall monitor the situation and advise the clerk, who shall mail the ballots as soon as possible in accordance with the secretary of state's guidelines.

SECTION 9. Section 86.011(b), Election Code, is amended to read as follows:

(b) If the return is timely, the clerk shall enclose the carrier envelope and the voter's early voting ballot application in a jacket envelope. The clerk shall also include in the jacket envelope:

(1) a copy of the voter's federal postcard application if the ballot is voted under Chapter 101; and

(2) the signature cover sheet, if the ballot is voted under Chapter 105.

SECTION 10. Subchapter B, Chapter 87, Election Code, is amended by adding Section 87.0223 to read as follows:

Sec. 87.0223. TIME OF DELIVERY: BALLOTS SENT OUT BY REGULAR MAIL AND E-MAIL. (a) If the early voting clerk has provided a voter a ballot to be voted by mail by both regular mail and e-mail under Subchapter C, Chapter 101, the clerk may not deliver a jacket envelope containing the early voting ballot voted by mail by the voter to the board until:

(1) both ballots are returned; or

(2) the deadline for returning marked ballots under Section 86.007 has passed.

(b) If both the ballot provided by regular mail and the ballot provided by e-mail are returned before the deadline, the early voting clerk shall deliver only the jacket envelope containing the ballot provided by e-mail to the board. The ballot provided by regular mail is considered to be a ballot not timely returned.

SECTION 11. Section 87.041, Election Code, is amended by adding Subsection (f) to read as follows:

(f) In making the determination under Subsection (b)(2) for a ballot cast under Chapter 101 or 105, the board shall compare the signature on the carrier envelope or signature cover sheet with the signature of the voter on the federal postcard application.

SECTION 12. Section 87.043, Election Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) The early voting ballot board shall place the carrier envelopes containing rejected ballots in an envelope and shall seal the envelope. More than one envelope may be used if necessary. The board shall keep a record of the number of rejected ballots in each envelope.

(d) A notation must be made on the carrier envelope of any ballot that was rejected after the carrier envelope was opened and include the reason the envelope was opened and the ballot was rejected.

SECTION 13. Section 87.0431, Election Code, is amended to read as follows:

Sec. 87.0431. NOTICE OF REJECTED BALLOT. Not later than the 10th day after election day, the presiding judge of the early voting ballot board shall deliver written notice of the reason for the rejection of a ballot to the voter at the residence

address on the ballot application. If the ballot was transmitted to the voter by e-mail under Subchapter C, Chapter 101, the presiding judge shall also provide the notice to the e-mail address to which the ballot was sent.

SECTION 14. Section 87.044(a), Election Code, is amended to read as follows:

(a) The early voting ballot board shall place each application for a ballot voted by mail in its corresponding jacket envelope. For a ballot voted under Chapter 101 or 105, the board shall also place the copy of the voter's federal postcard application or signature cover sheet in the same location as the carrier envelope. If the voter's ballot was accepted, the board shall also place the carrier envelope in the jacket envelope. However, if the jacket envelope is to be used in a subsequent election, the carrier envelope shall be retained elsewhere.

SECTION 15. Section 105.003, Election Code, is amended to read as follows:

Sec. 105.003. USE OF FEDERAL WRITE-IN ABSENTEE BALLOT FOR ELECTIONS FOR FEDERAL OFFICE. The secretary of state shall prescribe procedures to allow a voter who qualifies to vote by a federal write-in absentee ballot to vote through use of a federal write-in absentee ballot in:

(1) any general, special, primary, or runoff election for federal office; or

(2) an election for any office for which balloting materials may be sent

under Section 101.104.

SECTION 16. Section 142.010(b), Election Code, is amended to read as follows:

(b) Not later than the ~~68th~~ ~~[55th]~~ day before general election day, the certifying authority shall deliver the certification to the authority responsible for having the official ballot prepared in each county in which the candidate's name is to appear on the ballot.

SECTION 17. Section 143.007(c), Election Code, is amended to read as follows:

(c) For an election to be held on:

(1) the date of the general election for state and county officers, the day of the filing deadline is the 78th ~~[70th]~~ day before election day; and

(2) a uniform election date other than the date of the general election for state and county officers, the day of the filing deadline is the 71st day before election day.

SECTION 18. Section 144.005(d), Election Code, is amended to read as follows:

(d) For an election to be held on:

(1) the date of the general election for state and county officers, the day of the filing deadline is the 78th ~~[70th]~~ day before election day; and

(2) a uniform election date other than the date of the general election for state and county officers, the day of the filing deadline is the 71st day before election day.

SECTION 19. Section 144.006(b), Election Code, is amended to read as follows:

(b) For an election to be held on:

(1) the date of the general election for state and county officers, the day of the filing deadline is the 78th ~~[67th]~~ day before election day; and



(2) a uniform election date other than the date of the general election for state and county officers, the day of the filing deadline is the 71st day before election day.

SECTION 20. Section 145.037(e), Election Code, is amended to read as follows:

(e) The certification must be delivered not later than 5 p.m. of the 71st [~~70th~~] day before election day.

SECTION 21. Section 145.038(b), Election Code, is amended to read as follows:

(b) The state chair must deliver the certification of the replacement nominee not later than 5 p.m. of the 69th [~~67th~~] day before election day.

SECTION 22. Section 145.092(f), Election Code, is amended to read as follows:

(f) A candidate in an election for which the filing deadline for an application for a place on the ballot is not later than 5 p.m. of the 78th [~~70th~~] day before election day may not withdraw from the election after 5 p.m. of the 71st [~~67th~~] day before election day.

SECTION 23. Section 145.094(a), Election Code, is amended to read as follows:

(a) The name of a candidate shall be omitted from the ballot if the candidate:

(1) dies before the second day before the date of the deadline for filing the candidate's application for a place on the ballot;

(2) withdraws or is declared ineligible before 5 p.m. of the second day before the beginning of early voting by personal appearance, in an election subject to Section 145.092(a);

(3) withdraws or is declared ineligible before 5 p.m. of the 53rd day before election day, in an election subject to Section 145.092(b); or

(4) withdraws or is declared ineligible before 5 p.m. of the 71st [~~67th~~] day before election day, in an election subject to Section 145.092(f).

SECTION 24. Section 145.096(a), Election Code, is amended to read as follows:

(a) Except as provided by Subsection (b), a candidate's name shall be placed on the ballot if the candidate:

(1) dies on or after the second day before the deadline for filing the candidate's application for a place on the ballot;

(2) is declared ineligible after 5 p.m. of the second day before the beginning of early voting by personal appearance, in an election subject to Section 145.092(a);

(3) is declared ineligible after 5 p.m. of the 53rd day before election day, in an election subject to Section 145.092(b); or

(4) is declared ineligible after 5 p.m. of the 71st [~~67th~~] day before election day, in an election subject to Section 145.092(f).

SECTION 25. Sections 146.025(a) and (b), Election Code, are amended to read as follows:

(a) A declaration of write-in candidacy must be filed not later than 5 p.m. of the 78th [~~70th~~] day before general election day, except as otherwise provided by this code. A declaration may not be filed earlier than the 30th day before the date of the regular filing deadline.

(b) If a candidate whose name is to appear on the general election ballot dies or is declared ineligible after the third day before the date of the filing deadline prescribed by Subsection (a), a declaration of write-in candidacy for the office sought by the deceased or ineligible candidate may be filed not later than 5 p.m. of the 75th [~~67th~~] day before election day.

SECTION 26. Section 146.029(c), Election Code, is amended to read as follows:

(c) Not later than the 68th [~~62nd~~] day before election day, the certifying authority shall deliver the certification to the authority responsible for having the official ballot prepared in each county in which the office sought by the candidate is to be voted on.

SECTION 27. Section 146.054(b), Election Code, is amended to read as follows:

(b) For an election to be held on:

(1) the date of the general election for state and county officers, the day of the filing deadline is the 74th [~~67th~~] day before election day; and

(2) a uniform election date other than the date of the general election for state and county officers, the day of the filing deadline is the 71st day before election day.

SECTION 28. Section 161.008(b), Election Code, is amended to read as follows:

(b) Not later than the 68th [~~62nd~~] day before general election day, the secretary of state shall deliver the certification to the authority responsible for having the official general election ballot prepared in each county in which the candidate's name is to appear on the ballot.

SECTION 29. Section 171.0231(d), Election Code, is amended to read as follows:

(d) A declaration of write-in candidacy must be filed not later than 5 p.m. of the 88th [~~62nd~~] day before general primary election day. However, if a candidate whose name is to appear on the ballot for the office of county chair or precinct chair dies or is declared ineligible after the third day before the date of the regular filing deadline prescribed by this subsection, a declaration of write-in candidacy for the office sought by the deceased or ineligible candidate may be filed not later than 5 p.m. of the 79th [~~59th~~] day before election day.

SECTION 30. Section 172.028(b), Election Code, is amended to read as follows:

(b) Not later than the 84th [~~57th~~] day before general primary election day, the state chair shall deliver the certification to the county chair in each county in which the candidate's name is to appear on the ballot.

SECTION 31. Section 172.052(a), Election Code, is amended to read as follows:

(a) A candidate for nomination may not withdraw from the general primary election after the 88th [~~62nd~~] day before general primary election day.

SECTION 32. Sections 172.054(a) and (b), Election Code, are amended to read as follows:

(a) The deadline for filing an application for a place on the general primary election ballot is extended as provided by this section if a candidate who has made an application that complies with the applicable requirements:

(1) dies on or after the fifth day before the date of the regular filing deadline and on or before the 88th [~~62nd~~] day before general primary election day;

(2) holds the office for which the application was made and withdraws or is declared ineligible on or after the date of the regular filing deadline and on or before the 88th [~~62nd~~] day before general primary election day; or

(3) withdraws or is declared ineligible during the period prescribed by Subdivision (2), and at the time of the withdrawal or declaration of ineligibility no other candidate has made an application that complies with the applicable requirements for the office sought by the withdrawn or ineligible candidate.

(b) An application for an office sought by a withdrawn, deceased, or ineligible candidate must be filed not later than 6 p.m. of the 80th [~~60th~~] day before general primary election day. An application filed by mail with the state chair is not timely if received later than 5 p.m. of the 80th [~~60th~~] day before general primary election day.

SECTION 33. Section 172.057, Election Code, is amended to read as follows:

Sec. 172.057. WITHDRAWN, DECEASED, OR INELIGIBLE CANDIDATE'S NAME OMITTED FROM GENERAL PRIMARY BALLOT. A candidate's name shall be omitted from the general primary election ballot if the candidate withdraws, dies, or is declared ineligible on or before the 88th [~~62nd~~] day before general primary election day.

SECTION 34. Section 172.058(a), Election Code, is amended to read as follows:

(a) If a candidate who has made an application for a place on the general primary election ballot that complies with the applicable requirements dies or is declared ineligible after the 88th [~~62nd~~] day before general primary election day, the candidate's name shall be placed on the ballot and the votes cast for the candidate shall be counted and entered on the official election returns in the same manner as for the other candidates.

SECTION 35. Section 172.059(a), Election Code, is amended to read as follows:

(a) A candidate for nomination may not withdraw from the runoff primary election after 5 p.m. of the 8th [~~10th~~] day after general primary election day.

SECTION 36. Section 172.082(c), Election Code, is amended to read as follows:

(c) The drawing shall be conducted at the county seat not later than the 81st [~~53rd~~] day before general primary election day.

SECTION 37. Section 192.033(b), Election Code, is amended to read as follows:

(b) The secretary of state shall deliver the certification to the authority responsible for having the official ballot prepared in each county before the later of the 68th [~~62nd~~] day before presidential election day or the second business day after the date of final adjournment of the party's national presidential nominating convention.

SECTION 38. Section 201.051(b), Election Code, is amended to read as follows:

(b) For a vacancy to be filled by a special election to be held on the date of the general election for state and county officers, the election shall be ordered not later than the 78th [~~70th~~] day before election day.

SECTION 39. Section 201.054(f), Election Code, is amended to read as follows:

(f) For a special election to be held on the date of the general election for state and county officers, the day of the filing deadline is the 75th [~~67th~~] day before election day.

SECTION 40. Sections 11.055(a) and (c), Education Code, are amended to read as follows:

(a) Except as provided by Subsection (c), an application of a candidate for a place on the ballot must be filed not later than 5 p.m. of the 71st [~~62nd~~] day before the date of the election. An application may not be filed earlier than the 30th day before the date of the filing deadline.

(c) For an election to be held on the date of the general election for state and county officers, the day of the filing deadline is the 78th [~~70th~~] day before election day.

SECTION 41. Section 11.056(b), Education Code, is amended to read as follows:

(b) A [~~Except as provided by Subsection (e), a~~] declaration of write-in candidacy must be filed not later than the deadline prescribed by Section 146.054, Election Code, for a write-in candidate in a city election [~~5 p.m. of the fifth day after the date an application for a place on the ballot is required to be filed~~].

SECTION 42. Section 11.059(e), Education Code, is amended to read as follows:

(e) Not later than December 31, 2011 [~~2007~~], the board of trustees may adopt a resolution changing the length of the terms of its trustees. The resolution must provide for a term of either three or four years and specify the manner in which the transition from the length of the former term to the modified term is made. The transition must begin with the first regular election for trustees that occurs after January 1, 2012 [~~2008~~], and a trustee who serves on that date shall serve the remainder of that term. This subsection expires January 1, 2017 [~~2013~~].

SECTION 43. Section 130.0825(b), Education Code, is amended to read as follows:

(b) A [~~Except as provided by Subsection (e), a~~] declaration of write-in candidacy must be filed not later than the deadline prescribed by Section 146.054, Election Code, for a write-in candidate in a city election [~~5 p.m. of the fifth day after the date an application for a place on the ballot is required to be filed~~].

SECTION 44. Section 285.131(d), Health and Safety Code, is amended to read as follows:

(d) A ~~[Except as provided by Subsection (g), a]~~ declaration of write-in candidacy must be filed not later than the deadline prescribed by Section 146.054, Election Code, for a write-in candidate in a city election [5 p.m. of the fifth day after the date an application for a place on the ballot is required to be filed].

SECTION 45. Subchapter A, Chapter 21, Local Government Code, is amended by adding Section 21.004 to read as follows:

Sec. 21.004. CHANGE OF LENGTH OF TERMS IN GENERAL-LAW MUNICIPALITY. (a) This section applies only to a general-law municipality whose governing body is composed of members that serve a term of one or three years.

(b) Not later than December 31, 2011, the governing body of the general-law municipality may adopt a resolution changing the length of the terms of its members to two years. The resolution must specify the manner in which the transition from the length of the former term to the modified term is made. The transition must begin with the first regular election for members of the governing body that occurs after January 1, 2012, and a member who serves on that date shall serve the remainder of that term.

(c) This section expires January 1, 2015.

SECTION 46. Section 63.0945(d), Water Code, is amended to read as follows:

(d) A ~~[Except as provided by Subsection (f), a]~~ declaration of write-in candidacy must be filed not later than the deadline prescribed by Section 146.054, Election Code, for a write-in candidate in a city election [5 p.m. of the fifth day after the date an application for a place on the ballot is required to be filed].

SECTION 47. (a) This section applies only to a political subdivision that elects the members of its governing body to a term that consists of an odd number of years.

(b) Not later than December 31, 2012, the governing body of the political subdivision may adopt a resolution changing the length of the terms of its members to an even number of years. The resolution must specify the manner in which the transition from the length of the former term to the modified term is made. The transition must begin with the first regular election for members of the governing body that occurs after January 1, 2013, and a member who serves on that date shall serve the remainder of that term.

(c) This section expires January 1, 2020.

SECTION 48. To the extent of any conflict, this Act prevails over another Act of the 82nd Legislature, Regular Session, 2011, regardless of the relative dates of enactment.

SECTION 49. The secretary of state shall adopt rules as necessary to implement this Act, including the adjustment or modification of any affected date, deadline, or procedure.

SECTION 50. The following are repealed:

- (1) Section 41.0052(a-1), Election Code;
- (2) Sections 11.056(e) and 130.0825(e), Education Code;
- (3) Section 285.131(g), Health and Safety Code; and
- (4) Section 63.0945(f), Water Code.

SECTION 51. The changes in law made by this Act do not apply to an election held on November 8, 2011.

SECTION 52. This Act takes effect September 1, 2011.

### Floor Amendment No. 1

Amend **CSSB 100** (house committee printing) as follows:

(1) On page 15, line 20, strike "Subsection (d)" and substitute "Subsections (d) and (e)".

(2) On page 16, between lines 8 and 9, insert the following:

(e) For a city to which Sec. 501.0211 applies holding an election under Subsection (a)(2):

(1) the commissioner's court of the county in which the city is located is required to comply with election requirements under Title 17;

(2) the city is required to incorporate the election as part of the regular election ballot of the city; and

(3) the city pays all costs related to holding the election.

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

SECTION \_\_\_\_ . Section 501.0211(a), Election Code, is amended to read as follows:

(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; and

(4) that is wholly contained in a single county and that is conducting a municipal election on the election date described by Section 41.001(a)(2).

### Floor Amendment No. 2

(1) Amend **CSSB 100** (house committee printing), from page 16, line 22 to page 17, line 1 by striking Subsection (b).

(2) Renumber subsequent subsections accordingly.

### Floor Amendment No. 3

Amend **CSSB 100** (house committee printing) as follows:

(1) Amend SECTION 5, Subsection (d) of Section 41.0052, Election Code (page 17, line 6) of the bill, after "(a)" insert "or provide for the election of all members of the governing body at the same election" and adjust accordingly.

(2) Amend SECTION 45 of the bill, by striking added Section 21.004, Local Government Code (page 30, line 18 through page 31, line 3), and substituting the following:

Sec. 21.004. CHANGE OF LENGTH OR STAGGERING OF TERMS IN GENERAL-LAW MUNICIPALITY. (a) This section applies only to a general-law municipality whose governing body is composed of members that serve:

(1) a term of one or three years; or

(2) staggered terms.

(b) Not later than December 31, 2012, the governing body of the general-law municipality may adopt a resolution:

(1) changing the length of the terms of its members to two years; or

(2) providing for the election of all members of the governing body at the same election.

(c) The resolution must specify the manner in which the transition in the length of terms is made. The transition must begin with the first regular election for members of the governing body that occurs after January 1, 2013, and a member who serves on that date shall serve the remainder of that term.

(d) This section expires January 1, 2016.

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

Amend **CSSB 100** as follows:

(1) Strike SECTION 6 and substitute the following appropriately numbered SECTION:

SECTION \_\_\_\_\_. Section 41.007(b), Election Code, is amended to read as follows:

(b) The runoff primary election date is the fourth Tuesday in May [~~second Tuesday in April~~] following the general primary election.

(2) Insert the following appropriately numbered SECTION to the bill and renumber the existing SECTIONS as appropriate:

SECTION \_\_\_\_\_. Section 172.023(a), Election Code, is amended to read as follows:

(a) An application for a place on the general primary election ballot must be filed not later than 6 p.m. on the second Monday in December of an odd-numbered year [~~January 2 in the primary election year~~] unless the filing deadline is extended under Subchapter C.

#### **Floor Amendment No. 5**

Amend **CSSB 100** by striking SECTION 29 of the bill amending Section 171.0231(d), Election Code (pages 25, line 18 to page 26, line 1), and substituting the following:

SECTION 29. Section 171.0231(d), Election Code, is amended to read as follows:

(d) A declaration of write-in candidacy must be filed not later than 6 [5] p.m. of the fifth [62nd] day after the date of the regular filing deadline for the general primary election [~~before general primary election day~~]. ~~However, if a candidate whose name is to appear on the ballot for the office of county chair or precinct chair dies or is declared ineligible after the third day before the date of the regular filing deadline prescribed by this subsection, a declaration of write in candidacy for the office sought by the deceased or ineligible candidate may be filed not later than 5 p.m. of the 59th day before election day.~~

### Floor Amendment No. 1 on Third Reading

Amend **CSSB 100** on third reading, by striking the changes made by Floor Amendment No. 1 by Pickett in adding Section 41.001(e), Election Code, and amending Section 501.0211(a), Election Code, and substituting the following appropriately numbered SECTION and renumbering the existing sections as appropriate:

SECTION \_\_\_\_\_. Section 501.109, Election Code, is amended to read as follows:

Sec. 501.109. ELECTION IN [~~CERTAIN~~] MUNICIPALITIES. (a) This section applies only to an election to permit or prohibit the legal sale of alcoholic beverages of one or more of the various types and alcoholic contents in a municipality [~~that is located in more than one county~~].

(b) An election to which this section applies shall be conducted by the municipality instead of a county [~~the counties~~]. For the purposes of an election conducted under this section, a reference in this chapter to:

(1) the county is considered to refer to the municipality;

(2) the commissioners court is considered to refer to the governing body of the municipality;

(3) the county clerk or voter registrar 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) 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.

(c) The municipality shall pay the expense of the election.

(d) An action to contest the election under Section 501.155 may be brought in the district court of any county in which the municipality is located.

### Floor Amendment No. 2 on Third Reading

Amend **CSSB 100** on third reading by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 86.014(a), Election Code, is amended to read as follows:

(a) A copy of an application for a ballot to be voted by mail is not available for public inspection, except to the voter seeking to verify that the information pertaining to the voter is accurate, until the first business day after [~~may be obtained from the early voting clerk~~]:

(1) the date the ballot corresponding to the application is received by the authority conducting the election, if the ballot is returned to the authority [~~72 hours after the time a ballot is mailed to the voter~~]; or

(2) [~~48 hours after the time a ballot is mailed to the voter if the mailing occurs on the fourth day before~~] election day.

The amendments were read.



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

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **SB 100** before appointment.

There were no motions offered.

The President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Van de Putte, Chair; Duncan, Williams, Seliger, and Shapiro.

### **SENATE CONCURRENT RESOLUTION 59**

The President Pro Tempore laid before the Senate the following resolution:

WHEREAS, Senate Bill No. 1082 has been adopted by the house of representatives and the senate; and

WHEREAS, The bill contains technical and typographical errors that should be corrected; now, therefore, be it

RESOLVED by the 82nd Legislature of the State of Texas, That the enrolling clerk of the senate be instructed to make the following correction:

(1) Strike SECTION 5 of the bill and substitute the following:

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, 2011.

HEGAR

**SCR 59** was read.

On motion of Senator Hegar, the resolution was considered immediately and was adopted by the following vote: Yeas 31, Nays 0.

### **HOUSE CONCURRENT RESOLUTION 167**

The President Pro Tempore laid before the Senate the following resolution:

WHEREAS, House Bill No. 2203 has been adopted by the senate and the house of representatives and is being prepared for enrollment; and

WHEREAS, The bill contains technical errors that should be corrected; now, therefore, be it

RESOLVED, by the 82nd Legislature of the State of Texas, That the enrolling clerk of the house of representatives be instructed to make the following corrections:

(1) In SECTION 1 of the house engrossment (page 1, line 11), strike "three-year" and substitute "four-year [~~three-year~~]".

(2) In SECTION 1 of the house engrossment (page 1, line 14), strike "one-year" and substitute "two-year".

(3) Between SECTIONS 3 and 4 of the house engrossment (page 3, between lines 19 and 20) insert the following and renumber subsequent SECTIONS of the bill accordingly:

SECTION 4. Section 2003.916, Government Code, is amended to read as follows:

Sec. 2003.916. EXPIRATION. This subchapter expires January 1, 2014 [~~2013~~].

WILLIAMS

**HCR 167** was read.

On motion of Senator Williams, the resolution was considered immediately and was adopted by the following vote: Yeas 31, Nays 0.

**RECESS**

On motion of Senator Eltife, the Senate at 12:18 p.m. recessed until 2:00 p.m. today.

**AFTER RECESS**

The Senate met at 2:05 p.m. and was called to order by President Pro Tempore Ogden.

**MESSAGE FROM THE HOUSE**

HOUSE CHAMBER

Austin, Texas

Friday, May 27, 2011 - 1

The Honorable President of the Senate  
Senate Chamber  
Austin, Texas

Mr. President:

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

THE HOUSE HAS PASSED THE FOLLOWING MEASURES:

**HCR 126** Thompson

In memory of the Honorable Edmund Kuempel of Seguin.

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

**HB 51** (86 Yeas, 53 Nays, 2 Present, not voting)

**HB 290** (136 Yeas, 1 Nays, 2 Present, not voting)

**HB 411** (134 Yeas, 4 Nays, 2 Present, not voting)

**HB 736** (138 Yeas, 0 Nays, 2 Present, not voting)

**HB 971** (138 Yeas, 0 Nays, 3 Present, not voting)

**HB 1173** (136 Yeas, 1 Nays, 2 Present, not voting)

**HB 1206** (101 Yeas, 36 Nays, 2 Present, not voting)

**HB 1244** (130 Yeas, 9 Nays, 2 Present, not voting)

**HB 1541** (112 Yeas, 28 Nays, 2 Present, not voting)

**HB 1646** (132 Yeas, 5 Nays, 2 Present, not voting)

**HB 1720** (136 Yeas, 0 Nays, 2 Present, not voting)

**HB 1781** (139 Yeas, 0 Nays, 2 Present, not voting)

**HB 2329** (139 Yeas, 0 Nays, 2 Present, not voting)

**HB 2367** (138 Yeas, 1 Nays, 2 Present, not voting)

**HB 2643** (112 Yeas, 24 Nays, 2 Present, not voting)

**HB 2728** (74 Yeas, 63 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 272** (non-record vote)

House Conferees: Smithee - Chair/Hancock/Ritter/Taylor, Larry/Thompson

**HB 335** (non-record vote)

House Conferees: Shelton - Chair/Branch/Creighton/Darby/Thompson

**HB 1242** (non-record vote)

House Conferees: Geren - Chair/Cook/Frullo/Kuempel/Ritter

**HB 1560** (non-record vote)

House Conferees: Scott - Chair/Creighton/Eiland/Keffer/Miller, Sid

**HB 2365** (non-record vote)

House Conferees: Eissler - Chair/Hancock/Hochberg/Huberty/Strama

**HB 2770** (non-record vote)

House Conferees: Smith, Wayne - Chair/Callegari/Hunter/Phillips/Thompson

**HB 2910** (non-record vote)

House Conferees: Branch - Chair/Bonnen/Howard, Donna/Johnson/Pitts

**HB 3246** (non-record vote)

House Conferees: Elkins - Chair/Jackson, Jim/King, Tracy O./Miller, Doug/Paxton

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

**SB 158** (non-record vote)

House Conferees: Fletcher - Chair/Deshotel/Gallego/Hopson/Woolley

**SB 377** (non-record vote)

House Conferees: Riddle - Chair/Anderson, Charles "Doc"/Dutton/Fletcher/Weber

**SB 472** (non-record vote)

House Conferees: Giddings - Chair/Deshotel/Otto/Solomons/Turner

**SB 516** (non-record vote)

House Conferees: Fletcher - Chair/Anderson, Charles "Doc"/Berman/Bonnen/King, Phil

**SB 635** (non-record vote)

House Conferees: Larson - Chair/Cook/King, Tracy O./Price/Ritter

**SB 694** (non-record vote)

House Conferees: Smith, Wayne - Chair/Cook/Deshotel/Dutton/Fletcher

**SB 773** (non-record vote)

House Conferees: Gallego - Chair/Chisum/Frullo/Hilderbran/Munoz, Jr.

**SB 875** (non-record vote)

House Conferees: Hancock - Chair/Bonnen/Chisum/Eiland/Smith, Wayne

**SB 1010** (non-record vote)

House Conferees: Workman - Chair/Carter/Gallego/Lucio III/Madden

**SB 1134** (non-record vote)

House Conferees: Craddick - Chair/Hancock/Lozano/Sheffield/Smith, Wayne

**SB 1320** (non-record vote)

House Conferees: Gonzales, Veronica - Chair/Anderson, Rodney/  
Deshotel/Kleinschmidt/Raymond

**SB 1331** (non-record vote)

House Conferees: Gallego - Chair/Aliseda/Christian/Rodriguez, Eddie/Zedler

**SB 1543** (non-record vote)

House Conferees: Larson - Chair/Guillen/Kuempel/Price/Rodriguez, Eddie

**SB 1588** (non-record vote)

House Conferees: Pitts - Chair/Chisum/Frullo/Guillen/Zerwas

**SB 1600** (non-record vote)

House Conferees: King, Phil - Chair/Beck/Fletcher/Miller, Sid/Walle

**SB 1664** (non-record vote)

House Conferees: Truitt - Chair/Hunter/Miles/Riddle/Turner

**SB 1717** (non-record vote)

House Conferees: Lewis - Chair/Hartnett/Jackson, Jim/Raymond/Thompson

**SB 1788** (non-record vote)

House Conferees: Huberty - Chair/Aycock/Strama/Taylor, Larry/Weber

Respectfully,

/s/Robert Haney, Chief Clerk  
House of Representatives

**SENATE BILL 1216 WITH HOUSE AMENDMENT**

Senator Estes called **SB 1216** from the President's table for consideration of the House amendment to the bill.

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

**Amendment**

Amend **SB 1216** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to determination of the validity and enforceability of a contract containing an arbitration agreement in suits for dissolution of marriage and certain suits affecting the parent-child relationship.

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

SECTION 1. Subchapter G, Chapter 6, Family Code, is amended by adding Section 6.6015 to read as follows:

Sec. 6.6015. DETERMINATION OF VALIDITY AND ENFORCEABILITY OF CONTRACT CONTAINING AGREEMENT TO ARBITRATE. (a) If a party to a suit for dissolution of a marriage opposes an application to compel arbitration or makes an application to stay arbitration and asserts that the contract containing the agreement to arbitrate is not valid or enforceable, notwithstanding any provision of the contract to the contrary, the court shall try the issue promptly and may order arbitration only if the court determines that the contract containing the agreement to arbitrate is valid and enforceable against the party seeking to avoid arbitration.

(b) A determination under this section that a contract is valid and enforceable does not affect the court's authority to stay arbitration or refuse to compel arbitration on any other ground provided by law.

(c) This section does not apply to:

(1) a court order;

(2) a mediated settlement agreement described by Section 6.602;

(3) a collaborative law agreement described by Section 6.603;

(4) a written settlement agreement reached at an informal settlement conference described by Section 6.604; or

(5) any other agreement between the parties that is approved by a court.

SECTION 2. Subchapter A, Chapter 153, Family Code, is amended by adding Section 153.00715 to read as follows:

Sec. 153.00715. DETERMINATION OF VALIDITY AND ENFORCEABILITY OF CONTRACT CONTAINING AGREEMENT TO ARBITRATE. (a) If a party to a suit affecting the parent-child relationship opposes an application to compel arbitration or makes an application to stay arbitration and asserts that the contract containing the agreement to arbitrate is not valid or enforceable, notwithstanding any provision of the contract to the contrary, the court shall try the issue promptly and may order arbitration only if the court determines that the contract containing the agreement to arbitrate is valid and enforceable against the party seeking to avoid arbitration.

(b) A determination under this section that a contract is valid and enforceable does not affect the court's authority to stay arbitration or refuse to compel arbitration on any other ground provided by law.

(c) This section does not apply to:

(1) a court order;

(2) an agreed parenting plan described by Section 153.007;

(3) a mediated settlement agreement described by Section 153.0071;

- (4) a collaborative law agreement described by Section 153.0072; or  
(5) any other agreement between the parties that is approved by a court.

SECTION 3. The changes in law made by this Act apply only to a contract entered into on or after the effective date of this Act. A contract entered into before the effective date of this Act is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

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, 2011.

The amendment was read.

Senator Estes moved to concur in the House amendment to **SB 1216**.

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

### **SENATE BILL 407 WITH HOUSE AMENDMENTS**

Senator Watson called **SB 407** from the President's table for consideration of the House amendments to the bill.

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

#### **Committee Amendment No. 1**

Amend **SB 407** (senate engrossed version) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 43.26, Penal Code, is amended by adding Subsection (h) to read as follows:

(h) It is a defense to prosecution under Subsection (a) or (e) that the actor is a law enforcement officer or a school administrator who:

(1) possessed the visual material in good faith solely as a result of an allegation of a violation of Section 43.261;

(2) allowed other law enforcement or school administrative personnel to access the material only as appropriate based on the allegation described by Subdivision (1); and

(3) took reasonable steps to destroy the material within an appropriate period following the allegation described by Subdivision (1).

SECTION \_\_\_\_\_. The change in law made by this Act to Section 43.26, Penal Code, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

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

Amend **SB 407** (house committee printing) as follows:

(1) In SECTION 6 of the bill, strike the amended heading to Article 38.45, Code of Criminal Procedure (page 6, lines 17 through 19), and substitute the following:

Art. 38.45. EVIDENCE DEPICTING OR DESCRIBING ABUSE OF OR SEXUAL CONDUCT BY ~~[THAT CONSTITUTES]~~ CHILD OR MINOR ~~[PORNOGRAPHY]~~.

(2) In SECTION 7 of the bill, in amended Article 38.45(a), Code of Criminal Procedure (page 6, line 24), strike "that".

(3) In SECTION 7 of the bill, in amended Article 38.45(a)(1), Code of Criminal Procedure (page 6, line 25), between "(1)" and "constitutes", insert "that".

(4) In SECTION 7 of the bill, in added Article 38.45(a)(1), Code of Criminal Procedure (page 6, line 26), strike "or".

(5) In SECTION 7 of the bill, in added Article 38.45(a)(2), Code of Criminal Procedure (page 7, line 1), between "Penal Code" and the period, insert the following:  
; or

(3) that is described by Section 2 or 5, Article 38.071, of this code

(6) In SECTION 8 of the bill, strike the amended heading to Article 39.15, Code of Criminal Procedure (page 7, lines 4 through 6) and substitute the following:

Art. 39.15. DISCOVERY OF EVIDENCE DEPICTING OR DESCRIBING ABUSE OF OR SEXUAL CONDUCT BY ~~[THAT CONSTITUTES]~~ CHILD OR MINOR ~~[PORNOGRAPHY]~~.

(7) In SECTION 9 of the bill, in added Article 39.15(a)(1), Code of Criminal Procedure (page 7, line 12), strike "or".

(8) In SECTION 9 of the bill, in added Article 39.15(a)(2), Code of Criminal Procedure (page 7, line 14), between "Penal Code" and the period, insert the following:

; or

(3) that is described by Section 2 or 5, Article 38.071, of this code

The amendments were read.

Senator Watson moved to concur in the House amendments to **SB 407**.

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

### **SENATE BILL 1094 WITH HOUSE AMENDMENT**

Senator Rodriguez called **SB 1094** from the President's table for consideration of the House amendment to the bill.

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

#### **Amendment**

Amend **SB 1094** by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to the availability of online testing for high school equivalency examinations.

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

SECTION 1. Section 7.111, Education Code, is amended by adding Subsection (c) to read as follows:

(c) The board by rule shall develop and deliver high school equivalency examinations and provide for the administration of the examinations online. The rules must:

(1) provide a procedure for verifying the identity of the person taking the examination; and

(2) prohibit a person under 18 years of age from taking the examination online.

SECTION 2. This Act applies beginning with the 2011-2012 school year.

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, 2011.

The amendment was read.

Senator Rodriguez moved to concur in the House amendment to **SB 1094**.

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

### **SENATE BILL 942 WITH HOUSE AMENDMENT**

Senator Watson called **SB 942** from the President's table for consideration of the House amendment to the bill.

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

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

Amend **SB 942** (house committee printing) as follows:

(1) In SECTION 1 of the bill, in added Subchapter B, Chapter 9017, Special District Local Laws Code (page 2, between lines 25 and 26), insert the following new Section 9017.054:

Sec. 9017.054. EXCLUSION OF TERRITORY FROM DEFINED AREA. Before holding an election under Section 9017.060, the district may exclude territory from the defined area in the manner provided by Sections 49.303, 49.304, 49.305, 49.306, and 49.307, Water Code.

(2) In SECTION 1 of the bill, in added Section 9017.054, Special District Local Laws Code (page 2, line 26), strike "9017.054" and substitute "9017.055".

(3) In SECTION 1 of the bill, in added Section 9017.055, Special District Local Laws Code (page 3, line 4), strike "9017.055" and substitute "9017.056".

(4) In SECTION 1 of the bill, in added Section 9017.055(b), Special District Local Laws Code (page 3, line 10), strike "9017.056, 9017.059, 9017.060, 9017.061, 9017.062, or 9017.063" and substitute "9017.057, 9017.060, 9017.061, 9017.062, 9017.063, or 9017.064".

(5) In SECTION 1 of the bill, in added Section 9017.056, Special District Local Laws Code (page 3, line 17), strike "9017.056" and substitute "9017.057".

(6) In SECTION 1 of the bill, in added Section 9017.057, Special District Local Laws Code (page 3, line 26), strike "9017.057" and substitute "9017.058".

(7) In SECTION 1 of the bill, in added Section 9017.058, Special District Local Laws Code (page 4, line 11), strike "9017.058" and substitute "9017.059".



(8) In SECTION 1 of the bill, in added Section 9017.058, Special District Local Laws Code (page 4, line 14), strike "9017.056" and substitute "9017.057".

(9) In SECTION 1 of the bill, in added Section 9017.058, Special District Local Laws Code (page 4, line 16), strike "Code." and substitute "Code, primarily intended to serve the defined area."

(10) In SECTION 1 of the bill, in added Section 9017.059, Special District Local Laws Code (page 4, line 17), strike "9017.059" and substitute "9017.060".

(11) In SECTION 1 of the bill, in added Section 9017.059, Special District Local Laws Code (page 4, line 19), strike "9017.055" and substitute "9017.056".

(12) In SECTION 1 of the bill, in added Section 9017.060, Special District Local Laws Code (page 5, line 1), strike "9017.060" and substitute "9017.061".

(13) In SECTION 1 of the bill, in added Section 9017.060, Special District Local Laws Code (page 5, line 2), strike "9017.059" and substitute "9017.060".

(14) In SECTION 1 of the bill, in added Section 9017.061, Special District Local Laws Code (page 5, line 8), strike "9017.061" and substitute "9017.062".

(15) In SECTION 1 of the bill, in added Section 9017.061, Special District Local Laws Code (page 5, line 14), strike "9017.059" and substitute "9017.060".

(16) In SECTION 1 of the bill, in added Section 9017.062, Special District Local Laws Code (page 5, line 22), strike "9017.062" and substitute "9017.063".

(17) In SECTION 1 of the bill, in added Section 9017.063, Special District Local Laws Code (page 5, line 27), strike "9017.063" and substitute "9017.064".

(18) In SECTION 1 of the bill, in added Section 9017.063, Special District Local Laws Code (page 6, line 1), strike "9017.059" and substitute "9017.060".

(19) In SECTION 1 of the bill, in added Section 9017.064, Special District Local Laws Code (page 6, line 4), strike "9017.064" and substitute "9017.065".

The amendment was read.

Senator Watson moved to concur in the House amendment to **SB 942**.

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

### **VOTE RECONSIDERED ON SENATE BILL 316**

Senator Whitmire moved to reconsider the vote by which the Conference Committee Report on **SB 316** was adopted.

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

**SB 316**, Relating to criminal asset forfeiture, the disposition of proceeds and property from criminal asset forfeiture, and accountability for that disposition; providing civil penalties.

Question — Shall the Conference Committee Report on **SB 316** be adopted?

On motion of Senator Whitmire and by unanimous consent, **SB 316** was recommitted to the conference committee.

**CONFERENCE COMMITTEE ON  
SENATE BILL 316 DISCHARGED**

Senator Whitmire moved to discharge the Senate conferees and to concur in the House amendments to **SB 316**.

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

**SENATE BILL 1636 WITH HOUSE AMENDMENT**

Senator Davis called **SB 1636** from the President's table for consideration of the House amendment to the bill.

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

**Amendment**

Amend **SB 1636** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to the collection, analysis, and preservation of sexual assault or DNA evidence.

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

SECTION 1. Section 411.151, Government Code, is amended by adding Subsection (e) to read as follows:

(e) The department's failure to expunge a DNA record as required by this section may not serve as the sole grounds for a court in a criminal proceeding to exclude evidence based on or derived from the contents of that record.

SECTION 2. Section 420.003, Government Code, is amended by amending Subdivisions (1) and (6) and adding Subdivisions (1-a), (1-b), (1-c), and (1-d) to read as follows:

(1) "Accredited crime laboratory" means a crime laboratory, as that term is defined by Article 38.35, Code of Criminal Procedure, that has been accredited under Section 411.0205.

(1-a) "Active criminal case" means a case:

(A) in which:

(i) a sexual assault has been reported to a law enforcement agency;

and

(ii) physical evidence of the assault has been submitted to the agency or an accredited crime laboratory under this chapter for analysis; and

(B) for which:

(i) the statute of limitations has not run with respect to the prosecution of the sexual assault; or

(ii) a DNA profile was obtained that is eligible under Section 420.043 for comparison with DNA profiles in the state database or CODIS DNA database.

(1-b) "Advocate" means a person who provides advocacy services as an employee or volunteer of a sexual assault program.

(1-c) "Department" means the Department of Public Safety of the State of Texas.

(1-d) "Law enforcement agency" means a state or local law enforcement agency in this state with jurisdiction over the investigation of a sexual assault.

(6) "Sexual assault nurse examiner" means a registered nurse who has completed a service-approved examiner training course described by Section 420.011.

SECTION 3. Subsection (e), Section 420.031, Government Code, is amended to read as follows:

(e) Evidence collected under this section may not be released unless a signed, [the survivor of the offense or a legal representative of the survivor signs a] written consent to release the evidence is obtained as provided by Section 420.0735.

SECTION 4. Subchapter B, Chapter 420, Government Code, is amended by adding Section 420.033 to read as follows:

Sec. 420.033. CHAIN OF CUSTODY. Medical, law enforcement, department, and laboratory personnel who handle sexual assault evidence under this chapter or other law shall maintain the chain of custody of the evidence from the time the evidence is collected until the time the evidence is destroyed.

SECTION 5. Chapter 420, Government Code, is amended by adding Subchapter B-1 to read as follows:

SUBCHAPTER B-1. ANALYSIS OF SEXUAL ASSAULT EVIDENCE

Sec. 420.041. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to physical evidence of a sexual assault with respect to an active criminal case.

Sec. 420.042. ANALYSIS OF SEXUAL ASSAULT EVIDENCE. (a) A law enforcement agency that receives sexual assault evidence collected under this chapter or other law shall submit that evidence to a public accredited crime laboratory for analysis not later than the 30th day after the date on which that evidence was received.

(b) A person who submits sexual assault evidence to a public accredited crime laboratory under this chapter or other law shall provide the following signed, written certification with each submission: "This evidence is being submitted by (name of person making submission) in connection with a criminal investigation."

(c) If sufficient personnel and resources are available, a public accredited crime laboratory as soon as practicable shall complete its analysis of sexual assault evidence submitted under this chapter or other law.

(d) To ensure the expeditious completion of analyses, the department and other applicable public accredited crime laboratories may contract with private accredited crime laboratories as appropriate to perform those analyses, subject to the necessary quality assurance reviews by the public accredited crime laboratories.

(e) The failure of a law enforcement agency to submit sexual assault evidence within the period required by this section does not affect the authority of:

(1) the agency to submit the evidence to an accredited crime laboratory for analysis; or

(2) an accredited crime laboratory to analyze the evidence or provide the results of that analysis to appropriate persons.

Sec. 420.043. DATABASE COMPARISON REQUIRED. On the request of any appropriate person and after an evidence collection kit containing biological evidence has been analyzed by an accredited crime laboratory and any necessary quality assurance reviews have been performed, the department shall compare the DNA profile obtained from the biological evidence with DNA profiles maintained in:

(1) state databases, including the DNA database maintained under Subchapter G, Chapter 411, if the amount and quality of the analyzed sample meet the requirements of the state database comparison policies; and

(2) the CODIS DNA database established by the Federal Bureau of Investigation, if the amount and quality of the analyzed sample meet the requirements of the bureau's CODIS comparison policies.

SECTION 6. Section 420.072, Government Code, is amended to read as follows:

Sec. 420.072. EXCEPTIONS. (a) A communication, ~~a [er] record, or evidence~~ that is confidential under this subchapter may be disclosed in court or in an administrative proceeding if:

(1) the proceeding is brought by the survivor against an advocate or a sexual assault program or is a criminal proceeding or a certification revocation proceeding in which disclosure is relevant to the claims or defense of the advocate or sexual assault program; or

(2) the survivor or other appropriate person ~~[a person authorized to act on behalf of the survivor]~~ consents in writing to the disclosure ~~[release of the confidential information]~~ as provided by Section 420.073 or 420.0735, as applicable.

(b) A communication, ~~a [er] record, or evidence~~ that is confidential under this subchapter may be disclosed only to:

(1) medical or law enforcement personnel if the advocate determines that there is a probability of imminent physical danger to any person for whom the communication, ~~[er] record, or evidence~~ is relevant or if there is a probability of immediate mental or emotional injury to the survivor;

(2) a governmental agency if the disclosure is required or authorized by law;

(3) a qualified person to the extent necessary for a management audit, financial audit, program evaluation, or research, except that a report of the research, audit, or evaluation may not directly or indirectly identify a survivor;

(4) a person authorized to receive the disclosure as a result of ~~[who has the] written consent obtained under [of the survivor or of a person authorized to act on the survivor's behalf as provided by]~~ Section 420.073 or 420.0735; or

(5) an advocate or a person under the supervision of a counseling supervisor who is participating in the evaluation or counseling of or advocacy for the survivor.

(c) A communication, ~~a [er] record, or evidence~~ that is confidential under this subchapter may not be disclosed to a parent or legal guardian of a survivor who is a minor if an advocate or a sexual assault program knows or has reason to believe that the parent or legal guardian of the survivor is a suspect in the sexual assault of the survivor.

SECTION 7. The heading to Section 420.073, Government Code, is amended to read as follows:

Sec. 420.073. CONSENT FOR RELEASE OF CERTAIN CONFIDENTIAL INFORMATION.

SECTION 8. Subsection (a), Section 420.073, Government Code, is amended to read as follows:

(a) Consent for the release of confidential information other than evidence contained in an evidence collection kit must be in writing and signed by the survivor, a parent or legal guardian if the survivor is a minor, a legal guardian if the survivor has been adjudicated incompetent to manage the survivor's personal affairs, an attorney ad litem appointed for the survivor, or a personal representative if the survivor is deceased. The written consent must specify:

- (1) the information or records covered by the release;
- (2) the reason or purpose for the release; and
- (3) the person to whom the information is to be released.

SECTION 9. Subchapter D, Chapter 420, Government Code, is amended by adding Section 420.0735 to read as follows:

Sec. 420.0735. CONSENT FOR RELEASE OF CERTAIN EVIDENCE.

(a) Consent for the release of evidence contained in an evidence collection kit must be in writing and signed by:

- (1) the survivor, if the survivor is 14 years of age or older;
- (2) the survivor's parent or guardian or an employee of the Department of Family and Protective Services, if the survivor is younger than 14 years of age; or
- (3) the survivor's personal representative, if the survivor is deceased.

(b) For purposes of Subsection (a)(1), a written consent signed by an incapacitated person, as that term is defined by Section 601, Texas Probate Code, is effective regardless of whether the incapacitated person's guardian, guardian ad litem, or other legal agent signs the release. If the incapacitated person is unable to provide a signature and the guardian, guardian ad litem, or other legal agent is unavailable to sign the release, then the investigating law enforcement officer may sign the release.

(c) Consent for release under Subsection (a) applies only to evidence contained in an evidence collection kit and does not affect the confidentiality of any other confidential information under this chapter.

(d) The written consent must specify:

- (1) the evidence covered by the release;
- (2) the reason or purpose for the release; and
- (3) the person to whom the evidence is to be released.

(e) A survivor or other person authorized to consent may withdraw consent to the release of evidence by submitting a written notice of withdrawal to the person or program to which consent was provided. Withdrawal of consent does not affect evidence disclosed before the date written notice of the withdrawal was received.

(f) A person who receives evidence made confidential by this chapter may not disclose the evidence except to the extent that disclosure is consistent with the authorized purposes for which the person obtained the evidence.

SECTION 10. Section 420.074, Government Code, is amended to read as follows:

Sec. 420.074. CRIMINAL SUBPOENA. Notwithstanding any other provision of this chapter, a person shall disclose a communication, a ~~[or]~~ record, or evidence that is confidential under this chapter for use in a criminal investigation or proceeding in response to a subpoena issued in accordance with law.

SECTION 11. Section 420.075, Government Code, is amended to read as follows:

Sec. 420.075. OFFENSE. A person commits an offense if the person intentionally or knowingly discloses a communication, a ~~[or]~~ record, or evidence that is confidential under this chapter, except as provided by this chapter. An offense under this section is a Class C misdemeanor.

SECTION 12. Subsections (f) and (g), Article 56.065, Code of Criminal Procedure, are amended to read as follows:

(f) The department, consistent with Chapter 420, Government Code, may develop procedures regarding the submission or collection of additional evidence of the alleged sexual assault other than through an examination as described by this article.

(g) The department, consistent with Chapter 420, Government Code, shall develop procedures for the transfer and preservation of evidence collected under this article to a crime laboratory or other suitable location designated by the public safety director of the department. The receiving entity shall preserve the evidence until the earlier of:

(1) the second anniversary of the date the evidence was collected; or

(2) the date on which ~~[the victim or a legal representative of the victim signs a]~~ written consent to release the evidence is obtained as provided by Section 420.0735, Government Code.

SECTION 13. Subsection (e), Article 102.056, Code of Criminal Procedure, is amended to read as follows:

(e) The legislature shall determine and appropriate the necessary amount from the criminal justice planning account to the criminal justice division of the governor's office for reimbursement in the form of grants to the Department of Public Safety of the State of Texas and other ~~[local]~~ law enforcement agencies for expenses incurred in performing duties imposed on those agencies under Section ~~[Sections]~~ 411.1471 or Subchapter B-1, Chapter 420 ~~[and 411.1472]~~, Government Code, as applicable. On the first day after the end of a calendar quarter, a law enforcement agency incurring expenses described by this subsection in the previous calendar quarter shall send a certified statement of the costs incurred to the criminal justice division. The criminal justice division through a grant shall reimburse the law enforcement agency for the costs not later than the 30th day after the date the certified statement is received. If the criminal justice division does not reimburse the law enforcement agency before the 90th day after the date the certified statement is received, the agency is not required to perform duties imposed under Section ~~[Sections]~~ 411.1471 or Subchapter B-1, Chapter 420 ~~[and 411.1472]~~, Government Code, as applicable, until the agency has been compensated for all costs for which the ~~[local law enforcement]~~ agency has submitted a certified statement under this subsection.

SECTION 14. On or after the effective date of this Act, the Department of Public Safety of the State of Texas shall ensure that any unanalyzed sexual assault evidence that is in the possession of a law enforcement agency and that is collected:

(1) on or after August 1, 2011, is analyzed in accordance with Chapter 420, Government Code, as amended by this Act; and

(2) before August 1, 2011, is analyzed as nearly as possible to the time provided by Chapter 420, Government Code, as amended by this Act.

SECTION 15. (a) A law enforcement agency in possession of sexual assault evidence that has not been submitted for laboratory analysis shall:

(1) not later than October 15, 2011, submit to the Department of Public Safety of the State of Texas a list of the agency's active criminal cases for which sexual assault evidence has not yet been submitted for laboratory analysis;

(2) not later than April 1, 2012, and subject to the availability of laboratory storage space, submit, as appropriate, to the Department of Public Safety of the State of Texas or a public accredited crime laboratory, as defined by Section 420.003, Government Code, as amended by this Act, all sexual assault evidence pertaining to those active criminal cases that has not yet been submitted for laboratory analysis; and

(3) if the law enforcement agency submits evidence under Subdivision (2) of this subsection to a laboratory other than a Department of Public Safety of the State of Texas laboratory, notify the department of:

(A) the laboratory to which the evidence was sent; and

(B) any analysis completed by the laboratory to which the evidence was sent and the date on which the analysis was completed.

(b) Not later than February 15, 2013, the Department of Public Safety of the State of Texas shall submit to the governor and the appropriate standing committees of the senate and the house of representatives a report containing:

(1) a projected timeline for the completion of laboratory analyses, in accordance with Chapter 420, Government Code, as amended by this Act, of all unanalyzed sexual assault evidence submitted under Subdivision (2), Subsection (a) of this section;

(2) a request for any necessary funding to accomplish the analyses under Subdivision (1) of this subsection, including a request for a grant of money under Subsection (e), Article 102.056, Code of Criminal Procedure, as amended by this Act, if money is available under that subsection;

(3) as appropriate, application materials for requests made as required by Subdivision (2) of this subsection; and

(4) if the department determines that outsourcing of a portion of the submitted evidence is necessary for timely analyses of the evidence:

(A) a proposal for determining which evidence should be outsourced; and

(B) a list of laboratories the department determines are capable of completing the outsourced analyses.

(c) Not later than September 1, 2014, and to the extent that funding is available, the Department of Public Safety of the State of Texas shall, as provided by Sections 420.042 and 420.043, Government Code, as added by this Act, analyze or contract for

the analysis of, and complete the required database comparison regarding, all sexual assault evidence submitted to the department under Subdivision (2), Subsection (a) of this section.

(d) Notwithstanding Subsection (c) of this section, the Department of Public Safety of the State of Texas is not required to use under this section in a state fiscal year any amount of money from the state highway fund that exceeds the amount the department has historically used in a state fiscal year to fund laboratory analyses of sexual assault evidence under Chapter 420, Government Code, as amended by this Act.

(e) To supplement funding of laboratory analyses under this section, the department may solicit and receive grants, gifts, or donations of money from the federal government or private sources as described by Chapter 420, Government Code.

SECTION 16. Notwithstanding Chapter 420, Government Code, as amended by this Act, and Section 14 of this Act, this Act does not apply to sexual assault evidence collected before September 1, 1996.

SECTION 17. (a) Except as provided by Article 102.056(e), Code of Criminal Procedure, as amended by this Act, Section 420.007, Government Code, and Section 15(d) of this Act, state funds may not be appropriated for the purpose of implementing this Act.

(b) Notwithstanding any other law, the Department of Public Safety of the State of Texas may not use legislative appropriations to discharge any additional duties imposed by this Act on the department.

SECTION 18. This Act takes effect September 1, 2011.

The amendment was read.

Senator Davis moved to concur in the House amendment to **SB 1636**.

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

### **SENATE BILL 1209 WITH HOUSE AMENDMENT**

Senator Whitmire called **SB 1209** from the President's table for consideration of the House amendment to the bill.

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

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

Amend **SB 1209** (house committee printing) as follows:

(1) Strike SECTION 3 of the bill, adding Section 152.0007(c), Human Resources Code (page 2, lines 20 through 25) and substitute the following:

SECTION 3. Subchapter A, Chapter 152, Human Resources Code, is amended by adding Section 152.0015 to read as follows:

Sec. 152.0015. PRETRIAL DETENTION POLICY FOR CERTAIN JUVENILES. A juvenile board shall establish a policy that specifies whether a person who has been transferred for criminal prosecution under Section 54.02, Family Code, and is younger than 17 years of age may be detained in a juvenile facility pending trial as provided by Section 51.12, Family Code.



(2) In SECTION 4 of the bill, in amended Section 54.02(h), Family Code (page 3, lines 11 through 12), strike "Section 152.0007(c)" and substitute "Section 152.0015".

The amendment was read.

Senator Whitmire moved to concur in the House amendment to **SB 1209**.

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

#### **SENATE BILL 1920 WITH HOUSE AMENDMENT**

Senator Gallegos called **SB 1920** from the President's table for consideration of the House amendment to the bill.

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

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

Amend **SB 1920** as follows:

In SECTION 2 of the bill, on page 5, line 17, insert "state or federal" between "by" and "law".

The amendment was read.

Senator Gallegos moved to concur in the House amendment to **SB 1920**.

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

#### **SENATE BILL 303 WITH HOUSE AMENDMENT**

Senator Nichols called **SB 303** from the President's table for consideration of the House amendment to the bill.

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

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

Amend **SB 303** (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 281, Health and Safety Code, is amended by adding Section 281.0286 to read as follows:

Sec. 281.0286. TARRANT COUNTY HOSPITAL DISTRICT; EMPLOYMENT OF PHYSICIANS. (a) The board of the Tarrant County Hospital District may appoint, contract for, or employ physicians as the board considers necessary for the efficient operation of the district.

(b) The term of an employment contract entered into under this section may not exceed four years.

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

(d) The authority granted to the board of the Tarrant County Hospital District under Subsection (a) to employ physicians shall apply as necessary for the district to fulfill the district's statutory mandate to provide medical care for the indigent and needy residents of the district as provided by Section 281.046.

(e) The medical executive committee of the Tarrant County Hospital District shall adopt, maintain, and enforce policies to ensure that a physician employed by the district exercises the physician's independent medical judgment in providing care to patients.

(f) The policies adopted by the medical executive committee under this section must include:

(1) policies relating to:

(A) governance of the medical executive committee;

(B) credentialing;

(C) quality assurance;

(D) utilization review;

(E) peer review;

(F) medical decision-making; and

(G) due process; and

(2) rules requiring the disclosure of financial conflicts of interest by a member of the medical executive committee.

(g) The medical executive committee and the board of the Tarrant County Hospital District shall jointly develop and implement a conflict management process to resolve any conflict between a policy adopted by the medical executive committee under this section and a policy of the Tarrant County Hospital District.

(h) A member of the medical executive committee who is a physician shall provide biennially to the chair of the medical executive committee a signed, verified statement indicating that the member of the medical executive committee:

(1) is licensed by the Texas Medical Board;

(2) will exercise independent medical judgment in all medical executive committee matters, including matters relating to:

(A) credentialing;

(B) quality assurance;

(C) utilization review;

(D) peer review;

(E) medical decision-making; and

(F) due process;

(3) will exercise the committee member's best efforts to ensure compliance with the policies that are adopted or established by the medical executive committee; and

(4) will report immediately to the Texas Medical Board any action or event that the committee member reasonably and in good faith believes constitutes a compromise of the independent medical judgment of a physician in caring for a patient.

(i) For all matters relating to the practice of medicine, each physician employed by the Tarrant County Hospital District shall ultimately report to the chair of the medical executive committee for the district.

The amendment was read.

Senator Nichols moved to concur in the House amendment to **SB 303**.

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

### GUESTS PRESENTED

Senator Gallegos was recognized and introduced to the Senate students from Port Houston Elementary School, accompanied by their teachers, Sharon Perry, Maria Green, Donald Thomas, Susana Castro, and Prince Hall.

The Senate welcomed its guests.

### SENATE BILL 1003 WITH HOUSE AMENDMENT

Senator Fraser called **SB 1003** from the President's table for consideration of the House amendment to the bill.

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

#### Amendment

Amend **SB 1003** by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to penalties for, and emergency orders suspending, the operation of a rock crusher or certain concrete plants without a current permit under the Texas Clean Air Act.

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

SECTION 1. Section 7.052, Water Code, is amended by amending Subsection (b) and adding Subsection (b-3) to read as follows:

(b) Except as provided by Subsection (b-3), the [The] amount of the penalty for operating a rock crusher or a concrete plant that performs wet batching, dry batching, or central mixing, that is required to obtain a permit under Section 382.0518, Health and Safety Code, and that is operating without the required permit is \$10,000. Each day that a continuing violation occurs is a separate violation.

(b-3) If a person operating a facility as described by Subsection (b) holds any type of permit issued by the commission other than the permit required for the facility, the commission may assess a penalty under Subsection (b) or (c).

SECTION 2. Section 5.5145, Water Code, is amended to read as follows:

Sec. 5.5145. EMERGENCY ORDER CONCERNING OPERATION OF ROCK CRUSHER OR CONCRETE PLANT WITHOUT PERMIT. The commission may [shall] issue an emergency order under this subchapter suspending operations of a rock crusher or a concrete plant that performs wet batching, dry batching, or central mixing and is required to obtain a permit under Section 382.0518, Health and Safety Code, and is operating without the necessary permit.

SECTION 3. The change in law made by this Act to Section 7.052, Water Code, applies only to a violation that occurs on or after the effective date of this Act. A violation that occurs before the effective date of this Act is governed by the law in effect on the date the violation occurred, and the former law is continued in effect for that purpose.

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, 2011.

The amendment was read.

Senator Fraser moved to concur in the House amendment to **SB 1003**.

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

### **SENATE BILL 480 WITH HOUSE AMENDMENT**

Senator Hegar called **SB 480** from the President's table for consideration of the House amendment to the bill.

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

#### **Committee Amendment No. 1**

Amend **SB 480** by adding appropriately numbered sections to read as follows:

SECTION \_\_\_\_\_. Chapter 29, Government Code, is amended by adding Subchapter A-1 to read as follows:

#### SUBCHAPTER A-1. RECUSAL OR DISQUALIFICATION OF MUNICIPAL JUDGES

Sec. 29.051. DEFINITIONS. In this chapter:

(1) "Active judge" means a person who holds office as a district court judge or statutory county court judge.

(2) "Presiding judge" means the presiding judge of a municipal court, including a municipal court of record.

(3) "Regional presiding judge" means the presiding judge of the administrative judicial region appointed under Section 74.005.

Sec. 29.052. MOTION FOR RECUSAL OR DISQUALIFICATION. (a) A party in a hearing or trial in a municipal court, including a municipal court of record, may file with the clerk of the court a motion stating grounds for the recusal or disqualification of the municipal judge. The grounds may include any disability of the judge to preside over the case.

(b) A motion for the recusal or disqualification of a municipal judge must:

(1) be filed at least 10 days before the date of the hearing or trial, except as provided by Subsection (c);

(2) be verified; and

(3) state with particularity the alleged grounds for recusal or disqualification of the judge based on:

(A) personal knowledge that is supported by admissible evidence; or

(B) specifically stated grounds for belief of the allegations.

(c) A motion for recusal or disqualification must be filed at the earliest practicable time before the beginning of the trial or other hearing if a judge is assigned to a case 10 or fewer days before the date set for a trial or hearing.

Sec. 29.053. NOTICE. A party filing a motion for recusal or disqualification under this subchapter shall serve on all other parties or their counsel:

(1) copies of the motion; and

(2) notice that the movant expects the motion to be presented to the judge three days after the filing of the motion unless the judge orders otherwise.

Sec. 29.054. STATEMENT OPPOSING OR CONCURRING WITH MOTION. A party may file with the clerk of the court a statement opposing or concurring with a motion for recusal or disqualification at any time before the motion is heard.

Sec. 29.055. PROCEDURE FOLLOWING FILING OF MOTION; RECUSAL OR DISQUALIFICATION WITHOUT MOTION. (a) Before further proceedings in a case in which a motion for the recusal or disqualification of a municipal judge has been filed, the judge shall:

(1) recuse or disqualify himself or herself; or

(2) request the regional presiding judge to assign a judge to hear the motion.

(b) A municipal judge who with or without a motion recuses or disqualifies himself or herself:

(1) shall enter an order of recusal or disqualification and:

(A) if the municipal judge is not the presiding judge, request the presiding judge to assign any other judge of the municipal court, including the presiding judge, to hear the case;

(B) if the municipal judge is the presiding judge, request the regional presiding judge to assign another judge of the municipal court to hear the case; or

(C) if the municipal judge serves in a municipality with only one municipal judge, request the regional presiding judge to assign a judge of another municipal court in the county to hear the case; and

(2) may not take other action in the case, except that a judge who recuses himself or herself for good cause may take other action as stated in the order in which the action is taken.

(c) A municipal judge who does not recuse or disqualify himself or herself:

(1) shall forward, in original form or certified copy, an order of referral, the motion, and all opposing and concurring statements to the regional presiding judge; and

(2) may not take other action in the case during the time after the filing of the motion for recusal or disqualification and before a hearing on the motion, except for good cause stated in the order in which the action is taken.

Sec. 29.056. HEARING ON MOTION. (a) A regional presiding judge who receives a request for the assignment of a judge to hear a motion to recuse or disqualify shall:

(1) immediately set a hearing before the regional presiding judge, an active judge, or a judge on the list of judges who are eligible to serve on assignment under Section 74.055;

(2) cause notice of the hearing to be given to all parties or their counsel; and

(3) make any other orders, including orders on interim or ancillary relief in the pending cause as justice may require.

(b) A judge who hears a motion for recusal or disqualification under Subsection (a) may also hear any amended or supplemented motion for recusal or disqualification filed in the case.

(c) If none of the parties to an action object, a hearing under Subsection (a) or (b) may be conducted by telephone.

Sec. 29.057. PROCEDURE FOLLOWING GRANTING OF MOTION. (a) If a motion for recusal or disqualification is granted after a hearing is conducted as provided by Section 29.056, the judge who heard the motion shall enter an order of recusal or disqualification, and:

(1) if the judge who was the subject of the motion is not the presiding judge, request that the presiding judge assign any other judge of the municipality, including the presiding judge, to hear the case;

(2) if the judge who was the subject of the motion is the presiding judge, request the regional presiding judge to assign another judge of the municipality to hear the case; or

(3) if the judge subject to recusal or disqualification is located in a municipality with only one municipal judge, request the regional presiding judge to assign a judge of another municipal court in the county to hear the case.

(b) If the presiding judge is unable to assign a judge of the municipality to hear a case when a municipal judge is recused or disqualified under Section 29.055 or 29.056 because there are not any other municipal judges in the municipality or because all the municipal judges have been recused or disqualified or are otherwise unavailable to hear the case, the presiding judge shall request the regional presiding judge to first assign a municipal judge from another municipality in the county or, if necessary, assign a municipal judge from a municipality in an adjacent county to hear the case.

(c) If the regional presiding judge is unable to assign a judge to hear a case when a municipal judge is recused or disqualified under Section 29.055 or 29.056 because there are not any other municipal judges in the county or because all the municipal judges have been recused or disqualified or are otherwise unavailable to hear the case, the regional presiding judge may assign a municipal judge from a municipality in an adjacent county to hear the case.

Sec. 29.058. APPEAL. (a) After a municipal court of record has rendered a final judgment in a case, a party may appeal an order that denies a motion for recusal or disqualification as an abuse of the court's discretion.

(b) A party may not appeal an order that grants a motion for recusal or disqualification.

Sec. 29.059. CONTEMPT. If a party files a motion to recuse or disqualify under this subchapter and it is determined by the judge hearing the motion, at the hearing and on motion of the opposing party, that the motion to recuse or disqualify is brought solely for the purpose of delay and without sufficient cause, the judge may in the interest of justice find the party filing the motion in contempt under Section 21.002(c).

Sec. 29.060. COMPENSATION. (a) An active judge who is assigned to hear a motion to recuse or disqualify a municipal judge under this subchapter is not entitled to additional compensation other than travel expenses. A judge assigned to hear a motion to recuse or disqualify who is not an active judge is entitled to:

(1) compensation of \$450 per day of service, prorated for any day for which the judge provides less than a full day of service; and

(2) travel expenses.

(b) A municipal judge assigned under this subchapter to hear a case in a court other than the one in which the judge resides or serves is entitled to compensation provided by law for judges in similar cases and travel expenses.

(c) The municipality in which a case subject to this subchapter is pending shall pay the compensation and travel expenses due or incurred under this subchapter.

SECTION \_\_\_\_\_. Subchapter A, Chapter 29, Government Code, is amended by adding Section 29.013 to read as follows:

Sec. 29.013. REPORT TO TEXAS JUDICIAL COUNCIL. (a) The secretary of the municipality in a municipality with a municipal court, including a municipal court of record, or the employee responsible for maintaining the records of the municipality's governing body shall notify the Texas Judicial Council of the name of:

(1) each person who is elected or appointed as mayor, municipal court judge, or clerk of a municipal court; and

(2) each person who vacates an office described by Subdivision (1).

(b) The secretary or employee shall notify the judicial council not later than the 30th day after the date of the person's election or appointment to office or vacancy from office.

SECTION \_\_\_\_\_. The following sections are repealed:

(1) Section 29.012, Government Code; and

(2) Section 22.073(c), Local Government Code.

SECTION \_\_\_\_\_. Subchapter A-1, Chapter 29, Government Code, as added by this Act, applies only to a hearing or trial initially filed in a municipal court on or after the effective date of this Act.

The amendment was read.

Senator Hegar moved to concur in the House amendment to **SB 480**.

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

### SENATE BILL 809 WITH HOUSE AMENDMENT

Senator Seliger called **SB 809** from the President's table for consideration of the House amendment to the bill.

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

### Floor Amendment No. 1

Amend **SB 809** (house committee printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 413.031(k-1), Labor Code, is amended to read as follows:

(k-1) A party who has exhausted all administrative remedies described by ~~under~~ Subsection (k) and who is aggrieved by a final decision of the division or the State Office of Administrative Hearings may seek judicial review of the decision. Judicial review under this subsection shall be conducted in the manner provided for judicial review of a contested case under Subchapter G, Chapter 2001, Government Code, except that in the case of a medical fee dispute the party seeking judicial review under this section must file suit not later than the 45th day after the date on which the State Office of Administrative Hearings mailed the party the notification of the decision. For purposes of this subsection, the mailing date is considered to be the fifth day after the date the decision was issued by the State Office of Administrative Hearings.

SECTION \_\_\_\_\_. Section 1305.103(c), Insurance Code, is amended to read as follows:

(c) An employee who lives within the service area of a network and who is being treated by a non-network provider for an injury that occurred before the employer's insurance carrier established or contracted with the network, shall select a network treating doctor on notification by the carrier that health care services are being provided through the network. The carrier shall provide to the employee all information required by Section 1305.451. If the employee fails to select a treating doctor on or before the 14th day after the date of receipt of the information required by Section 1305.451, the network may assign the employee a network treating doctor. An issue regarding whether a carrier properly provided an employee the information required by this subsection may be resolved using the process for adjudication of disputes under Chapter 410, Labor Code, as used by the department's division of workers' compensation.

SECTION \_\_\_\_\_. Section 1305.451, Insurance Code, is amended by adding Subsection (e) to read as follows:

(e) An issue regarding whether an employer properly provided an employee with the information required by this section may be resolved using the process for adjudication of disputes under Chapter 410, Labor Code, as used by the department's division of workers' compensation.

The amendment was read.

Senator Seliger moved to concur in the House amendment to **SB 809**.

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

### **SENATE BILL 322 WITH HOUSE AMENDMENT**

Senator Carona called **SB 322** from the President's table for consideration of the House amendment to the bill.

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



**Floor Amendment No. 1**

Amend **SB 322** by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Subchapter A, Chapter 2502, Insurance Code, is amended by adding Section 2502.006 to read as follows:

Sec. 2502.006. CERTAIN EXTRA HAZARDOUS COVERAGES PROHIBITED. (a) A title insurance company may not insure against loss or damage sustained by reason of any claim that under federal bankruptcy, state insolvency, or similar creditor's rights laws the transaction vesting title in the insured as shown in the policy or creating the lien of the insured mortgage is:

(1) a preference or preferential transfer under 11 U.S.C. Section 547;

(2) a fraudulent transfer under 11 U.S.C. Section 548;

(3) a transfer that is fraudulent as to present and future creditors under Section 24.005, Business & Commerce Code, or a similar law of another state; or

(4) a transfer that is fraudulent as to present creditors under Section 24.006, Business & Commerce Code, or a similar law of another state.

(b) The commissioner may by rule designate coverages that violate this section. It is not a defense against a claim that a title insurance company has violated this section that the commissioner has not adopted a rule under this subsection.

(c) Title insurance issued in or on a form prescribed by the commissioner shall be considered to comply with this section.

(d) Nothing in this section prohibits title insurance with respect to liens, encumbrances, or other defects to title to land that:

(1) appear in the public records before the date on which the contract of title insurance is made;

(2) occur or result from transactions before the transaction vesting title in the insured or creating the lien of the insured mortgage; or

(3) result from failure to timely perfect or record any instrument before the date on which the contract of title insurance is made.

(e) A title insurance company may not engage in the business of title insurance in this state if the title insurance company provides insurance of the type prohibited by Subsection (a) anywhere in the United States, except to the extent that the laws of another state require the title insurance company to provide that type of insurance.

SECTION \_\_\_\_\_. Section 2502.006, Insurance Code, as added by this Act, applies only to an insurance policy that is delivered, issued for delivery, or renewed on or after January 1, 2012. A policy delivered, issued for delivery, or renewed before January 1, 2012, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

The amendment was read.

Senator Carona moved to concur in the House amendment to **SB 322**.

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

**SENATE BILL 993 WITH HOUSE AMENDMENT**

Senator Uresti called **SB 993** from the President's table for consideration of the House amendment to the bill.

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

### Floor Amendment No. 1

Amend **SB 993** (house committee report) by adding the following appropriately numbered SECTIONS to the bill and renumbering the remaining SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Subchapter B, Chapter 262, Family Code, is amended by adding Section 262.1095 to read as follows:

Sec. 262.1095. INFORMATION PROVIDED TO RELATIVES AND CERTAIN INDIVIDUALS; INVESTIGATION. (a) When the Department of Family and Protective Services or another agency takes possession of a child under this chapter, the department:

(1) shall provide information as prescribed by this section to each adult the department is able to identify and locate who:

(A) is related to the child within the third degree by consanguinity as determined under Chapter 573, Government Code, or is an adult relative of the alleged father of the child who the department determines is most likely to be the child's biological father; and

(B) is identified as a potential relative or designated caregiver, as defined by Section 264.751, on the proposed child placement resources form provided under Section 261.307; and

(2) may provide information as prescribed by this section to each adult the department is able to identify and locate who has a long-standing and significant relationship with the child.

(b) The information provided under Subsection (a) must:

(1) state that the child has been removed from the child's home and is in the temporary managing conservatorship of the department;

(2) explain the options available to the individual to participate in the care and placement of the child and the support of the child's family;

(3) state that some options available to the individual may be lost if the individual fails to respond in a timely manner; and

(4) include, if applicable, the date, time, and location of the hearing under Subchapter C, Chapter 263.

(c) The department is not required to provide information to an individual if the individual has received service of citation under Section 102.009 or if the department determines providing information is inappropriate because the individual has a criminal history or a history of family violence.

(d) The department shall use due diligence to identify and locate all individuals described by Subsection (a) not later than the 30th day after the date the department files a suit affecting the parent-child relationship. In order to identify and locate the individuals described by Subsection (a), the department shall seek information from:

(1) each parent, relative, and alleged father of the child; and

(2) the child in an age-appropriate manner.

(e) The failure of a parent or alleged father of the child to complete the proposed child placement resources form does not relieve the department of its duty to seek information about the person under Subsection (d).

SECTION \_\_\_\_\_. Subchapter A, Chapter 263, Family Code, is amended by adding Section 263.007 to read as follows:

Sec. 263.007. REPORT REGARDING NOTIFICATION OF RELATIVES. Not later than the 10th day before the date set for a hearing under Subchapter C, the department shall file with the court a report regarding:

(1) the efforts the department made to identify, locate, and provide information to the individuals described by Section 262.1095;

(2) the name of each individual the department identified, located, or provided with information; and

(3) if applicable, an explanation of why the department was unable to identify, locate, or provide information to an individual described by Section 262.1095.

SECTION \_\_\_\_\_. The heading to Section 263.105, Family Code, is amended to read as follows:

Sec. 263.105. REVIEW OF SERVICE PLAN; MODIFICATION.

SECTION \_\_\_\_\_. Section 263.105, Family Code, is amended by adding Subsection (c) to read as follows:

(c) The court may modify an original or amended service plan at any time.

SECTION \_\_\_\_\_. Section 263.201(b), Family Code, is amended to read as follows:

(b) A status hearing is not required if the court holds an initial permanency hearing under Section 262.2015 and makes findings required by Section 263.202 before the date a status hearing is required by this section.

SECTION \_\_\_\_\_. Section 263.202, Family Code, is amended by amending Subsections (a) and (b) and adding Subsections (b-1), (f), (g), and (h) to read as follows:

(a) If all persons [~~parties~~] entitled to citation and notice of a status hearing under this chapter were not served, the court shall make findings as to whether:

(1) the department or other agency has exercised due diligence to locate all necessary persons, including an alleged father of the child, regardless of whether the alleged father is registered with the registry of paternity under Section 160.402; and

(2) the child and each [~~custodial~~] parent, alleged father, or relative of the child before the court have [~~has~~] furnished to the department all available information necessary to locate an [~~another~~] absent parent, alleged father, or relative of the child through exercise of due diligence.

(b) Except as otherwise provided by this subchapter [~~Subsection (c)~~], a status hearing shall be limited to matters related to the contents and execution of the service plan filed with the court. The court shall review the service plan that the department or other agency filed under this chapter for reasonableness, accuracy, and compliance with requirements of court orders and make findings as to whether:

(1) a plan that has the goal of returning the child to the child's parents adequately ensures that reasonable efforts are made to enable the child's parents to provide a safe environment for the child; [~~and~~]

(2) the child's parents have reviewed and understand the [~~service~~] plan and have been advised that unless the parents are willing and able to provide the child with a safe environment, even with the assistance of a service plan, within the

reasonable period of time specified in the plan, the parents' parental and custodial duties and rights may be subject to restriction or to termination under this code or the child may not be returned to the parents;

(3) the plan is reasonably tailored to address any specific issues identified by the department or other agency; and

(4) the child's parents and the representative of the department or other agency have signed the plan.

(b-1) After reviewing the service plan and making any necessary modifications, the court shall incorporate the service plan into the orders of the court and may render additional appropriate orders to implement or require compliance with the plan.

(f) The court shall review the report filed by the department under Section 263.007 and inquire into the sufficiency of the department's efforts to identify, locate, and provide information to each adult described by Section 262.1095(a). The court shall order the department to make further efforts to identify, locate, and provide information to each adult described by Section 262.1095(a) if the court determines that the department's efforts have not been sufficient.

(g) The court shall give the child's parents an opportunity to comment on the service plan.

(h) If a proposed child placement resources form as described by Section 261.307 has not been submitted, the court shall require each parent, alleged father, or other person to whom the department is required to provide a form to submit a completed form.

SECTION \_\_\_\_\_. Subchapter C, Chapter 263, Family Code, is amended by adding Section 263.203 to read as follows:

Sec. 263.203. APPOINTMENT OF ATTORNEY AD LITEM; ADMONISHMENTS. (a) The court shall advise the parties of the provisions regarding the mandatory appointment of an attorney ad litem under Subchapter A, Chapter 107, and shall appoint an attorney ad litem to represent the interests of any person eligible if the appointment is required by that subchapter.

(b) The court shall advise the parties that progress under the service plan will be reviewed at all subsequent hearings, including a review of whether the parties have acquired or learned any specific skills or knowledge stated in the plan.

SECTION \_\_\_\_\_. Sections 263.202(c) and (d), Family Code, are repealed.

SECTION \_\_\_\_\_. The changes in law made by this Act to Chapters 262 and 263, Family Code, apply only to a child taken into possession by the Department of Family and Protective Services or another agency on or after the effective date of this Act. A child taken into possession before that date is governed by the law in effect on the date the child is taken into possession, and the former law is continued in effect for that purpose.

The amendment was read.

Senator Uresti moved to concur in the House amendment to **SB 993**.

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

**SENATE BILL 594 WITH HOUSE AMENDMENT**

Senator Van de Putte called **SB 594** from the President's table for consideration of the House amendment to the bill.

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

**Floor Amendment No. 1**

Amend **SB 594** (house committee printing) as follows:

(1) In the recital to SECTION 1 of the bill (page 1, line 6), strike "and (k)" and substitute "(k), and (q)".

(2) In SECTION 1 of the bill, strike Section 481.074(b)(2), Health and Safety Code (page 1, line 21, through page 2, line 5), and substitute the following:

(2) if the person is not a prescribing practitioner or a pharmacist, promptly write the oral or telephonically communicated prescription and include in the written record of the prescription the name, address, ~~[department registration number,]~~ and Federal Drug Enforcement Administration number issued for prescribing a controlled substance in this state of the prescribing practitioner, all information required to be provided by a practitioner under Section 481.075(e)(1), and all information required to be provided by a dispensing pharmacist under Section 481.075(e)(2).

(3) In SECTION 1 of the bill, strike Sections 481.074(k)(7), (8), and (9), Health and Safety Code (page 6, line 21, through page 7, line 2), and substitute the following:

(7) the ~~[legibly printed or stamped]~~ name, address, Federal Drug Enforcement Administration ~~[registration]~~ number, and telephone number of the practitioner at the practitioner's usual place of business, which must be legibly printed or stamped on a written prescription; and

(8) if the prescription is handwritten, the signature of the prescribing practitioner~~;~~~~and~~

~~[(9) if the prescribing practitioner is licensed in this state, the practitioner's department registration number].~~

(4) In SECTION 1 of the bill, after amended Section 481.074(k), Health and Safety Code (page 7, between lines 2 and 3), insert the following:

(q) Each dispensing pharmacist shall send all information required by the director, including any information required to complete the Schedule III through V prescription forms, to the director by electronic transfer or another form approved by the director not later than the seventh ~~[+5th]~~ day after the date ~~[last day of the month in which]~~ the prescription is completely filled.

(5) In SECTION 2 of the bill, strike Section 481.075(e)(1)(E), Health and Safety Code (page 8, lines 1-3), and substitute the following:

(E) the practitioner's name, address, ~~[department registration number,]~~ and Federal Drug Enforcement Administration number issued for prescribing a controlled substance in this state;

(6) In SECTION 2 of the bill, strike Section 481.075(i)(3), Health and Safety Code (page 10, lines 2-7), and substitute the following:

(3) send all information required by the director, including any information required to complete an official prescription form or electronic prescription record, to the director by electronic transfer or another form approved by the director not later than the seventh ~~[15th]~~ day after the date ~~[last day of the month in which]~~ the prescription is completely filled.

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

SECTION \_\_\_\_\_. Section 481.061, Health and Safety Code, is amended by adding Subsection (d) to read as follows:

(d) A person shall provide the department with the person's Federal Drug Enforcement Administration number not later than the 45th day after the director issues a registration to the person under this subchapter.

SECTION \_\_\_\_\_. Subsections (a) and (i), Section 481.076, Health and Safety Code, are amended to read as follows:

(a) The director may not permit any person to have access to information submitted to the director under Section 481.074(q) or 481.075 except:

(1) an investigator for the Texas Medical Board, the Texas State Board of Podiatric Medical Examiners, the State Board of Dental Examiners, the State Board of Veterinary Medical Examiners, the Texas Board of Nursing, or the Texas State Board of Pharmacy;

(2) an authorized officer or member of the department engaged in the administration, investigation, or enforcement of this chapter or another law governing illicit drugs in this state or another state; or

(3) if the director finds that proper need has been shown to the director:

(A) a law enforcement or prosecutorial official engaged in the administration, investigation, or enforcement of this chapter or another law governing illicit drugs in this state or another state;

(B) a pharmacist or practitioner who is a physician, dentist, veterinarian, podiatrist, or advanced practice nurse or physician assistant described by Section 481.002(39)(D) and is inquiring about a recent Schedule II, III, IV, or V prescription history of a particular patient of the practitioner; or

(C) a pharmacist or practitioner who is inquiring about the person's own dispensing or prescribing activity.

(i) Information submitted to the director under Section 481.074(q) or 481.075 is confidential and remains confidential regardless of whether the director permits access to the information under this section.

SECTION \_\_\_\_\_. Notwithstanding Section 481.061, Health and Safety Code, as amended by this Act, a person who holds a valid registration under Subchapter C, Chapter 481, Health and Safety Code, on the effective date of this Act is not required to submit the person's Federal Drug Enforcement Administration number to the Department of Public Safety of the State of Texas before October 15, 2011.

The amendment was read.

Senator Van de Putte moved to concur in the House amendment to **SB 594**.

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

**SENATE BILL 1196 WITH HOUSE AMENDMENT**

Senator Rodriguez called **SB 1196** from the President's table for consideration of the House amendment to the bill.

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

**Committee Amendment No. 1**

Amend **SB 1196** (senate engrossed version) as follows:

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

SECTION \_\_\_\_\_. Subpart E, Part 2, Chapter XIII, Texas Probate Code, is amended by adding Section 652 to read as follows:

Sec. 652. LOCATION OF HEARING. (a) Except as provided by Subsection (b) of this section, the judge may hold a hearing on a guardianship matter involving an adult ward or adult proposed ward at any suitable location in the county in which the guardianship matter is pending. The hearing should be held in a physical setting that is not likely to have a harmful effect on the ward or proposed ward.

(b) On the request of the adult proposed ward, the adult ward, or the attorney of the proposed ward or ward, the hearing may not be held under the authority of this section at a place other than the courthouse.

(2) Immediately following SECTION 42(b) of the bill (page 32, between lines 5 and 6), insert the following appropriately lettered subsection and reletter subsequent subsections of SECTION 42 accordingly:

(\_\_\_\_) Section 652, Texas Probate Code, as added by this Act, applies to a guardianship matter that is pending or commenced on or after the effective date of this Act.

The amendment was read.

Senator Rodriguez moved to concur in the House amendment to **SB 1196**.

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

**SENATE BILL 1605 WITH HOUSE AMENDMENTS**

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

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

**Amendment**

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

A BILL TO BE ENTITLED  
AN ACT

relating to the Texas Low-Level Radioactive Waste Disposal Compact Commission.

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

SECTION 1. Section 401.248, Health and Safety Code, is amended by adding Subsection (e) to read as follows:

(e) The compact waste disposal facility license holder may not accept compact waste at the compact waste disposal facility unless the compact commission established by the compact under Section 403.006 has adopted bylaws necessary to carry out the terms of the compact.

SECTION 2. Chapter 403, Health and Safety Code, is amended by adding Section 403.0005 to read as follows:

Sec. 403.0005. DEFINITIONS. In this chapter:

(1) "Commission" means the commission established by Article III of the Texas Low-Level Radioactive Waste Disposal Compact.

(2) "Host state commissioner" means a person who is appointed from this state to serve on the commission under this chapter.

SECTION 3. Sections 403.002 and 403.004, Health and Safety Code, are amended to read as follows:

Sec. 403.002. TERMS OF COMMISSION MEMBERS; VACANCY. ~~Host~~ ~~host~~ Host state commissioners serve staggered six-year terms, with the terms of two host state commissioners expiring on February 1 of each even-numbered year. A host state commissioner serves ~~for a term of six years and~~ until a successor is appointed and qualified. A vacancy in the office of host state commissioner is filled for the unexpired term by appointment of the governor.

Sec. 403.004. COMPENSATION. A host state commissioner is not entitled to compensation for performing the duties of host state commissioner but is entitled to reimbursement for actual and necessary expenses incurred in the performance of the duties of host state commissioner.

SECTION 4. Chapter 403, Health and Safety Code, is amended by adding Sections 403.0051, 403.0052, 403.0053, 403.0054, and 403.0055 to read as follows:

Sec. 403.0051. COMMISSION AS INDEPENDENT ENTITY. (a) The commission is an independent entity and not a program, department, or other division of, or administratively attached to, the Texas Commission on Environmental Quality.

(b) Money for the commission may not be appropriated as part of an appropriation for the Texas Commission on Environmental Quality.

Sec. 403.0052. BIENNIAL REPORTS TO LEGISLATURE. On or before December 1 of each even-numbered year, the commission shall file with the governor and the appropriate legislative committees a written report that includes:

(1) a statement of the activities of the commission during the preceding fiscal biennium;

(2) the commission's recommendations for necessary and desirable legislation; and

(3) an accounting of all funds received and disbursed by the commission during the preceding biennium.

Sec. 403.0053. ATTORNEY GENERAL TO REPRESENT COMMISSION. The attorney general shall represent the commission under this chapter in all matters before the state courts and any court of the United States.

Sec. 403.0054. APPLICABILITY OF SUNSET ACT. (a) The commission is subject to review under Chapter 325, Government Code (Texas Sunset Act), as if it were a state agency subject to review under that chapter, but may not be abolished under that chapter.



(b) The commission shall be reviewed during each period in which the Texas Commission on Environmental Quality is reviewed.

(c) The commission shall pay the cost incurred by the Sunset Advisory Commission in performing a review of the commission under this section. The Sunset Advisory Commission shall determine the cost, and the commission shall pay the amount promptly on receipt of a statement from the Sunset Advisory Commission detailing the cost.

Sec. 403.0055. AUDIT. The commission is subject to audit by the state auditor in accordance with Chapter 321, Government Code.

SECTION 5. The term of office of a person serving as a host state commissioner of the Texas Low-Level Radioactive Waste Disposal Compact Commission on the effective date of this Act expires February 1, 2012. To begin the staggering of terms, the governor shall appoint host state commissioners, in accordance with the provisions of Section 403.002, Health and Safety Code, as amended by this Act, as follows:

- (1) two host state commissioners to terms expiring February 1, 2014;
- (2) two host state commissioners to terms expiring February 1, 2016; and
- (3) two host state commissioners to terms expiring February 1, 2018.

SECTION 6. This Act takes effect September 1, 2011.

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

Amend **CSSB 1605** (house committee report) as follows:

(1) In Section 3 of the bill, in amended Section 403.002, Health and Safety Code (page 2, lines 1-2), strike "February 1 of each even-numbered year" and substitute "September 1 of each odd-numbered year".

(2) In Section 5 of the bill (page 3, line 24), strike "February 1, 2012" and substitute "on that date".

(3) In Section 5(1) of the bill (page 4, line 2), strike "February 1, 2014" and substitute "September 1, 2013".

(4) In Section 5(2) of the bill (page 4, line 4), strike "February 1, 2016" and substitute "September 1, 2015".

(5) In Section 5(3) of the bill (page 4, line 6), strike "February 1, 2018" and substitute "September 1, 2017".

The amendments were read.

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

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

### **SENATE BILL 736 WITH HOUSE AMENDMENT**

Senator Hinojosa called **SB 736** from the President's table for consideration of the House amendment to the bill.

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

**Amendment**

Amend **SB 736** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to membership of local school health advisory councils.

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

SECTION 1. Section 28.004(d), Education Code, is amended to read as follows:

(d) The board of trustees shall appoint at least five members to the local school health advisory council. A majority of the members must be persons who are parents of students enrolled in the district and who are not employed by the district. One of those members shall serve as chair or co-chair of the council. The board of trustees also may appoint one or more persons from each of the following groups or a representative from a group other than a group specified under this subsection:

- (1) public school teachers;
- (2) public school administrators;
- (3) district students;
- (4) health care professionals;
- (5) the business community;
- (6) law enforcement;
- (7) senior citizens;
- (8) the clergy; ~~and~~
- (9) nonprofit health organizations; and
- (10) local domestic violence programs.

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, 2011.

The amendment was read.

Senator Hinojosa moved to concur in the House amendment to **SB 736**.

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

**SENATE BILL 731 WITH HOUSE AMENDMENT**

Senator Nichols called **SB 731** from the President's table for consideration of the House amendment to the bill.

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

**Amendment**

Amend **SB 731** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to the attorney general's legal sufficiency review of a comprehensive development agreement.

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

SECTION 1. Section 371.051, Transportation Code, is amended to read as follows:

Sec. 371.051. ATTORNEY GENERAL REVIEW AND EXAMINATION FEE.

(a) A toll project entity may not enter into a comprehensive development agreement unless the attorney general reviews the proposed agreement and determines that it is legally sufficient.

(b) A toll project entity shall pay a nonrefundable examination fee to the attorney general on submitting a proposed comprehensive development agreement for review. At the time the examination fee is paid, the toll project entity shall also submit for review a complete transcript of proceedings related to the comprehensive development agreement.

(c) If the toll project entity submits multiple proposed comprehensive development agreements relating to the same toll project for review, the entity shall pay the examination fee under Subsection (b) for each proposed comprehensive development agreement.

(d) The attorney general shall provide a legal sufficiency determination not later than the 60th business day after the date the examination fee and transcript of the proceedings required under Subsection (b) are received. If the attorney general cannot provide a legal sufficiency determination within the 60-business-day period, the attorney general shall notify the toll project entity in writing of the reason for the delay and may extend the review period for not more than 30 business days.

(e) After the attorney general issues a legal sufficiency determination, a toll project entity may supplement the transcript of proceedings or amend the comprehensive development agreement to facilitate a redetermination by the attorney general of the prior legal sufficiency determination issued under this section.

(f) The toll project entity may collect or seek reimbursement of the examination fee under Subsection (b) from the private participant.

(g) The attorney general by rule shall set the examination fee required under Subsection (b) in a reasonable amount and may adopt other rules as necessary to implement this section. The fee may not be set in an amount that is determined by a percentage of the cost of the toll project. The amount of the fee may not exceed reasonable attorney's fees charged for similar legal services in the private sector.

SECTION 2. The requirements of Section 371.051, Transportation Code, as amended by this Act, apply only to a comprehensive development agreement submitted to the office of the attorney general 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, 2011.

The amendment was read.

Senator Nichols moved to concur in the House amendment to **SB 731**.

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

### SENATE BILL 425 WITH HOUSE AMENDMENTS

Senator Carona called **SB 425** from the President's table for consideration of the House amendments to the bill.

Senator Carona temporarily withdrew further consideration of the House amendments to **SB 425**.

#### REMARKS ORDERED PRINTED

On motion of Senator Watson and by unanimous consent, the exchange between Senators Carona and Watson regarding **SB 425** was ordered reduced to writing and printed in the *Senate Journal* as follows:

**Senator Watson:** Cities often need to look at a contractor's actual insurance policy or at endorsements reflecting special coverages like additional insured or waiver of subrogation. Would Section 1811.155 of this bill prevent them from doing that?

**Senator Carona:** No, cities could continue to look at actual insurance policies.

**Senator Watson:** Cities often have language in their construction contracts that requires the contractor to defend and indemnify them for claims alleging that they are jointly negligent with the contractor. Would the language in Section 1811.154 mean that insurance would no longer cover this type of contractual liability?

**Senator Carona:** No, this bill does not affect terms of the policy.

**Senator Watson:** Is it your intent to ask the Texas Department of Insurance to make this clear in their rulemaking?

**Senator Carona:** We have visited with TDI at length about this bill and we are in agreement with these issues.

### SENATE BILL 425 WITH HOUSE AMENDMENTS

Senator Carona again called **SB 425** from the President's table for consideration of the House amendments to the bill.

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

#### Amendment

Amend **SB 425** by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to property and casualty certificates of insurance and approval of property and casualty certificate of insurance forms by the Texas Department of Insurance; providing penalties.

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

SECTION 1. Subtitle A, Title 10, Insurance Code, is amended by adding Chapter 1811 to read as follows:

CHAPTER 1811. CERTIFICATES OF PROPERTY AND CASUALTY  
INSURANCE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1811.001. DEFINITIONS. In this chapter:

(1) "Agent" means a person required to hold a license as a property and casualty agent or surplus lines agent.

(2) "Certificate holder" means a person, other than a policyholder:

(A) who is designated on a certificate of insurance as a certificate holder; or

(B) to whom a certificate of insurance has been issued by an insurer or agent at the request of the policyholder.

(3) "Certificate of insurance" means a document, instrument, or record, including an electronic record, no matter how titled or described, that is executed by an insurer or agent and issued to a third person not a party to the subject insurance contract, as a statement or summary of property or casualty insurance coverage. The term does not include an insurance binder or policy form.

(4) "Electronic record" has the meaning assigned by Section 322.002, Business & Commerce Code.

(5) "Insurance" means an insurance contract for property or casualty insurance.

(6) "Insurer" means a company or insurance carrier that is engaged in the business of making property or casualty insurance contracts. The term includes:

(A) a stock fire or casualty insurance company;

(B) a mutual fire or casualty insurance company;

(C) a Mexican casualty insurance company;

(D) a Lloyd's plan;

(E) a reciprocal or interinsurance exchange;

(F) a county mutual insurance company;

(G) a farm mutual insurance company;

(H) a risk retention group;

(I) the Medical Liability Insurance Joint Underwriting Association under Chapter 2203;

(J) the Texas Windstorm Insurance Association under Chapter 2210;

(K) the FAIR Plan Association under Chapter 2211;

(L) an eligible surplus lines insurer; and

(M) any other insurer authorized to write property or casualty insurance in this state.

(7) "Lender" has the meaning assigned by Section 549.001.

(8) "Person" means:

(A) an individual; or

(B) a partnership, corporation, limited liability company, association, trust, or other legal entity, including an insurer or a political subdivision or agency of this state.

(9) "Policyholder" means a person who has contracted with a property or casualty insurer for insurance coverage.

(10) "Record" has the meaning assigned by Section 322.002, Business & Commerce Code.

Sec. 1811.002. APPLICABILITY. (a) This chapter applies to a certificate holder, policyholder, insurer, or agent with regard to a certificate of insurance issued on property or casualty operations or a risk located in this state, regardless of where the certificate holder, policyholder, insurer, or agent is located.

(b) This chapter may not be construed to apply to:

(1) a statement, summary, or evidence of property insurance required by a lender in a lending transaction involving:

(A) a mortgage;

(B) a lien;

(C) a deed of trust; or

(D) any other security interest in real or personal property as security

for a loan;

(2) a certificate issued under:

(A) a group or individual policy for:

(i) life insurance;

(ii) credit insurance;

(iii) accident and health insurance;

(iv) long-term care benefit insurance; or

(v) Medicare supplement insurance; or

(B) an annuity contract; or

(3) standard proof of motor vehicle liability insurance under Section 601.081, Transportation Code.

Sec. 1811.003. RULES. The commissioner may adopt rules as necessary or proper to accomplish the purposes of this chapter.

Sec. 1811.004. FILING FEE. (a) The department may collect a fee in an amount determined by the commissioner for the filing of a new or amended certificate of insurance form under this chapter.

(b) The fee may not exceed \$100.

(c) A fee collected under this section shall be deposited to the credit of the Texas Department of Insurance operating account.

[Sections 1811.005-1811.050 reserved for expansion]

#### SUBCHAPTER B. PROHIBITED ACTS AND PRACTICES

Sec. 1811.051. ALTERING, AMENDING, OR EXTENDING THE TERMS OF AN INSURANCE POLICY; CONTRACTUAL RIGHTS OF CERTIFICATE HOLDER. (a) A property or casualty insurer or agent may not issue a certificate of insurance or any other type of document purporting to be a certificate of insurance if the certificate or document alters, amends, or extends the coverage or terms and conditions provided by the insurance policy referenced on the certificate or document.

(b) A certificate of insurance or any other type of document may not convey a contractual right to a certificate holder.

Sec. 1811.052. USE OF APPROVED CERTIFICATE OF INSURANCE FORMS. (a) An insurer or an agent may not issue a certificate of insurance unless the form of the certificate:

(1) has been filed with and approved by the department under Section 1811.101; or

(2) is a standard form deemed approved by the department under Section 1811.103.

(b) A person may not execute, issue, or require the issuance of a certificate of insurance for risks located in this state, unless the certificate of insurance form has been filed with and approved by the department.

Sec. 1811.053. ALTERATION OR MODIFICATION OF APPROVED CERTIFICATE OF INSURANCE FORMS. A person may not alter or modify a certificate of insurance form approved under Section 1811.101 unless the alteration or modification is approved by the department.

Sec. 1811.054. ISSUANCE OF FALSE OR MISLEADING CERTIFICATE OF INSURANCE. A person may not require the issuance of a certificate of insurance from an insurer, agent, or policyholder that contains any false or misleading information concerning the policy of insurance to which the certificate refers.

Sec. 1811.055. REQUEST FOR DOCUMENTS IN LIEU OF CERTIFICATE OF INSURANCE. A person may not require an agent or insurer, either in addition to or in lieu of a certificate of insurance, to issue any other document or correspondence, instrument, or record, including an electronic record, that is inconsistent with this chapter.

Sec. 1811.056. USE OF DISAPPROVED CERTIFICATE OF INSURANCE FORMS. A person who receives written notice under Section 1811.102 that a certificate of insurance form filed under this chapter has been disapproved by the commissioner shall immediately stop using the form.

[Sections 1811.057-1811.100 reserved for expansion]

#### SUBCHAPTER C. CERTIFICATE OF INSURANCE FORMS

Sec. 1811.101. FILING AND APPROVAL OF FORMS. (a) Except as provided by Subsection (b), an insurer or agent may not deliver or issue for delivery in this state a certificate of insurance unless the certificate's form:

(1) has been filed with and approved by the commissioner; and

(2) contains the phrase "for information purposes only" or similar language.

(b) If a certificate of insurance form does not contain the language required by Subsection (a)(2), the commissioner may approve the form if the form states:

(1) that the certificate of insurance does not confer any rights or obligations other than the rights and obligations conveyed by the policy referenced on the form; and

(2) that the terms of the policy control over the terms of the certificate of insurance.

(c) A filed form is approved at the expiration of 60 days after the date the form is filed unless the commissioner by order approves or disapproves the form during the 60-day period beginning the date the form is filed. The commissioner's approval of a filed form constitutes a waiver of any unexpired portion of the 60-day period.

(d) The commissioner may extend by not more than 10 days the 60-day period described by Subsection (c) during which the commissioner may approve or disapprove a form filed by an insurer or agent. The commissioner shall notify the insurer or agent of the extension before the expiration of the 60-day period.

(e) A filed form for which an extension has been granted under Subsection (d) is considered approved at the expiration of the extension period described by that subsection absent an earlier approval or disapproval of the form.

(f) A person may not use a form unless the form has been filed with and approved by the commissioner.

Sec. 1811.102. DISAPPROVAL OF FORMS; WITHDRAWAL OF APPROVAL. (a) The commissioner shall disapprove a form filed under Section 1811.101 or withdraw approval of a form if the form:

(1) contains a provision or has a title or heading that is misleading, is deceptive, or violates public policy;

(2) violates any state law, including a rule adopted under this code;

(3) requires an agent to provide certification of insurance coverage that is not available in the line or type of insurance coverage referenced on the form; or

(4) directly or indirectly requires the commissioner to make a coverage determination under a policy of insurance or insurance transaction.

(b) The commissioner may not disapprove a form filed under Section 1811.101 or withdraw approval of a form based solely on the fact that the form contains language described by Section 1811.101(b).

(c) An order issued by the commissioner disapproving a form, or a notice of the commissioner's intention to withdraw approval of a form, must state the grounds for the disapproval or withdrawal of approval in sufficient detail to reasonably inform the person filing the form of those grounds and the changes to the form necessary to obtain approval.

(d) An order disapproving a form or withdrawing approval of a form takes effect on the date prescribed by the commissioner in the order. The commissioner may not prescribe a date earlier than the 30th day after the effective date of the order, as prescribed by the commissioner.

Sec. 1811.103. STANDARD CERTIFICATE OF INSURANCE FORMS. A standard certificate of insurance form promulgated by the Association for Cooperative Operations Research and Development, the American Association of Insurance Services, or the Insurance Services Office (ISO) is deemed approved on the date the form is filed with the department. Notwithstanding this section, the commissioner may withdraw approval of a standard form under Section 1811.102.

Sec. 1811.104. PUBLIC INSPECTION OF INFORMATION. A certificate of insurance form and any supporting information filed with the department under this subchapter is open to public inspection as of the date of the filing.

[Sections 1811.105-1811.150 reserved for expansion]

SUBCHAPTER D. EFFECT OF APPROVAL OF CERTIFICATE OF INSURANCE FORM

Sec. 1811.151. CONFIRMATION OF POLICY ISSUANCE. A certificate of insurance form that has been approved by the commissioner and properly executed and issued by a property and casualty insurer or an agent constitutes a confirmation that the referenced insurance policy has been issued or that coverage has been bound. This section applies regardless of whether the face of the certificate includes the phrase "for information purposes only" or similar language.



Sec. 1811.152. CERTIFICATE OF INSURANCE NOT POLICY OF INSURANCE. A certificate of insurance is not a policy of insurance and does not amend, extend, or alter the coverage afforded by the referenced insurance policy.

Sec. 1811.153. RIGHTS CONFERRED BY CERTIFICATE OF INSURANCE. A certificate of insurance does not confer to a certificate holder new or additional rights beyond what the referenced policy or any executed endorsement of insurance provides.

Sec. 1811.154. REFERENCE TO OTHER CONTRACTS. A certificate of insurance may not contain a reference to a legal or insurance requirement contained in a contract other than the underlying contract of insurance, including a contract for construction or services.

Sec. 1811.155. NOTICE. (a) A person may have a legal right to notice of cancellation, nonrenewal, or material change or any similar notice concerning a policy of insurance only if:

- (1) the person is named within the policy or an endorsement to the policy;  
and  
(2) the policy or endorsement or a law, including a rule, of this state requires notice to be provided.

(b) A certificate of insurance may not alter the terms and conditions of the notice required by a policy of insurance or the law of this state.

Sec. 1811.156. CERTIFICATE OF INSURANCE ISSUED IN VIOLATION OF CHAPTER. A certificate of insurance that is executed, issued, or required and that is in violation of this chapter is void and has no effect.

[Sections 1811.157-1811.200 reserved for expansion]

#### SUBCHAPTER E. ENFORCEMENT AND REMEDIES

Sec. 1811.201. POWERS OF COMMISSIONER. (a) If the commissioner has reason to believe that an insurer or agent has violated or is threatening to violate this chapter or a rule adopted under this chapter, the commissioner may:

- (1) issue a cease and desist order;  
(2) seek an injunction under Section 1811.203;  
(3) request that the attorney general recover a civil penalty under Section 1811.203;  
(4) impose sanctions on the insurer or agent as provided by Chapter 82; or  
(5) take any combination of those actions.

(b) This section does not prevent or limit any action by or remedy available to the commissioner under applicable law.

Sec. 1811.202. HEARING; NOTICE. (a) The commissioner may hold a hearing on whether to issue a cease and desist order under Section 1811.201 if the commissioner has reason to believe that:

- (1) an insurer or agent has violated or is threatening to violate this chapter or a rule adopted under this chapter; or  
(2) an insurer or agent has engaged in or is threatening to engage in an unfair act related to a certificate of insurance.

(b) The commissioner shall serve on the insurer or agent a statement of charges and a notice of hearing in the form provided by Section 2001.052, Government Code.

(c) A hearing under this section is a contested case under Chapter 2001, Government Code.

Sec. 1811.203. CIVIL PENALTY; INJUNCTION. (a) A person, including an insurer or agent, who willfully violates this chapter is subject to a civil penalty of not more than \$1,000 for each violation.

(b) The commissioner may request that the attorney general institute a civil suit in a district court in Travis County for injunctive relief to restrain a person, including an insurer or agent, from continuing a violation or threat of violation of Subchapter B. On application for injunctive relief and a finding that a person, including an insurer or agent, is violating or threatening to violate Subchapter B, the district court shall grant the injunctive relief and issue an injunction without bond.

(c) On request by the commissioner, the attorney general shall institute and conduct a civil suit in the name of the state for injunctive relief, to recover a civil penalty, or for both injunctive relief and a civil penalty, as authorized under this subchapter.

Sec. 1811.204. INVESTIGATION OF COMPLAINTS. (a) The commissioner may:

(1) investigate a complaint or allegation of specific violations by a person, including an insurer or agent, who has allegedly engaged in an act or practice prohibited by Subchapter B; and

(2) enforce the provisions of this chapter.

(b) If the commissioner has reason to believe that a person, including an insurer or agent, is performing an act in violation of Subchapter B, the person shall immediately provide to the commissioner, on written request of the commissioner, information relating to that act.

SECTION 2. The changes in law made by this Act apply only to a certificate of insurance issued on or after January 1, 2012. A certificate of insurance issued before January 1, 2012, 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 3. This Act takes effect September 1, 2011.

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

Amend **CSSB 425** (house committee printing) in SECTION 1 of the bill as follows:

(1) In added Section 1811.102, Insurance Code, strike proposed Subsection (d) (page 8, lines 8-12) and substitute:

(d) An order disapproving a form or withdrawing approval of a form takes effect on the date prescribed by the commissioner in the order. An order withdrawing approval of a form may not become effective until the 30th day after the date of the order.

(2) In added Section 1811.153, Insurance Code (page 9, line 13), strike "does" and substitute "shall".

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

Amend **CSSB 425** on third reading as follows:

On page 11, line 23, strike "shall" and insert "may"

The amendments were read.

Senator Carona moved to concur in the House amendments to **SB 425**.

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

**SENATE BILL 502 WITH HOUSE AMENDMENT**

Senator West called **SB 502** from the President's table for consideration of the House amendment to the bill.

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

**Amendment**

Amend **SB 502** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to determinations of paternity; creating an offense.

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

SECTION 1. Section 160.302(a), Family Code, is amended to read as follows:

(a) An acknowledgment of paternity must:

- (1) be in a record;
- (2) be signed, or otherwise authenticated, under penalty of perjury by the mother and the man seeking to establish paternity;
- (3) state that the child whose paternity is being acknowledged:
  - (A) does not have a presumed father or has a presumed father whose full name is stated; and
  - (B) does not have another acknowledged or adjudicated father;
- (4) state whether there has been genetic testing and, if so, that the acknowledging man's claim of paternity is consistent with the results of the testing; and
- (5) state that the signatories understand that the acknowledgment is the equivalent of a judicial adjudication of the paternity of the child and that a challenge to the acknowledgment is permitted only under limited circumstances [~~and is barred after four years~~].

SECTION 2. Section 160.306, Family Code, is amended to read as follows:

Sec. 160.306. FILING FEE NOT REQUIRED. The bureau of vital statistics may not charge a fee for filing:

- (1) an acknowledgment of paternity;
- (2) a ~~[of]~~ denial of paternity; or
- (3) a rescission of an acknowledgment of paternity or denial of paternity.

SECTION 3. Section 160.307, Family Code, is amended to read as follows:

Sec. 160.307. PROCEDURES ~~[PROCEEDING]~~ FOR RESCISSION. (a) A signatory may rescind an acknowledgment of paternity or denial of paternity as provided by this section ~~[by commencing a proceeding to rescind]~~ before the earlier of:

- (1) the 60th day after the effective date of the acknowledgment or denial, as provided by Section 160.304; or

(2) the date ~~[of the first hearing in]~~ a proceeding to which the signatory is a party is initiated before a court to adjudicate an issue relating to the child, including a proceeding that establishes child support.

(b) A signatory seeking to rescind an acknowledgment of paternity or denial of paternity must file with the bureau of vital statistics a completed rescission, on the form prescribed under Section 160.312, in which the signatory declares under penalty of perjury that:

(1) as of the date the rescission is filed, a proceeding has not been held affecting the child identified in the acknowledgment of paternity or denial of paternity, including a proceeding to establish child support;

(2) a copy of the completed rescission was sent by certified or registered mail, return receipt requested, to:

(A) if the rescission is of an acknowledgment of paternity, the other signatory of the acknowledgment of paternity and the signatory of any related denial of paternity; or

(B) if the rescission is of a denial of paternity, the signatories of the related acknowledgment of paternity; and

(3) if a signatory to the acknowledgment of paternity or denial of paternity is receiving services from the Title IV-D agency, a copy of the completed rescission was sent by certified or registered mail to the Title IV-D agency.

(c) On receipt of a completed rescission, the bureau of vital statistics shall void the acknowledgment of paternity or denial of paternity affected by the rescission and amend the birth record of the child, if appropriate.

(d) Any party affected by the rescission, including the Title IV-D agency, may contest the rescission by bringing a proceeding under Subchapter G to adjudicate the parentage of the child.

SECTION 4. Sections 160.308(a) and (c), Family Code, are amended to read as follows:

(a) After the period for rescission under Section 160.307 has expired, a signatory of an acknowledgment of paternity or denial of paternity may commence a proceeding to challenge the acknowledgment or denial only on the basis of fraud, duress, or material mistake of fact. The proceeding may ~~must~~ be commenced at any time before the issuance of an order affecting the child identified in ~~[fourth anniversary of the date]~~ the acknowledgment or denial, including an order relating to support of the child ~~[is filed with the bureau of vital statistics unless the signatory was a minor on the date the signatory executed the acknowledgment or denial. If the signatory was a minor on the date the signatory executed the acknowledgment or denial, the proceeding must be commenced before the earlier of the fourth anniversary of the date of:~~

~~[(1) the signatory's 18th birthday; or~~

~~[(2) the removal of the signatory's disabilities of minority by court order, marriage, or by other operation of law].~~

(c) Notwithstanding any other provision of this chapter, a collateral attack on an acknowledgment of paternity signed under this chapter may not be maintained after the issuance of an order affecting the child identified in the acknowledgment, including an order relating to support of the child ~~[fourth anniversary of the date the~~

~~acknowledgment of paternity is filed with the bureau of vital statistics unless the signatory was a minor on the date the signatory executed the acknowledgment. If the signatory was a minor on the date the signatory executed the acknowledgment, a collateral attack on the acknowledgment of paternity may not be maintained after the earlier of the fourth anniversary of the date of:~~

~~(1) the signatory's 18th birthday; or~~

~~(2) the removal of the signatory's disabilities of minority by court order, marriage, or by other operation of law].~~

SECTION 5. Section 160.309, Family Code, is amended to read as follows:

Sec. 160.309. PROCEDURE FOR ~~[RESCISSION OR]~~ CHALLENGE. (a) Each signatory to an acknowledgment of paternity and any related denial of paternity must be made a party to a proceeding to ~~[repeal or]~~ challenge the acknowledgment or denial of paternity.

(b) For purposes of ~~[the rescission of or]~~ a challenge to an acknowledgment of paternity or denial of paternity, a signatory submits to the personal jurisdiction of this state by signing the acknowledgment or denial. The jurisdiction is effective on the filing of the document with the bureau of vital statistics.

(c) Except for good cause shown, while a proceeding is pending to ~~[repeal or]~~ challenge an acknowledgment of paternity or a denial of paternity, the court may not suspend the legal responsibilities of a signatory arising from the acknowledgment, including the duty to pay child support.

(d) A proceeding to ~~[repeal or to]~~ challenge an acknowledgment of paternity or a denial of paternity shall be conducted in the same manner as a proceeding to adjudicate parentage under Subchapter G.

(e) At the conclusion of a proceeding to ~~[repeal or]~~ challenge an acknowledgment of paternity or a denial of paternity, the court shall order the bureau of vital statistics to amend the birth record of the child, if appropriate.

SECTION 6. Section 160.312, Family Code, is amended to read as follows:

Sec. 160.312. FORMS ~~[FOR ACKNOWLEDGMENT AND DENIAL OF PATERNITY]~~. (a) To facilitate compliance with this subchapter, the bureau of vital statistics shall prescribe forms for the:

(1) acknowledgment of paternity;

(2) ~~[and the]~~ denial of paternity; and

(3) rescission of an acknowledgment or denial of paternity.

(b) A valid acknowledgment of paternity, ~~or~~ denial of paternity, or rescission of an acknowledgment or denial of paternity is not affected by a later modification of the prescribed form.

SECTION 7. Subchapter F, Chapter 160, Family Code, is amended by adding Section 160.512 to read as follows:

Sec. 160.512. OFFENSE: FALSIFICATION OF SPECIMEN. (a) A person commits an offense if the person alters, destroys, conceals, fabricates, or falsifies genetic evidence in a proceeding to adjudicate parentage, including inducing another person to provide a specimen with the intent to affect the outcome of the proceeding.

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

(c) An order excluding a man as the biological father of a child based on genetic evidence shown to be altered, fabricated, or falsified is void and unenforceable.

SECTION 8. Section 160.607(b), Family Code, is amended to read as follows:

(b) A proceeding seeking to adjudicate the parentage of a child having a ~~[disprove the father-child relationship between a child and the child's]~~ presumed father may be maintained at any time if the court determines that:

(1) the presumed father and the mother of the child did not live together or engage in sexual intercourse with each other during the probable time of conception; or ~~[and]~~

(2) the presumed father was precluded from commencing a proceeding to adjudicate the parentage of the child before the expiration of the time prescribed by Subsection (a) because of the mistaken belief that he was the child's biological father based on misrepresentations that led him to that conclusion ~~[never represented to others that the child was his own].~~

SECTION 9. Section 160.608(f), Family Code, is amended to read as follows:

(f) This section applies to a proceeding to ~~[revoke or]~~ challenge an acknowledgment of paternity or a denial of paternity as provided by Section 160.309(d).

SECTION 10. Section 160.609(a), Family Code, is amended to read as follows:

(a) If a child has an acknowledged father, a signatory to the acknowledgment or denial of paternity may commence a proceeding under this chapter ~~[seeking to revoke the acknowledgment or denial of]~~ to challenge the paternity of the child only within the time allowed under Section ~~[160.307 or]~~ 160.308.

SECTION 11. (a) The changes in law made by this Act with respect to an acknowledgment or denial of paternity apply only to an acknowledgment or denial of paternity that becomes effective on or after the effective date of this Act. An acknowledgment or denial of paternity that became effective before the effective date of this Act is governed by the law in effect at the time the acknowledgment or denial of paternity became effective, and the former law is continued in effect for that purpose.

(b) The changes in law made by this Act with respect to a proceeding to adjudicate parentage apply only to a proceeding that is commenced on or after the effective date of this Act. A proceeding to adjudicate parentage commenced before the effective date of this Act is governed by the law in effect on the date the proceeding was commenced, and the former law is continued in effect for that purpose.

SECTION 12. This Act takes effect September 1, 2011.

The amendment was read.

Senator West moved to concur in the House amendment to **SB 502**.

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

### **SENATE BILL 1620 WITH HOUSE AMENDMENT**

Senator Duncan called **SB 1620** from the President's table for consideration of the House amendment to the bill.

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

**Floor Amendment No. 1**

Amend **SB 1620** (house committee printing) as follows:

(1) In SECTION 2 of the bill, in added Section 28.027(b), Education Code (page 2, line 17), following the underlined period, insert:

The State Board of Education may only approve a course to substitute for a mathematics course taken after successful completion of Algebra I and geometry and after successful completion of or concurrently with Algebra II. The State Board of Education may only approve a course to substitute for a science course taken after successful completion of biology and chemistry and after successful completion of or concurrently with physics.

(2) In SECTION 2 of the bill, strike added Section 28.027(e), Education Code (page 3, line 23, through page 4, line 4).

(3) In SECTION 3 of the bill, strike amended Section 28.025(b-2), Education Code (page 4, lines 7 through 21), and substitute the following:

(b-2) In adopting rules under Subsection (b-1), the State Board of Education shall allow a student to comply with the curriculum requirements for a mathematics course under Subsection (b-1)(1) taken after the successful completion of Algebra I and geometry and either after the successful completion of or concurrently with ~~an~~ Algebra II ~~course~~ or a science course under Subsection (b-1)(1) taken after the successful completion of biology and chemistry and either after the successful completion of or concurrently with ~~a~~ physics ~~course~~ by successfully completing an advanced career and technical course designated by the State Board of Education as containing substantively similar and rigorous academic content. A student may use the option provided by this subsection for not more than two courses.

(4) In SECTION 4 of the bill, in added Section 61.0517(b), Education Code (page 5, lines 5 and 6), strike "ensure that academic credit for an applied STEM course is freely transferable among all" and substitute "work with institutions of higher education to ensure that credit for an applied STEM course may be applied to relevant degree programs offered by".

(5) In SECTION 4 of the bill, in added Section 61.0517(c), Education Code (page 5, line 9), strike "listing of courses approved" and substitute "review of courses considered for approval".

The amendment was read.

Senator Duncan moved to concur in the House amendment to **SB 1620**.

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

Nays: Nichols.

**PERSONAL PRIVILEGE STATEMENT**

Senator Deuell read the following citation:

**THE SECRETARY OF THE NAVY**

The President of the United States takes pleasure in presenting the SILVER STAR MEDAL to

CORPORAL JAMES E. NICHOLSON, JR.  
UNITED STATES MARINE CORPS RESERVE

for service as set forth in the following

CITATION:

For conspicuous gallantry and intrepidity in action against the enemy while serving as a Browning Automatic Rifleman, G Company, 3d Battalion, 7th Marines, 1st Marine Division in the Republic of South Korea on 22 April 1951. During the late evening hours, Corporal (then Private First Class) Nicholson's fire team came under intense enemy fire by a numerically superior enemy force. Despite being surrounded, Corporal Nicholson and his team courageously applied suppressive fire against the enemy, resulting in numerous enemy casualties. Although equipped with a malfunctioning weapon, he advanced under furious enemy automatic weapons fire and hand grenades to retrieve a seriously wounded Marine. Corporal Nicholson's outstanding courage and daring initiative was a constant source of inspiration to his fire team, squad, and platoon. His determination and daring, despite overwhelming enemy fire, directly resulted in the return of a seriously wounded Marine to a safe area and the ability of his platoon to hold the high ground in the face of superior enemy numbers. Corporal Nicholson was personally responsible for drawing the fire of and destroying a particularly effective enemy machine gun with fire from his Browning Automatic Rifle. By his selfless determination, daring initiative, and complete dedication to duty, Corporal Nicholson reflected great credit upon himself and upheld the highest traditions of the Marine Corps and the United States Naval Service.

For the President,  
/s/Ray Mabus  
Secretary of the Navy

**SENATE BILL 978 WITH HOUSE AMENDMENT**

Senator Hinojosa called **SB 978** from the President's table for consideration of the House amendment to the bill.

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

**Amendment**

Amend **SB 978** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to procedures for the dissolution of the Hidalgo County Water Improvement District No. 3.

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

SECTION 1. DEFINITIONS. In this Act:

- (1) "City" means a municipality described by Section 2 of this Act.
- (2) "City council" means the governing body of a city.



(3) "District" means the Hidalgo County Water Improvement District No. 3.

(4) "District board" means the district's board of directors.

SECTION 2. DISTRICT AND MUNICIPALITY TO WHICH ACT IS APPLICABLE. This Act applies only to:

(1) the district; and

(2) a municipality that:

(A) has a population greater than 100,000; and

(B) contains within its corporate boundaries or extraterritorial jurisdiction more than half of the district's territory.

SECTION 3. DISSOLUTION OF DISTRICT; FINDINGS PREREQUISITE TO MOTION TO TRANSFER. (a) The district is dissolved on the later of:

(1) the effective date of this Act; or

(2) the date a transfer ordinance adopted pursuant to Section 5 of this Act takes effect under Section 8 of this Act.

(b) At a regularly scheduled meeting of the city council, a city may propose an ordinance to allow the city to accept a transfer of the obligations, liabilities, and assets of the district if the city council finds that as of the date of the meeting:

(1) at least 80 percent of the raw water diverted by the district in the preceding 12 months was diverted for use by the city;

(2) the city is capable of assuming all rights and obligations of the district;

(3) the city is capable of assuming responsibility for operating the district's facilities to benefit the district's existing customers and performing the services and functions performed by the district;

(4) dissolution of the district will result in an overall cost savings to city residents; and

(5) dissolution of the district will result in a more stable water supply for residents of the city and surrounding communities.

SECTION 4. HEARING REQUIRED. (a) Before a city may propose an ordinance described by Section 5 of this Act, the city must conduct a public hearing on the issue.

(b) Notice of the public hearing must be:

(1) posted in accordance with the laws that apply to regular meetings of the city council; and

(2) mailed to each district board member.

SECTION 5. TRANSFER ORDINANCE. (a) After a city council has made the findings required by Section 3(b) of this Act and has conducted a public hearing as required by Section 4 of this Act, the city council may adopt an ordinance allowing the city to accept a transfer of the district's obligations, liabilities, and assets.

(b) The ordinance must contain provisions that:

(1) eliminate the required payment of any flat tax or assessments paid to the district by landowners in the district;

(2) ensure that all water rights are held in trust by the city for the uses previously adjudicated;

(3) ensure that all individual water users are entitled to continue to use or have access to the same amount of water they were entitled to before the dissolution of the district;

(4) require the city to perform all the functions of the district, including the provision of services; and

(5) ensure delivery of water to landowners at or below the lowest comparable delivery charge imposed by any other irrigation district in Hidalgo County.

(c) The ordinance takes effect only if two-thirds of the city council votes in favor of the ordinance.

SECTION 6. CITY CONSENT; DISTRICT DUTIES. (a) On or before the effective date of the ordinance described by Section 5 of this Act, the district board shall provide the district's management and operational records to the city that passed the ordinance to ensure the orderly transfer of management and operational responsibility to the city.

(b) Without the consent of a majority of the members of a city council that publishes notice under Section 4(b) of this Act, the district may not:

(1) sell, transfer, or encumber any district asset;

(2) issue debt or acquire additional obligations; or

(3) default on or fail to honor financial, legal, or other obligations of the district.

(c) Unless a majority of the members of a city council that publishes notice under Section 4(b) of this Act agree otherwise, the district shall:

(1) maintain assets of the district in an appropriate condition reflective of good stewardship and proper repair; and

(2) preserve district records, including information maintained by the district in electronic format.

(d) Any action undertaken by the district that does not comply with Subsection (b) of this section is void.

(e) This section expires on the date a city that has published notice under Section 4(b) of this Act repeals the city's ordinance described by Section 5 of this Act.

SECTION 7. PETITION BY VOTERS; SUSPENSION OR REPEAL OF ORDINANCE; ELECTION. (a) The voters of the district and of a city that enacts a transfer ordinance under this Act may object to the ordinance by filing a petition with the secretary of the city.

(b) The petition must be signed by at least five percent of the combined total of registered voters who reside in the city or any part of the district outside the city.

(c) The petition must be filed not later than the 30th day after the date the city council votes in favor of the transfer ordinance under Section 5(c) of this Act.

(d) The city secretary shall verify the signatures on the petition and shall present the verified petition to the city council at the council's next scheduled meeting.

(e) On receipt of the petition, the city council shall suspend the effectiveness of the ordinance, and the city may not take action under the ordinance unless the ordinance is approved by the voters under Subsection (f) of this section.

(f) The city council shall reconsider the suspended ordinance at the next scheduled meeting of the council. If the city council does not repeal the transfer ordinance, the city council shall submit a proposition for or against enactment of the

ordinance to the voters of the city and the district at an election held jointly by the city and the district on the next uniform election date. The transfer ordinance takes effect if a majority of the voters voting in that election vote in favor of the transfer.

SECTION 8. EFFECTIVE DATE OF TRANSFER. A transfer ordinance under this Act takes effect on the date:

(1) the period for filing a voter petition expires under Section 7(c) of this Act, if a voter petition is not filed under that section; or

(2) the voters approve the transfer ordinance under Section 7(f) of this Act.

SECTION 9. TRANSFER OF ASSETS. (a) On or before the effective date of a transfer ordinance under Section 8 of this Act, the district shall:

(1) transfer to the city the ownership of any water rights and certificates of adjudication;

(2) transfer the assets, debts, and contractual rights and obligations of the district to the city; and

(3) provide notice and make recordings of the transfers under this section as required by the Water Code and other law.

(b) On receipt of notice of the transfer of a district certificate of adjudication, the Texas Commission on Environmental Quality shall note in its records that the certificate of adjudication is owned and held by the city. The Texas Commission on Environmental Quality shall transfer the district's certificate to the city as a ministerial act without further application, notice, or hearing. A person or other legal entity does not have a right to object to or to request an administrative review of a transfer made in accordance with this Act.

(c) The transfer of the district's water rights and any certificate of adjudication to the city does not affect or impair the priority, extent, validity, or purpose of the water rights or certificate.

SECTION 10. EXPIRATION. This Act expires January 1, 2016.

SECTION 11. EFFECTIVE DATE. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2011.

The amendment was read.

Senator Hinojosa moved to concur in the House amendment to **SB 978**.

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

#### **SENATE BILL 49 WITH HOUSE AMENDMENT**

Senator Zaffirini called **SB 49** from the President's table for consideration of the House amendment to the bill.

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

**Amendment**

Amend **SB 49** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to school district requirements regarding parental notification in connection with disciplinary alternative education programs.

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

SECTION 1. Section 37.008, Education Code, is amended by adding Subsection (1-1) to read as follows:

(1-1) A school district shall provide the parents of a student removed to a disciplinary alternative education program with written notice of the district's obligation under Subsection (1) to provide the student with an opportunity to complete coursework required for graduation. The notice must:

(1) include information regarding all methods available for completing the coursework; and

(2) state that the methods are available at no cost to the student.

SECTION 2. This Act applies beginning with the 2011-2012 school year.

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, 2011.

The amendment was read.

Senator Zaffirini moved to concur in the House amendment to **SB 49**.

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

Nays: Birdwell.

**SENATE BILL 988 WITH HOUSE AMENDMENT**

Senator Van de Putte called **SB 988** from the President's table for consideration of the House amendment to the bill.

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

**Amendment**

Amend **SB 988** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to the creation of a cybersecurity, education, and economic development council.

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

SECTION 1. Chapter 2054, Government Code, is amended by adding Subchapter N to read as follows:

SUBCHAPTER N. CYBERSECURITY, EDUCATION,  
AND ECONOMIC DEVELOPMENT COUNCIL

Sec. 2054.501. DEFINITION. In this subchapter, "council" means the Cybersecurity, Education, and Economic Development Council.

Sec. 2054.502. CYBERSECURITY, EDUCATION, AND ECONOMIC DEVELOPMENT COUNCIL; COMPOSITION. (a) The Cybersecurity, Education, and Economic Development Council is established.

(b) The council is composed of nine members appointed by the executive director. The members must include:

(1) one representative from the department;

(2) one representative from the Texas Economic Development and Tourism Office in the office of the governor;

(3) two representatives from institutions of higher education with cybersecurity-related programs;

(4) one representative from a public junior college, as defined by Section 61.003, Education Code, with a cybersecurity-related program;

(5) one state military forces liaison experienced in the cybersecurity field;

and

(6) three representatives from chamber of commerce organizations or businesses who have a cybersecurity background.

(c) The council shall elect a presiding officer from among its members.

(d) A council member serves at the pleasure of the executive director.

Sec. 2054.503. COMPENSATION. A council member serves without compensation or reimbursement of expenses.

Sec. 2054.504. COUNCIL POWERS AND DUTIES. (a) The council shall:

(1) at least quarterly, meet at the call of the presiding officer; and

(2) conduct an interim study and make recommendations to the executive director regarding:

(A) improving the infrastructure of this state's cybersecurity operations with existing resources and through partnerships between government, business, and institutions of higher education; and

(B) examining specific actions to accelerate the growth of cybersecurity as an industry in this state.

(b) The council may request the assistance of state agencies, departments, or offices to carry out its duties.

Sec. 2054.505. REPORT. Not later than December 1, 2012, the council shall submit a report based on its findings to:

(1) the executive director;

(2) the governor;

(3) the lieutenant governor;

(4) the speaker of the house of representatives;

(5) the higher education committees of the senate and house of representatives;

(6) the Senate Committee on Economic Development;

(7) the House Technology Committee; and

(8) the House Economic and Small Business Development Committee.

Sec. 2054.506. EXPIRATION OF SUBCHAPTER. This subchapter expires and the council is abolished September 1, 2013.

SECTION 2. Not later than the 30th day after the effective date of this Act, the executive director of the Department of Information Resources shall appoint the members of the Cybersecurity, Education, and Economic Development Council as established by Subchapter N, Chapter 2054, Government Code, as added by this Act.

SECTION 3. This Act takes effect September 1, 2011.

The amendment was read.

Senator Van de Putte moved to concur in the House amendment to **SB 988**.

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

Nays: Patrick.

### SENATE BILL 332 WITH HOUSE AMENDMENTS

Senator Fraser called **SB 332** from the President's table for consideration of the House amendments to the bill.

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

#### Amendment

Amend **SB 332** by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to the ownership of groundwater below the surface of land, the right to produce that groundwater, and the management of groundwater in this state.

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

SECTION 1. Section 36.002, Water Code, is amended to read as follows:

Sec. 36.002. OWNERSHIP OF GROUNDWATER. (a) The legislature recognizes that a landowner owns the groundwater below the surface of the landowner's land as real property.

(b) The groundwater ownership and rights described by this section:

(1) entitle the landowner, including a landowner's lessees, heirs, or assigns, to drill for and produce the groundwater below the surface of real property, subject to Subsection (d), without causing waste or malicious drainage of other property or negligently causing subsidence, but does not entitle a landowner, including a landowner's lessees, heirs, or assigns, to the right to capture a specific amount of groundwater below the surface of his land; and

(2) do not affect the existence of common law defenses or other defenses to liability under the rule of capture.

(c) Nothing [The ownership and rights of the owners of the land and their lessees and assigns in groundwater are hereby recognized, and nothing] in this code shall be construed as granting the authority to deprive [depriving] or divest a landowner, including a landowner's lessees, heirs, or assigns, [divesting the owners of their lessees and assigns] of the groundwater ownership and rights described by this section [or rights, except as those rights may be limited or altered by rules promulgated by a district].

(d) This section does not:

(1) prohibit a district from limiting or prohibiting the drilling of a well by a landowner for failure or inability to comply with minimum well spacing or tract size requirements adopted by the district;

(2) affect the ability of a district to regulate groundwater production as authorized under Section 36.113, 36.116, or 36.122 or otherwise under this chapter or a special law governing a district; or

(3) require that a rule adopted by a district allocate to each landowner a proportionate share of available groundwater for production from the aquifer based on the number of acres owned by the landowner [~~A rule promulgated by a district may not discriminate between owners of land that is irrigated for production and owners of land or their lessees and assigns whose land that was irrigated for production is enrolled or participating in a federal conservation program.~~]

(e) This section does not affect the ability to regulate groundwater in any manner authorized under:

(1) Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993, for the Edwards Aquifer Authority;

(2) Chapter 8801, Special District Local Laws Code, for the Harris-Galveston Coastal Subsidence District; and

(3) Chapter 8834, Special District Local Laws Code, for the Fort Bend Subsidence District.

SECTION 2. Section 36.101, Water Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a) A district may make and enforce rules, including rules limiting groundwater production based on tract size or the spacing of wells, to provide for conserving, preserving, protecting, and recharging of the groundwater or of a groundwater reservoir or its subdivisions in order to control subsidence, prevent degradation of water quality, or prevent waste of groundwater and to carry out the powers and duties provided by this chapter. In adopting a rule under this chapter, a district [~~During the rulemaking process the board~~] shall:

(1) consider all groundwater uses and needs;

(2) [~~and shall~~] develop rules that [~~which~~] are fair and impartial;

(3) consider the groundwater ownership and rights described by Section 36.002;

(4) consider the public interest in conservation, preservation, protection, recharging, and prevention of waste of groundwater, and of groundwater reservoirs or their subdivisions, and in controlling subsidence caused by withdrawal of water from those groundwater reservoirs or their subdivisions, consistent with the objectives of Section 59, Article XVI, Texas Constitution;

(5) consider the goals developed as part of the district's comprehensive management plan under Section 36.1071; and

(6) [~~and that do~~] not discriminate between land that is irrigated for production and land that was irrigated for production and enrolled or participating in a federal conservation program.

(a-1) Any rule of a district that discriminates between land that is irrigated for production and land that was irrigated for production and enrolled or participating in a federal conservation program is void.

SECTION 3. This Act takes effect September 1, 2011.

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

Amend **CSSB 332** (house committee printing) as follows:

(1) In SECTION 1 of the bill, in added Section 36.002(b)(1), Water Code (page 1, line 20), strike "his" and substitute "that landowner's".

(2) In SECTION 1 of the bill, in added Section 36.002(e)(2), Water Code (page 3, line 3), strike "Coastal".

(3) In SECTION 2 of the bill, in added Section 36.101(a)(4), Water Code (page 3, line 26), strike "water" and substitute "groundwater".

(4) In SECTION 2 of the bill, in added Section 36.101(a)(5), Water Code (page 4, line 3), strike "comprehensive".

The amendments were read.

Senator Fraser moved to concur in the House amendments to **SB 332**.

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

Nays: Watson.

### **SENATE BILL 629 WITH HOUSE AMENDMENT**

Senator Hegar called **SB 629** from the President's table for consideration of the House amendment to the bill.

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

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

Amend **SB 629** (house committee printing) in SECTION 1 of the bill, at the end of added Section 8343.004, Special District Local Laws Code (page 2, line 6), by adding "Consent of the City of San Marcos is required for the inclusion in the district of the 203.47-acre tract described in Section 2 of the Act enacting this chapter."

The amendment was read.

Senator Hegar moved to concur in the House amendment to **SB 629**.

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

### **SENATE BILL 924 WITH HOUSE AMENDMENT**

Senator Carona called **SB 924** from the President's table for consideration of the House amendment to the bill.

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

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

Amend **SB 924** on third reading by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:



SECTION \_\_\_\_\_. (a) Subchapter H, Chapter 418, Government Code, is amended by adding Section 418.192 to read as follows:

Sec. 418.192. COMMUNICATIONS BY PUBLIC SERVICE PROVIDERS DURING DISASTERS AND EMERGENCIES. (a) In this section:

(1) "Emergency" means a temporary, sudden, and unforeseen occurrence that requires action by a public service provider to correct the occurrence, inform others of the occurrence, protect lives or property, or temporarily reduce demand for or allocate supply of the provider's products or services to ensure public safety or preserve the integrity of service delivery mechanisms.

(2) "Public service provider" means any person or entity that provides essential products or services to the public that are regulated under the Natural Resources Code, Utilities Code, or Water Code, including:

(A) common carriers under Section 111.002, Natural Resources Code;

(B) telecommunications providers as defined by Section 51.002, Utilities Code; and

(C) any other person or entity providing or producing heat, light, power, or water.

(b) A public service provider may enter into a contract for an emergency notification system described by this section for use in informing the provider's customers, governmental entities, and other affected persons regarding:

(1) notice of a disaster or emergency; and

(2) any actions a recipient is required to take during a disaster or emergency.

(c) The emergency notification system for which a contract is entered into under Subsection (b) must rely on a dynamic information database that:

(1) is capable of simultaneous transmission of emergency messages to all recipients through at least two industry-standard gateways to one or more telephones or electronic devices owned by a recipient in a manner that does not negatively impact the existing communications infrastructure;

(2) allows the public service provider to:

(A) store prewritten emergency messages in the dynamic information database for subsequent use; and

(B) generate emergency messages in real time based on provider inputs;

(3) allows a recipient to select the language in which the recipient would prefer to receive messages;

(4) transmits the message in the recipient's language of choice to that recipient;

(5) converts text messages to sound files and transmits those sound files to the appropriate device;

(6) assigns recipients to priority groups for notification;

(7) allows for the collection and verification of responses by recipients of emergency messages; and

(8) reads or receives alerts from a commercial mobile alert system established by the Federal Communications Commission or complies with standards adopted for a commercial mobile alert system established by the Federal Communications Commission.

(d) The dynamic information database must comply with:

(1) the Telecommunications Service Priority program established by the Federal Communications Commission; and

(2) the Federal Information Processing Standard 140-2 governing compliant cryptographic modules for encryption and security issued by the National Institute of Standards and Technology.

(e) Before sending a notice described by Subsection (b), a public service provider must:

(1) provide a copy of the notice to the emergency management director designated under Section 418.1015, for each political subdivision for which the public service provider provides services at the time of the notice; and

(2) during a disaster declared by the governor or United States government, obtain approval of the notice from the emergency management director designated under Section 418.1015, for each political subdivision for which the public service provider provides services during the disaster.

(f) A customer of a public service provider may decline to receive the notices described by Subsection (b) by providing written notice of that decision to the public service provider.

(g) A public service provider shall cooperate with emergency management officials of each political subdivision in which the public service provider provides services to survey the number of notification systems in place.

(h) The requirements of this section do not apply to an emergency notification system that is in use by a public service provider on June 1, 2011.

(b) This section takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this section takes effect September 1, 2011.

The amendment was read.

Senator Carona moved to concur in the House amendment to **SB 924**.

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

### **CONFERENCE COMMITTEE ON HOUSE BILL 3109**

Senator Seliger 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 3109** and moved that the request be granted.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **HB 3109** before appointment.

There were no motions offered.

Accordingly, the President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Seliger, Chair; Duncan, Eltife, Uresti, and Hinojosa.

**VOTE RECONSIDERED ON  
SENATE BILL 408**

On motion of Senator Estes and by unanimous consent, the vote by which the Senate concurred in the House amendment to **SB 408** was reconsidered:

**SB 408**, Relating to inspection of and the operation of watercraft on the John Graves Scenic Riverway; providing for the imposition of a criminal penalty.

Question — Shall the Senate concur in the House amendment to **SB 408**?

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

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **SB 408** before appointment.

There were no motions offered.

The President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Estes, Chair; Fraser, Harris, Carona, and Lucio.

**SENATE BILL 293 WITH HOUSE AMENDMENTS**

Senator Watson called **SB 293** from the President's table for consideration of the House amendments to the bill.

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

**Amendment**

Amend **SB 293** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to telemedicine medical services, telehealth services, and home telemonitoring services provided to certain Medicaid recipients.

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

SECTION 1. Section 531.001, Government Code, is amended by adding Subdivisions (4-a), (7), and (8) to read as follows:

(4-a) "Home telemonitoring service" means a health service that requires scheduled remote monitoring of data related to a patient's health and transmission of the data to a licensed home health agency as defined by Section 531.02164(a).

(7) "Telehealth service" means a health service, other than a telemedicine medical service, that is delivered by a licensed or certified health professional acting within the scope of the health professional's license or certification who does not perform a telemedicine medical service and that requires the use of advanced telecommunications technology, other than telephone or facsimile technology, including:

(A) compressed digital interactive video, audio, or data transmission;

(B) clinical data transmission using computer imaging by way of still-image capture and store and forward; and

(C) other technology that facilitates access to health care services or medical specialty expertise.

(8) "Telemedicine medical service" means a health care service that is initiated by a physician or provided by a health professional acting under physician delegation and supervision, that is provided for purposes of patient assessment by a health professional, diagnosis or consultation by a physician, or treatment, or for the transfer of medical data, and that requires the use of advanced telecommunications technology, other than telephone or facsimile technology, including:

(A) compressed digital interactive video, audio, or data transmission;

(B) clinical data transmission using computer imaging by way of still-image capture and store and forward; and

(C) other technology that facilitates access to health care services or medical specialty expertise.

SECTION 2. Section 531.0216, Government Code, is amended to read as follows:

Sec. 531.0216. PARTICIPATION AND REIMBURSEMENT OF TELEMEDICINE MEDICAL SERVICE PROVIDERS AND TELEHEALTH SERVICE PROVIDERS UNDER MEDICAID. (a) The commission by rule shall develop and implement a system to reimburse providers of services under the state Medicaid program for services performed using telemedicine medical services or telehealth services.

(b) In developing the system, the executive commissioner by rule shall:

(1) review programs and pilot projects in other states to determine the most effective method for reimbursement;

(2) establish billing codes and a fee schedule for services;

(3) provide for an approval process before a provider can receive reimbursement for services;

(4) consult with the Department of State Health Services and the telemedicine and telehealth advisory committee to establish procedures to:

(A) identify clinical evidence supporting delivery of health care services using a telecommunications system;

(B) establish pilot studies for telemedicine medical service delivery and telehealth service delivery; and

(C) annually review health care services, considering new clinical findings, to determine whether reimbursement for particular services should be denied or authorized;

(5) establish pilot programs in designated areas of this state under which the commission, in administering government-funded health programs, may reimburse a health professional participating in the pilot program for telehealth services authorized under the licensing law applicable to the health professional;

(6) establish a separate provider identifier for telemedicine medical services providers, telehealth services providers, and home telemonitoring services providers; and

(7) establish a separate modifier for telemedicine medical services, telehealth services, and home telemonitoring services eligible for reimbursement.

(c) The commission shall encourage health care providers and health care facilities to participate as telemedicine medical service providers or telehealth service providers in the health care delivery system. The commission may not require that a service be provided to a patient through telemedicine medical services or telehealth services when the service can reasonably be provided by a physician through a face-to-face consultation with the patient in the community in which the patient resides or works. This subsection does not prohibit the authorization of the provision of any service to a patient through telemedicine medical services or telehealth services at the patient's request.

(d) Subject to Section 153.004, Occupations Code, the commission may adopt rules as necessary to implement this section. In the rules adopted under this section, the commission shall:

(1) refer to the site where the patient is physically located as the patient site; and

(2) refer to the site where the physician or health professional providing the telemedicine medical service or telehealth service is physically located as the distant site.

(e) The commission may not reimburse a health care facility for telemedicine medical services or telehealth services provided to a Medicaid recipient unless the facility complies with the minimum standards adopted under Section 531.02161.

(f) Not later than December 1 of each even-numbered year, the commission shall report to the speaker of the house of representatives and the lieutenant governor on the effects of telemedicine medical services, telehealth services, and home telemonitoring services on the Medicaid program in the state, including the number of physicians, ~~and~~ health professionals, and licensed health care facilities using telemedicine medical services, telehealth services, or home telemonitoring services, the geographic and demographic disposition of the physicians and health professionals, the number of patients receiving telemedicine medical services, telehealth services, and home telemonitoring services, the types of services being provided, and the cost of utilization of telemedicine medical services, telehealth services, and home telemonitoring services to the program.

~~[(g) In this section:~~

~~[(1) "Telehealth service" has the meaning assigned by Section 57.042, Utilities Code.~~

~~[(2) "Telemedicine medical service" has the meaning assigned by Section 57.042, Utilities Code.]~~

SECTION 3. The heading to Section 531.02161, Government Code, is amended to read as follows:

Sec. 531.02161. TELEMEDICINE, TELEHEALTH, AND HOME TELEMONITORING TECHNOLOGY STANDARDS.

SECTION 4. Section 531.02161(b), Government Code, is amended to read as follows:

(b) The commission and the Telecommunications Infrastructure Fund Board by joint rule shall establish and adopt minimum standards for an operating system used in the provision of telemedicine medical services, telehealth services, or home telemonitoring services by a health care facility participating in the state Medicaid program, including standards for electronic transmission, software, and hardware.

SECTION 5. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.02164 to read as follows:

Sec. 531.02164. MEDICAID SERVICES PROVIDED THROUGH HOME TELEMONITORING SERVICES. (a) In this section, "home health agency" means a facility licensed under Chapter 142, Health and Safety Code, to provide home health services as defined by Section 142.001, Health and Safety Code.

(b) If the commission determines that establishing a statewide program that permits reimbursement under the state Medicaid program for home telemonitoring services would be cost-effective and feasible, the executive commissioner by rule shall establish the program as provided under this section.

(c) A program established under this section must:

(1) provide that home telemonitoring services are available only to persons who are diagnosed with one or more conditions described by Section 531.02171(c)(4) and who exhibit two or more of the following risk factors:

(A) two or more hospitalizations in the prior 12-month period;

(B) frequent or recurrent emergency room admissions;

(C) a documented history of poor adherence to ordered medication

regimens;

(D) a documented history of falls in the prior six-month period;

(E) limited or absent informal support systems;

(F) living alone or being home alone for extended periods of time; and

(G) a documented history of care access challenges;

(2) ensure that clinical information gathered by a home health agency while providing home telemonitoring services is shared with the patient's physician; and

(3) ensure that the program does not duplicate disease management program services provided under Section 32.057, Human Resources Code.

(d) If, after implementation, the commission determines that the program established under this section is not cost-effective, the commission may discontinue the program and stop providing reimbursement under the state Medicaid program for home telemonitoring services, notwithstanding Section 531.0216 or any other law.

(e) The commission shall determine whether the provision of home telemonitoring services to persons who are eligible to receive benefits under both the Medicaid and Medicare programs achieves cost savings for the Medicare program. If the commission determines that the provision of home telemonitoring services achieves cost savings for the Medicare program, the commission shall pursue the creation of accountable care organizations to participate in the Medicare shared savings program in accordance with 42 U.S.C. Section 1395jjj.

SECTION 6. The heading to Section 531.02171, Government Code, as added by Chapter 661 (H.B. 2700), Acts of the 77th Legislature, Regular Session, 2001, is amended to read as follows:

Sec. 531.02171. TELEMEDICINE MEDICAL SERVICES AND TELEHEALTH SERVICES PILOT PROGRAMS.

SECTION 7. Section 531.02171(c), Government Code, as added by Chapter 661 (H.B. 2700), Acts of the 77th Legislature, Regular Session, 2001, is amended to read as follows:

(c) In developing and operating a pilot program under this section, the commission shall:

(1) solicit and obtain support for the program from local officials and the medical community;

(2) focus on enhancing health outcomes in the area served by the pilot program through increased access to medical or health care services, including:

(A) health screenings;

(B) prenatal care;

(C) medical or surgical follow-up visits;

(D) periodic consultation with specialists regarding chronic disorders;

(E) triage and pretransfer arrangements; [~~and~~]

(F) transmission of diagnostic images or data; and

(G) monitoring of chronic conditions;

(3) establish quantifiable measures and expected health outcomes for each authorized telemedicine medical service or telehealth service;

(4) consider condition-specific applications of telemedicine medical services or telehealth services, including applications for:

(A) pregnancy;

(B) diabetes;

(C) heart disease; [~~and~~]

(D) cancer;

(E) chronic obstructive pulmonary disease;

(F) hypertension; and

(G) congestive heart failure; and

(5) demonstrate that the provision of services authorized as telemedicine medical services or telehealth services will not adversely affect the provision of traditional medical services or other health care services within the area served by the pilot program.

SECTION 8. The heading to Section 531.02172, Government Code, is amended to read as follows:

Sec. 531.02172. TELEMEDICINE AND TELEHEALTH ADVISORY COMMITTEE.

SECTION 9. Section 531.02172(b), Government Code, is amended to read as follows:

(b) The advisory committee must include:

(1) representatives of health and human services agencies and other state agencies concerned with the use of telemedical and telehealth consultations and home telemonitoring services in the Medicaid program and the state child health plan program, including representatives of:

(A) the commission;

(B) the Department of State Health Services;

- (C) the Texas Department of Rural Affairs;
  - (D) the Texas Department of Insurance;
  - (E) the Texas Medical Board;
  - (F) the Texas Board of Nursing; and
  - (G) the Texas State Board of Pharmacy;
- (2) representatives of health science centers in this state;
- (3) experts on telemedicine, telemedical consultation, and telemedicine medical services or telehealth services; ~~and~~
- (4) representatives of consumers of health services provided through telemedical consultations and telemedicine medical services or telehealth services; and
- (5) representatives of providers of telemedicine medical services, telehealth services, and home telemonitoring services.

SECTION 10. Section 531.02173(c), Government Code, is amended to read as follows:

(c) The commission shall perform its duties under this section with assistance from the telemedicine and telehealth advisory committee established under Section 531.02172.

SECTION 11. The following provisions of the Government Code are repealed:

- (1) Section 531.02161(a);
- (2) Sections 531.0217(a)(3) and (4);
- (3) Sections 531.02171(a)(3) and (4), as added by Chapter 661 (H.B. 2700), Acts of the 77th Legislature, Regular Session, 2001; and
- (4) Section 531.02171, as added by Chapter 959 (S.B. 1536), Acts of the 77th Legislature, Regular Session, 2001.

SECTION 12. Not later than December 31, 2012, the Health and Human Services Commission shall submit a report to the governor, the lieutenant governor, and the speaker of the house of representatives regarding the establishment and implementation of the program to permit reimbursement under the state Medicaid program for home telemonitoring services under Section 531.02164, Government Code, as added by this Act. The report must include:

- (1) the methods used by the commission to determine whether the program was cost-effective and feasible; and
- (2) if the program has been established, information regarding:
  - (A) the utilization of home telemonitoring services by Medicaid recipients under the program;
  - (B) the health outcomes of Medicaid recipients who receive home telemonitoring services under the program;
  - (C) the hospital admission rate of Medicaid recipients who receive home telemonitoring services under the program;
  - (D) the cost of the home telemonitoring services provided under the program; and
  - (E) the estimated cost savings to the state as a result of the program.



SECTION 13. 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 14. This Act takes effect September 1, 2011.

### Floor Amendment No. 1

Amend **CSSB 293** (house committee printing) as follows:

(1) In SECTION 1 of the bill, in added Section 531.001(4-a), Government Code (page 1, line 11), strike "as" and substitute "or a hospital, as those terms are".

(2) In SECTION 2 of the bill, strike amended Section 531.0216(b), Government Code (page 2, line 23, through page 3, line 26), and substitute the following:

(b) In developing the system, the executive commissioner by rule shall:

(1) review programs and pilot projects in other states to determine the most effective method for reimbursement;

(2) establish billing codes and a fee schedule for services;

(3) provide for an approval process before a provider can receive reimbursement for services;

(4) consult with the Department of State Health Services and the telemedicine and telehealth advisory committee to establish procedures to:

(A) identify clinical evidence supporting delivery of health care services using a telecommunications system; and

(B) ~~[establish pilot studies for telemedicine medical service delivery; and~~

~~[(C)]~~ annually review health care services, considering new clinical findings, to determine whether reimbursement for particular services should be denied or authorized;

~~(5) [establish pilot programs in designated areas of this state under which the commission, in administering government funded health programs, may reimburse a health professional participating in the pilot program for telehealth services authorized under the licensing law applicable to the health professional;~~

~~[(6)]~~ establish a separate provider identifier for telemedicine medical services providers, telehealth services providers, and home telemonitoring services providers; and

(6) [(7)] establish a separate modifier for telemedicine medical services, telehealth services, and home telemonitoring services eligible for reimbursement.

(3) In SECTION 5 of the bill, strike added Section 531.02164(a), Government Code (page 6, lines 6 through 9), and substitute the following:

(a) In this section:

(1) "Home health agency" means a facility licensed under Chapter 142, Health and Safety Code, to provide home health services as defined by Section 142.001, Health and Safety Code.

(2) "Hospital" means a hospital licensed under Chapter 241, Health and Safety Code.

(4) In SECTION 5 of the bill, strike added Section 531.02164(c), Government Code (page 6, line 15, through page 7, line 11), and substitute the following:

(c) The program required under this section must:

(1) provide that home telemonitoring services are available only to persons who:

(A) are diagnosed with one or more of the following conditions:

- (i) pregnancy;
- (ii) diabetes;
- (iii) heart disease;
- (iv) cancer;
- (v) chronic obstructive pulmonary disease;
- (vi) hypertension;
- (vii) congestive heart failure;
- (viii) mental illness or serious emotional disturbance;
- (ix) asthma;
- (x) myocardial infarction; or
- (xi) stroke; and

(B) exhibit two or more of the following risk factors:

- (i) two or more hospitalizations in the prior 12-month period;
- (ii) frequent or recurrent emergency room admissions;
- (iii) a documented history of poor adherence to ordered medication

regimens;

- (iv) a documented history of falls in the prior six-month period;
- (v) limited or absent informal support systems;
- (vi) living alone or being home alone for extended periods of time;

and

(vii) a documented history of care access challenges;

(2) ensure that clinical information gathered by a home health agency or hospital while providing home telemonitoring services is shared with the patient's physician; and

(3) ensure that the program does not duplicate disease management program services provided under Section 32.057, Human Resources Code.

(5) In SECTION 5 of the bill, in added Section 531.02164(e), Government Code (page 7, lines 21 through 26), strike "If the commission determines that the provision of home telemonitoring services achieves cost savings for the Medicare program, the commission shall pursue the creation of accountable care organizations to participate in the Medicare shared savings program in accordance with 42 U.S.C. Section 1395jii."

(6) Strike SECTION 6 of the bill (page 7, line 27, through page 8, line 4).

(7) Strike SECTION 7 of the bill (page 8, line 5, through page 9, line 14).

(8) In the recital to SECTION 9 of the bill (page 9, line 19), strike "Section 531.02172(b), Government Code, is" and substitute "Sections 531.02172(a) and (b), Government Code, are".

(9) In SECTION 9 of the bill, immediately following the recital (page 9, between lines 20 and 21), insert the following:

(a) The executive commissioner shall establish an advisory committee to assist the commission in:

(1) evaluating policies for telemedical consultations under Sections 531.02163 and 531.0217;

(2) ~~[evaluating policies for telemedicine medical services or telehealth services pilot programs established under Section 531.02171;~~

~~[(3)]~~ ensuring the efficient and consistent development and use of telecommunication technology for telemedical consultations and telemedicine medical services or telehealth services reimbursed under government-funded health programs;

(3) ~~[(4)]~~ monitoring the type of consultations and other services ~~[programs]~~ receiving reimbursement under Section ~~[Sections]~~ 531.0217 ~~[and 531.02171]~~; and

(4) ~~[(5)]~~ coordinating the activities of state agencies concerned with the use of telemedical consultations and telemedicine medical services or telehealth services.

(10) In SECTION 11(3) of the bill (page 10, line 27), strike "Sections 531.02171(a)(3) and (4)" and substitute "Section 531.02171".

(11) Renumber SECTIONS of the bill accordingly.

### Floor Amendment No. 2

Amend **CSSB 293** (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 531, Government Code, is amended by adding Section 531.02176 to read as follows:

Sec. 531.02176. EXPIRATION OF MEDICAID REIMBURSEMENT FOR PROVISION OF TELEMEDICINE MEDICAL, TELEHEALTH, AND HOME TELEMONITORING SERVICES. Notwithstanding any other law, the commission may not reimburse providers under the Medicaid program for the provision of telemedicine medical, telehealth, or home telemonitoring services on or after September 1, 2015.

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 President Pro Tempore asked if there were any motions to instruct the conference committee on **SB 293** before appointment.

There were no motions offered.

The President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Watson, Chair; Nelson, West, Uresti, and Harris.

### CONFERENCE COMMITTEE ON HOUSE BILL 2608

Senator Hinojosa called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2608** and moved that the request be granted.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **HB 2608** before appointment.

There were no motions offered.

Accordingly, the President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Hinojosa, Chair; Ellis, Hegar, Nichols, and Eltife.

### SENATE BILL 1416 WITH HOUSE AMENDMENT

Senator Hinojosa called **SB 1416** from the President's table for consideration of the House amendment to the bill.

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

#### Floor Amendment No. 1

Amend **SB 1416** (house committee report) by adding the following appropriately numbered SECTIONS to the bill and renumbering the remaining SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Sections 38.04(b) and (c), Penal Code, are amended to read as follows:

(b) An offense under this section is a Class A misdemeanor, except that the offense is:

(1) a state jail felony if:

~~[(A) the actor has been previously convicted under this section; [or~~

~~[(B) the actor uses a vehicle while the actor is in flight and the actor has not been previously convicted under this section;]~~

(2) a felony of the third degree if:

(A) the actor uses a vehicle while the actor is in flight ~~[and the actor has been previously convicted under this section]; [or~~

(B) another suffers serious bodily injury as a direct result of an attempt by the officer from whom the actor is fleeing to apprehend the actor while the actor is in flight; or

(C) the actor uses a tire deflation device against the officer while the actor is in flight; or

(3) a felony of the second degree if:

(A) another suffers death as a direct result of an attempt by the officer from whom the actor is fleeing to apprehend the actor while the actor is in flight; or

(B) another suffers serious bodily injury as a direct result of the actor's use of a tire deflation device while the actor is in flight.

(c) In this section:

(1) "Vehicle" [,"vehicle"] has the meaning assigned by Section 541.201, Transportation Code.

(2) "Tire deflation device" has the meaning assigned by Section 46.01.

SECTION \_\_\_\_\_. Section 38.04, Penal Code, as amended by this Act, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the

date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

The amendment was read.

Senator Hinojosa moved to concur in the House amendment to **SB 1416**.

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

### **SENATE BILL 1551 WITH HOUSE AMENDMENT**

Senator Rodriguez called **SB 1551** from the President's table for consideration of the House amendment to the bill.

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

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

Amend **SB 1551** (house committee report) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Chapter 13, Code of Criminal Procedure, is amended by adding Article 13.075 to read as follows:

Art. 13.075. CHILD INJURED IN ONE COUNTY AND RESIDING IN ANOTHER. An offense under Title 5, Penal Code, involving a victim younger than 18 years of age, or an offense under Section 25.03, Penal Code, that results in bodily injury to a child younger than 18 years of age, may be prosecuted in the county:

- (1) in which an element of the offense was committed;
- (2) in which the defendant is apprehended;
- (3) in which the victim resides; or
- (4) in which the defendant resides.

SECTION \_\_\_\_\_. Article 13.075, Code of Criminal Procedure, as added by this Act, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

The amendment was read.

Senator Rodriguez moved to concur in the House amendment to **SB 1551**.

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

### **SENATE BILL 209 WITH HOUSE AMENDMENT**

Senator Zaffirini called **SB 209** from the President's table for consideration of the House amendment to the bill.

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

**Amendment**

Amend **SB 209** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to juvenile case managers.

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

SECTION 1. Article 45.056, Code of Criminal Procedure, is amended by amending Subsections (c), (d), and (e) and adding Subsections (f), (g), and (h) to read as follows:

(c) A county or justice court on approval of the commissioners court or a municipality or municipal court on approval of the city council may employ one or more ~~[full-time]~~ juvenile case managers to assist the court in administering the court's juvenile docket and in supervising its court orders in juvenile cases.

(d) Pursuant to Article 102.0174, the court may pay the salary and benefits of a ~~[the]~~ juvenile case manager from the juvenile case manager fund.

(e) A juvenile case manager employed under Subsection (c) shall give priority to ~~[work primarily on]~~ cases brought under Sections 25.093 and 25.094, Education Code.

(f) The juvenile case manager shall timely report to the judge who signed the order or judgment and, on request, to the judge assigned to the case or the presiding judge any information or recommendations relevant to assisting the judge in making decisions that are in the best interest of the child.

(g) The judge who is assigned to the case shall consult with the juvenile case manager who is supervising the case regarding:

(1) the child's home environment;

(2) the child's developmental, psychological, and educational status;

(3) the child's previous interaction with the justice system; and

(4) any sanctions available to the court that would be in the best interest of

the child.

(h) Subsections (f) and (g) do not apply to:

(1) a part-time judge; or

(2) a county judge of a county court that has one or more appointed full-time magistrates under Section 54.1172, Government Code.

SECTION 2. The changes in law made by this Act to Article 45.056, Code of Criminal Procedure, apply to a juvenile case manager employed on or after the effective date of this Act, regardless of whether the juvenile case manager began that employment before, on, or after the effective date of this Act.

SECTION 3. This Act takes effect September 1, 2011.

The amendment was read.

Senator Zaffirini moved to concur in the House amendment to **SB 209**.

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

**SENATE BILL 943 WITH HOUSE AMENDMENT**

Senator Carona called **SB 943** from the President's table for consideration of the House amendment to the bill.

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

### Amendment

Amend **SB 943** by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to the classification, use, and regulation of electric energy storage equipment or facilities.

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

SECTION 1. Section 31.002(10), Utilities Code, is amended to read as follows:

(10) "Power generation company" means a person that:

(A) generates electricity that is intended to be sold at wholesale, including the owner or operator of electric energy storage equipment or facilities to which Subchapter E, Chapter 35, applies;

(B) does not own a transmission or distribution facility in this state other than an essential interconnecting facility, a facility not dedicated to public use, or a facility otherwise excluded from the definition of "electric utility" under this section; and

(C) does not have a certificated service area, although its affiliated electric utility or transmission and distribution utility may have a certificated service area.

SECTION 2. Chapter 35, Utilities Code, is amended by adding Subchapter E to read as follows:

#### SUBCHAPTER E. ELECTRIC ENERGY STORAGE

Sec. 35.151. ELECTRIC ENERGY STORAGE. This subchapter applies to electric energy storage equipment or facilities that are intended to provide energy or ancillary services at wholesale, including electric energy storage equipment or facilities listed on a power generation company's registration with the commission or, for an exempt wholesale generator, on the generator's registration with the Federal Energy Regulatory Commission.

Sec. 35.152. GENERATION ASSETS. (a) Electric energy storage equipment or facilities that are intended to be used to sell energy or ancillary services at wholesale are generation assets.

(b) The owner or operator of electric energy storage equipment or facilities that are generation assets under Subsection (a) is a power generation company and is required to register under Section 39.351(a). The owner or operator of the equipment or facilities is entitled to:

(1) interconnect the equipment or facilities;

(2) obtain transmission service for the equipment or facilities; and

(3) use the equipment or facilities to sell electricity or ancillary services at wholesale in a manner consistent with the provisions of this title and commission rules applicable to a power generation company or an exempt wholesale generator.

(c) Notwithstanding Subsection (a), this section does not affect a determination made by the commission in a final order issued before December 31, 2010.

SECTION 3. Section 31.002(10), Utilities Code, as amended by this Act, and Subchapter E, Chapter 35, Utilities Code, as added by this Act, may not be construed to determine the regulatory treatment of electricity acquired to charge electric energy storage equipment or facilities and used solely for the purpose of later sale as energy or ancillary services.

SECTION 4. (a) The Public Utility Commission of Texas shall adopt or revise rules as necessary to implement this Act not later than January 1, 2012.

(b) The Public Utility Commission of Texas shall ensure that the Electric Reliability Council of Texas adopts or revises the council's protocols, standards, and procedures to implement this Act not later than April 1, 2012.

SECTION 5. This Act takes effect September 1, 2011.

The amendment was read.

Senator Carona moved to concur in the House amendment to **SB 943**.

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

### SENATE BILL 1732 WITH HOUSE AMENDMENT

Senator Van de Putte called **SB 1732** from the President's table for consideration of the House amendment to the bill.

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

#### Amendment

Amend **SB 1732** by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to authorizing the adjutant general to operate post exchanges on state military property.

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

SECTION 1. Subchapter B, Chapter 431, Government Code, is amended by adding Section 431.040 to read as follows:

Sec. 431.040. POST EXCHANGES ON STATE MILITARY PROPERTY.

(a) The adjutant general may establish and contract for the operation of not more than three military-type post exchanges similar to those operated by the armed forces of the United States on any real property under the management and control of the department. A post exchange may sell, lease, or rent goods and services, including tobacco products, prepared foods, and beer and wine but not distilled spirits. The adjutant general may designate facilities located on department property to use for purposes of this section.

(b) The adjutant general shall adopt rules to govern post exchanges established under this section that are similar to the procedures, policies, and restrictions governing exchanges of the Army and Air Force Exchange Service, including rules that require an individual to show identification that indicates that the individual is qualified to buy, lease, or rent goods at the post exchange.

(c) The adjutant general shall contract with a person to operate a post exchange created under this section.



(d) A post exchange may sell, lease, or rent goods and services only to:

- (1) active, retired, and reserve members of the United States armed services;
- (2) active and retired members of the state military forces;
- (3) full-time employees of the adjutant general's department; and
- (4) dependents of an individual described by Subdivisions (1)-(3).

(e) The post exchange services account is a company fund under Section 431.014 and may be used in a manner authorized by the General Appropriations Act for local funds. The post exchange services account is exempt from the application of Sections 403.095 and 404.071. The account consists of:

(1) money received from the operation of post exchanges created under this section; and

(2) all interest attributable to money held in the account.

(f) A post exchange created under this section may sell goods and services, including beer and wine but not distilled spirits, for off-premises consumption if the operator of the exchange holds the appropriate license or permit issued by the Texas Alcoholic Beverage Commission. The licensee or permittee shall comply in all respects with the provisions of the Alcoholic Beverage Code and the rules of the Texas Alcoholic Beverage Commission.

(g) Chapter 94, Human Resources Code, does not apply to vending facilities operated at a post exchange.

SECTION 2. Subchapter H, Chapter 151, Tax Code, is amended by adding Section 151.344 to read as follows:

Sec. 151.344. POST EXCHANGES ON STATE MILITARY PROPERTY.

(a) A taxable item sold, leased, or rented to, or stored, used, or consumed by, a post exchange under Section 431.040, Government Code, is exempt from the taxes imposed by this chapter.

(b) A taxable item sold, leased, or rented by a post exchange under Section 431.040, Government Code, is exempt from the taxes imposed by this chapter.

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, 2011.

The amendment was read.

Senator Van de Putte moved to concur in the House amendment to **SB 1732**.

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

### **SENATE BILL 1185 WITH HOUSE AMENDMENT**

Senator Nichols called **SB 1185** from the President's table for consideration of the House amendment to the bill.

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

### Amendment

Amend **SB 1185** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to the authority of certain counties to impose a hotel occupancy tax for the operation and maintenance of a fairground in the county.

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

SECTION 1. Section 352.002, Tax Code, is amended by adding Subsection (o) to read as follows:

(o) The commissioners court of a county that has a population of 65,000 or more and that is bordered by the Neches and Trinity Rivers may impose a tax as provided by Subsection (a).

SECTION 2. Section 352.003, Tax Code, is amended by adding Subsection (n) to read as follows:

(n) The tax rate in a county authorized to impose the tax under Section 352.002(o) may not exceed two percent of the price paid for a room in a hotel.

SECTION 3. Subchapter B, Chapter 352, Tax Code, is amended by adding Section 352.1037 to read as follows:

Sec. 352.1037. USE OF REVENUE: CERTAIN COUNTIES BORDERING NECHES AND TRINITY RIVERS. The revenue from a tax imposed under this chapter by a county authorized to impose the tax under Section 352.002(o) may be used only to operate and maintain a fairground in the county that has a substantial impact on tourism and hotel activity.

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, 2011.

The amendment was read.

Senator Nichols moved to concur in the House amendment to **SB 1185**.

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

### SENATE BILL 391 WITH HOUSE AMENDMENT

Senator Patrick called **SB 391** from the President's table for consideration of the House amendment to the bill.

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

**Amendment**

Amend **SB 391** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to the provision of electronic samples of a textbook adopted by the State Board of Education.

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

SECTION 1. Section 31.022, Education Code, is amended by adding Subsection (d-1) to read as follows:

(d-1) A notice published under Subsection (d) must state that a publisher of an adopted textbook for a grade level other than prekindergarten must submit an electronic sample of the textbook as required by Sections 31.027(a) and (b) and may not submit a print sample copy.

SECTION 2. The heading to Section 31.027, Education Code, is amended to read as follows:

Sec. 31.027. INFORMATION TO SCHOOL DISTRICTS; ELECTRONIC SAMPLE [~~COPIES~~].

SECTION 3. Sections 31.027(a) and (b), Education Code, are amended to read as follows:

(a) A publisher shall provide each school district and open-enrollment charter school with information that fully describes each of the publisher's adopted textbooks. On request of a school district, a publisher shall provide an electronic [~~a~~] sample [~~copy~~] of an adopted textbook.

(b) A publisher shall provide an electronic [~~at least two~~] sample [~~copies~~] of each adopted textbook to be maintained at each regional education service center.

SECTION 4. This Act takes effect September 1, 2011.

The amendment was read.

Senator Patrick moved to concur in the House amendment to **SB 391**.

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

**SENATE BILL 981 WITH HOUSE AMENDMENTS**

Senator Carona called **SB 981** from the President's table for consideration of the House amendments to the bill.

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

**Amendment**

Amend **SB 981** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to the regulation of distributed renewable generation of electricity.

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

SECTION 1. Section 39.916(a)(2), Utilities Code, is amended to read as follows:

(2) "Distributed renewable generation owner" means:

(A) the owner of distributed renewable generation; or

(B) a retail electric customer who contracts with another person to finance, install, or maintain distributed renewable generation on the customer's side of the meter, regardless of whether the customer takes ownership of the installed distributed renewable generation.

SECTION 2. Section 39.916, Utilities Code, is amended by adding Subsection (d-1) to read as follows:

(d-1) If, at the time distributed renewable generation is installed on a retail electric customer's side of the meter, the estimated annual amount of electric energy to be produced by the distributed renewable generation is less than or equal to the customer's estimated annual electric energy consumption, the commission may not:

(1) consider the distributed renewable generation owner to be an electric utility, a power generation company, or a retail electric provider; or

(2) require the distributed renewable generation owner to register with or to be certified by the commission.

SECTION 3. This Act takes effect September 1, 2011.

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

Amend **CSSB 981** (house committee printing) by striking SECTION 2 of the bill (page 1, line 15, through page 2, line 3) and substituting the following:

SECTION 2. Section 39.916, Utilities Code, is amended by adding Subsection (k) to read as follows:

(k) Neither a retail electric customer that uses distributed renewable generation nor the owner of the distributed renewable generation that the retail electric customer uses is an electric utility, power generation company, or retail electric provider for the purposes of this title and neither is required to register with or be certified by the commission if at the time distributed renewable generation is installed, the estimated annual amount of electricity to be produced by the distributed renewable generation is less than or equal to the retail electric customer's estimated annual electricity consumption.

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

Amend **CSSB 981** (house committee printing) in SECTION 1 of the bill, in amended Section 39.916(a), Utilities Code, by striking Subdivision (2) (page 1, lines 7-14) and substituting the following:

(2) "Distributed renewable generation owner" means:

(A) an ~~the~~ owner of distributed renewable generation;

(B) a retail electric customer on whose side of the meter distributed renewable generation is installed and operated, regardless of whether the customer takes ownership of the distributed renewable generation; or

(C) a person who by contract is assigned ownership rights to energy produced from distributed renewable generation located at the premises of the customer on the customer's side of the meter.

The amendments were read.

Senator Carona moved to concur in the House amendments to **SB 981**.

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

### **SENATE BILL 663 WITH HOUSE AMENDMENT**

Senator Nichols called **SB 663** from the President's table for consideration of the House amendment to the bill.

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

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

Amend **SB 663** (house committee printing) as follows:

(1) In SECTION 9 of the bill, in proposed Section 402.1022, Occupations Code (page 6, line 25), strike "(a)".

(2) In SECTION 9 of the bill, in proposed Section 402.1022, Occupations Code (page 7, lines 2-5), strike proposed Subsection (b) of that section.

The amendment was read.

Senator Nichols moved to concur in the House amendment to **SB 663**.

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

### **SENATE BILL 498 WITH HOUSE AMENDMENTS**

Senator Jackson called **SB 498** from the President's table for consideration of the House amendments to the bill.

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

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

Amend **SB 498** (house committee printing) as follows:

(j) The commission by rule may set and the department may ~~not~~ charge a fee not to exceed \$300 for a white-tailed deer trapping and transporting permit issued under this section, except that the department may not charge a fee for a permit issued to a political subdivision or property owners' association if the deer pose a threat to human health or safety.

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

Amend **SB 498** on third reading as follows:

(1) Strike the recital to SECTION 1 of the bill and substitute the following:  
SECTION 1. Sections 43.0612(a)-(i) and (k), Parks and Wildlife Code, are amended to read as follows:

(2) Strike amended Section 43.0612(j), Parks and Wildlife Code.

The amendments were read.

Senator Jackson moved to concur in the House amendments to **SB 498**.

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

**SENATE BILL 844 WITH HOUSE AMENDMENT**

Senator Patrick called **SB 844** from the President's table for consideration of the House amendment to the bill.

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

**Amendment**

Amend **SB 844** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to the offense of escape from custody by a person lawfully detained.

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

SECTION 1. Sections 38.06(a) and (c), Penal Code, are amended to read as follows:

(a) A person commits an offense if the person [~~he~~] escapes from custody when the person [~~he~~] is:

(1) under arrest for, lawfully detained for, charged with, or convicted of an offense;

(2) in custody pursuant to a lawful order of a court;

(3) detained in a secure detention facility, as that term is defined by Section 51.02, Family Code; or

(4) in the custody of a juvenile probation officer for violating an order imposed by the juvenile court under Section 52.01, Family Code.

(c) An offense under this section is a felony of the third degree if the actor:

(1) is under arrest for, charged with, or convicted of a felony;

(2) is confined or lawfully detained in a secure correctional facility or law enforcement facility; or

(3) is committed to or lawfully detained in a secure correctional facility, as defined by Section 51.02, Family Code, other than a halfway house, operated by or under contract with the Texas Youth Commission.

SECTION 2. 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 was committed before that date.

SECTION 3. This Act takes effect September 1, 2011.

The amendment was read.

Senator Patrick moved to concur in the House amendment to **SB 844**.

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

**SENATE BILL 1250 WITH HOUSE AMENDMENT**

Senator Lucio called **SB 1250** from the President's table for consideration of the House amendment to the bill.

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

**Amendment**

Amend **SB 1250** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to the applicability of certain restrictions on the location and operation of concrete crushing facilities.

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

SECTION 1. Section 382.065(b), Health and Safety Code, is amended to read as follows:

(b) Subsection (a) does not apply to a concrete crushing facility:

(1) at a location for which commission authorization for the operation of a concrete crushing facility was in effect on September 1, 2001; ~~or~~

(2) at a location that satisfies the distance requirements of Subsection (a) at the time the application for the initial authorization for the operation of that facility at that location is filed with the commission, provided that the authorization is granted and maintained, regardless of whether a single or multifamily residence, school, or place of worship is subsequently built or put to use within 440 yards of the facility; or

(3) that:

(A) uses a concrete crusher:

(i) in the manufacture of products that contain recycled materials;

and

(ii) that is located in an enclosed building; and

(B) is located:

(i) within 25 miles of an international border; and

(ii) in a municipality with a population of not less than 6,100 but

not more than 20,000.

SECTION 2. This Act takes effect September 1, 2011.

The amendment was read.

Senator Lucio moved to concur in the House amendment to **SB 1250**.

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

**SENATE BILL 1048 WITH HOUSE AMENDMENTS**

Senator Jackson called **SB 1048** from the President's table for consideration of the House amendments to the bill.

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

**Amendment**

Amend **SB 1048** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to the creation of public and private facilities and infrastructure.

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

SECTION 1. Subtitle F, Title 10, Government Code, is amended by adding Chapters 2267 and 2268 to read as follows:

CHAPTER 2267. PUBLIC AND PRIVATE FACILITIES AND  
INFRASTRUCTURE  
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2267.001. DEFINITIONS. In this chapter:

(1) "Affected jurisdiction" means any county or municipality in which all or a portion of a qualifying project is located.

(2) "Comprehensive agreement" means the comprehensive agreement authorized by Section 2267.058 between the contracting person and the responsible governmental entity.

(3) "Contracting person" means a person who enters into a comprehensive or interim agreement with a responsible governmental entity under this chapter.

(4) "Develop" means to plan, design, develop, finance, lease, acquire, install, construct, or expand a qualifying project.

(5) "Governmental entity" means:

(A) a board, commission, department, or other agency of this state, including an institution of higher education as defined by Section 61.003, Education Code, that elects to operate under this chapter through the adoption of a resolution by the institution's board of regents; and

(B) a political subdivision of this state that elects to operate under this chapter by the adoption of a resolution by the governing body of the political subdivision.

(6) "Interim agreement" means an agreement authorized by Section 2267.059 between a contracting person and a responsible governmental entity that proposes the development or operation of the qualifying project.

(7) "Lease payment" means any form of payment, including a land lease, by a governmental entity to the contracting person for the use of a qualifying project.

(8) "Material default" means any default by a contracting person in the performance of duties imposed under Section 2267.057(f) that jeopardizes adequate service to the public from a qualifying project.

(9) "Operate" means to finance, maintain, improve, equip, modify, repair, or operate a qualifying project.

(10) "Qualifying project" means:

(A) any ferry, mass transit facility, vehicle parking facility, port facility, power generation facility, fuel supply facility, oil or gas pipeline, water supply facility, public work, waste treatment facility, hospital, school, medical or nursing care facility, recreational facility, public building, or other similar facility currently available or to be made available to a governmental entity for public use, including any structure, parking area, appurtenance, and other property required to operate the structure or facility and any technology infrastructure installed in the structure or facility that is essential to the project's purpose; or

(B) any improvements necessary or desirable to unimproved real estate owned by a governmental entity.



(11) "Responsible governmental entity" means a governmental entity that has the power to develop or operate an applicable qualifying project.

(12) "Revenue" means all revenue, income, earnings, user fees, lease payments, or other service payments that support the development or operation of a qualifying project, including money received as a grant or otherwise from the federal government, a governmental entity, or any agency or instrumentality of the federal government or governmental entity in aid of the project.

(13) "Service contract" means a contract between a governmental entity and a contracting person under Section 2267.054.

(14) "Service payment" means a payment to a contracting person of a qualifying project under a service contract.

(15) "User fee" means a rate, fee, or other charge imposed by a contracting person for the use of all or part of a qualifying project under a comprehensive agreement.

Sec. 2267.002. DECLARATION OF PUBLIC PURPOSE; CONSTRUCTION OF CHAPTER. (a) The legislature finds that:

(1) there is a public need for timely acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, operation, implementation, and installation of education facilities, technology and other public infrastructure, and government facilities in this state that serve a public need and purpose;

(2) the public need may not be wholly satisfied by existing methods of procurement in which qualifying projects are acquired, designed, constructed, improved, renovated, expanded, equipped, maintained, operated, implemented, or installed;

(3) there are inadequate resources to develop new education facilities, technology and other public infrastructure, and government facilities for the benefit of the citizens of this state, and there is demonstrated evidence that partnerships between public entities and private entities or other persons can meet these needs by improving the schedule for delivery, lowering the cost, and providing other benefits to the public;

(4) financial incentives exist under state and federal tax provisions that encourage public entities to enter into partnerships with private entities or other persons to develop qualifying projects; and

(5) authorizing private entities or other persons to develop or operate one or more qualifying projects may serve the public safety, benefit, and welfare by making the projects available to the public in a more timely or less costly fashion.

(b) An action authorized under Section 2267.053 serves the public purpose of this chapter if the action facilitates the timely development or operation of a qualifying project.

(c) The purposes of this chapter include:

(1) encouraging investment in this state by private entities and other persons;

(2) facilitating bond financing or other similar financing mechanisms, private capital, and other funding sources that support the development or operation of qualifying projects in order to expand and accelerate financing for qualifying projects that improve and add to the convenience of the public; and

(3) providing governmental entities with the greatest possible flexibility in contracting with private entities or other persons to provide public services through qualifying projects subject to this chapter.

(d) This chapter shall be liberally construed in conformity with the purposes of this section.

(e) The procedures in this chapter are not exclusive. This chapter does not prohibit a responsible governmental entity from entering into an agreement for or procuring public and private facilities and infrastructure under other authority.

Sec. 2267.003. APPLICABILITY. This chapter does not apply to:

(1) the financing, design, construction, maintenance, or operation of a highway in the state highway system;

(2) a transportation authority created under Chapter 451, 452, 453, or 460, Transportation Code; or

(3) any telecommunications, cable television, video service, or broadband infrastructure other than technology installed as part of a qualifying project that is essential to the project.

Sec. 2267.004. APPLICABILITY OF EMINENT DOMAIN LAW. This chapter does not alter the eminent domain laws of this state or grant the power of eminent domain to any person who is not expressly granted that power under other state law.

[Sections 2267.005-2267.050 reserved for expansion]

#### SUBCHAPTER B. QUALIFYING PROJECTS

Sec. 2267.051. APPROVAL REQUIRED; SUBMISSION OF PROPOSAL FOR QUALIFYING PROJECT. (a) A person may not develop or operate a qualifying project unless the person obtains the approval of and contracts with the responsible governmental entity under this chapter. The person may initiate the approval process by submitting a proposal requesting approval under Section 2267.053(a), or the responsible governmental entity may request proposals or invite bids under Section 2267.053(b).

(b) A person submitting a proposal requesting approval of a qualifying project shall specifically and conceptually identify any facility, building, infrastructure, or improvement included in the proposal as a part of the qualifying project.

(c) On receipt of a proposal submitted by a person initiating the approval process under Section 2267.053(a), the responsible governmental entity shall determine whether to accept the proposal for consideration in accordance with Sections 2267.052 and 2267.065 and the guidelines adopted under those sections. A responsible governmental entity that determines not to accept the proposal for consideration shall return the proposal, all fees, and the accompanying documentation to the person submitting the proposal.

(d) The responsible governmental entity may at any time reject a proposal initiated by a person under Section 2267.053(a).

Sec. 2267.052. ADOPTION OF GUIDELINES BY RESPONSIBLE GOVERNMENTAL ENTITIES. (a) Before requesting or considering a proposal for a qualifying project, a responsible governmental entity must adopt and make publicly

available guidelines that enable the governmental entity to comply with this chapter. The guidelines must be reasonable, encourage competition, and guide the selection of projects under the purview of the responsible governmental entity.

(b) The guidelines for a responsible governmental entity described by Section 2267.001(5)(A) must:

(1) require the responsible governmental entity to:

(A) make a representative of the entity available to meet with persons who are considering submitting a proposal; and

(B) provide notice of the representative's availability;

(2) provide reasonable criteria for choosing among competing proposals;

(3) contain suggested timelines for selecting proposals and negotiating an interim or comprehensive agreement;

(4) allow the responsible governmental entity to accelerate the selection, review, and documentation timelines for proposals involving a qualifying project considered a priority by the entity;

(5) include financial review and analysis procedures that at a minimum consist of:

(A) a cost-benefit analysis;

(B) an assessment of opportunity cost;

(C) consideration of the degree to which functionality and services similar to the functionality and services to be provided by the proposed project are already available in the private market; and

(D) consideration of the results of all studies and analyses related to the proposed qualifying project;

(6) allow the responsible governmental entity to consider the nonfinancial benefits of a proposed qualifying project;

(7) include criteria for:

(A) the qualifying project, including the scope, costs, and duration of the project and the involvement or impact of the project on multiple public entities;

(B) the creation of and the responsibilities of an oversight committee, with members representing the responsible governmental entity, that acts as an advisory committee to review the terms of any proposed interim or comprehensive agreement; and

(C) compliance with the requirements of Chapter 2268;

(8) require the responsible governmental entity to analyze the adequacy of the information to be released by the entity when seeking competing proposals and require that the entity provide more detailed information, if the entity determines necessary, to encourage competition, subject to Section 2267.053(g);

(9) establish criteria, key decision points, and approvals required to ensure that the responsible governmental entity considers the extent of competition before selecting proposals and negotiating an interim or comprehensive agreement; and

(10) require the posting and publishing of public notice of a proposal requesting approval of a qualifying project, including:

(A) specific information and documentation regarding the nature, timing, and scope of the qualifying project, as required under Section 2267.053(a);

(B) a reasonable period of not less than 45 days, as determined by the responsible governmental entity, to encourage competition and partnerships with private entities and other persons in accordance with the goals of this chapter, during which the responsible governmental entity must accept submission of competing proposals for the qualifying project; and

(C) a requirement for advertising the notice on the governmental entity's Internet website and on TexasOnline or the state's official Internet website.

(c) The guidelines of a responsible governmental entity described by Section 2267.001(5)(B):

(1) may include the provisions required under Subsection (b); and

(2) must include a requirement that the governmental entity engage the services of qualified professionals, including an architect, professional engineer, or certified public accountant, not otherwise employed by the governmental entity, to provide independent analyses regarding the specifics, advantages, disadvantages, and long-term and short-term costs of any proposal requesting approval of a qualifying project unless the governing body of the governmental entity determines that the analysis of the proposal is to be performed by employees of the governmental entity.

Sec. 2267.053. APPROVAL OF QUALIFYING PROJECTS BY RESPONSIBLE GOVERNMENTAL ENTITY. (a) A private entity or other person may submit a proposal requesting approval of a qualifying project by the responsible governmental entity. The proposal must be accompanied by the following, unless waived by the responsible governmental entity:

(1) a topographic map, with a 1:2,000 or other appropriate scale, indicating the location of the qualifying project;

(2) a description of the qualifying project, including:

(A) the conceptual design of any facility or a conceptual plan for the provision of services or technology infrastructure; and

(B) a schedule for the initiation of and completion of the qualifying project that includes the proposed major responsibilities and timeline for activities to be performed by the governmental entity and the person;

(3) a statement of the method the person proposes for securing necessary property interests required for the qualifying project;

(4) information relating to any current plans for the development of facilities or technology infrastructure to be used by a governmental entity that are similar to the qualifying project being proposed by the person for each affected jurisdiction;

(5) a list of all permits and approvals required for the development and completion of the qualifying project from local, state, or federal agencies and a projected schedule for obtaining the permits and approvals;

(6) a list of any facilities that will be affected by the qualifying project and a statement of the person's plans to accommodate the affected facilities;

(7) a statement on the person's general plans for financing the qualifying project, including the sources of the person's funds and identification of any dedicated revenue source or proposed debt or equity investment for the person;

(8) the name and address of each individual who may be contacted for further information concerning the request;

(9) user fees, lease payments, and other service payments over the term of any applicable interim or comprehensive agreement and the methodology and circumstances for changes to the user fees, lease payments, and other service payments over time; and

(10) any additional material and information the responsible governmental entity reasonably requests.

(b) A responsible governmental entity may request proposals or invite bids from persons for the development or operation of a qualifying project. A responsible governmental entity shall consider the total project cost as one factor in evaluating the proposals received, but is not required to select the proposal that offers the lowest total project cost. The responsible governmental entity may consider the following factors:

(1) the proposed cost of the qualifying project;

(2) the general reputation, industry experience, and financial capacity of the person submitting a proposal;

(3) the proposed design of the qualifying project;

(4) the eligibility of the project for accelerated selection, review, and documentation timelines under the responsible governmental entity's guidelines;

(5) comments from local citizens and affected jurisdictions;

(6) benefits to the public;

(7) the person's good faith effort to comply with the goals of a historically underutilized business plan;

(8) the person's plans to employ local contractors and residents;

(9) for a qualifying project that involves a continuing role beyond design and construction, the person's proposed rate of return and opportunities for revenue sharing; and

(10) other criteria that the responsible governmental entity considers appropriate.

(c) The responsible governmental entity may approve as a qualifying project the development or operation of a facility needed by the governmental entity, or the design or equipping of a qualifying project, if the responsible governmental entity determines that the project serves the public purpose of this chapter. The responsible governmental entity may determine that the development or operation of the project as a qualifying project serves the public purpose if:

(1) there is a public need for or benefit derived from the project of the type the person proposes as a qualifying project;

(2) the estimated cost of the project is reasonable in relation to similar facilities; and

(3) the person's plans will result in the timely development or operation of the qualifying project.

(d) The responsible governmental entity may charge a reasonable fee to cover the costs of processing, reviewing, and evaluating the proposal, including reasonable legal fees and fees for financial, technical, and other necessary advisors or consultants.

(e) The approval of a responsible governmental entity described by Section 2267.001(5)(A) is subject to the private entity or other person entering into an interim or comprehensive agreement with the responsible governmental entity.

(f) On approval of the qualifying project, the responsible governmental entity shall establish a date by which activities related to the qualifying project must begin. The responsible governmental entity may extend the date.

(g) The responsible governmental entity shall take action appropriate under Section 552.153 to protect confidential and proprietary information provided by the contracting person under an agreement.

(h) Before entering into the negotiation of an interim or comprehensive agreement, each responsible governmental entity described by Section 2267.001(5)(A) must submit copies of detailed proposals to the Partnership Advisory Commission in accordance with Chapter 2268.

(i) This chapter and an interim or comprehensive agreement entered into under this chapter do not enlarge, diminish, or affect any authority a responsible governmental entity has to take action that would impact the debt capacity of this state.

Sec. 2267.054. SERVICE CONTRACTS. A responsible governmental entity may contract with a contracting person for the delivery of services to be provided as part of a qualifying project in exchange for service payments and other consideration as the governmental entity considers appropriate.

Sec. 2267.055. AFFECTED JURISDICTIONS. (a) A person submitting a proposal to a responsible governmental entity under Section 2267.053 shall notify each affected jurisdiction by providing a copy of its proposal to the affected jurisdiction.

(b) Not later than the 60th day after the date an affected jurisdiction receives the notice required by Subsection (a), the affected jurisdiction that is not the responsible governmental entity for the respective qualifying project shall submit in writing to the responsible governmental entity any comments the affected jurisdiction has on the proposed qualifying project and indicate whether the facility or project is compatible with the local comprehensive plan, local infrastructure development plans, the capital improvements budget, or other government spending plan. The responsible governmental entity shall consider the submitted comments before entering into a comprehensive agreement with a contracting person.

Sec. 2267.056. DEDICATION AND CONVEYANCE OF PUBLIC PROPERTY. (a) After obtaining any appraisal of the property interest that is required under other law in connection with the conveyance, a governmental entity may dedicate any property interest, including land, improvements, and tangible personal property, for public use in a qualifying project if the governmental entity finds that the dedication will serve the public purpose of this chapter by minimizing the cost of a qualifying project to the governmental entity or reducing the delivery time of a qualifying project.

(b) In connection with a dedication under Subsection (a), a governmental entity may convey any property interest, including a license, franchise, easement, or another right or interest the governmental entity considers appropriate, subject to the conditions imposed by general law governing such conveyance and subject to the rights of an existing utility under a license, franchise, easement, or other right under

law, to the contracting person for the consideration determined by the governmental entity. The consideration may include the agreement of the contracting person to develop or operate the qualifying project.

Sec. 2267.057. POWERS AND DUTIES OF CONTRACTING PERSON.

(a) The contracting person has:

(1) the power granted by:

(A) general law to a person that has the same form of organization as the contracting person; and

(B) a statute governing the business or activity of the contracting person; and

(2) the power to:

(A) develop or operate the qualifying project; and

(B) collect lease payments, impose user fees subject to Subsection (b), or enter into service contracts in connection with the use of the project.

(b) The contracting person may not impose a user fee or increase the amount of a user fee until the fee or increase is approved by the responsible governmental entity.

(c) The contracting person may own, lease, or acquire any other right to use or operate the qualifying project.

(d) The contracting person may finance a qualifying project in the amounts and on the terms determined by the contracting person. The contracting person may issue debt, equity, or other securities or obligations, enter into sale and leaseback transactions, and secure any financing with a pledge of, security interest in, or lien on any or all of its property, including all of its property interests in the qualifying project.

(e) In operating the qualifying project, the contracting person may:

(1) establish classifications according to reasonable categories for assessment of user fees; and

(2) with the consent of the responsible governmental entity, adopt and enforce reasonable rules for the qualifying project to the same extent as the responsible governmental entity.

(f) The contracting person shall:

(1) develop or operate the qualifying project in a manner that is acceptable to the responsible governmental entity and in accordance with any applicable interim or comprehensive agreement;

(2) subject to Subsection (g), keep the qualifying project open for use by the public at all times, or as appropriate based on the use of the project, after its initial opening on payment of the applicable user fees, lease payments, or service payments;

(3) maintain, or provide by contract for the maintenance or upgrade of, the qualifying project, if required by any applicable interim or comprehensive agreement;

(4) cooperate with the responsible governmental entity to establish any interconnection with the qualifying project requested by the responsible governmental entity; and

(5) comply with any applicable interim or comprehensive agreement and any lease or service contract.

(g) The qualifying project may be temporarily closed because of emergencies or, with the consent of the responsible governmental entity, to protect public safety or for reasonable construction or maintenance activities.

(h) This chapter does not prohibit a contracting person of a qualifying project from providing additional services for the qualifying project to the public or persons other than the responsible governmental entity, provided that the provision of additional service does not impair the contracting person's ability to meet the person's commitments to the responsible governmental entity under any applicable interim or comprehensive agreement.

Sec. 2267.058. COMPREHENSIVE AGREEMENT. (a) Before developing or operating the qualifying project, the contracting person must enter into a comprehensive agreement with a responsible governmental entity. The comprehensive agreement shall provide for:

(1) delivery of letters of credit or other security in connection with the development or operation of the qualifying project, in the forms and amounts satisfactory to the responsible governmental entity, and delivery of performance and payment bonds in compliance with Chapter 2253 for all construction activities;

(2) review of plans and specifications for the qualifying project by the responsible governmental entity and approval by the responsible governmental entity if the plans and specifications conform to standards acceptable to the responsible governmental entity, except that the contracting person may not be required to complete the design of a qualifying project before the execution of a comprehensive agreement;

(3) inspection of the qualifying project by the responsible governmental entity to ensure that the contracting person's activities are acceptable to the responsible governmental entity in accordance with the comprehensive agreement;

(4) maintenance of a public liability insurance policy, copies of which must be filed with the responsible governmental entity accompanied by proofs of coverage, or self-insurance, each in the form and amount satisfactory to the responsible governmental entity and reasonably sufficient to ensure coverage of tort liability to the public and project employees and to enable the continued operation of the qualifying project;

(5) monitoring of the practices of the contracting person by the responsible governmental entity to ensure that the qualifying project is properly maintained;

(6) reimbursement to be paid to the responsible governmental entity for services provided by the responsible governmental entity;

(7) filing of appropriate financial statements on a periodic basis; and

(8) policies and procedures governing the rights and responsibilities of the responsible governmental entity and the contracting person if the comprehensive agreement is terminated or there is a material default by the contracting person, including conditions governing:

(A) assumption of the duties and responsibilities of the contracting person by the responsible governmental entity; and

(B) the transfer or purchase of property or other interests of the contracting person to the responsible governmental entity.



(b) The comprehensive agreement shall provide for any user fee, lease payment, or service payment established by agreement of the parties. In negotiating a user fee under this section, the parties shall establish a payment or fee that is the same for persons using a facility of the qualifying project under like conditions and that will not materially discourage use of the qualifying project. The execution of the comprehensive agreement or an amendment to the agreement is conclusive evidence that the user fee, lease payment, or service payment complies with this chapter. A user fee or lease payment established in the comprehensive agreement as a source of revenue may be in addition to, or in lieu of, a service payment.

(c) A comprehensive agreement may include a provision that authorizes the responsible governmental entity to make grants or loans to the contracting person from money received from the federal, state, or local government or any agency or instrumentality of the government.

(d) The comprehensive agreement must incorporate the duties of the contracting person under this chapter and may contain terms the responsible governmental entity determines serve the public purpose of this chapter. The comprehensive agreement may contain:

(1) provisions that require the responsible governmental entity to provide notice of default and cure rights for the benefit of the contracting person and the persons specified in the agreement as providing financing for the qualifying project;

(2) other lawful terms to which the contracting person and the responsible governmental entity mutually agree, including provisions regarding unavoidable delays or providing for a loan of public money to the contracting person to develop or operate one or more qualifying projects; and

(3) provisions in which the authority and duties of the contracting person under this chapter cease and the qualifying project is dedicated for public use to the responsible governmental entity or, if the qualifying project was initially dedicated by an affected jurisdiction, to the affected jurisdiction.

(e) Any change in the terms of the comprehensive agreement that the parties agree to must be added to the comprehensive agreement by written amendment.

(f) The comprehensive agreement may provide for the development or operation of phases or segments of the qualifying project.

Sec. 2267.059. INTERIM AGREEMENT. Before or in connection with the negotiation of the comprehensive agreement, the responsible governmental entity may enter into an interim agreement with the contracting person proposing the development or operation of the qualifying project. The interim agreement may:

(1) authorize the contracting person to begin project phases or activities for which the contracting person may be compensated relating to the proposed qualifying project, including project planning and development, design, engineering, environmental analysis and mitigation, surveying, and financial and revenue analysis, including ascertaining the availability of financing for the proposed facility or facilities of the qualifying project;

(2) establish the process and timing of the negotiation of the comprehensive agreement; and

(3) contain any other provision related to any aspect of the development or operation of a qualifying project that the parties consider appropriate.

Sec. 2267.060. FEDERAL, STATE, AND LOCAL ASSISTANCE. (a) The contracting person and the responsible governmental entity may use any funding resources that are available to the parties, including:

- (1) accessing any designated trust funds; and
- (2) borrowing or accepting grants from any state infrastructure bank.

(b) The responsible governmental entity may take any action to obtain federal, state, or local assistance for a qualifying project that serves the public purpose of this chapter and may enter into any contracts required to receive the assistance.

(c) If the responsible governmental entity is a state agency, any money received from the state or federal government or any agency or instrumentality of the state or federal government is subject to appropriation by the legislature.

(d) The responsible governmental entity may determine that it serves the public purpose of this chapter for all or part of the costs of a qualifying project to be directly or indirectly paid from the proceeds of a grant or loan made by the local, state, or federal government or any agency or instrumentality of the government.

Sec. 2267.061. MATERIAL DEFAULT; REMEDIES. (a) If the contracting person commits a material default, the responsible governmental entity may assume the responsibilities and duties of the contracting person of the qualifying project. If the responsible governmental entity assumes the responsibilities and duties of the contracting person, the responsible governmental entity has all the rights, title, and interest in the qualifying project, subject to any liens on revenue previously granted by the contracting person to any person providing financing for the project.

(b) A responsible governmental entity that has the power of eminent domain under state law may exercise that power to acquire the qualifying project in the event of a material default by the contracting person. Any person who has provided financing for the qualifying project, and the contracting person to the extent of its capital investment, may participate in the eminent domain proceedings with the standing of a property owner.

(c) The responsible governmental entity may terminate, with cause, any applicable interim or comprehensive agreement and exercise any other rights and remedies available to the governmental entity at law or in equity.

(d) The responsible governmental entity may make any appropriate claim under the letters of credit or other security or the performance and payment bonds required by Section 2267.058(a)(1).

(e) If the responsible governmental entity elects to assume the responsibilities and duties for a qualifying project under Subsection (a), the responsible governmental entity may:

- (1) develop or operate the qualifying project;
- (2) impose user fees;
- (3) impose and collect lease payments for the use of the project; and
- (4) comply with any applicable contract to provide services.

(f) The responsible governmental entity shall collect and pay to secured parties any revenue subject to a lien to the extent necessary to satisfy the contracting person's obligations to secured parties, including the maintenance of reserves. The liens shall be correspondingly reduced and, when paid off, released.

(g) Before any payment is made to or for the benefit of a secured party, the responsible governmental entity may use revenue to pay the current operation and maintenance costs of the qualifying project, including compensation to the responsible governmental entity for its services in operating and maintaining the qualifying project. The right to receive any payment is considered just compensation for the qualifying project.

(h) The full faith and credit of the responsible governmental entity may not be pledged to secure any financing of the contracting person that was assumed by the governmental entity when the governmental entity assumed responsibility for the qualifying project.

Sec. 2267.062. EMINENT DOMAIN. (a) At the request of the contracting person, the responsible governmental entity may exercise any power of eminent domain that it has under law to acquire any land or property interest to the extent that the responsible governmental entity dedicates the land or property interest to public use and finds that the action serves the public purpose of this chapter.

(b) Any amounts to be paid in any eminent domain proceeding shall be paid by the contracting person.

Sec. 2267.063. AFFECTED FACILITY OWNER. (a) The contracting person and each facility owner, including a public utility, a public service company, or a cable television provider, whose facilities will be affected by a qualifying project shall cooperate fully in planning and arranging the manner in which the facilities will be affected.

(b) The contracting person and responsible governmental entity shall ensure that a facility owner whose facility will be affected by a qualifying project does not suffer a disruption of service as a result of the construction or improvement of the qualifying project.

(c) A governmental entity possessing the power of eminent domain may exercise that power in connection with the relocation of facilities affected by the qualifying project or facilities that must be relocated to the extent that the relocation is necessary or desirable by construction of, renovation to, or improvements to the qualifying project, which includes construction of, renovation to, or improvements to temporary facilities to provide service during the period of construction or improvement. The governmental entity shall exercise its power of eminent domain to the extent required to ensure an affected facility owner does not suffer a disruption of service as a result of the construction or improvement of the qualifying project during the construction or improvement or after the qualifying project is completed or improved.

(d) The contracting person shall pay any amount owed for the crossing, constructing, or relocating of facilities.

Sec. 2267.064. POLICE POWERS; VIOLATIONS OF LAW. A peace officer of this state or of any affected jurisdiction has the same powers and jurisdiction within the area of the qualifying project as the officer has in the officer's area of jurisdiction. The officer may access the qualifying project at any time to exercise the officer's powers and jurisdiction.

Sec. 2267.065. PROCUREMENT GUIDELINES. (a) Chapters 2155, 2156, and 2166, any interpretations, rules, or guidelines of the comptroller and the Texas Facilities Commission, and interpretations, rules, or guidelines developed under Chapter 2262 do not apply to a qualifying project under this chapter.

(b) A responsible governmental entity may enter into a comprehensive agreement only in accordance with guidelines that require the contracting person to design and construct the qualifying project in accordance with procedures that do not materially conflict with those specified in:

(1) Section 2166.2531;

(2) Section 44.036, Education Code;

(3) Section 271.119, Local Government Code; or

(4) Subchapter J, Chapter 271, Local Government Code, for civil works projects as defined by Section 271.181(2), Local Government Code.

(c) This chapter does not authorize a responsible governmental entity or a contracting person to obtain professional services through any process except in accordance with Subchapter A, Chapter 2254.

(d) Identified team members, including the architect, engineer, or builder, may not be substituted or replaced once a project is approved and an interim or comprehensive agreement is executed without the written approval of the responsible governmental entity.

Sec. 2267.066. POSTING OF PROPOSALS; PUBLIC COMMENT; PUBLIC ACCESS TO PROCUREMENT RECORDS. (a) Not later than the 10th day after the date a responsible governmental entity accepts a proposal submitted in accordance with Section 2267.053(a) or (b), the responsible governmental entity shall provide notice of the proposal as follows:

(1) for a responsible governmental entity described by Section 2267.001(5)(A), by posting the proposal on the entity's Internet website; and

(2) for a responsible governmental entity described by Section 2267.001(5)(B), by:

(A) posting a copy of the proposal on the entity's Internet website; or

(B) publishing in a newspaper of general circulation in the area in which the qualifying project is to be performed a summary of the proposal and the location where copies of the proposal are available for public inspection.

(b) The responsible governmental entity shall make available for public inspection at least one copy of the proposal. This section does not prohibit the responsible governmental entity from posting the proposal in another manner considered appropriate by the responsible governmental entity to provide maximum notice to the public of the opportunity to inspect the proposal.

(c) Trade secrets, financial records, or other records of the contracting person excluded from disclosure under Section 552.101 may not be posted or made available for public inspection except as otherwise agreed to by the responsible governmental entity and the contracting person.

(d) The responsible governmental entity shall hold a public hearing on the proposal during the proposal review process not later than the 30th day before the date the entity enters into an interim or comprehensive agreement.

(e) On completion of the negotiation phase for the development of an interim or comprehensive agreement and before an interim agreement or comprehensive agreement is entered into, a responsible governmental entity must make available the proposed agreement in a manner provided by Subsection (a) or (b).

(f) A responsible governmental entity that has entered into an interim agreement or comprehensive agreement shall make procurement records available for public inspection on request. For purposes of this subsection, procurement records do not include the trade secrets of the contracting person or financial records, including balance sheets or financial statements of the contracting person, that are not generally available to the public through regulatory disclosure or other means.

(g) Cost estimates relating to a proposed procurement transaction prepared by or for a responsible governmental entity are not open to public inspection.

(h) Any inspection of procurement transaction records under this section is subject to reasonable restrictions to ensure the security and integrity of the records.

(i) This section applies to any accepted proposal regardless of whether the process of bargaining results in an interim or comprehensive agreement.

## CHAPTER 2268. PARTNERSHIP ADVISORY COMMISSION

### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2268.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Partnership Advisory Commission.

(2) "Comprehensive agreement" has the meaning assigned by Section 2267.001.

(3) "Detailed proposal" means a proposal for a qualifying project accepted by a responsible governmental entity beyond a conceptual level of review that defines and establishes periods related to fixing costs, payment schedules, financing, deliverables, and project schedule.

(4) "Interim agreement" has the meaning assigned by Section 2267.001.

(5) "Qualifying project" has the meaning assigned by Section 2267.001.

(6) "Responsible governmental entity" has the meaning assigned by Section 2267.001.

Sec. 2268.002. APPLICABILITY. This chapter applies only to responsible governmental entities described by Section 2267.001(5)(A).

[Sections 2268.003-2268.050 reserved for expansion]

### SUBCHAPTER B. COMMISSION

Sec. 2268.051. ESTABLISHMENT OF COMMISSION. The Partnership Advisory Commission is an advisory commission in the legislative branch that advises responsible governmental entities described by Section 2267.001(5)(A) on proposals received under Chapter 2267.

Sec. 2268.052. COMPOSITION AND TERMS. (a) The commission consists of the following 11 members:

(1) the chair of the House Appropriations Committee or the chair's designee;

(2) three representatives appointed by the speaker of the house of representatives;

(3) the chair of the Senate Finance Committee or the chair's designee;

(4) three senators appointed by the lieutenant governor; and

(5) three representatives of the executive branch, appointed by the governor.

(b) The legislative members serve on the commission until the expiration of their terms of office or until their successors qualify.

(c) The members appointed by the governor serve at the will of the governor.

Sec. 2268.053. PRESIDING OFFICER. The members of the commission shall elect from among the legislative members a presiding officer and an assistant presiding officer to serve two-year terms.

Sec. 2268.054. COMPENSATION; REIMBURSEMENT. A member of the commission is not entitled to compensation for service on the commission but is entitled to reimbursement for all reasonable and necessary expenses incurred in performing duties as a member.

Sec. 2268.055. MEETINGS. The commission shall hold meetings quarterly or on the call of the presiding officer.

Sec. 2268.056. ADMINISTRATIVE, LEGAL, RESEARCH, TECHNICAL, AND OTHER SUPPORT. (a) The legislative body that the presiding officer serves shall provide administrative staff support for the commission.

(b) The Texas Legislative Council shall provide legal, research, and policy analysis services to the commission.

(c) The staffs of the House Appropriations Committee, Senate Finance Committee, and comptroller shall provide technical assistance.

(d) The comptroller or a state agency shall provide additional assistance as needed.

Sec. 2268.057. COMMISSION PROCEEDINGS. A copy of the proceedings of the commission shall be filed with the legislative body that the presiding officer serves.

Sec. 2268.058. SUBMISSION OF DETAILED PROPOSALS FOR QUALIFYING PROJECTS; EXEMPTION; COMMISSION REVIEW. (a) Before beginning to negotiate an interim or comprehensive agreement, each responsible governmental entity receiving a detailed proposal for a qualifying project must provide copies of the proposal to:

(1) the presiding officer of the commission; and

(2) the chairs of the House Appropriations Committee and Senate Finance Committee or their designees.

(b) The following qualifying projects are not subject to review by the commission:

(1) any proposed qualifying project with a total cost of less than \$5 million; and

(2) any proposed qualifying project with a total cost of more than \$5 million but less than \$50 million for which money has been specifically appropriated as a public-private partnership in the General Appropriations Act.

(c) The commission may undertake additional reviews of any qualifying project that will be completed in phases and for which an appropriation has not been made for any phase other than the current phase of the project.

(d) Not later than the 10th day after the date the commission receives a complete copy of the detailed proposal for a qualifying project, the commission shall determine whether to accept or decline the proposal for review and notify the responsible governmental entity of the commission's decision.

(e) If the commission accepts a proposal for review, the commission shall provide its findings and recommendations to the responsible governmental entity not later than the 45th day after the date the commission receives complete copies of the detailed proposal. If the commission does not provide its findings or recommendations to the responsible governmental entity by that date, the commission is considered to have declined review of the proposal and to not have made any findings or recommendations on the proposal.

(f) The responsible governmental entity on request of the commission shall provide any additional information regarding a qualifying project reviewed by the commission if the information is available to or can be obtained by the responsible governmental entity.

(g) The commission shall review accepted detailed proposals and provide findings and recommendations to the responsible governmental entity that include:

(1) a determination on whether the terms of the proposal and proposed qualifying project create state tax-supported debt, taking into consideration the specific findings of the comptroller with respect to the recommendation;

(2) an analysis of the potential financial impact of the qualifying project;

(3) a review of the policy aspects of the detailed proposal and the qualifying project; and

(4) proposed general business terms.

(h) Review by the commission does not constitute approval of any appropriations necessary to implement a subsequent interim or comprehensive agreement.

(i) Except as provided by Subsection (e), the responsible governmental entity may not begin negotiation of an interim or comprehensive agreement until the commission has submitted its recommendations or declined to accept the detailed proposals for review.

(j) Not later than the 30th day before the date a comprehensive or interim agreement is executed, the responsible governmental entity shall submit to the commission and the chairs of the House Appropriations Committee and Senate Finance Committee or their designees:

(1) a copy of the proposed interim or comprehensive agreement; and

(2) a report describing the extent to which the commission's recommendations were addressed in the proposed interim or comprehensive agreement.

Sec. 2268.059. CONFIDENTIALITY OF CERTAIN RECORDS SUBMITTED TO COMMISSION. Records and information afforded protection under Section 552.153 that are provided by a responsible governmental entity to the commission shall continue to be protected from disclosure when in the possession of the commission.

SECTION 2. Subchapter C, Chapter 552, Government Code, is amended by adding Section 552.153 to read as follows:

Sec. 552.153. PROPRIETARY RECORDS AND TRADE SECRETS INVOLVED IN CERTAIN PARTNERSHIPS. (a) In this section, "affected jurisdiction," "comprehensive agreement," "contracting person," "interim agreement," "qualifying project," and "responsible governmental entity" have the meanings assigned those terms by Section 2267.001.

(b) Information in the custody of a responsible governmental entity that relates to a proposal for a qualifying project authorized under Chapter 2267 is excepted from the requirements of Section 552.021 if:

(1) the information consists of memoranda, staff evaluations, or other records prepared by the responsible governmental entity, its staff, outside advisors, or consultants exclusively for the evaluation and negotiation of proposals filed under Chapter 2267 for which:

(A) disclosure to the public before or after the execution of an interim or comprehensive agreement would adversely affect the financial interest or bargaining position of the responsible governmental entity; and

(B) the basis for the determination under Paragraph (A) is documented in writing by the responsible governmental entity; or

(2) the records are provided by a contracting person to a responsible governmental entity or affected jurisdiction under Chapter 2267 and contain:

(A) trade secrets of the contracting person;

(B) financial records of the contracting person, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or other means; or

(C) other information submitted by the contracting person that, if made public before the execution of an interim or comprehensive agreement, would adversely affect the financial interest or bargaining position of the responsible governmental entity or the person.

(c) Except as specifically provided by Subsection (b), this section does not authorize the withholding of information concerning:

(1) the terms of any interim or comprehensive agreement, service contract, lease, partnership, or agreement of any kind entered into by the responsible governmental entity and the contracting person or the terms of any financing arrangement that involves the use of any public money; or

(2) the performance of any person developing or operating a qualifying project under Chapter 2267.

SECTION 3. This Act takes effect September 1, 2011.

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

Amend **CSSB 1048** (house committee report) as follows:

(1) In SECTION 1 of the bill, in proposed Section 2267.002(e), Government Code (page 5, line 17), between "other" and "authority", insert "statutory".

(2) In SECTION 1 of the bill, immediately following proposed Section 2267.065(b)(2), Government Code (page 26, between lines 19 and 20), insert the following:

(3) Section 51.780, Education Code;



(3) In SECTION 1 of the bill, in proposed Section 2267.065(b), Government Code (page 26, lines 20 and 21), renumber the subdivisions of that subsection appropriately.

#### **Floor Amendment No. 5**

Amend **CSSB 1048** (house committee printing) in SECTION 1 of the bill, immediately following added Section 2267.060, Government Code (page 22, between lines 23 and 24), by inserting the following:

Sec. 2267.0605. PERFORMANCE AND PAYMENT BONDS REQUIRED. (a) The construction, remodel, or repair of a qualifying project may be performed only after performance and payment bonds for the construction, remodel, or repair have been executed in compliance with Chapter 2253 regardless of whether the qualifying project is on public or private property or is publicly or privately owned.

(b) For purposes of this section, a qualifying project is considered a public work under Chapter 2253 and the responsible governmental entity shall assume the obligations and duties of a governmental entity under that chapter. The obligee under a performance bond under this section may be a public entity, a private person, or an entity consisting of both a public entity and a private person.

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

Amend **CSSB 1048** (house committee report) in SECTION 1 of the bill, immediately following proposed Section 2267.065, Government Code (page 27, between lines 5 and 6), by inserting the following:

Sec. 2267.0655. HISTORICALLY UNDERUTILIZED BUSINESSES. A responsible governmental entity selecting a provider of services for a qualifying project or awarding a contract for a qualifying project shall comply with the requirements of Chapter 2161 if:

(1) the entity receives more than \$10 million in appropriated state funds in a state fiscal year; or

(2) the entity is awarding a contract in an amount that exceeds \$100,000 or is selecting a provider of services for the project in connection with a contract in an amount that exceeds \$100,000.

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

Amend **CSSB 1048** on third reading by striking the text of proposed Section 2267.0655, Government Code, as added on second reading by Amendment No. 8 by Dukes.

The amendments were read.

Senator Jackson moved to concur in the House amendments to **SB 1048**.

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

Nays: Nichols.

### **SENATE BILL 776 WITH HOUSE AMENDMENTS**

Senator Zaffirini called **SB 776** from the President's table for consideration of the House amendments to the bill.

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

### Amendment

Amend **SB 776** by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to customs brokers.

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

SECTION 1. Sections 151.157(a-1), (f), and (f-1), Tax Code, are amended to read as follows:

(a-1) The comptroller shall maintain a password-protected website that a customs broker, or an authorized employee of a customs broker, licensed under this section must use to prepare documentation to show the exemption of tangible personal property under Section 151.307(b)(2). The comptroller shall require a customs broker or authorized employee to use the website to actually produce the documentation after providing all necessary information. The comptroller shall use the information provided by a customs broker or authorized employee under this subsection as necessary to enforce this section and Section 151.307. The comptroller may ~~shall~~ provide an alternate method to prepare documentation to show the exemption of tangible personal property under Section 151.307(b)(2) in those instances when the password-protected website is unavailable due to technical or communication problems. A customs broker or authorized employee may use the alternate method only if the comptroller provides prior authorization for each use.

(f) The comptroller may suspend or revoke a license issued under this section if the customs broker does not comply with Section 151.1575(c) or issues documentation that is false ~~[to obtain a refund of taxes paid on tangible personal property not exported or to assist another person in obtaining such a refund]~~. The comptroller may determine the length of suspension or revocation necessary for the enforcement of this chapter and the comptroller's rules. A proceeding to suspend or revoke a license under this subsection is a contested case under Chapter 2001, Government Code. Judicial review is by trial de novo. The district courts of Travis County have exclusive original jurisdiction of a suit under this section.

(f-1) In addition to any other penalty provided by law, the comptroller may require a customs broker to pay to the comptroller the amount of any tax refunded and the amount of any penalty imposed under Section 151.1575(c) if the customs broker did not comply with this section or the rules adopted by the comptroller under this section ~~[in relation to the refunded tax]~~.

SECTION 2. Sections 151.1575(a), (b), and (c), Tax Code, are amended to read as follows:

(a) A customs broker licensed by the comptroller or an authorized employee of the customs broker may issue documentation certifying that delivery of tangible personal property was made to a point outside the territorial limits of the United States as required by Section 151.307(b)(2)(B) only if the customs broker or authorized employee:

- (1) watches the property cross the border of the United States;

(2) watches the property being placed on a common carrier for delivery outside the territorial limits of the United States; or

(3) verifies that the purchaser is transporting the property to a destination outside of the territorial limits of the United States by:

(A) examining a passport, laser visa identification card, or foreign voter registration picture identification indicating that the purchaser of the property resides in a foreign country;

(B) requiring that the documentation examined under Paragraph (A) have a unique identification number for that purchaser;

(C) requiring the purchaser to produce the property and the original sales receipt for the property;

(D) [~~C~~] requiring the purchaser to state the foreign country destination of the property which must be the foreign country in which the purchaser resides;

(E) [~~D~~] requiring the purchaser to state the date and time the property is expected to arrive in the foreign country destination;

(F) [~~E~~] requiring the purchaser to state the date and time the property was purchased, the name and address of the place at which the property was purchased, the sales price and quantity of the property, and a description of the property;

(G) [~~F~~] requiring the purchaser and the broker or an authorized employee to sign in the presence of each other a form prepared or approved by the comptroller:

(i) stating that the purchaser has provided the information and documentation required by this subdivision; and

(ii) that contains a notice to the purchaser that tangible personal property not exported is subject to taxation under this chapter and the purchaser is liable, in addition to other possible civil liabilities and criminal penalties, for payment of an amount equal to the value of the merchandise if the purchaser improperly obtained a refund of taxes relating to the property; and

(H) [~~G~~] requiring the purchaser to produce the purchaser's:

(i) Form I-94, Arrival/Departure record, or its successor, as issued by the United States Immigration and Naturalization Service, for those purchasers in a county not bordering the United Mexican States; or

(ii) air, land, or water travel documentation if the customs broker is located in a county that does not border the United Mexican States.

(b) A customs broker licensed by the comptroller or an authorized employee of the customs broker may issue and deliver documentation under Subsection (a) at any time after the tangible personal property is purchased and the broker or employee completes the process required by Subsection (a). The comptroller shall limit to six the number of receipts for which a single proof of export documentation may be issued under this section. The documentation must include:

(1) the name and address of the customs broker;

(2) the license number of the customs broker;

(3) the name and address of the purchaser;

(4) the name and address of the place at which the property was purchased;

(5) the date and time of the sale;

- (6) a description and the quantity of the property;
- (7) the sales price of the property;
- (8) the foreign country destination of the property, which may not be the place of export;
- (9) the date and time:
  - (A) at which the customs broker or authorized employee watched the property cross the border of the United States;
  - (B) at which the customs broker or authorized employee watched the property being placed on a common carrier for delivery outside the territorial limits of the United States; or
  - (C) the property is expected to arrive in the foreign country destination, as stated by the purchaser;
- (10) a declaration signed by the customs broker or an authorized employee of the customs broker stating that:
  - (A) the customs broker is a licensed Texas customs broker; and
  - (B) the customs broker or authorized employee inspected the property and the original receipt for the property; and
- (11) an export certification stamp issued by the comptroller.

(c) The comptroller may require a customs broker to pay the comptroller the amount of any tax refunded if the customs broker does not comply with this section, Section 151.157, or the rules adopted by the comptroller under this section or Section 151.157. In addition to the amount of the refunded tax, the comptroller may require the customs broker to pay a penalty of ~~[in an amount equal to the amount of the refunded tax, but]~~ not less than \$500 nor more than \$5,000. The comptroller and the state may deduct any penalties to be paid by a customs broker from the broker's posted bond.

SECTION 3. Section 151.158, Tax Code, is amended by amending Subsection (g) and adding Subsections (g-1) and (g-2) to read as follows:

(g) The comptroller shall charge \$2.10 ~~[\$1.60]~~ for each stamp. The comptroller shall use:

- (1) \$1.60 of the money from the sale of the stamps only for costs related to producing the stamps, including costs of materials, labor, and overhead; and
- (2) the remaining 50 cents only for enforcement of the laws relating to customs brokers under this title.

(g-1) Any unspent money shall be deposited to the credit of the general revenue fund.

(g-2) Customs brokers who return unused stamps to the comptroller's office on a quarterly basis shall get credit towards the purchase of new stamps.

SECTION 4. The change in law made by this Act applies only to documentation issued on or after the effective date of this Act. Documentation issued before the effective date of this Act is governed by the law in effect on the date the documentation was issued, and that law is continued in effect for that purpose.

SECTION 5. This Act takes effect September 1, 2011.

**Floor Amendment No. 1**

Amend **CSSB 776** (house committee printing) as follows:

(1) In SECTION 2 of the bill, in amended Section 151.1575(a)(3)(G)(ii), Tax Code (page 4, line 9), strike "and" and substitute "[~~and~~]".

(2) In SECTION 2 of the bill, in amended Section 151.1575(a)(3)(H)(ii), Tax Code (page 4, line 18), strike the period and substitute the following:  
; and

(I) requiring the purchaser and the broker or an authorized employee, when using a power of attorney form, to attest, as a part of the form and in the presence of each other:

(i) that the purchaser has provided the information and documentation required by this subdivision; and

(ii) that the purchaser is on notice that tangible personal property not exported is subject to taxation under this chapter and the purchaser is liable, in addition to other possible civil liabilities and criminal penalties, for payment of an amount equal to the value of the merchandise if the purchaser improperly obtained a refund of taxes relating to the property.

The amendments were read.

Senator Zaffirini moved to concur in the House amendments to **SB 776**.

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

**SENATE BILL 1170 WITH HOUSE AMENDMENTS**

Senator Carona called **SB 1170** from the President's table for consideration of the House amendments to the bill.

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

**Amendment**

Amend **SB 1170** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to the regulation of barbers and cosmetologists.

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

SECTION 1. Section 1601.001(a), Occupations Code, is amended by adding Subdivision (1-a) to read as follows:

(1-a) "Barber school" means a place that holds a permit issued under Subchapter H to teach the practice of barbering and may be privately or publicly funded. The term includes a barber college.

SECTION 2. Section 1601.253, Occupations Code, is amended by adding Subsection (c) to read as follows:

(c) The commission shall adopt rules for the issuance of a Class A barber certificate to a person who holds an operator license under Chapter 1602. The department shall issue the certificate to an applicant who:

(1) holds an active operator license under Chapter 1602;

(2) completes at least 300 hours of instruction in barbering that includes barber history and shaving through a commission-approved training program in a barber school;

(3) passes the examination required under Subsection (a); and

(4) submits to the department:

(A) an application on a form prescribed by the department; and

(B) the required fee.

SECTION 3. Section 1601.254, Occupations Code, is amended to read as follows:

Sec. 1601.254. ELIGIBILITY FOR BARBER INSTRUCTOR LICENSE [TEACHER'S CERTIFICATE]. (a) A person holding a barber instructor license may perform any act of barbering and may instruct a person in any act of barbering.

(b) To be eligible for a barber instructor license, an [An] applicant [for a teacher's certificate] must:

(1) be at least 18 years of age;

(2) have a high school diploma or a high school equivalency certificate;

(3) hold a current [be a] Class A barber certificate;

(4) [(2)] have completed:

(A) a course consisting of 750 hours of instruction in barber courses and methods of teaching in a barber school; or

(B) at least one year of work experience as a licensed Class A barber and:

(i) have completed 500 hours of instruction in barber courses and methods of teaching in a commission-approved training program;

(ii) have completed 15 semester hours in education courses from an accredited college or university within the 10 years preceding the date of the application; or

(iii) have obtained a degree in education from an accredited college or university; and

(5) pass the required examination.

(c) The commission shall adopt rules for the licensing of specialty instructors to teach specialty courses in the practice of barbering as defined by Sections 1601.002(1)(C)-(H) and (K) [five years' experience as a practicing barber in a barbershop, two years of which occurred in the two years preceding the application date; and

[(3) submit the required examination fee with the application].

[(b) An applicant must submit a new application and fee for each examination taken by the applicant. Fees paid are not refundable.

[(c) The department shall issue a teacher's certificate to an applicant who:

[(1) passes the appropriate examination; and

[(2) pays the required certificate fee.]

SECTION 4. Subchapter F, Chapter 1601, Occupations Code, is amended by adding Sections 1601.261, 1601.262, and 1601.263 to read as follows:

Sec. 1601.261. ELIGIBILITY FOR SHAMPOO APPRENTICE PERMIT. (a) A person holding a shampoo apprentice permit may perform only barbering as defined by Section 1601.002(1)(I).

(b) The department shall issue a shampoo apprentice permit to an applicant who is at least 16 years of age.

(c) A shampoo apprentice permit expires on the second anniversary of the date of issuance and may not be renewed.

(d) The commission shall adopt rules as necessary to administer this section. The commission may not require an applicant to:

(1) complete any hours of instruction at a barber training program as a prerequisite for the issuance of a shampoo apprentice permit; or

(2) pay a fee for a shampoo apprentice permit.

(e) A facility licensed under this chapter may employ a person who holds a shampoo apprentice permit to perform shampooing or conditioning services and shall pay the person at least the federal minimum wage as provided by Section 6, Fair Labor Standards Act of 1938 (29 U.S.C. Section 206).

Sec. 1601.262. ELIGIBILITY FOR BARBER TECHNICIAN/MANICURIST SPECIALTY LICENSE. (a) A person holding a barber technician/manicurist specialty license may perform only barbering as defined by Sections 1601.002(1)(C) through (G).

(b) To be eligible for a barber technician/manicurist specialty license, an applicant must:

(1) submit an application on a form prescribed by the department;

(2) pay the required fee; and

(3) either:

(A) hold both an active barber technician license and an active manicurist license; or

(B) meet the requirements of Subsection (c).

(c) An applicant who qualifies under Subsection (b)(3)(B) must:

(1) be at least 17 years of age and have completed the seventh grade or its equivalent; and

(2) have completed:

(A) 900 hours of instruction in a barber technician/manicurist curriculum in a commission-approved training program; or

(B) 600 hours of instruction in a manicure curriculum and 300 hours of instruction in a barber technician curriculum in a commission-approved training program.

Sec. 1601.263. ELIGIBILITY FOR BARBER TECHNICIAN/HAIR WEAVING SPECIALTY LICENSE. (a) A person holding a barber technician/hair weaving specialty license may perform only barbering as defined by Sections 1601.002(1)(C), (D), (G), and (H).

(b) To be eligible for a barber technician/hair weaving specialty license, an applicant must:

(1) submit an application on a form prescribed by the department;

(2) pay the required fee; and

(3) either:

(A) hold both an active barber technician license and an active hair weaving specialty certificate of registration; or

(B) meet the requirements of Subsection (c).

(c) An applicant who qualifies under Subsection (b)(3)(B) must:

(1) be at least 17 years of age and have completed the seventh grade or its equivalent; and

(2) have completed:

(A) 600 hours of instruction in a barber technician/hair weaving curriculum in a commission-approved training program; or

(B) 300 hours of instruction in a hair weaving curriculum and 300 hours of instruction in a barber technician curriculum in a commission-approved training program.

SECTION 5. Section 1601.352, Occupations Code, is amended to read as follows:

Sec. 1601.352. APPLICATION FOR BARBER SCHOOL PERMIT. ~~[(a)]~~ An applicant for a barber school permit must:

(1) provide to the department adequate proof of financial responsibility;

(2) submit an application on a form prescribed by the department;

(3) satisfy the facility and equipment requirements of Section 1601.353; and

(4) pay the required fee ~~[demonstrate to the department that the school meets the requirements of this subchapter for issuance of a permit].~~

~~[(b) Before issuing a barber school permit, the department must determine that the applicant is financially sound and capable of fulfilling the applicant's commitments for training.]~~

SECTION 6. Section 1601.353, Occupations Code, is amended to read as follows:

Sec. 1601.353. REQUIRED FACILITIES AND EQUIPMENT. ~~[(a)]~~ The department may ~~[not]~~ approve an application for a permit for a barber school if ~~[that provides training leading to issuance of a Class A barber certificate unless]~~ the school ~~[has]~~:

(1) is located in:

(A) a municipality with a population of more than 50,000 that has a building of permanent construction containing at least 2,000 [2,800] square feet of floor space, including classroom and practical areas, covered in [divided into at least:

[A) a senior department;

[B) a junior department;

[C) a class theory room;

[D) a supply room;

[E) an office space; and

[F) separate restrooms for male and female students;

[(2)] a hard-surface floor-covering of tile or other suitable material; or

(B) a municipality with a population of 50,000 or less or an unincorporated area of a county that has a building of permanent construction containing at least 1,000 square feet of floor space, including classroom and practical areas, covered in a hard-surface floor-covering of tile or other suitable material;

(2) has the following equipment:

(A) [(2)] at least 10 student workstations that include a chair that reclines, a back bar, and a wall mirror [20 modern barber chairs, including a cabinet and mirror for each chair];



(B) ~~[(4)]~~ a sink behind every two workstations ~~[barber chairs];~~  
(C) ~~[(5)]~~ a liquid sterilizer for each workstation ~~[barber chair];~~  
(D) ~~[(6)]~~ ~~an adequate number of latherers, vibrators, and hair dryers for student use;~~

~~[(7)]~~ adequate lighting for each room;

(E) ~~[(8)]~~ at least 10 ~~[20]~~ classroom chairs and other materials necessary to teach the required subjects; and

(F) ~~access to permanent restrooms and~~ ~~[a blackboard, anatomical charts of the head, neck, and face, and one barber chair in the class theory room;~~

~~[(9)]~~ ~~at least one medical dictionary and a standard work on human anatomy;~~

~~[(10)]~~ adequate drinking fountain facilities ~~[, with at least one for each floor]; and~~

(3) meets any other requirement set by the commission

~~[(11)]~~ ~~at least one fire extinguisher].~~

~~[(b)]~~ ~~An applicant for a barber school permit must submit to the department:~~

~~[(1)]~~ ~~a detailed drawing and chart of the proposed physical layout of the school, showing the departments, floor space, equipment, lights, and outlets;~~

~~[(2)]~~ ~~photographs of the proposed site for the school, including the interior and exterior of the building, rooms, and departments;~~

~~[(3)]~~ ~~a detailed copy of the training program;~~

~~[(4)]~~ ~~a copy of the catalogue and promotional literature of the school;~~

~~[(5)]~~ ~~a copy of the building lease or proposed building lease if the building is not owned by the school;~~

~~[(6)]~~ ~~a sworn statement showing the ownership of the school; and~~

~~[(7)]~~ ~~the required permit fee.]~~

SECTION 7. Section 1601.402(b), Occupations Code, is amended to read as follows:

(b) A Class A barber, barber technician, instructor ~~[teacher]~~, manicurist, or other licensed specialist must renew the person's certificate or license on or before the expiration date.

SECTION 8. Section 1601.405(a), Occupations Code, is amended to read as follows:

(a) The department may not require a Class A barber, barber technician, instructor ~~[teacher]~~, or manicurist who is serving on active duty in the United States armed forces to renew the person's certificate or license.

SECTION 9. Section 1601.560, Occupations Code, is amended to read as follows:

Sec. 1601.560. INSTRUCTOR-TO-STUDENT RATIO ~~[QUALIFIED INSTRUCTOR]~~. (a) A ~~[In addition to the teacher required by Section 1601.355(b), a]~~ barber school must ~~[that provides training leading to issuance of a Class A barber certificate shall]~~ have at least one ~~[qualified]~~ instructor ~~[, holding a Class A certificate,]~~ for every 25 students on the school's premises. ~~[A teacher may serve as an instructor in practical work in addition to holding a position as a theory teacher.]~~

(b) A barber school must have at least one instructor for every three student instructors on the school's premises ~~[may not enroll more than one student teacher for each certified teacher who teaches at the school]~~. A student instructor ~~[teacher]~~ shall concentrate on developing teaching skills and may not be booked with customers.

SECTION 10. Section 1601.563(b), Occupations Code, is amended to read as follows:

(b) A barber school's refund policy must provide that:

(1) the refund is based on the period of the student's enrollment, computed on the basis of course time expressed in scheduled ~~[clock]~~ hours, as specified by an enrollment agreement, contract, or other document acceptable to the department;

(2) the effective date of the termination for refund purposes is the earliest of:

(A) the last date of attendance, if the student is terminated by the school;

(B) the date the permit holder receives the student's written notice of withdrawal; or

(C) 10 school days after the last date of attendance; and

(3) the school may retain not more than \$100 if:

(A) tuition is collected before the course of training begins; and

(B) the student does not begin the course of training before the date the cancellation period under Section 1601.562 expires.

SECTION 11. Section 1601.602, Occupations Code, is amended to read as follows:

Sec. 1601.602. REVOCATION OF STUDENT INSTRUCTOR'S ~~[TEACHER'S]~~ BARBER CERTIFICATE. A violation of Section 1601.560(b) by a student instructor ~~[teacher]~~ is a ground for the revocation of the ~~[person's]~~ student instructor's ~~[teacher]~~ barber certificate [license].

SECTION 12. Section 1602.002(a), Occupations Code, is amended to read as follows:

(a) In this chapter, "cosmetology" means the practice of performing or offering to perform for compensation any of the following services:

(1) treating a person's hair by:

(A) providing any method of treatment as a primary service, including arranging, beautifying, bleaching, cleansing, coloring, cutting, dressing, dyeing, processing, shampooing, shaping, singeing, straightening, styling, tinting, or waving;

(B) providing a necessary service that is preparatory or ancillary to a service under Paragraph (A), including bobbing, clipping, cutting, or trimming; or

(C) cutting the person's hair as a separate and independent service for which a charge is directly or indirectly made separately from charges for any other service;

(2) weaving or braiding a person's hair;

(3) shampooing and conditioning a person's hair;

(4) servicing a person's wig or artificial hairpiece on a person's head or on a block after the initial retail sale and servicing in any manner listed in Subdivision (1);

(5) treating a person's mustache or beard by arranging, beautifying, coloring, processing, styling, or trimming;

(6) cleansing, stimulating, or massaging a person's scalp, face, neck, or arms:

(A) by hand or by using a device, apparatus, or appliance; and

(B) with or without the use of any cosmetic preparation, antiseptic, tonic, lotion, or cream;

(7) beautifying a person's face, neck, or arms using a cosmetic preparation, antiseptic, tonic, lotion, powder, oil, clay, cream, or appliance;

(8) administering facial treatments;

(9) removing superfluous hair from a person's body using depilatories, preparations, or tweezing techniques [mechanical tweezers];

(10) treating a person's nails by:

(A) cutting, trimming, polishing, tinting, coloring, cleansing, or manicuring; or

(B) attaching false nails; [~~or~~]

(11) massaging, cleansing, treating, or beautifying a person's hands or feet;

or

(12) applying semipermanent, thread-like extensions composed of single fibers to a person's eyelashes.

SECTION 13. Section 1602.254, Occupations Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) To be eligible for an operator license, an applicant must meet the requirements of Subsection (c) or:

(1) be at least 17 years of age;

(2) have obtained a high school diploma or the equivalent of a high school diploma or have passed a valid examination administered by a certified testing agency that measures the person's ability to benefit from training; and

(3) have completed:

(A) 1,500 hours of instruction in a licensed beauty culture school; or

(B) 1,000 hours of instruction in beauty culture courses and 500 hours of related high school courses prescribed by the commission in a vocational cosmetology program in a public school.

(c) The commission shall adopt rules for the issuance of an operator license under this section to a person who holds a Class A barber certificate. The department shall issue the license to an applicant who:

(1) holds an active Class A barber certificate;

(2) completes 300 hours of instruction in cosmetology through a commission-approved training program in a cosmetology school;

(3) passes the examination required under Section 1602.262; and

(4) submits to the department:

(A) an application on a form prescribed by the department; and

(B) the required fee.

SECTION 14. Sections 1602.255(b) and (c), Occupations Code, are amended to read as follows:

(b) To be eligible for an instructor license, an applicant must:

(1) be at least 18 years of age;

(2) have a high school diploma [~~completed the 12th grade~~] or a high school equivalency certificate [~~its equivalent~~];

(3) hold an operator license under this chapter; [~~and~~]

(4) have [~~completed~~]:

(A) completed [~~a course consisting of~~] 750 hours of instruction in [~~cosmetology courses and~~] methods of teaching in:

(i) a licensed private beauty culture school; or

(ii) a vocational training program of a publicly financed postsecondary institution; [~~or~~]

(B) completed at least:

(i) one year [~~two years~~] of verifiable experience as a licensed cosmetology operator; and

(ii) 500 [~~250~~] hours of instruction in cosmetology in a commission-approved training program;

(C) completed 15 semester hours in education courses through an accredited college or university within the 10 years before the date of application; or

(D) obtained a degree in education from an accredited college or university; and

(5) pass the examination required under Section 1602.262.

(c) The commission shall adopt rules for the licensing of specialty instructors to teach specialty courses in the practice of cosmetology defined in Sections 1602.002(a)(7) [~~1602.002(7)~~], (9), [~~and~~] (10), and (12).

SECTION 15. Section 1602.257, Occupations Code, is amended to read as follows:

Sec. 1602.257. ELIGIBILITY FOR ESTHETICIAN [~~A FACIALIST~~] SPECIALTY LICENSE. (a) A person holding an esthetician [~~a facialist~~] specialty license may perform only the practice of cosmetology defined in Sections 1602.002(a)(6), (7), (8), [~~through~~] (9), and (12).

(b) To be eligible for an esthetician [~~a facialist~~] specialty license, an applicant must:

(1) be at least 17 years of age;

(2) have obtained a high school diploma or the equivalent of a high school diploma or have passed a valid examination administered by a certified testing agency that measures the person's ability to benefit from training; and

(3) have completed 750 hours of instruction in esthetics [~~facialist~~] specialty through a commission-approved training program.

SECTION 16. Subchapter F, Chapter 1602, Occupations Code, is amended by adding Sections 1602.2571 and 1602.2572 to read as follows:

Sec. 1602.2571. ELIGIBILITY FOR A SPECIALTY LICENSE IN EYELASH EXTENSION APPLICATION. (a) A person holding a specialty license in eyelash extension application may perform only the practice of cosmetology defined in Section 1602.002(a)(12).

(b) To be eligible for a specialty license in eyelash extension application, an applicant must:

(1) be at least 17 years of age;

(2) have obtained a high school diploma or the equivalent of a high school diploma or have passed a valid examination administered by a certified testing agency that measures the person's ability to benefit from training; and

(3) have completed a training program described by Section 1602.2572 that has been approved by the commission.

Sec. 1602.2572. EYELASH EXTENSION APPLICATION TRAINING PROGRAM. (a) An eyelash extension application training program must include at least 320 hours of classroom instruction and practical experience, including at least eight hours of theoretical instruction, and include instruction in the following areas:

(1) recognizing infectious or contagious diseases of the eye and allergic reactions to materials;

(2) proper sanitation practices;

(3) occupational health and safety practices;

(4) eyelash extension application procedures; and

(5) eyelash extension isolation and separation procedures.

(b) An instructor at an eyelash extension application training program must comply with Section 1602.251(b).

(c) The commission shall adopt rules regarding eyelash extension application training programs and may establish or designate approved training programs.

SECTION 17. Subchapter F, Chapter 1602, Occupations Code, is amended by adding Section 1602.261 to read as follows:

Sec. 1602.261. ELIGIBILITY FOR MANICURIST/ESTHETICIAN SPECIALTY LICENSE. (a) A person holding a manicurist/esthetician specialty license may perform only the practice of cosmetology defined in Sections 1602.002(a)(6) through (11).

(b) To be eligible for a manicurist/esthetician specialty license, an applicant must:

(1) submit an application on a form prescribed by the department;

(2) pay the required fee; and

(3) either:

(A) hold both an active manicurist specialty license and an active esthetician specialty license; or

(B) meet the educational requirements of Subsection (c).

(c) An applicant who qualifies under Subsection (b)(3)(B) must:

(1) either:

(A) have obtained a high school diploma or a high school equivalency certificate; or

(B) have passed a valid examination administered by a certified testing agency that measures the person's ability to benefit from training; and

(2) have completed:

(A) 1,200 hours of instruction in a manicure/esthetics specialty curriculum in a commission-approved training program; or

(B) 600 hours of instruction in a manicure curriculum and 750 hours of instruction in an esthetics curriculum in commission-approved training programs.

SECTION 18. Section 1602.262, Occupations Code, is amended to read as follows:

Sec. 1602.262. ISSUANCE OF LICENSE OR CERTIFICATE. (a) An applicant for a ~~[an operator]~~ license under this chapter ~~[- instructor license, manicurist specialty license, or facialist specialty license]~~ is entitled to the license if the applicant:

- (1) meets the applicable eligibility requirements;
- (2) passes the applicable examination;
- (3) pays the required fee; ~~[and]~~
- (4) has not committed an act that constitutes a ground for denial of the license; and

(5) submits an application on a form prescribed by the department.

(b) An applicant for a specialty certificate is entitled to the certificate if the applicant:

- (1) meets the eligibility requirements;
- (2) pays the required fee; ~~[and]~~
- (3) has not committed an act that constitutes a ground for denial of the certificate; and

(4) submits an application on a form prescribed by the department.

SECTION 19. Section 1602.267(c), Occupations Code, is amended to read as follows:

(c) A shampoo apprentice permit expires on the second ~~[first]~~ anniversary of the date of issuance and may not be renewed.

SECTION 20. Sections 1602.303(a) and (b), Occupations Code, are amended to read as follows:

(a) A person holding a private beauty culture school license may maintain an establishment in which any practice of cosmetology is taught, including providing an eyelash extension application training program described by Section 1602.2572.

(b) An application for a private beauty culture school license must be accompanied by the required license fee and inspection fee and:

- (1) be on a form prescribed by the department;
- (2) be verified by the applicant; and
- (3) contain a statement that the building:

(A) is of permanent construction and is divided into at least two separate areas:

- (i) one area for instruction in theory; and
- (ii) one area for clinic work;

(B) contains a minimum of:

(i) 2,000 [3,500] square feet of floor space if the building is located in a municipality with a population of more than 50,000; or

(ii) 1,000 square feet of floor space if the building is located in a municipality with a population of 50,000 or less or in an unincorporated area of a county;

(C) has access to permanent restrooms and adequate drinking fountain facilities [separate restrooms for male and female students]; and

(D) contains, or will contain before classes begin, the equipment established by commission rule as sufficient to properly instruct a minimum of 10 ~~[50]~~ students.

SECTION 21. Section 1602.305(a), Occupations Code, is amended to read as follows:

(a) A person holding a specialty shop license may maintain an establishment in which only the practice of cosmetology as defined in Section 1602.002(a)(2) [~~1602.002(2)~~], (4), (7), (9), [~~or~~] (10), or (12) is performed.

SECTION 22. Section 1602.451(a), Occupations Code, is amended to read as follows:

- (a) The holder of a private beauty culture school license shall:
- (1) maintain a sanitary establishment;
  - (2) maintain [~~on its staff and~~] on duty [~~during business hours~~] one full-time licensed instructor for each 25 students in attendance;
  - (3) maintain a daily record of students' attendance;
  - (4) establish regular class and instruction hours and grades;
  - (5) require a school term of not less than nine months and not less than 1,500 hours instruction for a complete course in cosmetology;
  - (6) require a school term of not less than 600 hours instruction for a complete course in manicuring;
  - (7) hold examinations before issuing diplomas;
  - (8) maintain a copy of the school's curriculum in a conspicuous place and verify that the curriculum is being followed;
  - (9) publish in the school's catalogue and enrollment contract a description of the refund policy required under Section 1602.458; and
  - (10) provide the department with information on:
    - (A) the current course completion rates of students who attend a course of instruction offered by the school; and
    - (B) job placement rates and employment rates of students who complete the course of instruction.

SECTION 23. Section 1602.458(b), Occupations Code, is amended to read as follows:

- (b) The refund policy must provide that:
- (1) the refund is based on the period of the student's enrollment, computed on the basis of course time expressed in scheduled [~~clock~~] hours, as specified by an enrollment agreement, contract, or other document acceptable to the department;
  - (2) the effective date of the termination for refund purposes is the earliest of:
    - (A) the last date of attendance, if the student is terminated by the school;
    - (B) the date the license holder receives the student's written notice of withdrawal; or
    - (C) 10 school days after the last date of attendance; and
  - (3) the school may retain not more than \$100 if:
    - (A) tuition is collected before the course of training begins; and
    - (B) the student fails to withdraw from the course of training before the cancellation period expires.

SECTION 24. Section 1603.255, Occupations Code, is amended to read as follows:

Sec. 1603.255. EARLY EXAMINATION. The department ~~[, on written request by a student,]~~ may allow ~~[provide]~~ for the early written examination of a student who has completed the following number of ~~[an applicant for a Class A barber certificate, a teacher's certificate, or an operator license who has completed at least 1,000]~~ hours of instruction in a department-approved training program:

(1) 1,000 hours for a student seeking a Class A barber certificate or operator license in a private barber or cosmetology school; or

(2) 900 hours for a student seeking a Class A barber certificate or operator license in a publicly funded barber or cosmetology school.

SECTION 25. Sections 1603.352(a), (b), and (c), Occupations Code, are amended to read as follows:

(a) A person who holds a license, certificate, or permit issued under this chapter, Chapter 1601, or Chapter 1602 and who performs a barbering service described by Section 1601.002(1)(E) or (F) or a cosmetology service described by Section 1602.002(a)(10) or (11) shall, before performing the service, clean, disinfect, and sterilize with an autoclave or ~~[a]~~ dry heat sterilizer or sanitize with an ~~[,]~~ ultraviolet sanitizer, ~~[or other department approved sterilizer,]~~ in accordance with the sterilizer or sanitizer manufacturer's instructions, each metal instrument, including metal nail clippers, cuticle pushers, cuticle nippers, and other metal instruments, used to perform the service.

(b) The owner or manager of a barber shop, barber school, beauty shop, specialty shop, beauty culture school, or other facility licensed under this chapter, Chapter 1601, or Chapter 1602, is responsible for providing an autoclave, ~~[or]~~ a dry heat sterilizer, or an ultraviolet sanitizer ~~[, or other department approved sterilizer]~~ for use in the shop or school as required by Subsection (a). ~~[An autoclave or a dry heat, ultraviolet, or other department approved sterilizer used as required by Subsection (a) must be listed with the United States Food and Drug Administration.]~~

(c) Each sterilized or sanitized instrument must be stored in accordance with the manufacturer's instructions.

SECTION 26. The following provisions of the Occupations Code are repealed:

- (1) Section 1601.001(a)(5);
- (2) Section 1601.354;
- (3) Section 1601.355; and
- (4) Section 1602.403(b).

SECTION 27. (a) The Texas Department of Licensing and Regulation shall conduct a study that analyzes the performance of barber schools under Subchapter L, Chapter 1601, Occupations Code, and beauty culture schools under Subchapter J, Chapter 1602, Occupations Code, including the payment of refunds and recommendations for improvements to the process for the payment of refunds to eligible students.

(b) In conducting the study, the Texas Department of Licensing and Regulation shall consult with:

- (1) the Advisory Board on Barbering;
- (2) the Advisory Board on Cosmetology;
- (3) national accrediting organizations for barbers and cosmetologists;
- (4) representatives of barber schools and beauty culture schools; and



(5) barbers, cosmetologists, and other interested parties.

(c) Not later than September 1, 2012, the Texas Department of Licensing and Regulation shall report the results of the study to the:

- (1) House Committee on Licensing and Administrative Procedures; and
- (2) Senate Committee on Business and Commerce.

(d) This section expires September 1, 2013.

SECTION 28. (a) The Texas Department of Licensing and Regulation shall issue a specialty license in eyelash extension application under Section 1602.2571, Occupations Code, as added by this Act, to an applicant who:

(1) submits an application on a form prescribed by the department not later than April 1, 2012;

(2) meets the eligibility requirements of Sections 1602.2571(b)(1) and (2), Occupations Code, as added by this Act;

(3) submits proof of either:

(A) successful completion of a training program provided by an eyelash extension manufacturer or distributor that is approved by the department; or

(B) completion of at least 240 hours of verifiable practical experience performing the practice of cosmetology defined in Section 1602.002(a)(12), Occupations Code, as added by this Act, at a facility licensed under this chapter; and

(4) pays the required application fee.

(b) A license issued under this section may be renewed in the same manner as a specialty license in eyelash extension application issued under Section 1602.2571, Occupations Code, as added by this Act.

(c) This section expires March 1, 2013.

SECTION 29. (a) Not later than February 1, 2012, the Texas Commission of Licensing and Regulation shall adopt rules to implement Sections 1602.2571 and 1602.2572, Occupations Code, as added by this Act, and Section 28 of this Act.

(b) A person is not required to hold a specialty license in eyelash extension application issued under Section 1602.2571, Occupations Code, as added by this Act, until June 1, 2012.

SECTION 30. (a) The changes in law made by this Act apply only to an application for the issuance or renewal of a license or certificate that is filed with the Texas Department of Licensing and Regulation on or after the effective date of this Act. An application for the issuance or renewal of a license or certificate that is filed before the effective date of this Act is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

(b) Except as provided by Section 29(a) of this Act, the Texas Commission of Licensing and Regulation shall adopt rules necessary to implement the changes in law made by this Act not later than March 31, 2012.

SECTION 31. This Act takes effect September 1, 2011.

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

Amend **CSSB 1170** (house committee printing) as follows:

(1) In SECTION 20 of the bill, in proposed Section 1602.303(b)(3)(B)(i), Occupations Code, strike "2,000" and substitute "2,800".

(2) In SECTION 20 of the bill, in proposed Section 1602.303(b)(3)(B)(i), Occupations Code, strike "municipality" and substitute "county".

(3) In SECTION 20 of the bill, in proposed Section 1602.303(b)(3)(B)(i), Occupations Code, strike "50,000" and substitute "100,000".

(4) In SECTION 20 of the bill, in proposed Section 1602.303(b)(3)(B)(ii), Occupations Code, strike "1,000" and substitute "1,800".

(5) In SECTION 20 of the bill, in proposed Section 1602.303(b)(3)(B)(ii), Occupations Code, strike "municipality with a population of 50,000 or less or in an unincorporated area of a county" and substitute "county with a population of 100,000 or less".

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

SECTION \_\_\_\_\_. To the extent of any conflict, the change in law made by this Act to Section 1602.303(b)(3)(B), Occupations Code, prevails over a change in law made by any other Act of the 82nd Legislature, Regular Session, 2011, regardless of the relative dates of enactment.

The amendments were read.

Senator Carona moved to concur in the House amendments to **SB 1170**.

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

#### **SENATE BILL 1546 WITH HOUSE AMENDMENT**

Senator Patrick called **SB 1546** from the President's table for consideration of the House amendment to the bill.

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

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

Amend **SB 1546** (house committee printing) in SECTION 1 of the bill, in amended Section 41.45 (e-1), Tax Code (page 1, line 8), by striking "under Section 1.111" and substituting "[~~under Section 1.111~~]".

The amendment was read.

Senator Patrick moved to concur in the House amendment to **SB 1546**.

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

Nays: Rodriguez.

#### **SENATE BILL 1810 WITH HOUSE AMENDMENT**

Senator Carona called **SB 1810** from the President's table for consideration of the House amendment to the bill.

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

#### **Amendment**

Amend **SB 1810** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to the exemption of certain retirement accounts from access by creditors.

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

SECTION 1. Sections 42.0021(a), (c), and (d), Property Code, are amended to read as follows:

(a) In addition to the exemption prescribed by Section 42.001, a person's right to the assets held in or to receive payments, whether vested or not, under any stock bonus, pension, annuity, deferred compensation, profit-sharing, or similar plan, including a retirement plan for self-employed individuals, or a simplified employee pension plan, an individual retirement account or individual retirement annuity, including an inherited individual retirement account or individual retirement annuity, or a health savings account, and under any annuity or similar contract purchased with assets distributed from that type of plan or account, [and under any retirement annuity or account described by Section 403(b) or 408A of the Internal Revenue Code of 1986, and under any individual retirement account or any individual retirement annuity, including a simplified employee pension plan, and under any health savings account described by Section 223 of the Internal Revenue Code of 1986,] is exempt from attachment, execution, and seizure for the satisfaction of debts to the extent [unless] the plan, contract, annuity, or account is exempt from federal income tax, or to the extent federal income tax on the person's interest is deferred until actual payment of benefits to the person under Section 223, 401(a), 403(a), 403(b), 408(a), 408A, 457(b), or 501(a), Internal Revenue Code of 1986, including a government plan or church plan described by Section 414(d) or (e), [does not qualify under the applicable provisions of the] Internal Revenue Code of 1986. For purposes of this subsection, the interest of a person in a plan, annuity, account, or contract acquired by reason of the death of another person, whether as an owner, participant, beneficiary, survivor, coannuitant, heir, or legatee, is exempt to the same extent that the interest of the person from whom the plan, annuity, account, or contract was acquired was exempt on the date of the person's death. [A person's right to the assets held in or to receive payments, whether vested or not, under a government or church plan or contract is also exempt unless the plan or contract does not qualify under the definition of a government or church plan under the applicable provisions of the federal Employee Retirement Income Security Act of 1974.] If this subsection is held invalid or preempted by federal law in whole or in part or in certain circumstances, the subsection remains in effect in all other respects to the maximum extent permitted by law.

(c) Amounts distributed from a plan, annuity, account, or contract entitled to an [the] exemption under Subsection (a) are not subject to seizure for a creditor's claim for 60 days after the date of distribution if the amounts qualify as a nontaxable rollover contribution under Subsection (b).

(d) A participant or beneficiary of a [~~stock bonus, pension, profit sharing, retirement~~] plan, annuity, account, or contract entitled to an exemption under Subsection (a), other than an individual retirement account or individual retirement annuity, [or government plan] is not prohibited from granting a valid and enforceable security interest in the participant's or beneficiary's right to the assets held in or to receive payments under the exempt plan, annuity, account, or contract to secure a loan to the participant or beneficiary from the exempt plan, annuity, account, or contract, and the right to the assets held in or to receive payments from the plan, annuity,

account, or contract is subject to attachment, execution, and seizure for the satisfaction of the security interest or lien granted by the participant or beneficiary to secure the loan.

SECTION 2. Section 42.0021, Property Code, as amended by this Act, applies to an inherited individual retirement plan, annuity, account, or contract without regard to whether the plan, annuity, account, or contract was created before, on, or after the effective date of this Act.

SECTION 3. The changes made by this Act are intended to clarify rather than change existing law.

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, 2011.

The amendment was read.

Senator Carona moved to concur in the House amendment to **SB 1810**.

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

#### **SENATE BILL 1285 WITH HOUSE AMENDMENT**

Senator Watson called **SB 1285** from the President's table for consideration of the House amendment to the bill.

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

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

Amend **SB 1285** (house engrossment) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Subdivision (1), Subsection (a), Section 8.01, Chapter 452 (**SB 738**), Acts of the 72nd Legislature, Regular Session, 1991 (Article 6243n-1, Vernon's Texas Civil Statutes), is amended to read as follows:

(1) Deposits by the members to the police retirement system shall be made at a rate of at least 13 [~~six~~] percent of the basic hourly earnings of each member. Deposits required to be made by members shall be deducted from payroll. On recommendation of the board, the Active-Contributory members may by a majority of those voting increase the rate of member deposits above 13 [~~six~~] percent to whatever amount the board has recommended. If the deposit rate for members has been increased to a rate above 13 [~~six~~] percent, the rate may be decreased if the board recommends the decrease, the board's actuary approves the decrease, and a majority of the Active-Contributory members voting on the matter approve the decrease.

The amendment was read.

Senator Watson moved to concur in the House amendment to **SB 1285**.

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

**SENATE BILL 1909 WITH HOUSE AMENDMENT**

Senator Lucio called **SB 1909** from the President's table for consideration of the House amendment to the bill.

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

**Amendment**

Amend **SB 1909** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to The University of Texas at Brownsville, including its partnership agreement with the Texas Southmost College District.

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

SECTION 1. Subsection (c), Section 78.02, Education Code, is amended to read as follows:

(c) The university may enter into any ~~a partnership~~ agreement with the Texas Southmost ~~Union Junior~~ College District to facilitate higher education advancement and opportunity in the district's service area and the transition of students from Texas Southmost College to in the manner authorized by Subchapter N, Chapter 51, to offer a lower division, occupational, or technical course that is not offered at the university. An agreement may cover any matter related to those purposes, including the facilitation of the transfer of course credit and the alignment of courses between the university and the college.

SECTION 2. Section 78.03, Education Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a) The board may prescribe courses leading to customary degrees offered at leading American universities and may award those degrees, including bachelor's, master's, and doctoral degrees and their equivalents ~~authorize the university to offer any upper level or graduate course which is authorized by the Texas Higher Education Coordinating Board~~.

(a-1) A department, school, or degree program may not be instituted without the prior approval of the Texas Higher Education Coordinating Board.

SECTION 3. Section 78.04, Education Code, is amended to read as follows:

Sec. 78.04. FACILITIES. (a) The board shall make provisions for adequate physical facilities for use by the university. Subject to the agreement of the parties as provided by Subsection (b), the facilities may include facilities[-] on land committed by the board of trustees of the Texas Southmost [Union Junior] College District on the district's Texas Southmost College campus. The provision of facilities is[-] subject to the normal requirements of the board and the Texas Higher Education Coordinating Board.

(b) The board and the board of trustees of the Texas Southmost College District may contract with each other for the use of facilities. The terms of the contract shall be negotiated between the parties and must provide for reasonable compensation for the use of facilities.

SECTION 4. Subsections (b) and (d), Section 78.02, and Sections 78.07 and 78.08, Education Code, are repealed.

SECTION 5. (a) The University of Texas at Brownsville and the Texas Southmost College District, formerly referred to as the Southmost Union Junior College District, are free-standing, independent institutions that have operated in close association under a partnership agreement authorized by Section 78.02, Education Code. It is the intent of this Act to facilitate the independent operation of the university and the college district in the absence of such a partnership, but this Act does not affect the authority of the university and the college district to continue in partnership or to establish a new partnership at a future date.

(b) The University of Texas at Brownsville and the Texas Southmost College District shall cooperate to ensure that each institution timely achieves separate accreditation from a recognized accrediting agency before the termination of the existing partnership agreement and shall continue a partnership agreement in effect until August 31, 2015, to the extent necessary to ensure accreditation.

(c) The University of Texas at Brownsville and the Texas Southmost College District may extend or renew the existing partnership agreement, agree to its earlier termination, or execute a new agreement as necessary to ensure accreditation.

(d) The University of Texas at Brownsville and the Texas Southmost College District shall submit to the legislature a semiannual report on the status of the partnership until each institution achieves separate accreditation and the existing partnership agreement is terminated.

SECTION 6. 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, 2011.

The amendment was read.

Senator Lucio moved to concur in the House amendment to **SB 1909**.

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

#### **SENATE BILL 1449 WITH HOUSE AMENDMENT**

Senator Zaffirini called **SB 1449** from the President's table for consideration of the House amendment to the bill.

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

#### **Amendment**

Amend **SB 1449** by substituting in lieu thereof the following:

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

relating to an alternative method of satisfying certain licensing requirements for chemical dependency treatment facilities.

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

SECTION 1. Subsection (b), Section 464.005, Health and Safety Code, is amended to read as follows:

(b) The Department of State Health Services [~~commission~~] may require an inspection before renewing a license, unless the applicant submits an accreditation review from the Commission on Accreditation of Rehabilitation Facilities, the Joint Commission, or another national accreditation organization recognized by the department in accordance with Section 464.0055.

SECTION 2. Subchapter A, Chapter 464, Health and Safety Code, is amended by adding Section 464.0055 to read as follows:

Sec. 464.0055. ACCREDITATION REVIEW TO SATISFY INSPECTION REQUIREMENTS. (a) In this section:

(1) "Accreditation commission" means the Commission on Accreditation of Rehabilitation Facilities, the Joint Commission, or another national accreditation organization recognized by the Department of State Health Services.

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

(b) The department shall accept an accreditation review from an accreditation commission for a treatment facility instead of an inspection by the department for renewal of a license under Section 464.005, but only if:

(1) the treatment facility is accredited by the Commission on Accreditation of Rehabilitation Facilities, the Joint Commission, or another national accreditation organization recognized by the department;

(2) the accreditation commission maintains and updates an inspection or review program that, for each treatment facility, meets the department's applicable minimum standards;

(3) the accreditation commission conducts a regular on-site inspection or review of the treatment facility according to the accreditation commission's guidelines; and

(4) the treatment facility submits to the department a copy of its most recent accreditation review from the accreditation commission in addition to the application, fee, and any report or other document required for renewal of a license.

(c) This section does not limit the department in performing any duties, investigations, or inspections authorized by this chapter, including authority to take appropriate action relating to a treatment facility, such as closing the treatment facility.

(d) This section does not require a treatment facility to obtain accreditation from an accreditation commission.

SECTION 3. Section 464.005, Health and Safety Code, as amended by this Act, and Section 464.0055, Health and Safety Code, as added by this Act, apply only to the renewal of a license to operate a chemical dependency treatment facility that expires on or after the effective date of this Act. A license that expires before that date is governed by the law in effect on the date the license expires, and the former law is continued in effect for that purpose.

SECTION 4. This Act takes effect September 1, 2011.

The amendment was read.

Senator Zaffirini moved to concur in the House amendment to **SB 1449**.

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

## SENATE BILL 385 WITH HOUSE AMENDMENT

Senator Williams called **SB 385** from the President's table for consideration of the House amendment to the bill.

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

### Floor Amendment No. 1 on Third Reading

Amend **SB 385** on third reading as follows:

(1) In SECTION 1 of the bill, strike added Paragraphs (D) and (E) in amended Section 386.252(a)(1), Health and Safety Code (page 1, line 22, through page 2, line 1), and substitute the following:

(D) five percent shall be used for the clean fleet program;

(E) two percent may be used for the Texas alternative fueling facilities program;

(F) not less than 16 percent shall be used for the natural gas vehicle grant program; and

(G) not more than four percent may be used to provide grants for natural gas fueling stations under Section 394.010;

(2) In the recital to SECTION 2 of the bill, amending Section 386.252, Health and Safety Code (page 3, line 2), strike "Subsection (e)" and substitute "Subsections (e), (f), and (g)".

(3) In SECTION 2 of the bill, immediately following added Section 386.252(e), Health and Safety Code (page 3, between lines 7 and 8), add the following:

(f) Notwithstanding Subsection (a), the commission may reallocate money in the fund if:

(1) the commission, in consultation with the governor and the advisory board, determines that the use of the money in the fund for the program established under Chapter 394 will cause the state to be in noncompliance with the state implementation plan to the extent that federal action is likely; and

(2) the commission finds that the reallocation of some or all of the funding for the program established under Chapter 394 would resolve the noncompliance.

(g) Under Subsection (f), the commission may not reallocate more than the minimum amount of money necessary to resolve the noncompliance.

(4) In the recital to SECTION 3 of the bill, adding Chapter 393 to Subtitle C, Title 5, Health and Safety Code (page 3, line 9), strike "Chapter 393" and substitute "Chapters 393 and 394".

(5) In SECTION 3 of the bill, immediately following added Chapter 393, Health and Safety Code (page 5, between lines 12 and 13), add the following:

#### CHAPTER 394. TEXAS NATURAL GAS VEHICLE GRANT PROGRAM

Sec. 394.001. DEFINITIONS. In this chapter:

(1) "Advisory board" means the Texas Emissions Reduction Plan Advisory Board.

(2) "Commission" means the Texas Commission on Environmental Quality.

(3) "Executive director" means the executive director of the Texas Commission on Environmental Quality.

(4) "Heavy-duty motor vehicle" means a motor vehicle with:



(A) a gross vehicle weight rating of more than 8,500 pounds; and

(B) an engine certified to the United States Environmental Protection Agency's standards for heavy-duty engines.

(5) "Incremental cost" means the difference between the manufacturer's suggested retail price of a baseline vehicle, the documented dealer price of a baseline vehicle, cost to lease or otherwise commercially finance a baseline vehicle, cost to repower with a baseline engine, or other appropriate baseline cost established by the commission, and the actual cost of the natural gas vehicle purchase, lease, or other commercial financing, or repower.

(6) "Medium-duty motor vehicle" means a motor vehicle with a gross vehicle weight rating of more than 8,500 pounds that:

(A) is certified to the United States Environmental Protection Agency's light-duty emissions standard; or

(B) has an engine certified to the United States Environmental Protection Agency's light-duty emissions standard.

(7) "Motor vehicle" has the meaning assigned by Section 386.151.

(8) "Natural gas vehicle" means a motor vehicle that receives not less than 75 percent of its power from compressed or liquefied natural gas.

(9) "Program" means the Texas natural gas vehicle grant program established under this chapter.

Sec. 394.002. PROGRAM. The commission shall establish and administer the Texas natural gas vehicle grant program to encourage an entity that has a heavy-duty or medium-duty motor vehicle to repower the vehicle with a natural gas engine or replace the vehicle with a natural gas vehicle. Under the program, the commission shall provide grants for eligible heavy-duty motor vehicles and medium-duty motor vehicles to offset the incremental cost for the entity of repowering or replacing the heavy-duty or medium-duty motor vehicle.

Sec. 394.003. QUALIFYING VEHICLES. (a) A vehicle is a qualifying vehicle that may be considered for a grant under the program if during the calendar year the entity:

(1) purchased, leased, or otherwise commercially financed the vehicle as a new on-road heavy-duty or medium-duty motor vehicle that:

(A) is a natural gas vehicle;

(B) is certified to current federal emissions standards;

(C) replaces an on-road heavy-duty or medium-duty motor vehicle of the same weight classification and use; and

(D) is powered by an engine certified to:

(i) emit not more than 0.2 grams of nitrogen oxides per brake horsepower hour; or

(ii) meet or exceed the United States Environmental Protection Agency's Bin 5 standard for light-duty engines when powering the vehicle; or

(2) repowered the on-road motor vehicle to a natural gas vehicle powered by a natural gas engine that:

(A) is certified to current federal emissions standards; and

(B) is:

(i) a heavy-duty engine that is certified to emit not more than 0.2 grams of nitrogen oxides per brake horsepower hour; or

(ii) certified to meet or exceed the United States Environmental Protection Agency's Bin 5 standard for light-duty engines when powering the vehicle.

(b) A heavy-duty or medium-duty motor vehicle is not a qualifying vehicle if the vehicle or the natural gas engine powering the vehicle:

(1) has been awarded a grant under this chapter for a previous reporting period; or

(2) has received a similar grant or tax credit in another jurisdiction if that grant or tax credit program is relied on for credit in the state implementation plan.

Sec. 394.004. APPLICATION FOR GRANT. (a) Only an entity operating in this state that operates a heavy-duty or medium-duty motor vehicle may apply for and receive a grant under this chapter.

(b) 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.

(c) The commission, after consulting stakeholders, shall:

(1) simplify the application form; and

(2) minimize, to the maximum extent possible, documentation required for an application.

Sec. 394.005. ELIGIBILITY FOR GRANTS. (a) The commission by rule shall establish criteria for prioritizing qualifying vehicles eligible to receive grants under this chapter. The commission shall review and revise the criteria as appropriate after consultation with the advisory board.

(b) To be eligible for a grant under the program:

(1) the use of the qualifying vehicle must be projected to result in a reduction in emissions of nitrogen oxides of at least 25 percent as compared to the motor vehicle or engine being replaced, based on:

(A) the baseline emission level set by the commission under Subsection

(g); and

(B) the certified emission rate of the new vehicle; and

(2) the qualifying vehicle must:

(A) replace a heavy-duty or medium-duty motor vehicle that:

(i) is an on-road vehicle that has been owned, leased, or otherwise commercially financed and registered and operated by the applicant in Texas for at least the two years immediately preceding the submission of a grant application;

(ii) satisfies any minimum average annual mileage or fuel usage requirements established by the commission;

(iii) satisfies any minimum percentage of annual usage requirements established by the commission; and

(iv) is in operating condition and has at least two years of remaining useful life, as determined in accordance with criteria established by the commission; or

(B) be a heavy-duty or medium-duty motor vehicle repowered with a natural gas engine that:

(i) is installed in an on-road vehicle that has been owned, leased, or otherwise commercially financed and registered and operated by the applicant in Texas for at least the two years immediately preceding the submission of a grant application;

(ii) satisfies any minimum average annual mileage or fuel usage requirements established by the commission;

(iii) satisfies any minimum percentage of annual usage requirements established by the commission; and

(iv) is installed in an on-road vehicle that, at the time of the vehicle's repowering, was in operating condition and had at least two years of remaining useful life, as determined in accordance with criteria established by the commission.

(c) As a condition of receiving a grant, the qualifying vehicle must be continuously owned, leased, or otherwise commercially financed and registered and operated in the state by the grant recipient until the earlier of the fourth anniversary of the date of reimbursement of the grant-funded expenses or until the date the vehicle has been in operation for 400,000 miles after the date of reimbursement. Not less than 75 percent of the annual use of the qualifying vehicle, either mileage or fuel use as determined by the commission, must occur in:

(1) the counties any part of which are included in the area described by Section 394.010(a); or

(2) counties designated as nonattainment areas within the meaning of Section 107(d) of the federal Clean Air Act (42 U.S.C. Section 7407).

(d) The commission shall include and enforce the usage provisions in the grant contracts. The commission shall monitor compliance with the ownership, leasing, and usage requirements, including submission of reports on at least an annual basis, or more frequently as determined by the commission.

(e) The commission by contract may require the return of all or a portion of grant funds for a grant recipient's noncompliance with the usage and percentage of use requirements under this section.

(f) A heavy-duty or medium-duty motor vehicle replaced under this program must be rendered permanently inoperable by crushing the vehicle, by making a hole in the engine block and permanently destroying the frame of the vehicle, or by another method approved by the commission that permanently removes the vehicle from operation in this state. The commission shall establish criteria for ensuring the permanent destruction of the engine or vehicle. The commission shall enforce the destruction requirements.

(g) The commission shall establish baseline emission levels for emissions of nitrogen oxides for on-road heavy-duty or medium-duty motor vehicles being replaced by using the emission certification for the engine or vehicle being replaced. The commission may consider deterioration of the emission performance of the engine of the vehicle being replaced in establishing the baseline emission level. The commission may consider and establish baseline emission rates for additional pollutants of concern, as determined by the commission after consultation with the advisory board.

(h) Mileage or fuel use requirements established by the commission under Subsection (b)(2)(A)(ii) may differ by vehicle weight categories and type of use.

(i) The executive director shall waive the requirements of Subsection (b)(2)(A)(i) on a finding of good cause, which may include short lapses in registration or operation due to economic conditions, seasonal work, or other circumstances.

Sec. 394.006. RESTRICTION ON USE OF GRANT. A recipient of a grant under this chapter shall use the grant to pay the incremental costs of the replacement for which the grant is made, which may include the initial cost of the natural gas vehicle or natural gas engine 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. 394.007. AMOUNT OF GRANT. (a) The commission shall develop a grant schedule that:

(1) assigns a standardized grant in an amount between 60 and 90 percent of the incremental cost of a natural gas vehicle purchase, lease, other commercial finance, or repowering;

(2) is based on:

(A) the certified emission level of nitrogen oxides, or other pollutants as determined by the commission, of the engine powering the natural gas vehicle; and

(B) the usage of the natural gas vehicle; and

(3) may take into account the overall emissions reduction achieved by the natural gas vehicle.

(b) Not less than 60 percent of the total amount of grants awarded under this chapter for the purchase and repowering of motor vehicles must be awarded to motor vehicles with a gross vehicle weight rating of at least 33,001 pounds. The minimum grant requirement under this subsection does not apply if the commission does not receive enough grant applications to satisfy the requirement for motor vehicles described by this subsection that are eligible to receive a grant under this chapter.

(c) A person may not receive a grant under this chapter that, when combined with any other grant, tax credit, or other governmental incentive, exceeds the incremental cost of the vehicle for which the grant is awarded. A person shall return to the commission the amount of a grant awarded under this chapter that, when combined with any other grant, tax credit, or other governmental incentive, exceeds the incremental cost of the vehicle for which the grant is awarded.

(d) The commission shall reduce the amount of a grant awarded under this chapter as necessary to keep the combined incentive total at or below the incremental cost of the vehicle for which the grant is awarded if the grant recipient is eligible to receive an automatic incentive at or before the time a grant is awarded under this chapter.

Sec. 394.008. GRANT PROCEDURES. (a) The commission shall adopt procedures for:

(1) awarding grants under this chapter in the form of rebates; and

(2) streamlining the grant application, contracting, reimbursement, and reporting process for qualifying natural gas vehicle purchases or repowers.

(b) Procedures adopted under this section must:

(1) provide for the commission to compile and regularly update a listing of preapproved natural gas vehicles:

(A) powered by natural gas engines certified to emit not more than 0.2 grams of nitrogen oxides per brake horsepower hour; or

(B) certified to the United States Environmental Protection Agency's light-duty Bin 5 standard or better;

(2) if a federal standard for the calculation of emissions reductions exists, provide a method to calculate the reduction in emissions of nitrogen oxides, volatile organic compounds, carbon monoxide, particulate matter, and sulfur compounds for each replacement or repowering;

(3) assign a standardized rebate amount for each qualifying vehicle under Section 394.007;

(4) allow for processing rebates on an ongoing first-come, first-served basis;

(5) provide for contracts between the commission and participating dealers under Section 394.009;

(6) allow grant recipients to assign their grant funds to participating dealers to offset the purchase or lease price;

(7) require grant applicants to identify natural gas fueling stations that are available to fuel the qualifying vehicle in the area of its use;

(8) provide for payment not later than the 30th day after the date the request for reimbursement for an approved grant is received;

(9) provide for application submission and application status checks to be made over the Internet; and

(10) consolidate, simplify, and reduce the administrative work for applicants and the commission associated with grant application, contracting, reimbursement, and reporting requirements.

(c) The commission, or its designee, shall oversee the grant process and is responsible for final approval of any grant.

(d) Grant recipients are responsible for meeting all grant conditions, including reporting and monitoring as required by the commission through the grant contract.

Sec. 394.009. PARTICIPATING DEALERS. (a) In this section, "participating dealer" means a person who:

(1) sells, leases, or otherwise commercially finances on-road heavy-duty or medium-duty natural gas vehicles or heavy-duty or medium-duty natural gas engines; and

(2) has satisfied all requirements established by the commission for participation in the program as a dealer.

(b) A participating dealer must agree to the terms and conditions of a standardized contract developed by the commission.

(c) A participating dealer shall:

(1) provide information regarding natural gas vehicle grants to fleet operators;

(2) assist an applicant who purchases, leases, or otherwise commercially finances a natural gas vehicle or engine from the dealer with the completion of the application; and

(3) submit completed applications and documentation to the commission on behalf of an applicant who purchases, leases, or otherwise commercially finances a natural gas vehicle or engine from the dealer.

(d) A participating dealer may not approve a grant.

(e) The commission shall:

(1) maintain and make available to the public online a list of all qualified dealers; and

(2) establish requirements for participation in the program by sellers of on-road heavy-duty or medium-duty natural gas vehicles and heavy-duty or medium-duty natural gas engines.

Sec. 394.010. CLEAN TRANSPORTATION TRIANGLE. (a) To ensure that natural gas vehicles purchased, leased, or otherwise commercially financed or repowered under the program have access to fuel, and to build the foundation for a self-sustaining market for natural gas vehicles in Texas, the commission shall award grants to support the development of a network of natural gas vehicle fueling stations along the interstate highways connecting Houston, San Antonio, Dallas, and Fort Worth. In awarding the grants, the commission shall provide for:

(1) strategically placed natural gas vehicle fueling stations in and between the Houston, San Antonio, and Dallas-Fort Worth areas to enable a natural gas vehicle to travel along that triangular area relying solely on natural gas fuel;

(2) grants to be dispersed through a competitive bidding process to offset a portion of the cost of installation of the natural gas dispensing equipment;

(3) contracts that require the recipient stations to meet operational, maintenance, and reporting requirements as specified by the commission; and

(4) a listing, to be maintained by the commission and made available to the public online, of all natural gas vehicle fueling stations that have received grant funding, including location and hours of operation.

(b) The commission may not award more than:

(1) three station grants to any entity; or

(2) one grant for each station.

(c) Grants awarded under this section may not exceed:

(1) \$100,000 for a compressed natural gas station;

(2) \$250,000 for a liquefied natural gas station; or

(3) \$400,000 for a station providing both liquefied and compressed natural gas.

(d) Stations funded by grants under this section must be publicly accessible and located not more than three miles from an interstate highway system. The commission shall give preference to:

(1) stations providing both liquefied natural gas and compressed natural gas at a single location; and

(2) stations located not more than one mile from an interstate highway system.

(e) To meet the goals of this section, the commission may solicit grant applications under this section for a new fueling station in a specific area or location.

(f) Grants made under this section are not subject to the requirements of Sections 394.002 through 394.008. The commission shall develop an application package and review applications in accordance with Sections 386.110 and 386.111.

(g) The commission, in consultation with the natural gas industry, shall determine the most efficient use of funding for the station grants under this section to maximize the availability of natural gas fueling stations.

Sec. 394.011. ADMINISTRATION OF PROGRAM. The commission may contract with one or more entities for administration of the program.

Sec. 394.012. EXPIRATION. This chapter expires August 31, 2017.

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

SECTION \_\_\_\_\_. The Texas Commission on Environmental Quality shall adopt rules and establish procedures under Chapter 394, Health and Safety Code, as added by this Act, as soon as practicable after the effective date of this Act.

SECTION \_\_\_\_\_. To the extent of any conflict, this Act prevails over another Act of the 82nd Legislature, Regular Session, 2011, relating to nonsubstantive additions to and corrections in enacted codes.

The amendment was read.

Senator Williams moved to concur in the House amendment to **SB 385**.

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

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

Nays: Birdwell, Patrick.

### SENATE BILL 932 WITH HOUSE AMENDMENT

Senator Williams called **SB 932** from the President's table for consideration of the House amendment to the bill.

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

#### Amendment

Amend **SB 932** by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to oyster beds and shells and an oyster shell recovery and replacement program.

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

SECTION 1. Section 76.020, Parks and Wildlife Code, is amended to read as follows:

Sec. 76.020. OYSTER SHELL RECOVERY AND REPLACEMENT PROGRAM. (a) The commission by proclamation may establish and conduct a program to require the recovery of oyster shell or other suitable cultch material from, and replacement of oyster shell in the coastal waters of the state to maintain or enhance public oyster reefs.

(b) The department may accept grants and donations of money or materials from private or public sources to be applied to the oyster shell recovery and replacement program.

SECTION 2. Subchapter A, Chapter 76, Parks and Wildlife Code, is amended by adding Section 76.021 to read as follows:

Sec. 76.021. OYSTER SHELL RECOVERY AND REPLACEMENT PROGRAM ACCOUNT; FEE. (a) The oyster shell recovery and replacement program account is a separate account in the game, fish, and water safety account. The account consists of money deposited to the account under this section. The account is exempt from the application of Section 403.095, Government Code.

(b) The department shall collect a fee of 20 cents or an amount set by the commission, whichever is greater, from a licensed commercial oyster fisherman for each box of oysters harvested by the fisherman from the water of this state.

(c) The commission by rule shall adopt policies and procedures for the issuance of oyster shell recovery tags or other means to collect the fee imposed by this section. A tag required by this section must:

(1) be affixed to the outside of each box of oysters at the time of harvest, in the location of harvest;

(2) contain information required by the Department of State Health Services under the National Shellfish Sanitation Program; and

(3) remain affixed during transportation of the oysters to a dealer.

(d) The department shall deposit to the credit of the oyster shell recovery and replacement program account all revenue, less allowable costs, from the fees collected under Subsection (b).

(e) Money in the oyster shell recovery and replacement program account may be appropriated only for the recovery and enhancement of public oyster reefs under Section 76.020.

(f) The department shall consult with members of the oyster industry regarding the management of oyster beds in this state.

SECTION 3. Section 76.115, Parks and Wildlife Code, is amended by amending Subsection (c) and adding Subsections (d), (e), and (f) to read as follows:

(c) Before closing any area, the commission [~~commissioner~~] shall [~~post notices of the closing in fish and oyster houses in two towns nearest the area to be closed and shall~~] publish notice in a daily newspaper of general circulation in the area to be closed. The notice [~~notices~~] shall be [~~posted and~~] published at least three days before the effective date of the closing.

(d) Areas closed under this section must reopen by the beginning of the next public oyster season unless sound biological data indicates that the need for closure still exists.



(e) The commission by rule may establish procedures and criteria for closing areas under Subsection (a).

(f) The commission may delegate to the executive director the duties and responsibilities under this section.

SECTION 4. Not later than January 1, 2012, the Parks and Wildlife Commission shall adopt rules:

- (1) for the recovery of oyster shells in accordance with this Act; and
- (2) necessary for the implementation of this Act.

SECTION 5. This Act takes effect September 1, 2011.

The amendment was read.

Senator Williams moved to concur in the House amendment to **SB 932**.

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

### **SENATE BILL 1035 WITH HOUSE AMENDMENTS**

Senator Williams called **SB 1035** from the President's table for consideration of the House amendments to the bill.

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

#### **Amendment**

Amend **CSSB 1035** by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to motor vehicle title services; providing penalties.

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

SECTION 1. Effective January 1, 2012, the heading to Subchapter E, Chapter 520, Transportation Code, is amended to read as follows:

#### SUBCHAPTER E. COUNTY PERMITTING OF MOTOR VEHICLE TITLE SERVICES

SECTION 2. Effective January 1, 2012, Subdivisions (2), (3), (4), and (6), Section 520.051, Transportation Code, are amended to read as follows:

(2) "Motor vehicle title service" means any person that for compensation directly or indirectly assists other persons in obtaining motor vehicle [title] documents by submitting, transmitting, or sending applications for motor vehicle [title] documents to the appropriate government agencies, including county tax assessor-collectors.

(3) "Motor vehicle [Title] documents" means motor vehicle title applications, motor vehicle registration renewal applications, motor vehicle mechanic's lien title applications, motor vehicle storage lien title applications, motor vehicle temporary registration permits, motor vehicle title application transfers occasioned by the death of the title holder, or notifications under Chapter 683 of this code or Chapter 70, Property Code.

(4) "Title service permit [license] holder" means a person who holds a motor vehicle title service permit [license] or a title service runner's permit [license].

(6) "Title service runner" means any person employed by a ~~[licensed]~~ motor vehicle title service to submit or present motor vehicle [title] documents to the county tax assessor-collector.

SECTION 3. Effective January 1, 2012, Subchapter E, Chapter 520, Transportation Code, is amended by adding Section 520.0521 to read as follows:

Sec. 520.0521. PURPOSE; LIBERAL CONSTRUCTION. (a) The purpose of this subchapter is to protect the integrity of the submittal of transactional motor vehicle documents by nongovernmental entities through:

(1) the permitting and regulation of titling services and title service runners;  
and

(2) the enforcement of this chapter to prevent crime, fraud, unfair practices, and discrimination.

(b) This subchapter shall be liberally construed to give effect to the purpose of this subchapter.

SECTION 4. Effective January 1, 2012, Sections 520.052 through 520.060, Transportation Code, are amended to read as follows:

Sec. 520.052. APPLICABILITY. This subchapter applies to any motor vehicle title service operating in a county[+:

~~[(1)] that requires a permit under Section 520.053 [has a population of more than 500,000; or~~

~~[(2) in which the commissioners court by order has adopted this subchapter].~~

Sec. 520.053. PERMIT [LICENSE] REQUIRED. A county may require a motor vehicle title service or a title service runner to obtain a permit from the county in which the titles are required to be filed [person may not act as a motor vehicle title service or act as an agent for that business unless that person holds a license issued under this subchapter].

Sec. 520.054. GENERAL PERMIT [LICENSE] APPLICATION REQUIREMENTS. (a) In a county that requires [An applicant for] a motor vehicle title service permit or a title service runner permit, an applicant [license] must apply on a form prescribed by the county tax assessor-collector. The application form must be signed by the applicant and accompanied by the application fee, which may not exceed the maximum fee allowed under Section 520.077.

(b) An application must include:

(1) the applicant's name, business address, and business telephone number;  
(2) the name under which the applicant will do business;  
(3) the physical address of each office from which the applicant will conduct business;

(4) a statement indicating whether the applicant has previously applied for a permit [license] under this subchapter, the result of the previous application, and whether the applicant has ever been the holder of a permit [license] under this subchapter that was revoked or suspended;

(5) information from the applicant as required by the county tax assessor-collector to establish the business reputation and character of the applicant;

(6) the applicant's federal tax identification number;

(7) the applicant's state sales tax number; ~~[and]~~

(8) any other information required by rules adopted under this subchapter;  
(9) an affirmation of the truth of the information contained in the application signed and sworn to before an officer authorized to administer oaths; and

(10) if for a motor vehicle title service permit, an affirmation that all acts of a motor vehicle title service's employees, agents, contractors, or title service runners are acts of the motor vehicle title service for the purposes of this subchapter.

(c) A permit fee charged under Subsection (a) must be deposited in the general fund for the county tax assessor-collector and sheriff to use for the administration and enforcement of the county's motor vehicle title service and title service runner permitting program.

Sec. 520.055. APPLICATION REQUIREMENTS: CORPORATION. In addition to the information required in Section 520.054, an applicant for a motor vehicle title service permit [~~license~~] that intends to engage in business as a corporation shall submit the following information:

- (1) the state of incorporation;
- (2) the name, address, date of birth, and social security number of each of the principal owners and directors of the corporation;
- (3) information about each officer and director as required by the county tax assessor-collector to establish the business reputation and character of the applicant; and
- (4) a statement indicating whether an employee, officer, or director has been refused a motor vehicle title service permit [~~license~~] or a title service runner's permit [~~license~~] or has been the holder of a permit [~~license~~] that was revoked or suspended.

Sec. 520.056. APPLICATION REQUIREMENTS: PARTNERSHIP. In addition to the information required in Section 520.054, a motor vehicle title service permit [~~license~~] applicant that intends to engage in business as a partnership shall submit an application that includes the following information:

- (1) the name, address, date of birth, and social security number of each partner;
- (2) information about each partner as required by the county tax assessor-collector to establish the business reputation and character of the applicant; and
- (3) a statement indicating whether a partner or employee has been refused a motor vehicle title service permit [~~license~~] or a title service runner's permit [~~license~~] or has been the holder of a permit [~~license~~] that was revoked or suspended.

Sec. 520.057. RECORDS. [~~(a)~~] A holder of a motor vehicle title service permit [~~license~~] shall maintain records as required by Section 520.080 [~~this section on a form prescribed and made available by the county tax assessor-collector for each transaction in which the license holder receives compensation. The records shall include:~~

- ~~[(1) the date of the transaction;~~
- ~~[(2) the name, age, address, sex, driver's license number, and a legible photocopy of the driver's license for each customer; and~~
- ~~[(3) the license plate number, vehicle identification number, and a legible photocopy of proof of financial responsibility for the motor vehicle involved.~~

~~[(b) A motor vehicle title service shall keep:~~

~~[(1) two copies of all records required under this section for at least two years after the date of the transaction;~~

~~[(2) legible photocopies of any documents submitted by a customer; and~~

~~[(3) legible photocopies of any documents submitted to the county tax assessor collector].~~

Sec. 520.058. INSPECTION OF RECORDS. A motor vehicle title service permit ~~[license]~~ holder or any of its employees shall allow an inspection of records required under Section 520.057 by the county tax assessor-collector or a peace officer on the premises of the motor vehicle title service at any reasonable time to verify, check, or audit the records.

Sec. 520.059. DENIAL, SUSPENSION, OR REVOCATION OF PERMIT [LICENSE]. (a) The county tax assessor-collector may deny, suspend, revoke, or reinstate a permit [license] issued under this subchapter.

(b) The county tax assessor-collector shall adopt rules that establish grounds for the denial, suspension, revocation, or reinstatement of a permit [license] and rules that establish procedures for disciplinary action. Procedures issued under this subchapter are subject to Chapter 2001, Government Code.

(c) A person whose permit [license] is revoked may not apply for a new permit [license] before the first anniversary of the date of the revocation.

(d) A permit [license] may not be issued under a fictitious name that is similar to or may be confused with the name of a governmental entity or that is deceptive or misleading to the public.

(e) The county tax assessor-collector must provide written notice of denial, suspension, or revocation of a permit.

(f) Notwithstanding any other provision of law, the county has all powers necessary, incidental, or convenient to:

(1) initiate and conduct proceedings, investigations, or hearings;

(2) administer oaths;

(3) receive evidence and pleadings;

(4) issue subpoenas to compel the attendance of any person;

(5) order the production of any tangible property, including papers, records, or other documents;

(6) make findings of fact on all factual issues arising out of a proceeding initiated under this subchapter;

(7) specify and govern appearance, practice, and procedures before the county;

(8) issue conclusions of law and decisions, including declaratory decisions or orders;

(9) enter into settlement agreements;

(10) impose a sanction for contempt;

(11) assess and collect fees and costs, including attorney's fees;

(12) issue cease and desist orders in the nature of temporary or permanent injunctions;

(13) impose a civil penalty;

(14) enter an order requiring a person to:

(A) pay costs and expenses of a party in connection with an order;

(B) perform an act other than the payment of money; or

(C) refrain from performing an act; and

(15) enforce a county order.

Sec. 520.060. PERMIT [LICENSE] RENEWAL. (a) A permit [license] issued under this subchapter expires on the first anniversary of the date of issuance and may be renewed annually on or before the expiration date on payment of the required renewal fee.

(b) A person who is otherwise eligible to renew a permit [license] may renew an unexpired permit [license] by paying to the county tax assessor-collector before the expiration date of the permit [license] the required renewal fee. A person whose permit [license] has expired may not engage in activities that require a permit [license] until the permit [license] has been renewed under this section.

(c) If a person's permit [license] has been expired for 90 days or less, the person may renew the permit [license] by paying to the county tax assessor-collector 1-1/2 times the required renewal fee.

(d) If a person's permit [license] has been expired for longer than 90 days but less than one year, the person may renew the permit [license] by paying to the county tax assessor-collector two times the required renewal fee.

(e) If a person's permit [license] has been expired for one year or longer, the person may not renew the permit [license]. The person may obtain a new permit [license] by complying with the requirements and procedures for obtaining an original permit [license].

(f) Notwithstanding Subsection (e), if a person had obtained a permit [was licensed] in this state, moved to another state, and has been doing business in the other state for the two years preceding application, the person may renew an expired permit [license]. The person must pay to the county tax assessor-collector a fee that is equal to two times the required renewal fee for the permit [license].

(g) Before the 30th day preceding the date on which a person's permit [license] expires, the county tax assessor-collector shall notify the person of the impending expiration. The notice must be in writing and sent to the person's last known address according to the records of the county tax assessor-collector.

SECTION 5. Effective January 1, 2012, Section 520.061, Transportation Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) Except as provided by Subsection (c) or the Penal Code, an [A+] offense under this section is a Class A misdemeanor.

(c) An offense under this section is a state jail felony if it is based on:

(1) a violation of Section 520.053; or

(2) the falsification of information required under Section 520.054, 520.055,

or 520.056.

SECTION 6. Effective January 1, 2012, Subchapter E, Chapter 520, Transportation Code, is amended by adding Section 520.0611 to read as follows:

Sec. 520.0611. CIVIL PENALTY. (a) A person who violates this subchapter is subject to a civil penalty of not more than \$10,000 for each violation.

(b) Each day a violation occurs constitutes a separate violation.

(c) The county by rule shall establish factors to be considered in determining the amount of the civil penalty assessed by the county.

(d) Notwithstanding any other law to the contrary, a civil penalty recovered under this subchapter shall be deposited to the credit of the county's general fund or other fund as designated by the county.

SECTION 7. Effective January 1, 2012, Subsection (a), Section 520.062, Transportation Code, is amended to read as follows:

(a) The county attorney or a [A] district attorney of the county in which the motor vehicle title service is operating [located] may bring an action to enjoin the operation of a motor vehicle title service or a title service runner if the motor vehicle title service permit [license] holder or a runner of the motor vehicle title service while in the scope of the runner's employment is found to have committed one or more violations of or convicted of more than one offense under this subchapter.

SECTION 8. Effective January 1, 2012, Section 520.063, Transportation Code, is amended to read as follows:

Sec. 520.063. EXEMPTIONS. The following persons and their agents are exempt from the permitting [licensing] and other requirements established by this subchapter:

(1) a franchised motor vehicle dealer or independent motor vehicle dealer who holds a general distinguishing number issued by the department under Chapter 503;

(2) a vehicle lessor holding a license issued by the department [Motor Vehicle Board] under Chapter 2301, Occupations Code, or a trust or other entity that is specifically not required to obtain a lessor license under Section 2301.254(a) of that code; [and]

(3) a vehicle lease facilitator holding a license issued by the department [Motor Vehicle Board] under Chapter 2301, Occupations Code;

(4) a state or federally chartered bank or credit union; and

(5) an auctioneer licensed under Chapter 1802, Occupations Code.

SECTION 9. Effective January 1, 2012, Chapter 520, Transportation Code, is amended by adding Subchapter F to read as follows:

SUBCHAPTER F. STATE LICENSING OF MOTOR VEHICLE TITLE SERVICES

Sec. 520.071. DEFINITIONS. In this subchapter:

(1) "Board" means the board of the Texas Department of Motor Vehicles.

(2) "Motor vehicle" has the meaning assigned by Section 501.002.

(3) "Motor vehicle documents" means motor vehicle title applications, motor vehicle registration renewal applications, motor vehicle mechanic's lien title applications, motor vehicle storage lien title applications, motor vehicle temporary registration permits, motor vehicle title application transfers occasioned by the death of the title holder, or notifications under Chapter 683 of this code or Chapter 70, Property Code.

(4) "Motor vehicle title service" means any person that for compensation directly or indirectly assists other persons in obtaining motor vehicle documents by submitting, transmitting, or sending applications for motor vehicle documents to the appropriate government agencies, including county tax assessor-collectors.

(5) "Title service license holder" means a person who holds a motor vehicle title service license or a title service runner's license.

(6) "Title service record" means the written record for each transaction in which a motor vehicle title service receives compensation.

(7) "Title service runner" means any person employed by a motor vehicle title service to submit or present motor vehicle documents to the county tax assessor-collector.

Sec. 520.072. APPLICABILITY. This subchapter applies to any motor vehicle title service operating in this state.

Sec. 520.073. PURPOSE; LIBERAL CONSTRUCTION. (a) The purpose of this subchapter is to protect the integrity of the submittal of transactional motor vehicle documents by nongovernmental entities through:

- (1) the licensing and regulation of titling services and title service runners;
- and
- (2) the enforcement of this chapter to prevent crime, fraud, unfair practices, and discrimination.

(b) This subchapter shall be liberally construed to give effect to the purpose of this subchapter.

Sec. 520.074. LICENSE REQUIRED. A person may not act as a motor vehicle title service or act as a title service runner unless that person holds:

- (1) a permit issued by the county, if required by the county where the titles are required to be filed; and
- (2) a license issued by the department.

Sec. 520.075. STATE LICENSE APPLICATION REQUIREMENTS. An applicant for a motor vehicle title service license or a title service runner license must apply on a form prescribed by the department. The application form must be signed by the applicant and accompanied by the application fee.

Sec. 520.076. ESTABLISHED AND PERMANENT PLACE OF BUSINESS.

(a) An applicant for a motor vehicle title service license must demonstrate that the location for which the applicant requests the license is an established and permanent place of business. A location is considered to be an established and permanent place of business if the applicant:

- (1) owns the real property on which the business is situated or has a written lease for the property that has a term of not less than the term of the license; and
- (2) maintains on the location:
  - (A) a permanent furnished office that is equipped for titling services as specified in department rules; and

(B) a conspicuous sign with letters at least six inches high showing the name of the applicant's business.

(b) The applicant must demonstrate that:

(1) the applicant intends to remain regularly and actively engaged in the business specified in the application for a time equal to at least the term of the license at the location specified in the application; and

(2) the applicant or a bona fide employee of the applicant will be:

(A) at the location to transact title services; and

(B) available to the public or the department at that location during reasonable and lawful business hours.

Sec. 520.077. LICENSE FEES. (a) The department by rule shall adopt fees for an original license and a renewal license for motor vehicle title services and for an original license and a renewal license for title service runners.

(b) The fee for an original license for a motor vehicle title service or for a title service runner may not exceed \$500.

(c) The fee for a renewal license for a motor vehicle title service or for a title service runner may not exceed \$200 annually.

(d) The fee for an amendment to a license issued under this subchapter may not exceed \$25.

(e) The fee for a duplicate license issued under this subchapter may not exceed \$50.

(f) An additional fee may be charged for late renewal of not more than 1-1/2 times the renewal fee.

(g) A fee collected under this section shall be deposited to the credit of the state highway fund. Section 403.095, Government Code, does not apply to money received by the department and deposited to the credit of the state highway fund under this subchapter.

(h) The department may refund from funds appropriated to the department for that purpose a fee collected under this subchapter that is not due or that exceeds the amount due.

Sec. 520.078. SURETY BOND. (a) The department may not issue or renew a motor vehicle title service license unless the applicant provides to the department satisfactory proof that the applicant has purchased a properly executed surety bond in the amount of \$25,000 with a good and sufficient surety authorized by the Texas Department of Insurance in effect for at least the term of the license.

(b) The surety bond must be:

(1) in a form approved by the department; and

(2) conditioned on the submission by the applicant of money and accurate motor vehicle documents on behalf of another person that are required to be submitted to government agencies, including county tax assessor-collectors, in order to obtain motor vehicle title or registration.

(c) A person may recover against a surety bond if the person obtains a judgment assessing damages and reasonable attorney's fees based on an act or omission of the bondholder:

(1) on which the bond is conditioned; and

(2) that occurred during the term for which the motor vehicle title service license was valid.

(d) The liability imposed on a surety is limited to the amount:

(1) required to be submitted to the appropriate government agencies, including county tax assessor-collectors;

(2) received by the applicant for performing as a motor vehicle title service;

(3) incurred in engaging the applicant to assist in obtaining motor vehicle documents; and

(4) of attorney's fees awarded in the judgment.



(e) The liability of a surety may not exceed the face value of the surety bond. A surety is not liable for successive claims in excess of the bond amount regardless of the number of claims made against the bond or the number of years the bond remains in force.

Sec. 520.079. LICENSE RENEWAL. (a) The board shall set the term of a license issued under this subchapter by rule.

(b) If a person's license has been expired for 90 days or less, the person may renew the license by paying a late fee in addition to the renewal fee as described in Section 520.077(f).

Sec. 520.080. RECORDS. (a) A holder of a motor vehicle title service license shall:

(1) maintain records as required by department rule, including any forms prescribed by the department for each transaction presented to the county tax office or appropriate government office under this subchapter; and

(2) provide a copy of the record to the county tax assessor-collector.

(b) The records maintained under this section must include:

(1) the date of the transaction;

(2) the name, age, address, sex, and driver's license number of, and a legible photocopy of the driver's license for, each customer;

(3) the license plate number and vehicle identification number of, and, if applicable, a legible photocopy of proof of financial responsibility for, the motor vehicle involved; and

(4) any other information required to be maintained by department rule.

(c) Records required by this section must be maintained for four years from the date of the transaction.

(d) A motor vehicle title service shall keep:

(1) a copy of all records required under this section for at least four years after the date of the transaction;

(2) a legible photocopy of any documents submitted by a customer; and

(3) a legible photocopy of any documents submitted to the county tax assessor-collector.

Sec. 520.081. INSPECTION OF RECORDS. A motor vehicle title service license holder or any of its employees shall allow during business hours at the license holder's business location an inspection of records required under Section 520.080 by the department, the county tax assessor-collector, or a peace officer.

Sec. 520.082. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE.

(a) The department may deny, suspend, revoke, or reinstate a license issued under this subchapter.

(b) The department:

(1) shall adopt rules that establish grounds for the denial, suspension, revocation, or reinstatement of a license and rules that establish procedures for disciplinary action; and

(2) may adopt rules that allow for the incorporation of findings made by a county that has denied, suspended, revoked, or reinstated a permit issued under Subchapter E.

(c) Procedures established under this subchapter are subject to Chapter 2001, Government Code.

(d) The department must provide written notice of denial, suspension, or revocation of a license.

(e) Notwithstanding any other provision of law, the board has all powers necessary, incidental, or convenient to:

(1) initiate and conduct proceedings, investigations, or hearings;

(2) administer oaths;

(3) receive evidence and pleadings;

(4) issue subpoenas to compel the attendance of any person;

(5) order the production of any tangible property, including papers, records, and other documents;

(6) make findings of fact on all factual issues arising out of a proceeding initiated under this subchapter;

(7) specify and govern appearance, practice, and procedures before the board;

(8) issue conclusions of law and decisions, including declaratory decisions or orders;

(9) enter into settlement agreements;

(10) impose a sanction for contempt;

(11) assess and collect fees and costs, including attorney's fees;

(12) issue cease and desist orders in the nature of temporary or permanent injunctions;

(13) impose a civil penalty;

(14) enter an order requiring a person to:

(A) pay costs and expenses of a party in connection with an order;

(B) perform an act other than the payment of money; or

(C) refrain from performing an act; and

(15) enforce a board order.

Sec. 520.083. CRIMINAL PENALTY. (a) A person commits an offense if the person violates this subchapter or a rule adopted by the department or county tax assessor-collector under this subchapter.

(b) Except as provided by Subsection (c) or the Penal Code, an offense under this section is a Class A misdemeanor.

(c) An offense under this section is a state jail felony if it is based on:

(1) a violation of Section 520.074; or

(2) the falsification of information required under Section 520.075 or 520.078.

Sec. 520.084. CIVIL PENALTY. (a) A person who violates this subchapter is subject to a civil penalty of not more than \$10,000 for each violation.

(b) Each day a violation occurs constitutes a separate violation.

(c) The department by rule shall establish factors to be considered in determining the amount of the civil penalty assessed by the department.

(d) Notwithstanding any other law to the contrary, a civil penalty recovered under this subchapter shall be deposited in the state treasury to the credit of the state highway fund.

Sec. 520.085. CEASE AND DESIST ORDER. (a) If it appears to the board that a person is violating this subchapter or a board rule or order, the board after notice may require the person engaged in the conduct to appear and show cause why a cease and desist order should not be issued prohibiting the conduct described in the notice.

(b) An interlocutory cease and desist order may be granted with or without bond or other undertaking if:

(1) the order is necessary to the performance of the duties delegated to the board by this subchapter;

(2) the order is necessary or convenient to maintaining the status quo between two or more adverse parties before the board;

(3) a party before the board is entitled to relief demanded of the board and all or part of the relief requires the restraint of some act prejudicial to the party;

(4) a person is performing, about to perform, or procuring or allowing the performance of an act:

(A) relating to the subject of a contested case pending before the board, in violation of the rights of a party before the board; and

(B) that would tend to render the board's order in the case ineffectual;

or

(5) substantial injury to the rights of a person subject to the board's jurisdiction is threatened regardless of any remedy available at law.

(c) A proceeding under this section is governed by:

(1) this subchapter and the board's rules; and

(2) Chapter 2001, Government Code, relating to a contested case, to the extent that chapter is not in conflict with Subdivision (1).

(d) An interlocutory cease and desist order remains in effect until vacated or incorporated in a final order of the board. An appeal of an interlocutory cease and desist order must be made to the board before seeking judicial review as provided by this subchapter.

(e) A permanent cease and desist order may be issued regardless of the requirements of Subsection (b) but only under the procedures for a final order by the board under this subchapter. An appeal of a permanent cease and desist order is made in the same manner as an appeal of a final order under this subchapter.

Sec. 520.086. INJUNCTION. (a) The attorney general or a district attorney of the county in which the motor vehicle title service is operating may bring an action to enjoin the operation of a motor vehicle title service or a title service runner if the motor vehicle title service license holder or a runner of the motor vehicle title service while in the scope of the runner's employment is found to have committed one or more violations of or convicted of more than one offense under this subchapter.

(b) If the court grants relief under Subsection (a), the court may:

(1) enjoin the person from maintaining or participating in the business of a motor vehicle title service for a period of time as determined by the court; or

(2) declare the place where the person's business is located to be closed for any use relating to the business of the motor vehicle title service for as long as the person is enjoined from participating in that business.

Sec. 520.087. COMPLAINT INVESTIGATION AND DISPOSITION. (a) If the department has reason to believe, through receipt of a complaint or otherwise, that a violation of this subchapter or a rule, order, or decision of the department has occurred or is likely to occur, the department may conduct an investigation unless it determines that the complaint is frivolous or for the purpose of harassment.

(b) If the investigation establishes that a violation of this subchapter or a rule, order, or decision of the department has occurred or is likely to occur, the department shall initiate proceedings as it determines appropriate to enforce this subchapter or its rules, orders, and decisions.

Sec. 520.088. EXEMPTIONS. The following persons and their agents are exempt from the licensing and other requirements established by this subchapter:

(1) a franchised motor vehicle dealer or independent motor vehicle dealer who holds a general distinguishing number issued by the department under Chapter 503;

(2) a vehicle lessor holding a license issued by the department under Chapter 2301, Occupations Code, or a trust or other entity that is specifically not required to obtain a lessor license under Section 2301.254(a), Occupations Code;

(3) a vehicle lease facilitator holding a license issued by the department under Chapter 2301, Occupations Code;

(4) a state or federally chartered bank or credit union; and

(5) an auctioneer licensed under Chapter 1802, Occupations Code.

SECTION 10. Effective January 1, 2012, Subsection (c), Section 730.007, Transportation Code, is amended to read as follows:

(c) This section does not:

(1) prohibit the disclosure of a person's photographic image to:

(A) a law enforcement agency, the Texas Department of Motor Vehicles, a county tax assessor-collector, or a criminal justice agency for an official purpose; or

(B) an agency of this state investigating an alleged violation of a state or federal law relating to the obtaining, selling, or purchasing of a benefit authorized by Chapter 31 or 33, Human Resources Code; or

(2) prevent a court from compelling by subpoena the production of a person's photographic image.

SECTION 11. Not later than November 1, 2011, the Texas Department of Motor Vehicles shall adopt rules and forms to administer Subchapter F, Chapter 520, Transportation Code, as added by this Act.

SECTION 12. The change in law made by this Act to Section 520.061, Transportation Code, as amended by this Act, applies only to an offense committed on or after January 1, 2012. An offense committed before that date is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before January 1, 2012, if any element of the offense was committed before that date.

SECTION 13. Except as otherwise provided by this Act, this Act takes effect September 1, 2011.

**Floor Amendment No. 1**

Amend **CSSB 1035** (house committee printing) in SECTION 9 of the bill, immediately following proposed Section 520.080, Transportation Code (page 18, between lines 9 and 10), by inserting the following:

(e) If the records maintained under Subsection (b) by a holder of a motor vehicle title service license include a legible photocopy of a driver's license issued by a foreign government, the license holder must also maintain a valid identification document for the customer.

(f) In this section, "valid identification document" means a document that contains an identifiable photograph with information concerning a particular individual that is of a type of document intended or commonly accepted for the purpose of identification of an individual and is issued by:

(1) an agency or institution of the federal government; or

(2) an agency, institution, or political subdivision of this state or another state.

The amendments were read.

Senator Williams moved to concur in the House amendments to **SB 1035**.

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

**SENATE BILL 767 WITH HOUSE AMENDMENT**

Senator Ellis called **SB 767** from the President's table for consideration of the House amendment to the bill.

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

**Floor Amendment No. 1**

Amend **SB 767** (house committee printing) in SECTION 1 of the bill, by striking added Section 21.152, Business & Commerce Code (page 8, lines 8-10).

The amendment was read.

Senator Ellis moved to concur in the House amendment to **SB 767**.

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

**SENATE BILL 1068 WITH HOUSE AMENDMENT**

Senator Ellis called **SB 1068** from the President's table for consideration of the House amendment to the bill.

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

**Amendment**

Amend **SB 1068** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to the lease of certain state parking facilities to other persons.

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

SECTION 1. The heading to Section 2165.2035, Government Code, is amended to read as follows:

Sec. 2165.2035. LEASE OF SPACE IN STATE-OWNED PARKING LOTS AND GARAGES; PRIVATE COMMERCIAL USE.

SECTION 2. Subchapter E, Chapter 2165, Government Code, is amended by adding Sections 2165.204, 2165.2045, and 2165.2046 to read as follows:

Sec. 2165.204. LEASE OF SPACE IN STATE-OWNED PARKING LOTS AND GARAGES; PRIVATE INDIVIDUAL USE OF EXCESS INDIVIDUAL PARKING SPACES. (a) The commission may lease to a private individual an individual parking space in a state-owned parking lot or garage located in the city of Austin if the commission determines the parking space to be in excess of the number of parking spaces sufficient to accommodate the regular parking requirements of state employees employed near the lot or garage and visitors to nearby state government offices.

(b) Money received from a lease under this section shall be deposited to the credit of the general revenue fund.

(c) In leasing a parking space under Subsection (a), the commission must ensure that the lease does not restrict uses for parking lots and garages developed under Section 2165.2035, including special event parking related to institutions of higher education.

(d) In leasing or renewing a lease for a parking space under Subsection (a), the commission shall give preference to an individual who is currently leasing or previously leased the parking space.

Sec. 2165.2045. LEASE OF SPACE IN STATE-OWNED PARKING LOTS AND GARAGES; CERTAIN GOVERNMENTAL ENTITIES USE OF EXCESS BLOCKS OF PARKING SPACE. (a) The commission may lease to an institution of higher education or a local government all or a significant block of a state-owned parking lot or garage located in the city of Austin if the commission determines the parking spaces located in the lot or garage to be in excess of the number of parking spaces sufficient to accommodate the regular parking requirements of state employees employed near the lot or garage and visitors to nearby state government offices.

(b) Money received from a lease under this section shall be deposited to the credit of the general revenue fund.

(c) In leasing all or a block of a state-owned parking lot or garage under Subsection (a), the commission must ensure that the lease does not restrict uses for parking lots and garages developed under Section 2165.2035, including special event parking related to institutions of higher education.

(d) In leasing or renewing a lease for all or a block of a state-owned parking lot or garage under Subsection (a), the commission shall give preference to an entity that is currently leasing or previously leased the lot or garage or a block of the lot or garage.

Sec. 2165.2046. REPORTS ON PARKING PROGRAMS. On or before October 1 of each even-numbered year, the commission shall submit a report to the Legislative Budget Board describing the effectiveness of parking programs developed by the commission under this subchapter. The report must, at a minimum, include:

(1) the yearly revenue generated by the programs;

- (2) the yearly administrative and enforcement costs of each program;
- (3) yearly usage statistics for each program; and
- (4) initiatives and suggestions by the commission to:
  - (A) modify administration of the programs; and
  - (B) increase revenue generated by the programs.

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, 2011.

The amendment was read.

Senator Ellis moved to concur in the House amendment to **SB 1068**.

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

### **SENATE BILL 1286 WITH HOUSE AMENDMENT**

Senator Watson called **SB 1286** from the President's table for consideration of the House amendment to the bill.

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

#### **Amendment**

Amend **SB 1286** by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to the funding of retirement systems for firefighters in certain municipalities.

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

SECTION 1. Subsections (a) and (b), Section 10.01, Chapter 183 (S.B. 598), Acts of the 64th Legislature, Regular Session, 1975 (Article 6243e.1, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) Each municipality in which a fire department to which this Act applies is located shall appropriate and contribute to the fund an amount equal to a percentage [~~18.05 percent~~] of the compensation of all members during that month as follows:

- (1) 19.05 percent, beginning on the first pay date following September 30, 2010, through the pay date immediately preceding September 30, 2011;
- (2) 20.05 percent, beginning on the first pay date following September 30, 2011, through the pay date immediately preceding September 30, 2012;
- (3) 21.05 percent, for 24 pay dates of the municipality beginning on the first pay date following September 30, 2012; and
- (4) 22.05 percent, for all pay dates of the municipality that follow the 24 pay dates referenced in Subdivision (3) of this subsection.

(b) Each firefighter shall pay into the fund each month a percentage [~~13.70 percent~~] of the firefighter's compensation for that month as follows:

- (1) 15.70 percent, for the pay dates of the municipality following September 30, 2010, through the pay date immediately preceding September 30, 2011;

(2) 16.20 percent, beginning on the first pay date of the municipality following September 30, 2011, through the pay date immediately preceding September 30, 2012;

(3) 16.70 percent, beginning on the first pay date of the municipality following September 30, 2012, through the pay date immediately preceding September 30, 2013;

(4) 17.20 percent, beginning on the first pay date of the municipality following September 30, 2013, through the pay date immediately preceding September 30, 2014;

(5) 17.70 percent, beginning on the first pay date of the municipality following September 30, 2014, through the pay date immediately preceding September 30, 2015;

(6) 18.20 percent, beginning on the first pay date of the municipality following September 30, 2015, through the pay date immediately preceding September 30, 2016; and

(7) 18.70 percent, for the first pay date of the municipality following September 30, 2016, and all subsequent pay dates of the municipality.

SECTION 2. This Act takes effect September 1, 2011.

The amendment was read.

Senator Watson moved to concur in the House amendment to **SB 1286**.

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

### MESSAGE FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

Friday, May 27, 2011 - 2

The Honorable President of the Senate

Senate Chamber

Austin, Texas

Mr. President:

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

THE HOUSE HAS PASSED THE FOLLOWING MEASURES:

**HCR 172** Hamilton

Instructing the enrolling clerk of the house to make corrections in H.B. 2643.

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

**HB 2761** (122 Yeas, 16 Nays, 1 Present, not voting)

Respectfully,

/s/Robert Haney, Chief Clerk  
House of Representatives



**SENATE BILL 803 WITH HOUSE AMENDMENT**

Senator Hegar called **SB 803** from the President's table for consideration of the House amendment to the bill.

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

**Amendment**

Amend **SB 803** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to venue projects in certain counties.

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

SECTION 1. Subchapter A, Chapter 334, Local Government Code, is amended by adding Section 334.0083 to read as follows:

Sec. 334.0083. VENUE PROJECTS IN CERTAIN COUNTIES. (a) In this section, "venue" has the meaning assigned by Section 334.001 and includes a tourism development project such as a park, aquarium, birding center, bird viewing site, history center, art center, nature center, nature trail, museum, or water-related project that creates or enhances an activity involving water sports or fishing.

(b) A county with a population of 40,000 or less in which at least one state park and one national wildlife refuge are located may plan, acquire, establish, develop, construct, or renovate a venue as a venue project under this chapter.

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, 2011.

The amendment was read.

Senator Hegar moved to concur in the House amendment to **SB 803**.

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

**SENATE BILL 71 WITH HOUSE AMENDMENT**

Senator Nelson called **SB 71** from the President's table for consideration of the House amendment to the bill.

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

**Amendment**

Amend **SB 71** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to certain reports submitted and analyses conducted regarding health and human services.

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

SECTION 1. Subsection (h), Section 264.701, Family Code, is amended to read as follows:

(h) The committee shall:

(1) develop and adopt policies and procedures governing the system each state agency uses to evaluate the effectiveness of programs to prevent or treat child abuse or neglect with which the agency contracts;

(2) develop and adopt standard definitions of "child abuse treatment" and "child abuse prevention" to be used in implementing and administering the evaluation system created under this subchapter;

(3) develop and adopt standard models and guidelines for prevention and treatment of child abuse to be used in implementing and administering the evaluation system created under this subchapter;

(4) develop and adopt, in cooperation with each affected state agency, a schedule for each agency's adoption and implementation of the committee's evaluation system that considers each agency's budget cycle;

(5) develop and adopt a standard report form and a reporting schedule for the affected agencies; and

(6) develop and adopt objective criteria by which the performance of child abuse programs may be measured after reports under this subchapter are submitted and evaluated~~;~~ and

~~[(7) report annually to the Board of Protective and Regulatory Services, governor, lieutenant governor, and speaker of the house of representatives on the results of the committee's evaluation process].~~

SECTION 2. The heading to Section 531.0274, Government Code, is amended to read as follows:

Sec. 531.0274. COORDINATION AND APPROVAL OF CASELOAD ESTIMATES~~;~~ REPORT.

SECTION 3. Subsection (b), Section 531.1235, Government Code, is amended to read as follows:

(b) The advisory board shall prepare a biennial ~~[an annual]~~ report with respect to the recommendations of the advisory board under Subsection (a). The advisory board shall file the report with the commission, the Department of Aging and Disability Services, the governor, the lieutenant governor, and the speaker of the house of representatives not later than December 15 of each even-numbered year.

SECTION 4. Subsection (b), Section 531.124, Government Code, is amended to read as follows:

(b) The advisory board shall biennially ~~[annually]~~ review and comment on the minimum standards adopted under Section 111.041 and the plan implemented under Subsection (a) and shall include its conclusions in the report submitted under Section 531.1235.

SECTION 5. Subsection (b), Section 11.0045, Health and Safety Code, is amended to read as follows:

(b) The board shall publish the plan not later than September 1 of each even-numbered year. The board shall at a minimum:

(1) make the plan available on its generally accessible Internet site; and

(2) make printed copies of the plan available on request to members of the public~~;~~ and

~~[(3) send printed copies of the plan to the governor, the lieutenant governor, the speaker of the house of representatives, the Legislative Budget Board, and the committees of the senate and the house of representatives that have oversight responsibilities regarding the board and the department].~~

SECTION 6. The heading to Section 32.017, Health and Safety Code, is amended to read as follows:

Sec. 32.017. RECORDS ~~[AND REVIEW]~~.

SECTION 7. The heading to Section 36.012, Health and Safety Code, is amended to read as follows:

Sec. 36.012. RESEARCH~~;~~ ~~REPORT TO LEGISLATURE]~~.

SECTION 8. Subsection (a), Section 83.005, Health and Safety Code, is amended to read as follows:

(a) The identity of a veteran about whom a report has been made under Section 83.002 ~~[or 83.004]~~ may not be disclosed unless the veteran consents to the disclosure.

SECTION 9. Section 83.009, Health and Safety Code, is amended to read as follows:

Sec. 83.009. CERTAIN CASES EXCLUDED. Section ~~[Sections]~~ 83.002 ~~does [and 83.004 do]~~ not apply to veterans treated before January 1, 1982, for symptoms typical of a person who has been exposed to a chemical defoliant or herbicide or other causative agent, including Agent Orange.

SECTION 10. Subsection (c), Section 94.001, Health and Safety Code, is amended to read as follows:

(c) The department shall update the state plan developed under this section biennially ~~[and shall, not later than October 1 of each even numbered year, file the state plan with the governor, lieutenant governor, and speaker of the house of representatives]~~.

SECTION 11. Subsection (h), Section 108.0065, Health and Safety Code, is amended to read as follows:

(h) The commission, using existing funds, may contract with an entity to comply with the requirements under Subsection ~~[Subsections]~~ (e) ~~[and (f)]~~.

SECTION 12. Subsection (g), Section 533.032, Health and Safety Code, is amended to read as follows:

(g) The department shall:

(1) attach the report ~~[reports]~~ required by Subsection ~~[Subsections]~~ (c) ~~[and (e)]~~ to the department's legislative appropriations request for each biennium;

(2) at the time the department presents its legislative appropriations request, present the report ~~[reports]~~ to the:

- (A) governor;
- (B) governor's budget office;
- (C) lieutenant governor;
- (D) speaker of the house of representatives;
- (E) Legislative Budget Board; and
- (F) Health and Human Services Commission; and

(3) update the department's long-range plan biennially and include the report ~~reports~~ in the plan.

SECTION 13. Subsection (a), Section 533.0415, Health and Safety Code, is amended to read as follows:

(a) The department, the Texas Department of Human Services, the Texas Youth Commission, the Texas Juvenile Probation Commission, and the Texas Education Agency by rule shall adopt a joint memorandum of understanding to develop interagency training for the staffs of the agencies involved in the functions of assessment, case planning, case management, and in-home or direct delivery of services to children, youth, and their families. The memorandum must:

(1) outline the responsibility of each agency in coordinating and developing a plan for interagency training on individualized assessment and effective intervention and treatment services for children and dysfunctional families; and

(2) provide for the establishment of an interagency task force to:

(A) develop a training program to include identified competencies, content, and hours for completion of the training with at least 20 hours of training required each year until the program is completed;

(B) design a plan for implementing the program, including regional site selection, frequency of training, and selection of experienced clinical public and private professionals or consultants to lead the training; and

(C) monitor, evaluate, and revise the training program, including the development of additional curricula based on future training needs identified by staff and professionals~~[-and~~

~~(D) submit a report to the governor, lieutenant governor, and speaker of the house of representatives by October 15 of each even-numbered year].~~

SECTION 14. Subsection (d), Section 22.005, Human Resources Code, is amended to read as follows:

(d) With the approval of the comptroller, the department shall establish an internal accounting system, and the department's expenditures shall be allocated to the various funds according to the system. ~~[At the end of each fiscal biennium the department shall report to the comptroller the amount of the unencumbered balances in each of the department's operating funds that belongs to the children's assistance fund and the medical assistance fund, and those unencumbered balances shall be returned to the appropriate special fund.]~~

SECTION 15. Subsection (d), Section 33.002, Human Resources Code, is amended to read as follows:

(d) The department shall continually monitor the expedited issuance of food stamp benefits to ensure that each region in the state complies with federal regulations and that those households eligible for expedited issuance are identified, processed, and certified within the timeframes prescribed within the federal regulations. ~~[As soon as practicable after the end of each fiscal year, the department shall report to the Governor's Office of Budget and Planning, the Legislative Budget Board, the state auditor, and the department's board members regarding its monitoring of expedited issuance and the degree of compliance with federal regulations on a region by region~~

~~basis. The department shall notify members of the legislature and the standing committees of the senate and house of representatives having primary jurisdiction over the department of the filing of the report.]~~

SECTION 16. Section 34.006, Human Resources Code, is amended to read as follows:

Sec. 34.006. STUDY. The Texas Workforce Commission, in collaboration with local workforce development boards and the appropriate standing committees of the senate and house of representatives, shall:

(1) study methods to improve the delivery of workforce services to persons residing in minimum service counties, as defined by the commission; and

(2) develop recommendations to improve the delivery of services described by Subdivision (1) ~~[for inclusion in the report required by Section 34.007].~~

SECTION 17. Subsection (b), Section 52.001, Human Resources Code, is amended to read as follows:

(b) ~~The [Consistent with the provisions of the Memorandum of Understanding on Family Planning Services required by Section 22.012, Human Resources Code, the]~~ department shall:

(1) set guidelines for keeping statistical information on school age pregnancy and parenthood by agencies, organizations, and individuals so that the information may be evaluated and compared;

(2) collect information relating to school age pregnancy as considered necessary by the department, including information on educational programs provided in the public school system relating to family life education, abstinence from sex, and sexually transmitted diseases;

(3) serve as a statewide clearinghouse on information relating to school age pregnancy and education on abstinence from sex and make it available to the legislature, other state agencies, and private entities that are involved in preventing school age pregnancy, addressing the problems caused by school age pregnancy, or encouraging abstinence from sex;

(4) analyze and evaluate the data collected on and studies relating to school age pregnancy and make the analysis and information readily available to the legislature, relevant agencies, and the public; and

(5) make recommendations to the relevant state agencies or the legislature to prevent duplication of services~~]; and~~

~~[(6) submit a report each regular session to the legislature on the status of school age pregnancy programs in the state and the department's progress in meeting the requirements of this section].~~

SECTION 18. Section 131.005, Human Resources Code, is amended to read as follows:

Sec. 131.005. REPORTING AND ACCOUNTING SYSTEM. Each health and human services agency that provides, purchases, or otherwise funds transportation services for clients shall:

(1) comply with the standardized system of reporting and accounting established by the office under Section 131.003(a)(3); and

(2) make any changes to agency data collection systems that are necessary to enable the agency to comply with the standardized system~~]; and~~

~~[(3) not later than August 31 of each year, submit to the office a report relating to transportation services that complies with the standardized system].~~

SECTION 19. Section 131.006, Human Resources Code, is amended to read as follows:

Sec. 131.006. IMPLEMENTATION OF STATEWIDE COORDINATION PLAN. In order to implement the statewide coordination plan created by the office under Section 131.003(a)(2), the office shall:

(1) review rules, policies, contracts, grants, and funding mechanisms relating to transportation services of each health and human services agency that provides, purchases, or otherwise funds transportation services for clients to determine whether the rules, policies, contracts, grants, and funding mechanisms are consistent with the plan; and

(2) make recommendations for revisions to rules, policies, contracts, grants, and funding mechanisms determined under Subdivision (1) to be inconsistent with the plan; ~~and~~

~~[(3) not later than September 30 of each even numbered year, submit a report by electronic mail and by hand delivery to the governor, the secretary of state, the Legislative Budget Board, and the commissioner relating to the results of the review conducted by the office under this section].~~

SECTION 20. Subsection (c), Section 264.205, Family Code, is repealed.

SECTION 21. The following provisions of the Government Code are repealed:

- (1) Section 531.0243;
- (2) Subsection (b), Section 531.0273;
- (3) Subsections (c), (d), and (e), Section 531.0274;
- (4) Section 531.029;
- (5) Section 531.0311;
- (6) Subsection (b), Section 531.056;
- (7) Subsection (l), Section 531.070;
- (8) Subsection (f), Section 531.110;
- (9) Section 531.603;
- (10) Section 752.005;
- (11) Section 752.006; and
- (12) Subchapter G, Chapter 531.

SECTION 22. The following provisions of the Health and Safety Code are repealed:

- (1) Subsections (c), (d), and (e), Section 32.017;
- (2) Subsection (b), Section 36.012;
- (3) Subsection (e), Section 62.104;
- (4) Section 83.004;
- (5) Subsections (f) and (g), Section 108.0065;
- (6) Section 121.0067;
- (7) Subsection (i), Section 532.021;
- (8) Subsections (e) and (f), Section 533.032;
- (9) Subsection (e), Section 533.033;
- (10) Section 533.036;
- (11) Subsection (b), Section 533.049;

- (12) Subsection (b), Section 533.050;
- (13) Subsection (d), Section 534.022;
- (14) Subsection (d), Section 571.0065; and
- (15) Section 1001.031.

SECTION 23. The following provisions of the Human Resources Code are repealed:

- (1) Subsection (b), Section 22.025;
- (2) Subsection (c), Section 22.0255;
- (3) Section 31.0034;
- (4) Subsection (d), Section 31.0325;
- (5) Subsection (s), Section 32.021;
- (6) Subsection (d), Section 32.048;
- (7) Subsection (d), Section 32.055;
- (8) Section 32.257;
- (9) Subsection (c), Section 33.0022;
- (10) Section 34.007;
- (11) Subsection (c), Section 52.001;
- (12) Section 117.031; and
- (13) Section 161.031.

SECTION 24. The following provisions of the Occupations Code are repealed:

- (1) Section 505.207; and
- (2) Section 603.157.

SECTION 25. Section 1.23, Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session, 2003, is repealed.

SECTION 26. This Act takes effect September 1, 2011.

The amendment was read.

Senator Nelson moved to concur in the House amendment to **SB 71**.

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

### **SENATE BILL 76 WITH HOUSE AMENDMENTS**

Senator Nelson called **SB 76** from the President's table for consideration of the House amendments to the bill.

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

#### **Amendment**

Amend **SB 76** by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to certain providers of subsidized child care.

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

SECTION 1. Subtitle B, Title 4, Labor Code, is amended by adding Chapter 313 to read as follows:

CHAPTER 313. REQUIREMENTS FOR PROVIDERS OF RELATIVE CHILD CARE

Sec. 313.001. DEFINITIONS. In this chapter:

(1) "Department" means the Department of Family and Protective Services.

(2) "Relative child care" means child care that is:

(A) funded wholly or partly from money received under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. Section 9858 et seq.); and

(B) provided by a provider who:

(i) is at least 18 years of age;

(ii) complies with any federal or state requirements regarding subsidized child care that apply to the provider;

(iii) provides child-care services for less than 24 hours a day to a child who is, by marriage, blood relationship, or court decree:

(a) the grandchild of the provider;

(b) the great-grandchild of the provider;

(c) the sibling of the provider, and the child resides in a separate residence from the provider; or

(d) the niece or nephew of the provider; and

(iv) operates a listed family home under Chapter 42, Human Resources Code, that provides care for one or more children related to the provider and does not hold any other license or permit to provide child care under Chapter 42, Human Resources Code.

(3) "Teen parent" means an individual 18 years of age or younger, or 19 years of age and fully enrolled in a secondary school in a program leading toward a high school diploma, who is the parent of a child.

Sec. 313.002. LOCATION OF CARE. (a) Except as provided by Subsections (b) and (c), relative child care must be provided in the child-care provider's home.

(b) The commission shall allow relative child care in the child's home:

(1) for a disabled child and the child's siblings;

(2) for a child under 18 months of age and the child's siblings;

(3) for a child of a teen parent; and

(4) when the parent's work schedule necessitates child-care services during the evening, overnight, or on the weekend and taking the child outside of the child's home would be disruptive to the child.

(c) The commission may allow relative child care in the child's home if the commission determines that other child-care provider arrangements are not available in the community.

Sec. 313.003. LISTING AS FAMILY HOME. A relative child-care provider must list the provider's home with the department as a family home.

Sec. 313.004. NOTICE OF BACKGROUND AND CRIMINAL HISTORY CHECKS. The commission must provide notice of the background and criminal history check requirement to the parent or guardian of the child who will receive care through a relative child-care provider before the parent or guardian selects the provider.



Sec. 313.005. MEMORANDUM OF UNDERSTANDING. The commission and the department shall adopt a memorandum of understanding regarding the administration and payment of costs of listing a relative child-care provider as required by this chapter.

SECTION 2. Chapter 301, Labor Code, is amended by adding Subchapter K to read as follows:

SUBCHAPTER K. DETECTION AND PREVENTION OF CHILD-CARE FRAUD, WASTE, AND ABUSE

Sec. 301.191. PREVENTION AND DETECTION OF CHILD-CARE FRAUD, WASTE, AND ABUSE. (a) The commission shall develop risk assessment protocols to identify and assess possible instances of fraud, waste, and abuse in child-care programs, including:

(1) the use of unemployment insurance wage records to identify:

(A) potential ineligible parents due to a change in income or underreporting of income;

(B) relative child-care providers who are engaged in other employment;  
and

(C) parents who do not have the required work history; and

(2) the identification of parents who apply for or receive child-care services in multiple workforce areas simultaneously.

(b) The commission shall ensure that local workforce development boards implement procedures to prevent and detect fraud, waste, and abuse in child-care programs.

Sec. 301.192. CORRECTION OF CHILD-CARE FRAUD, WASTE, AND ABUSE. (a) The commission shall ensure that corrective action is initiated against a child-care provider who commits fraud, including:

(1) temporarily or permanently withholding payments to the provider for child-care services already delivered;

(2) recovering money paid for child care from the child-care provider;

(3) stopping the provision of authorized child care at the provider's facility or location; or

(4) taking any other action consistent with the intent of the governing statutes or rules to investigate, prevent, or stop suspected fraud.

(b) The commission shall ensure that corrective action is initiated against a parent who commits fraud, including:

(1) recovering money paid for child care from the parent;

(2) declaring the parent ineligible for future child care under a commission program;

(3) limiting the enrollment of the parent's child to a regulated child-care provider; or

(4) taking any other action consistent with the intent of the governing statutes or rules to investigate, prevent, or stop suspected fraud.

(c) If the commission proposes to take a corrective action under Subsection (a) or (b), the provider or parent is entitled to appeal the proposed corrective action in accordance with procedures adopted by the commission by rule.

SECTION 3. Subchapter C, Chapter 42, Human Resources Code, is amended by adding Section 42.0523 to read as follows:

Sec. 42.0523. LISTING OF RELATIVE CHILD-CARE PROVIDERS. (a) A child-care provider who only provides child care under Chapter 313, Labor Code, to children related to the provider may list the provider's home as a family home.

(b) Before the department may list a child-care provider's home under this section, in addition to conducting any other background or criminal history check required for a family home listing, the department must search the central database of sex offender registration records maintained by the Department of Public Safety under Chapter 62, Code of Criminal Procedure, to determine whether the provider is listed in the registry as a sex offender.

(c) The address of a family home listed under this section is the address of the child-care provider's home, regardless of whether the child care is provided in the provider's home or in the child's home.

(d) A relative child-care provider's home listed as a family home under this section is exempt from the health and safety requirements of 45 C.F.R. Section 98.41(a).

SECTION 4. Subchapter A, Chapter 302, Labor Code, is amended by adding Section 302.0047 to read as follows:

Sec. 302.0047. ELECTRONIC VALIDATION OF CHILD-CARE SERVICES AND ATTENDANCE. If feasible, the commission shall use an electronic validation system to ensure that parents verify that a provider of relative child care is providing care and that the child for whom the care is provided is in attendance during the period for which the child-care provider is being reimbursed for services.

SECTION 5. Subsection (g), Section 42.054, Human Resources Code, is amended to read as follows:

(g) The provisions of Subsections (b) through (f) of this section do not apply to:

(1) licensed foster homes and licensed foster group homes;  
 (2) nonprofit facilities regulated under this chapter that provided 24-hour care for children in the managing conservatorship of the department during the 12-month period immediately preceding the anniversary date of the facility's license;  
 [or]

(3) facilities operated by a nonprofit corporation or foundation that provides 24-hour residential care and does not charge for the care provided; or

(4) a family home listed under Section 42.0523 in which the relative child-care provider cares for the child in the child's own home.

SECTION 6. The Texas Workforce Commission and the Department of Family and Protective Services shall adopt the memorandum of understanding required by Section 313.005, Labor Code, as added by this Act, not later than October 1, 2011.

SECTION 7. 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 8. Notwithstanding Chapter 313, Labor Code, as added by this Act, the Texas Workforce Commission shall ensure that payments made on or after November 1, 2011, to providers of relative child care, as defined by Section 313.001, Labor Code, as added by this Act, are made only to providers with respect to whom a background and criminal history check has been conducted as required by that chapter.

SECTION 9. This Act takes effect September 1, 2011.

### Floor Amendment No. 1

Amend **CSSB 76** (house committee printing) as follows:

(1) In SECTION 2 of the bill, immediately following added Section 301.191, Labor Code (page 4, between lines 9 and 10), add the following:

(c) The commission may use a motor vehicle record, including a photographic image and signature, to prevent and detect fraud, waste, and abuse in child-care programs.

(d) The commission may use the information under Subsection (c) otherwise for enforcement under this title.

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

SECTION \_\_\_\_\_. Section 730.005, Transportation Code, is amended to read as follows:

Sec. 730.005. REQUIRED DISCLOSURE. Personal information obtained by an agency in connection with a motor vehicle record shall be disclosed for use in connection with any matter of:

(1) motor vehicle or motor vehicle operator safety;  
 (2) motor vehicle theft;  
 (3) motor vehicle emissions;  
 (4) motor vehicle product alterations, recalls, or advisories;  
 (5) performance monitoring of motor vehicles or motor vehicle dealers by a motor vehicle manufacturer;

(6) removal of nonowner records from the original owner records of a motor vehicle manufacturer to carry out the purposes of:

(A) the Automobile Information Disclosure Act, 15 U.S.C. Section 1231 et seq.;

(B) 49 U.S.C. Chapters 301, 305, 323, 325, 327, 329, and 331;

(C) the Anti Car Theft Act of 1992, 18 U.S.C. Sections 553, 981, 982, 2119, 2312, 2313, and 2322, 19 U.S.C. Sections 1646b and 1646c, and 42 U.S.C. Section 3750a et seq., all as amended;

(D) the Clean Air Act, 42 U.S.C. Section 7401 et seq., as amended; and

(E) any other statute or regulation enacted or adopted under or in relation to a law included in Paragraphs (A)-(D); [✕]

(7) child support enforcement under Chapter 231, Family Code; or

(8) enforcement by the Texas Workforce Commission under Title 4, Labor Code.

SECTION \_\_\_\_\_. Section 730.007(c), Transportation Code, is amended to read as follows:

(c) This section does not:

- (1) prohibit the disclosure of a person's photographic image to:
- (A) a law enforcement agency or a criminal justice agency for an official purpose; ~~[or]~~
  - (B) an agency of this state investigating an alleged violation of a state or federal law relating to the obtaining, selling, or purchasing of a benefit authorized by Chapter 31 or 33, Human Resources Code; or
  - (C) an agency of this state investigating an alleged violation of a state or federal law under authority provided by Title 4, Labor Code; or
- (2) prevent a court from compelling by subpoena the production of a person's photographic image.

The amendments were read.

Senator Nelson moved to concur in the House amendments to **SB 76**.

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

### **SENATE BILL 221 WITH HOUSE AMENDMENTS**

Senator Nelson called **SB 221** from the President's table for consideration of the House amendments to the bill.

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

#### **Amendment**

Amend **SB 221** by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to the Department of Family and Protective Services, including protective services and investigations of alleged abuse, neglect, or exploitation for certain adults who are elderly or disabled; providing a criminal penalty.

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

SECTION 1. Section 59.006(a), Finance Code, is amended to read as follows:

(a) This section provides the exclusive method for compelled discovery of a record of a financial institution relating to one or more customers but does not create a right of privacy in a record. This section does not apply to and does not require or authorize a financial institution to give a customer notice of:

(1) a demand or inquiry from a state or federal government agency authorized by law to conduct an examination of the financial institution;

(2) a record request from a state or federal government agency or instrumentality under statutory or administrative authority that provides for, or is accompanied by, a specific mechanism for discovery and protection of a customer record of a financial institution, including a record request from a federal agency subject to the Right to Financial Privacy Act of 1978 (12 U.S.C. Section 3401 et seq.), as amended, or from the Internal Revenue Service under Section 1205, Internal Revenue Code of 1986;

(3) a record request from or report to a government agency arising out of the investigation or prosecution of a criminal offense or the investigation of alleged abuse, neglect, or exploitation of an elderly or disabled person in accordance with Chapter 48, Human Resources Code;

(4) a record request in connection with a garnishment proceeding in which the financial institution is garnishee and the customer is debtor;

(5) a record request by a duly appointed receiver for the customer;

(6) an investigative demand or inquiry from a state legislative investigating committee;

(7) an investigative demand or inquiry from the attorney general of this state as authorized by law other than the procedural law governing discovery in civil cases; or

(8) the voluntary use or disclosure of a record by a financial institution subject to other applicable state or federal law.

SECTION 2. Section 411.114, Government Code, is amended to read as follows:

Sec. 411.114. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: DEPARTMENT OF FAMILY AND PROTECTIVE ~~[AND REGULATORY]~~ SERVICES. (a)(1) In this subsection:

(A) "Child," "child-care facility," "child-placing agency," and "family home" have the meanings assigned by Section 42.002, Human Resources Code.

(B) "Elderly person" has the meaning assigned by Section 48.002, Human Resources Code.

(C) "Maternity home" has the meaning assigned by Section 249.001, Health and Safety Code.

(D) "Person with a disability" means a disabled person as defined by Section 48.002, Human Resources Code.

(E) "Ward" has the meaning assigned by Section 601, Texas Probate Code.

(2) The Department of Family and Protective Services shall obtain from the department criminal history record information maintained by the department that relates to a person who is:

(A) an applicant for a license, registration, certification, or listing under Chapter 42, Human Resources Code, or Chapter 249, Health and Safety Code;

(B) an owner, operator, or employee of or an applicant for employment by a child-care facility, child-placing agency, family home, or maternity home licensed, registered, certified, or listed under Chapter 42, Human Resources Code, or Chapter 249, Health and Safety Code;

(C) a person 14 years of age or older who will be regularly or frequently working or staying in a child-care facility, family home, or maternity home while children are being provided care, other than a child in the care of the home or facility;

(D) an applicant selected for a position with the Department of Family and Protective Services, the duties of which include direct delivery of protective services to children, elderly persons, or persons with a disability;

(E) an employee of, an applicant for employment with, or a volunteer or an applicant volunteer with a business entity or person that contracts with the Department of Family and Protective Services to provide direct delivery of protective services to children, elderly persons, or persons with a disability, if the person's duties or responsibilities include direct contact with children, elderly persons, or persons with a disability;

(F) a registered volunteer with the Department of Family and Protective Services;

(G) a person providing or applying to provide in-home, adoptive, or foster care for children in the care of the Department of Family and Protective Services and other persons living in the residence in which the child will reside;

(H) a Department of Family and Protective Services employee who is engaged in the direct delivery of protective services to children, elderly persons, or persons with a disability;

(I) an alleged perpetrator in [a person who is the subject of] a report the Department of Family and Protective Services receives alleging that the person has abused, neglected, or exploited a child, an elderly person, or a person with a disability, provided that:

(i) the report alleges the person has engaged in conduct that meets the statutory definition of abuse, neglect, or exploitation under Chapter 261, Family Code, or the definition of abuse, neglect, or exploitation applicable through a rule adopted by the executive commissioner of the Health and Human Services Commission under Section 48.002(c), Human Resources Code, except that if the executive commissioner has not adopted applicable rules under that section, the statutory definition of abuse, neglect, or exploitation under Section 48.002(a) [Chapter 48], Human Resources Code, shall be used; and

(ii) the person [who is the subject of the report] is not also the victim of the alleged conduct;

(J) a person providing child care for a child who is in the care of the Department of Family and Protective Services and who is or will be receiving adoptive, foster, or in-home care;

(K) through a contract with a nonprofit management center, an employee of, an applicant for employment with, or a volunteer or an applicant volunteer with a nonprofit, tax-exempt organization that provides any service that involves the care of or access to a child [children], an elderly person [persons], or a person [persons] with a disability; or

(L) an applicant for a child-care administrator or child-placing agency administrator license under Chapter 43, Human Resources Code.

(3) The Department of Family and Protective [and Regulatory] Services is entitled to obtain from the department criminal history record information maintained by the department that relates to a person who is:

(A) a volunteer or applicant volunteer with a local affiliate in this state of Big Brothers/Big Sisters of America;

(B) a volunteer or applicant volunteer with the "I Have a Dream/Houston" program;

(C) a volunteer or applicant volunteer with an organization that provides court-appointed special advocates for abused or neglected children;

(D) a person providing, at the request of the child's parent, in-home care for a child who is the subject of a report alleging the child has been abused or neglected;

(E) a volunteer or applicant volunteer with a Texas chapter of the Make-a-Wish Foundation of America;

(F) a person providing, at the request of the child's parent, in-home care for a child only if the person gives written consent to the release and disclosure of the information;

(G) a child who is related to the caretaker, as determined under Section 42.002, Human Resources Code, and who resides in or is present in a child-care facility, family home, or maternity home, other than a child described by Subdivision (2)(C), or any other person who has unsupervised access to a child in the care of a child-care facility, family home, or maternity home;

(H) an applicant for a position with the Department of Family and Protective [~~and Regulatory~~] Services, other than a position described by Subdivision (2)(D), regardless of the duties of the position;

(I) a volunteer or applicant volunteer with the Department of Family and Protective [~~and Regulatory~~] Services, other than a registered volunteer, regardless of the duties to be performed;

(J) a person providing or applying to provide in-home, adoptive, or foster care for children to the extent necessary to comply with Subchapter B, Chapter 162, Family Code;

(K) a Department of Family and Protective [~~and Regulatory~~] Services employee, other than an employee described by Subdivision (2)(H), regardless of the duties of the employee's position;

(L) a relative of a child in the care of the Department of Family and Protective [~~and Regulatory~~] Services, to the extent necessary to comply with Section 162.007, Family Code;

(M) a person, other than an alleged perpetrator in [~~the subject of~~] a report described in Subdivision (2)(I), living in the residence in which the alleged victim of the report resides;

(N) a contractor or an employee of a contractor who delivers services to a ward of the Department of Protective and Regulatory Services under a contract with the estate of the ward;

(O) a person who seeks unsupervised visits with a ward of the Department of Protective and Regulatory Services, including a relative of the ward; [~~or~~]

(P) an employee, volunteer, or applicant volunteer of a children's advocacy center under Subchapter E, Chapter 264, Family Code, including a member of the governing board of a center; or

(Q) an employee of, an applicant for employment with, or a volunteer or an applicant volunteer with an entity or person that contracts with the Department of Family and Protective Services and has access to confidential information in the department's records, if the employee, applicant, volunteer, or applicant volunteer has or will have access to that confidential information.

(4) Subject to Section 411.087, the Department of Family and Protective [~~and Regulatory~~] Services is entitled to:

(A) obtain through the Federal Bureau of Investigation criminal history record information maintained or indexed by that bureau that pertains to a person described by Subdivision (2) or (3); and

(B) 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 Subdivision (2) or (3). Law enforcement entities shall expedite the furnishing of such information to Department of Family and Protective [~~and Regulatory~~] Services workers to ensure prompt criminal background checks for the safety of alleged victims and Department of Family and Protective [~~and Regulatory~~] Services workers.

(5) The Department of Family and Protective [~~and Regulatory~~] Services may not use the authority granted under this section to harass an employee or volunteer. The executive commissioner of the Health and Human Services Commission [~~Board of Protective and Regulatory Services~~] shall adopt rules to prevent the harassment of an employee or volunteer through the request and use of criminal records.

(6) Criminal history record information obtained by the Department of Family and Protective [~~and Regulatory~~] Services under this subsection may not be released to any person except:

(A) on court order;

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

(C) for purposes of an administrative hearing held by the Department of Family and Protective [~~and Regulatory~~] Services concerning the person who is the subject of the criminal history record information; or

(D) as provided by Subdivision (7).

(7) The Department of Family and Protective [~~and Regulatory~~] Services is not prohibited from releasing criminal history record information obtained under this subsection to:

(A) the person who is the subject of the criminal history record information;

(B) a child-care facility, child-placing agency, family home, or maternity home listed in Subdivision (2) that employs or is considering employing the person who is the subject of the criminal history record information;

(C) a person or business entity described by Subdivision (2)(E) or (3) who uses or intends to use the services of the volunteer or employs or is considering employing the person who is the subject of the criminal history record information;

[~~or~~]



(D) an adult who resides [residing] with an alleged victim of abuse, neglect, or exploitation of a child, elderly person, or person with a disability and who also resides with the alleged perpetrator of that abuse, neglect, or exploitation if:

(i) the alleged perpetrator [person who] is the subject of the criminal history record information; and

(ii) [if] the Department of Family and Protective [and Regulatory] Services determines that the release of information to the adult is necessary to ensure the safety or welfare of the alleged victim [child, elderly person, or person with a disability] or the adult; or

(E) an elderly or disabled person who is an alleged victim of abuse, neglect, or exploitation and who resides with the alleged perpetrator of that abuse, neglect, or exploitation if:

(i) the alleged perpetrator is the subject of the criminal history record information; and

(ii) the Department of Family and Protective Services determines that the release of information to the elderly or disabled person or adult is necessary to ensure the safety or welfare of the elderly or disabled person.

(b) The failure or refusal to provide a complete set of fingerprints or a complete name on request constitutes good cause for dismissal or refusal to hire, as applicable, with regard to a volunteer of or an employee or applicant for permanent or temporary employment with the Department of Family and Protective [and Regulatory] Services, or a facility, home, business, or other entity, if the volunteer position, employment, or potential employment involves direct interaction with or the opportunity to interact and associate with children.

(c) The Department of Family and Protective [and Regulatory] Services may charge an organization or person that requests criminal history record information under Subsection (a)(3) a fee in an amount necessary to cover the costs of obtaining the information on the organization's or person's behalf.

SECTION 3. Section 142.018(a), Health and Safety Code, is amended to read as follows:

(a) In this section, "abuse," "exploitation," and "neglect" have the meanings applicable through a rule adopted by the executive commissioner of the Health and Human Services Commission under [assigned by] Section 48.002(c) [48.002], Human Resources Code, except that if the executive commissioner has not adopted applicable rules under that section, the statutory definitions of those terms under Section 48.002(a), Human Resources Code, shall be used.

SECTION 4. 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; and [or]

(2) the appropriate law enforcement agency, unless the law enforcement agency reported the alleged abuse, neglect, or exploitation to the department.

SECTION 5. Sections 48.002(a)(3) and (5), Human Resources Code, are amended to read as follows:

(3) "Exploitation" means the illegal or improper act or process of a caretaker, family member, or other individual who has an ongoing relationship with an [the] elderly or disabled person that involves using, or attempting to use, the resources of the [an] elderly or disabled person, including the person's social security number or other identifying information, for monetary or personal benefit, profit, or gain without the informed consent of the elderly or disabled person.

(5) "Protective services" means the services furnished by the department or by a protective services agency to an elderly or disabled person who has been determined to be in a state of abuse, neglect, or exploitation or to a relative or caretaker of an elderly or disabled person if the department determines the services are necessary to prevent the elderly or disabled person from returning to a state of abuse, neglect, or exploitation. These services may include social casework, case management, and arranging for psychiatric and health evaluation, home care, day care, social services, health care, respite services, and other services consistent with this chapter. The term does not include the services of the department or another protective services agency in conducting an investigation regarding alleged abuse, neglect, or exploitation of an elderly or disabled person.

SECTION 6. Section 48.002, Human Resources Code, is amended by adding Subsection (c) to read as follows:

(c) Except as provided by Subsection (b), the executive commissioner by rule may adopt definitions of "abuse," "neglect," and "exploitation," as an alternative to the definitions of those terms under Subsection (a), for purposes of conducting an investigation under this chapter.

SECTION 7. Section 48.006(a), Human Resources Code, is amended to read as follows:

(a) Subject to the availability of funds, the department shall develop a community satisfaction survey that solicits information regarding the department's performance with respect to providing investigative and adult protective services. In each region, the department shall send the survey at least biennially [~~annually~~] to:

- (1) stakeholders in the adult protective services system, including local law enforcement agencies and prosecutors' offices;
- (2) protective services agencies, including nonprofit agencies; and
- (3) courts with jurisdiction over probate matters.

SECTION 8. Section 48.053, Human Resources Code, is amended to read as follows:

Sec. 48.053. FALSE REPORT; PENALTY. (a) A person commits an offense if the person knowingly or intentionally reports information as provided in this chapter that the person knows is false or lacks factual foundation.

(b) An offense under this section is a Class A ~~[B]~~ misdemeanor.

SECTION 9. Section 48.151(a), Human Resources Code, is amended to read as follows:

(a) Not later than 24 hours after the department receives a report of an allegation of abuse, neglect, or exploitation under Section 48.051, the department shall initiate a prompt and thorough investigation as needed to evaluate the accuracy of the report and to assess the need for protective services, unless the department determines that the report:

(1) is frivolous or patently without a factual basis; or

(2) does not concern abuse, neglect, or exploitation, as those terms are defined by rules adopted by the executive commissioner under Section 48.002(c), except that if the executive commissioner has not adopted applicable rules under that section, the statutory definitions of those terms under Section 48.002(a) shall be used [48.002].

SECTION 10. Section 48.152, Human Resources Code, is amended to read as follows:

Sec. 48.152. INVESTIGATION. (a) An investigation by the department or a state agency shall include an interview with the elderly or disabled person, if appropriate, and with persons thought to have knowledge of the circumstances. If the elderly or disabled person refuses to be interviewed or cannot be interviewed because of a physical or mental impairment, the department shall continue the investigation by interviewing other persons thought to have knowledge relevant to the investigation.

(b) The investigation may include an interview with an alleged juvenile perpetrator of the alleged abuse, neglect, or exploitation.

(c) The department or state agency may conduct an interview under this section in private or may include any person the department or agency determines is necessary.

SECTION 11. 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 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, unless the law enforcement agency reported the alleged abuse, neglect, or exploitation to the department; 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, in addition to the report to the appropriate law enforcement agency required by Subsection (a), 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.

SECTION 12. Sections 48.154(a), (b), (c), (d), and (e), Human Resources Code, are amended to read as follows:

(a) The department or another state agency, as appropriate, shall have access to any records or documents, including client-identifying information, financial records, and medical and psychological records, necessary to the performance of the department's or state agency's duties under this chapter. The duties include but are not limited to the investigation of abuse, neglect, or exploitation or the provisions of services to an elderly or disabled person. A person, ~~or~~ agency, or institution that has a record or document that the department or state agency needs to perform its duties under this chapter shall, without unnecessary delay, make the record or document available to the department or state agency that requested the record or document.

(b) The department is exempt from the payment of a fee otherwise required or authorized by law to obtain a financial record from a person, agency, or institution or a medical record, including a mental health record, from a hospital or health care provider if the request for a record is made in the course of an investigation by the department.

(c) If the department or another state agency cannot obtain access to a record or document that is necessary to properly conduct an investigation or to perform another duty under this chapter, the department or state agency may petition the probate court or the statutory or constitutional county court having probate jurisdiction for access to the record or document.

(d) On good cause shown, the court shall order the person, agency, or institution who has ~~denied access to~~ a requested record or document to allow the department or state agency to have access to that record or document under the terms and conditions prescribed by the court.

(e) A person, agency, or institution who has a requested record or document is entitled to notice and a hearing on a ~~the~~ petition filed under this section.

SECTION 13. Section 48.203(d), Human Resources Code, is amended to read as follows:

(d) Except as provided by Section 48.208, if ~~if~~ an elderly or disabled person withdraws from or refuses consent to voluntary protective services, the services may not be provided.

SECTION 14. Section 48.204, Human Resources Code, is amended to read as follows:

Sec. 48.204. AGENCY POWERS. A protective services agency may furnish protective services to an elderly or disabled person with the person's consent or to a relative or caretaker of an elderly or disabled person on behalf of the elderly or disabled person with the relative's or caregiver's consent or, if the elderly or disabled person lacks the capacity to consent, without that person's consent as provided by this chapter.

SECTION 15. Section 48.208, Human Resources Code, is amended by amending Subsections (e), (e-2), (f), and (h) and adding Subsection (i) to read as follows:

(e) The emergency order expires on the earlier of ~~[at]~~ the end of the 10th day after ~~[72 hours from]~~ the date ~~[time]~~ the order is rendered or the end of the 10th day after the date the person was removed to safer surroundings if the emergency order was rendered subsequent to the removal of the person to safer surroundings in accordance with Subsection (h), unless:

(1) the emergency order terminates as provided by Subsection (e-1);

(2) the 10-day ~~[72 hour]~~ period ends on a Saturday, Sunday, or legal holiday in which event the order is automatically extended to 4 p.m. on the first succeeding business day; or

(3) the court extends the order as provided by Subsection (e-2).

(e-2) The court, after notice and a hearing, may extend an emergency order issued under this section for a period of not more than 30 days after the date the original emergency order for protective services was rendered. The court, after notice and a hearing and for good cause shown, may grant a second extension of an emergency order of not more than an additional 30 days. The court may not grant more than two extensions of the original emergency order. An extension order that ends on a Saturday, Sunday, or legal holiday is automatically extended to 4 p.m. on the first succeeding business day. The court may modify or terminate the emergency order on petition of the department, the incapacitated person, or any person interested in the person's ~~[his]~~ welfare.

(f) Any medical facility, emergency medical services provider, or physician who provides treatment to or who transports ~~[treating]~~ an elderly or disabled person pursuant to an emergency order under Subsection (d) or an emergency authorization under Subsection (h) ~~[this chapter]~~ is not liable for any damages arising from the treatment or transportation, except those damages resulting from the negligence of the facility, provider, or physician.

(h) If the department cannot obtain an emergency order under this section because the court is closed on a Saturday, Sunday, or legal holiday or after 5 p.m., the department may remove or authorize an appropriate transportation service, including an emergency medical services provider, to remove the elderly or disabled person to safer surroundings, authorize medical treatment, or authorize ~~[order]~~ or provide other available services necessary to remove conditions creating the threat to life or physical safety. The department must obtain an emergency order under this section not later than 4 p.m. on the first succeeding business day after the date on which protective services are provided. If the department does not obtain an emergency order, the department shall cease providing protective services and, if necessary, make arrangements for the immediate return of the person to the place from which the person was removed, to the person's place of residence in the state, or to another suitable place.

(i) If the department's removal of a person from the person's place of residence under this section results in that residence being vacant, the department shall notify the appropriate law enforcement agency of the vacancy to facilitate the law enforcement agency's monitoring of the residence.

SECTION 16. Sections 48.405(a) and (b), Human Resources Code, are amended to read as follows:

(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 an administrative law judge [~~a hearings examiner~~] to conduct

the hearing.

(b) The administrative law judge [~~hearings examiner~~] shall make findings of fact and conclusions of law and shall promptly issue an order regarding [~~to the commissioner or the commissioner's designee a proposal for decision as to~~] the occurrence of the reportable conduct.

SECTION 17. Section 48.405(c), Human Resources Code, is repealed.

SECTION 18. The change made by this Act to Section 48.053, Human Resources Code, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For the 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 19. The change in law made by this Act to Section 48.405, Human Resources Code, applies only to a hearing requested on or after the effective date of this Act. A hearing requested before the effective date of this Act is governed by the law in effect when the hearing was requested, and the former law is continued in effect for that purpose.

SECTION 20. This Act takes effect September 1, 2011.

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

Amend **CSSB 221** (house committee printing) as follows:

(1) In SECTION 2 of the bill, strike amended Section 411.114(a)(2)(I)(i), Government Code (page 4, line 26, through page 5, line 8), and substitute the following:

(i) the report alleges the person has engaged in conduct that meets the applicable [~~statutory~~] definition of abuse, neglect, or exploitation under Chapter 261, Family Code, or Chapter 48, Human Resources Code; and

(2) In SECTION 6 of the bill, in proposed Section 48.002(c), Human Resources Code (page 13, line 9), between "chapter" and the underlined period, insert "or Chapter 142, Health and Safety Code".

The amendments were read.

Senator Nelson moved to concur in the House amendments to **SB 221**.

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

### **SENATE BILL 222 WITH HOUSE AMENDMENT**

Senator Nelson called **SB 222** from the President's table for consideration of the House amendment to the bill.

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

**Amendment**

Amend **SB 222** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to access to certain long-term care services and supports under the medical assistance program.

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

SECTION 1. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.0515 to read as follows:

Sec. 531.0515. RISK MANAGEMENT CRITERIA FOR CERTAIN WAIVER PROGRAMS. (a) In this section, "legally authorized representative" has the meaning assigned by Section 531.051.

(b) The commission shall consider developing risk management criteria under home and community-based services waiver programs designed to allow individuals eligible to receive services under the programs to assume greater choice and responsibility over the services and supports the individuals receive.

(c) The commission shall ensure that any risk management criteria developed under this section include:

(1) a requirement that if an individual to whom services and supports are to be provided has a legally authorized representative, the representative be involved in determining which services and supports the individual will receive; and

(2) a requirement that if services or supports are declined, the decision to decline is clearly documented.

SECTION 2. Section 533.0355, Health and Safety Code, is amended by adding Subsection (h) to read as follows:

(h) The Department of Aging and Disability Services shall ensure that local mental retardation authorities are informing and counseling individuals and their legally authorized representatives, if applicable, about all program and service options for which the individuals are eligible in accordance with Section 533.038(d), including options such as the availability and types of ICF-MR placements for which an individual may be eligible while the individual is on a department interest list or other waiting list for other services.

SECTION 3. Subchapter D, Chapter 161, Human Resources Code, is amended by adding Sections 161.084 and 161.085 to read as follows:

Sec. 161.084. MEDICAID SERVICE OPTIONS PUBLIC EDUCATION INITIATIVE. (a) In this section, "Section 1915(c) waiver program" has the meaning assigned by Section 531.001, Government Code.

(b) The department, in cooperation with the commission, shall educate the public on:

(1) the availability of home and community-based services under a Medicaid state plan program, including the primary home care and community attendant services programs, and under a Section 1915(c) waiver program; and

(2) the various service delivery options available under the Medicaid program, including the consumer direction models available to recipients under Section 531.051, Government Code.

(c) The department may coordinate the activities under this section with any other related activity.

Sec. 161.085. INTEREST LIST REPORTING. The department shall post on the department's Internet website historical data, categorized by state fiscal year, on the percentages of individuals who elect to receive services under a program for which the department maintains an interest list once their names reach the top of the list.

SECTION 4. (a) In this section:

(1) "Long-term care services" has the meaning assigned by Section 22.0011, Human Resources Code.

(2) "Medical assistance program" means the medical assistance program administered under Chapter 32, Human Resources Code.

(3) "Nursing facility" means a convalescent or nursing home or related institution licensed under Chapter 242, Health and Safety Code.

(b) The Health and Human Services Commission, in cooperation with the Department of Aging and Disability Services, shall prepare a written report regarding individuals who receive long-term care services in nursing facilities under the medical assistance program. The report should use existing data and information to identify:

(1) the reasons medical assistance recipients of long-term care services are placed in nursing facilities as opposed to being provided long-term care services in home or community-based settings;

(2) the types of medical assistance services recipients residing in nursing facilities typically receive and where and from whom those services are typically provided;

(3) community-based services and supports available under a Medicaid state plan program, including the primary home care and community attendant services programs, or under a medical assistance waiver granted in accordance with Section 1915(c) of the federal Social Security Act (42 U.S.C. Section 1396n(c)) for which recipients residing in nursing facilities may be eligible; and

(4) ways to expedite recipients' access to community-based services and supports identified under Subdivision (3) of this subsection for which interest lists or other waiting lists exist.

(c) Not later than September 1, 2012, the Health and Human Services Commission shall submit the report described by Subsection (b) of this section together with the commission's recommendations to the governor, the Legislative Budget Board, the Senate Committee on Finance, the Senate Committee on Health and Human Services, the House Appropriations Committee, and the House Human Services Committee. The recommendations must address options for expediting access to community-based services and supports by recipients described by Subsection (b)(3) of this section.

SECTION 5. As soon as practicable after the effective date of this Act, the executive commissioner of the Health and Human Services Commission shall apply for and actively pursue amendments from the federal Centers for Medicare and Medicaid Services, or any other appropriate federal agency, to the community living assistance and support services waiver and the home and community-based services



program waiver granted under Section 1915(c) of the federal Social Security Act (42 U.S.C. Section 1396n(c)) to authorize the provision of personal attendant services through the programs operated under those waivers.

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. This Act takes effect September 1, 2011.

The amendment was read.

Senator Nelson moved to concur in the House amendment to **SB 222**.

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

### SENATE BILL 469 WITH HOUSE AMENDMENT

Senator Nelson called **SB 469** from the President's table for consideration of the House amendment to the bill.

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

#### Amendment

Amend **SB 469** by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to the collection of unpaid tolls by a regional tollway authority.

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

SECTION 1. Section 366.003, Transportation Code, is amended by adding Subdivision (10-a) to read as follows:

(10-a) "Toll assessment facility" means a location on a turnpike project where a vehicle that is driven or towed through the facility is assessed a toll for the use of the project.

SECTION 2. Section 366.178, Transportation Code, is amended by amending Subsections (a), (b), (c), (d), (e), (f), (g), (i), and (i-1) and adding Subsections (b-1), (b-2), (b-3), (b-4), (d-1), (d-2), and (f-1) to read as follows:

(a) A motor vehicle other than an authorized emergency vehicle, as defined by Section 541.201, that passes through a toll assessment [~~collection~~] facility, whether driven or towed, shall pay the proper toll. The exemption from payment of a toll for an authorized emergency vehicle applies regardless of whether the vehicle is:

- (1) responding to an emergency;
- (2) displaying a flashing light; or
- (3) marked as a police or emergency vehicle.

(b) A person who fails or refuses to pay a toll provided for the use of a project is liable for a fine not to exceed \$250, plus any [~~an~~] administrative fees [~~fee~~] incurred in connection with the violation.

(b-1) As an alternative to requiring payment of a toll at the time a vehicle is driven or towed through a toll assessment facility, the authority shall use video recordings, photography, electronic data, transponders, or other tolling methods to permit the registered owner of the nonpaying vehicle to pay the toll at a later date.

(b-2) If the authority does not collect the proper toll at the time a vehicle is driven or towed through a toll assessment facility, the authority shall send an invoice by first class mail to the registered owner of the vehicle. The invoice may include one or more tolls assessed by the authority for use of the project by the nonpaying vehicle and must specify the date by which the toll or tolls must be paid. Except as provided by Subsection (b-3), the registered owner shall pay the unpaid tolls included in the invoice not later than the 30th day after the date the invoice is mailed.

(b-3) If the address to which the invoice issued under Subsection (b-2) is mailed to the registered owner is determined to be incorrect, the registered owner shall pay the invoice not later than the 30th day after the date the invoice is mailed to the correct address.

(b-4) If the registered owner of the nonpaying vehicle fails to pay the unpaid tolls included in the invoice mailed under Subsection (b-2) or (b-3) by the date specified in the invoice, the authority shall send the first notice of nonpayment by first class mail to the registered owner of the nonpaying vehicle as provided by Subsection (d).

(c) On ~~[If a person fails to pay the proper toll:~~

~~[(1) on] issuance of the first [a] notice of nonpayment, the registered owner of the nonpaying vehicle shall pay both the unpaid tolls included in the invoice and an [the proper toll and the] administrative fee. The authority may charge only one administrative fee of not more than \$25 for the first notice of nonpayment that is sent to the registered owner of the nonpaying vehicle[; and~~

~~[(2) an authority may charge an administrative fee of not more than \$100 to recover the cost of collecting the unpaid toll].~~

(d) Unless an authority requires additional time to send a notice of nonpayment because of events outside the authority's reasonable control, the authority shall send the first notice of nonpayment not later than the 30th day after the date the 30-day period expires for the registered owner to pay the invoice issued under Subsection (b-2) or (b-3). If an authority requires additional time as provided by this subsection, the authority must send the notice not later than the 60th day after the date the 30-day period expires for the registered owner to pay the invoice issued under Subsection (b-2) or (b-3). The first notice [Notice] of nonpayment ~~[under Subsection (c)(1)] shall [be sent by first class mail and may not] require payment of the unpaid tolls included in the invoice [the proper toll] and the administrative fee before the 30th day after the date the first notice of nonpayment is mailed[. The registered owner shall pay a separate toll and administrative fee for each nonpayment].~~

(d-1) If the registered owner of the nonpaying vehicle fails to pay the unpaid tolls and the administrative fee by the date specified in the first notice of nonpayment, the authority shall send a second notice of nonpayment by first class mail to the registered owner of the nonpaying vehicle. The second notice of nonpayment must specify the date by which payment must be made and may require payment of:

(1) the unpaid tolls and administrative fee included in the first notice of nonpayment; and

(2) an additional administrative fee of not more than \$25 for each unpaid toll included in the notice, not to exceed a total of \$200.

(d-2) If the registered owner of the nonpaying vehicle fails to pay the amount included in the second notice of nonpayment by the date specified in that notice, the authority shall send a third notice of nonpayment by first class mail to the registered owner of the nonpaying vehicle. The third notice of nonpayment must specify the date by which payment must be made and may require payment of:

(1) the amount included in the second notice of nonpayment; and

(2) any third-party collection service fees incurred by the authority.

(e) If the registered owner of the vehicle fails to pay the amount included in the third notice of nonpayment by the date ~~[proper toll and administrative fee in the time]~~ specified in ~~in~~ ~~[by]~~ the notice, the owner may ~~[shall]~~ be cited as for other traffic violations as provided by law, and the owner shall pay a fine of not more than \$250 for each nonpayment of a toll.

(f) Except as provided by Subsection (f-1), in ~~[in]~~ the prosecution of a violation for nonpayment, proof that the vehicle passed through a toll assessment ~~[collection]~~ facility and that the amount included in the third notice of nonpayment was not paid before the date specified in the notice, ~~[without payment of the proper toll]~~ together with proof that the defendant was the registered owner or the driver of the vehicle when the unpaid toll was assessed ~~[failure to pay occurred]~~, establishes the nonpayment of the registered owner. The proof may be by testimony of a peace officer or authority employee, video surveillance, or any other reasonable evidence, including a copy of the rental, lease, or other contract document or the electronic data provided to the authority under Subsection (i) that shows the defendant was the lessee of the vehicle when the unpaid toll was assessed ~~[underlying event of nonpayment occurred]~~.

(f-1) Nonpayment by the registered owner of the vehicle may be established by:

(1) a copy of a written agreement between the authority and the registered owner for the payment of unpaid tolls and administrative fees; and

(2) evidence that the registered owner is in default under the agreement.

(g) The court of the local jurisdiction in which the unpaid toll was assessed ~~[violation occurs]~~ may assess and collect the fine in addition to any court costs. The court shall collect the unpaid tolls, ~~[proper toll and]~~ administrative fees, and third-party collection service fees incurred by the authority on or before the date the fines and court costs are collected by the court ~~[fee]~~ and forward the tolls ~~[toll]~~ and fees ~~[fee]~~ to the authority. Payment of the unpaid tolls, administrative fees, and third-party collection service fees by the registered owner may not be waived by the court unless the court finds that the registered owner of the vehicle is indigent.

(i) A registered owner who is the lessor of a vehicle for which an invoice is mailed under Subsection (b-2) or (b-3) ~~[a notice of nonpayment has been issued]~~ is not liable if, not later than the 30th day after the date the invoice ~~[notice of nonpayment]~~ is mailed, the registered owner provides to the authority:

(1) a copy of the rental, lease, or other contract document covering the vehicle on the date the unpaid toll was assessed [~~of the nonpayment~~], with the name and address of the lessee clearly legible; or

(2) electronic data, other than a photocopy or scan of a rental or lease contract, that contains the information required under Sections 521.460(c)(1), (2), and (3) covering the vehicle on the date the unpaid toll was assessed [~~of the nonpayment~~] under this section.

(i-1) If the lessor timely provides the required information under Subsection (i), the lessee of the vehicle on the date the unpaid toll was assessed [~~of the violation~~] is considered to be the registered owner of the vehicle for purposes of this section, and the authority shall follow the procedures provided by this section as if the lessee were the registered owner of the vehicle, including sending an invoice [~~The lessee is subject to prosecution for failure to pay the proper toll if the authority sends a notice of nonpayment~~] to the lessee by first-class mail not later than the 30th day after the date of the receipt of the information from the lessor.

SECTION 3. Section 366.178, Transportation Code, as amended by this Act, applies only to a vehicle that is driven or towed through a toll assessment facility, as defined by Section 366.003, Transportation Code, as amended by this Act, on or after the effective date of this Act. A toll that is assessed before the effective date of this Act is governed by the law in effect on the date the vehicle was driven or towed through a toll assessment facility, and the former law is continued in effect for that purpose.

SECTION 4. This Act takes effect September 1, 2011.

The amendment was read.

Senator Nelson moved to concur in the House amendment to **SB 469**.

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

### **SENATE BILL 1178 WITH HOUSE AMENDMENT**

Senator Nelson called **SB 1178** from the President's table for consideration of the House amendment to the bill.

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

#### **Amendment**

Amend **SB 1178** by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to the regulation of certain shelter day-care facilities, child-care facilities, and individuals providing child-care services, and access to certain criminal history record information; providing an administrative penalty.

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

SECTION 1. Subdivision (18), Section 42.002, Human Resources Code, is amended to read as follows:

(18) "Controlling person" means a person who, either alone or in connection with others, has the ability to directly or indirectly influence or direct the management, expenditures, or policies of a [~~residential child care~~] facility or family home.

SECTION 2. Section 42.041, Human Resources Code, is amended by adding Subsection (f) to read as follows:

(f) Notwithstanding the requirements of Subsection (b)(14), a municipality that operates an elementary-age (ages 5-13) recreation program may, in lieu of an annual public hearing, accept public comment through the municipality's Internet website for at least 30 days before the municipality adopts standards of care by ordinance if the municipality:

(1) has a population of 300,000 or more; and

(2) has held at least two annual public hearings on the standards of care and adopted standards of care by ordinance after those public hearings.

SECTION 3. Section 42.044, Human Resources Code, is amended by amending Subsection (b) and adding Subsections (c-1) and (c-2) to read as follows:

(b) The department shall inspect all licensed or certified facilities at least once a year and may inspect other facilities or registered family homes as necessary. [~~The department shall investigate a listed family home when the department receives a complaint of abuse or neglect of a child, as defined by Section 261.401, Family Code.~~] At least one of the annual visits must be unannounced and all may be unannounced.

(c-1) The department:

(1) shall investigate a listed family home if the department receives a complaint that:

(A) a child in the home has been abused or neglected, as defined by Section 261.401, Family Code; or

(B) otherwise alleges an immediate risk of danger to the health or safety of a child being cared for in the home; and

(2) may investigate a listed family home to ensure that the home is providing care for compensation to not more than three children, excluding children who are related to the caretaker.

(c-2) The department must notify the operator of a listed family home when a complaint is being investigated under this section and report in writing the results of the investigation to the family home's operator.

SECTION 4. Section 42.052, Human Resources Code, is amended by amending Subsection (j) and adding Subsection (j-1) to read as follows:

(j) The operator of a listed family home shall undergo initial and subsequent background and criminal history checks required under Section 42.056. If the operator of a listed family home fails to submit the information required by Section 42.056 for a subsequent background and criminal history check, the department shall automatically:

(1) suspend the home's listing until the required information is submitted;  
and

(2) revoke the home's listing if the required information is not submitted within six months after the date the automatic suspension begins.

(j-1) A suspension or revocation under Subsection (j) is not a suspension or revocation under Section 42.072.

SECTION 5. Subsection (f), Section 42.054, Human Resources Code, is amended to read as follows:

(f) If a facility, agency, or home fails to pay the annual fee when due, the license, listing, or registration, as appropriate, is automatically suspended until the fee is paid. The license, listing, or registration shall be revoked if the fee is not paid within six months after the date the automatic suspension begins. A suspension or revocation under this subsection is not a suspension or revocation under Section 42.072.

SECTION 6. Section 42.056, Human Resources Code, is amended by amending Subsection (a-2) and adding Subsection (l) to read as follows:

(a-2) In accordance with rules adopted by the executive commissioner, the director, owner, or operator of a day-care center, before-school or after-school program, or school-age program shall submit a complete set of fingerprints of each person whose name is required to be submitted by the director, owner, or operator under Subsection (a), unless the person is only required to have the person's name submitted based on criteria specified by Subsection (a)(7). This subsection does not apply to a program that is exempt from the licensing requirements of Section 42.041.

(l) In accordance with rules adopted by the executive commissioner, a person that contracts to provide one or more substitute employees to a facility or family home must submit to the department for use in conducting background and criminal history checks the name of each substitute employee. Before a substitute employee may be present at a facility or family home, the employee must meet the same requirements under this section as an employee present at the facility or family home who performs similar duties. The director, owner, or operator of a facility or family home must verify with the department that a substitute employee is eligible to be present at the facility or family home before allowing the employee to begin work.

SECTION 7. Section 42.062, Human Resources Code, is amended to read as follows:

Sec. 42.062. CERTAIN EMPLOYMENT AND SERVICE PROHIBITED. A person may not be employed as a controlling person or serve in that capacity in a [residential child care] facility or family home if the person [may not employ in any capacity a person who] is not eligible to receive a license or certification for the operation of a [residential child care] facility or family home under Section 42.072(g) or [who] has been denied a license under Section 42.046 for a substantive reason.

SECTION 8. Section 42.072, Human Resources Code, is amended by adding Subsection (c-1) and amending Subsections (e) and (g) to read as follows:

(c-1) A person described by Subsection (c) may not be a controlling person in any facility or family home during the five-year period in which the person is ineligible to receive a license, listing, registration, or certification.

(e) A person may continue to operate a facility or family home during an appeal of a license, listing, or registration [denial or] revocation unless the operation of the facility or family home poses a risk to the health or safety of children. The executive commissioner shall by rule establish the criteria for determining whether the operation of a facility or family home poses a risk to the health or safety of children. The department shall notify the facility or family home of the criteria the department used

to determine that the operation of the facility or family home poses a risk to health or safety and that the facility or family home may not operate. A person who has been notified by the department that the facility or home may not operate under this section may seek injunctive relief from a district court in Travis County or in the county in which the facility or home is located to allow operation during the pendency of an appeal. The court may grant injunctive relief against the agency's action only if the court finds that the child-care operation does not pose a health or safety risk to children. A court granting injunctive relief under this subsection shall have no other jurisdiction over an appeal of final agency action unless conferred by Chapter 2001, Government Code.

(g) Notwithstanding Subsection (c), the department may refuse to issue a license, listing, registration, or certification to:

(1) a person whose license, listing, registration, or certification for a ~~[residential child care]~~ facility or family home was revoked by the department or by court order;

(2) a person who was a controlling person of a ~~[residential child care]~~ facility or family home at the time conduct occurred that resulted in the revocation of the license, listing, registration, or certification of the facility or family home;

(3) a person who voluntarily closed a ~~[residential child care]~~ facility or family home or relinquished the person's license, listing, registration, or certification after:

(A) the department took an action under Subsection (a) in relation to the facility, family home, or person; or

(B) the person received notice that the department intended to take an action under Subsection (a) in relation to the facility, family home, or person; or

(4) a person who was a controlling person of a ~~[residential child care]~~ facility or family home at the time conduct occurred that resulted in the closure of the facility or family home or relinquishment of the license, listing, registration, or certification in the manner described by Subdivision (3).

SECTION 9. Subsection (a), Section 42.078, Human Resources Code, is amended to read as follows:

(a) The department may impose an administrative penalty against a facility or family home licensed, ~~or~~ registered, or listed under this chapter that violates this chapter or a rule or order adopted under this chapter. In addition, the department may impose an administrative penalty against a residential child-care facility or a controlling person of a residential child-care facility if the facility or controlling person:

(1) violates a term of a license or registration issued under this chapter;

(2) makes a statement about a material fact that the facility or person knows or should know is false:

(A) on an application for the issuance of a license or registration or an attachment to the application; or

(B) in response to a matter under investigation;

(3) refuses to allow a representative of the department to inspect:

(A) a book, record, or file required to be maintained by the facility; or

(B) any part of the premises of the facility;

(4) purposefully interferes with the work of a representative of the department or the enforcement of this chapter; or

(5) fails to pay a penalty assessed under this chapter on or before the date the penalty is due, as determined under this section.

SECTION 10. Chapter 42, Human Resources Code, is amended by adding Subchapter G to read as follows:

SUBCHAPTER G. REGULATION OF TEMPORARY SHELTER DAY-CARE FACILITIES

Sec. 42.201. DEFINITIONS. In this subchapter:

(1) "Shelter" means a supervised publicly or privately operated shelter or other facility that is designed to provide temporary living accommodations to individuals and families, including a family violence shelter, a homeless shelter, and an emergency shelter. The term does not include a temporary facility established in response to a natural or other disaster.

(2) "Shelter care" means child care that is provided:

(A) to seven or more children under 14 years of age who temporarily reside at a shelter each with an adult who is related to the child by blood or who is the child's managing conservator;

(B) by a person who is not a temporary resident of a shelter; and

(C) while the adult described by Paragraph (A) is away from the shelter.

(3) "Shelter day-care facility" means a shelter that provides shelter care for not more than 24 hours a day, but at least four hours a day, three or more days a week.

Sec. 42.202. PERMIT REQUIRED. (a) Except as provided by Subsections (b) and (c), a shelter may not provide shelter care unless the shelter holds a permit issued by the department under this subchapter.

(b) A shelter is not required to obtain a permit to provide shelter care under this subchapter if the shelter holds a license to operate a child-care facility that is issued by the department under Subchapter C. A shelter that holds that license must comply with the applicable provisions of Subchapter C, the applicable rules of the department, and any specific terms of the license.

(c) Notwithstanding any other law, including Section 42.041, a shelter that holds a permit issued under this subchapter is not required to hold a license under Subchapter C to operate a shelter day-care facility.

(d) The department may not issue a permit under this subchapter to a shelter that provides child care to a child who is not a resident of the shelter. A shelter that provides child care described by this subsection must hold a license to operate a child-care facility issued under Subchapter C.

(e) A shelter is not required to obtain a permit under this subchapter or a license under Subchapter C if the shelter provides shelter care for:

(1) less than four hours a day or for less than three days a week; or

(2) six or fewer children.

Sec. 42.203. APPLICATION; INITIAL INSPECTION AND BACKGROUND AND CRIMINAL HISTORY CHECKS. (a) The department shall develop and implement a streamlined procedure by which a shelter may apply for and be issued a permit to operate a shelter day-care facility. The shelter must submit an application for the permit to the department on a form prescribed by the department.



(b) Except as provided by Section 42.204, on receipt of a shelter's application for a permit, the department shall:

(1) conduct an initial inspection of the shelter day-care facility to ensure that the shelter is able to comply with the provisions of this subchapter and that the facility complies with the fire safety and sanitation standards of the political subdivision in which the facility is located; and

(2) conduct a background and criminal history check on each prospective caregiver whose name is submitted as required by Section 42.206(a).

(c) The department may charge an applicant an administrative fee in a reasonable amount that is sufficient to cover the costs of the department in processing the application.

(d) The department shall process an application not later than the 30th day after the date the department receives all of the required information.

Sec. 42.204. CONVERSION OF LICENSE. (a) The department shall develop and implement a procedure by which a shelter that holds a license to operate a child-care facility that is issued under Subchapter C before September 1, 2012, may convert the license to a permit under this subchapter. The procedure must include an abbreviated application form for use by the shelter in applying for the permit.

(b) The department may waive the requirements under Section 42.203(b) for an initial inspection or background and criminal history checks with respect to a licensed child-care facility seeking to convert a license to a permit under this section if the department determines that previously conducted inspections or background and criminal history checks, as applicable, are sufficient to ensure the safety of children receiving care at the facility.

Sec. 42.205. CAREGIVER QUALIFICATIONS AND TRAINING; CHILD-TO-CAREGIVER RATIOS. (a) The executive commissioner shall adopt rules that specify the minimum:

(1) qualifications and training required for a person providing child care in a shelter day-care facility; and

(2) child-to-caregiver ratios in a shelter day-care facility.

(b) In adopting rules under this section, the executive commissioner shall consider:

(1) the special circumstances and needs of families that seek temporary shelter; and

(2) the role of a shelter in assisting and supporting families in crisis.

Sec. 42.206. BACKGROUND AND CRIMINAL HISTORY CHECKS REQUIRED. (a) In accordance with rules adopted by the executive commissioner, a shelter shall, when applying for a permit under this subchapter and at least once during each 24-month period after receiving that permit, submit to the department for use in conducting background and criminal history checks:

(1) the name of any director or prospective director of the shelter day-care facility and the name of each caregiver or prospective caregiver employed at the facility to provide care to children;

(2) the name of each person counted in child-to-caregiver ratios at the shelter day-care facility; and

(3) the name of each person 14 years of age or older who will have unsupervised access to one or more children while in the care of the shelter day-care facility.

(b) In addition to the requirements of Subsection (a), a shelter shall submit a complete set of fingerprints of each person required to undergo a criminal history check under Subsection (a) if:

(1) the person has lived outside the state at any time during the previous five years; or

(2) the shelter has reason to suspect that the person has a criminal history in another state.

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

(1) the information provided under Subsection (a) or (b), as applicable;

(2) the information made available by the Department of Public Safety under Section 411.114, Government Code, or by the Federal Bureau of Investigation or another criminal justice agency under Section 411.087, Government Code; and

(3) the department's records of reported abuse and neglect.

(d) For purposes of Sections 411.114 and 411.087, Government Code:

(1) a shelter that applies for a permit is considered to be an applicant for a license under this chapter; and

(2) a shelter day-care facility operating under a permit issued under this subchapter is considered to be a child-care facility licensed under this chapter.

(e) The department shall require the shelter to pay to the department a fee in an amount not to exceed the administrative costs the department incurs in conducting a background and criminal history check under this section.

Sec. 42.207. APPLICABILITY OF OTHER LAW. Except as otherwise provided by this subchapter, a shelter day-care facility operating under this subchapter is not a child-care facility, as defined by Section 42.002, and the provisions of this chapter and the department's rules that apply to a child-care facility licensed under Subchapter C do not apply to a shelter day-care facility.

Sec. 42.208. REPORTING OF INCIDENTS AND VIOLATIONS. A shelter day-care facility operating under this subchapter and each employee of that facility are subject to the reporting requirements of Section 42.063 to the same extent a licensed child-care facility and employees of licensed child-care facilities are subject to that section.

Sec. 42.209. AUTHORITY TO CONDUCT LIMITED INSPECTIONS.

(a) The department may inspect a shelter day-care facility operating under this subchapter if the department receives a complaint or report of child abuse or neglect alleged to have occurred at the shelter day-care facility.

(b) If the department inspects a shelter day-care facility as authorized by this section, the department may require the facility to take appropriate corrective action the department determines necessary to comply with the requirements of this subchapter and to ensure the health and safety of children receiving care at the facility. The department may continue to inspect the facility until corrective action is taken and for a reasonable time after that action is taken to ensure continued compliance.

(c) The department may charge a shelter issued a permit under this subchapter a reasonable fee for the cost of services provided by the department in formulating, monitoring, and implementing a corrective action plan under this section.

Sec. 42.210. SUSPENSION, DENIAL, OR REVOCATION. (a) The department may suspend, deny, or revoke a permit issued to a shelter under this subchapter if the shelter does not comply with the provisions of this subchapter or any applicable department rules.

(b) The department may refuse to issue a permit under this subchapter to a shelter that had its authorization to operate a child-care facility issued under another subchapter revoked, suspended, or not renewed for a reason relating to child health or safety as determined by the department.

(c) A shelter day-care facility is subject to the emergency suspension of its permit to operate and to closure under Section 42.073 to the same extent and in the same manner as a licensed child-care facility is subject to that section.

SECTION 11. Subsection (a), Section 43.010, Human Resources Code, is amended to read as follows:

(a) The department may deny, revoke, suspend, or refuse to renew a license, or place on probation or reprimand a license holder for:

- (1) violating this chapter or a rule adopted under this chapter;
- (2) circumventing or attempting to circumvent the requirements of this chapter or a rule adopted under this chapter;
- (3) engaging in fraud or deceit related to the requirements of this chapter or a rule adopted under this chapter;
- (4) providing false or misleading information to the department during the license application or renewal process for any person's license;
- (5) making a statement about a material fact during the license application or renewal process that the person knows or should know is false;
- (6) having:

(A) a criminal history or central registry record that would prohibit a person from working in a child-care facility, as defined by Section 42.002, under rules applicable to that type of facility; or

(B) a criminal history relevant to the duties of a licensed child-care or child-placing administrator, as those duties are specified in rules adopted by the executive commissioner;

(7) using drugs or alcohol in a manner that jeopardizes the person's ability to function as an administrator; or

(8) performing duties as a child-care administrator in a negligent manner.

SECTION 12. Section 411.087, Government Code, is amended by amending Subsections (a) and (e) and adding Subsection (f) to read as follows:

(a) Unless otherwise authorized by Subsection (e), a [A] person, agency, department, political subdivision, or other entity that is authorized by this subchapter to obtain from the department criminal history record information maintained by the department that relates to another person is authorized to:

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

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

(e) The department may provide access to state and national criminal history record information to qualified [nongovernmental] entities entitled to that information under 42 U.S.C. Section 5119a. The department must follow federal law and regulation, federal executive orders, and federal policy in releasing information under this subsection.

(f) Notwithstanding any other law, a person, agency, department, political subdivision, or other entity entitled to access the criminal history record information of a person under Subsection (e) is not required to collect or submit the person's fingerprints if:

(1) a complete set of the person's fingerprints was previously submitted under Subsection (d)(1);

(2) the department retained the fingerprints;

(3) the fingerprints are acceptable to the Federal Bureau of Investigation for access to criminal history record information; and

(4) the only purpose for which the person's fingerprints are collected is to access criminal history record information under Subsection (e).

SECTION 13. Subsection (a), Section 411.114, Government Code, is amended to read as follows:

(a)(1) In this subsection:

(A) "Child," "child-care facility," "child-placing agency," and "family home" have the meanings assigned by Section 42.002, Human Resources Code.

(B) "Elderly person" has the meaning assigned by Section 48.002, Human Resources Code.

~~[(C) "Maternity home" has the meaning assigned by Section 249.001, Health and Safety Code.]~~

(D) "Person with a disability" means a disabled person as defined by Section 48.002, Human Resources Code.

(E) "Ward" has the meaning assigned by Section 601, Texas Probate Code.

(2) The Department of Family and Protective Services shall obtain from the department criminal history record information maintained by the department that relates to a person who is:

(A) an applicant for a license, registration, certification, or listing under Chapter 42, Human Resources Code~~[, or Chapter 249, Health and Safety Code];~~

(B) an owner, operator, or employee of or an applicant for employment by a child-care facility, child-placing agency, or family home~~[, or maternity home]~~ licensed, registered, certified, or listed under Chapter 42, Human Resources Code~~[, or Chapter 249, Health and Safety Code];~~

(C) a person 14 years of age or older who will be regularly or frequently working or staying in a child-care facility or~~[,] family home~~~~[, or maternity home]~~ while children are being provided care, other than a child in the care of the home or facility;

(D) an applicant selected for a position with the Department of Family and Protective Services, the duties of which include direct delivery of protective services to children, elderly persons, or persons with a disability;

(E) an employee of, an applicant for employment with, or a volunteer or an applicant volunteer with a business entity or person that contracts with the Department of Family and Protective Services to provide direct delivery of protective services to children, elderly persons, or persons with a disability, if the person's duties or responsibilities include direct contact with children, elderly persons, or persons with a disability;

(F) a registered volunteer with the Department of Family and Protective Services;

(G) a person providing or applying to provide in-home, adoptive, or foster care for children in the care of the Department of Family and Protective Services and other persons living in the residence in which the child will reside;

(H) a Department of Family and Protective Services employee who is engaged in the direct delivery of protective services to children, elderly persons, or persons with a disability;

(I) a person who is the subject of a report the Department of Family and Protective Services receives alleging that the person has abused, neglected, or exploited a child, an elderly person, or a person with a disability, provided that:

(i) the report alleges the person has engaged in conduct that meets the statutory definition of abuse, neglect, or exploitation under Chapter 261, Family Code, or Chapter 48, Human Resources Code; and

(ii) the person who is the subject of the report is not also the victim of the alleged conduct;

(J) a person providing child care for a child who is in the care of the Department of Family and Protective Services and who is or will be receiving adoptive, foster, or in-home care;

(K) through a contract with a nonprofit management center, an employee of, an applicant for employment with, or a volunteer or an applicant volunteer with a nonprofit, tax-exempt organization that provides any service that involves the care of or access to children, elderly persons, or persons with a disability; or

(L) an applicant for a child-care administrator or child-placing agency administrator license under Chapter 43, Human Resources Code.

(3) The Department of Family and Protective ~~[and Regulatory]~~ Services is entitled to obtain from the department criminal history record information maintained by the department that relates to a person who is:

(A) a volunteer or applicant volunteer with a local affiliate in this state of Big Brothers/Big Sisters of America;

(B) a volunteer or applicant volunteer with the "I Have a Dream/Houston" program;

(C) a volunteer or applicant volunteer with an organization that provides court-appointed special advocates for abused or neglected children;

(D) a person providing, at the request of the child's parent, in-home care for a child who is the subject of a report alleging the child has been abused or neglected;

(E) a volunteer or applicant volunteer with a Texas chapter of the Make-a-Wish Foundation of America;

(F) a person providing, at the request of the child's parent, in-home care for a child only if the person gives written consent to the release and disclosure of the information;

(G) a child who is related to the caretaker, as determined under Section 42.002, Human Resources Code, and who resides in or is present in a child-care facility or[;] family home~~[-or maternity home]~~, other than a child described by Subdivision (2)(C), or any other person who has unsupervised access to a child in the care of a child-care facility or[;] family home~~[-or maternity home]~~;

(H) an applicant for a position with the Department of Family and Protective [~~and Regulatory~~] Services, other than a position described by Subdivision (2)(D), regardless of the duties of the position;

(I) a volunteer or applicant volunteer with the Department of Family and Protective [~~and Regulatory~~] Services, other than a registered volunteer, regardless of the duties to be performed;

(J) a person providing or applying to provide in-home, adoptive, or foster care for children to the extent necessary to comply with Subchapter B, Chapter 162, Family Code;

(K) a Department of Family and Protective [~~and Regulatory~~] Services employee, other than an employee described by Subdivision (2)(H), regardless of the duties of the employee's position;

(L) a relative of a child in the care of the Department of Family and Protective [~~and Regulatory~~] Services, to the extent necessary to comply with Section 162.007, Family Code;

(M) a person, other than the subject of a report described in Subdivision (2)(I), living in the residence in which the alleged victim of the report resides;

(N) a contractor or an employee of a contractor who delivers services to a ward of the Department of Family and Protective [~~and Regulatory~~] Services under a contract with the estate of the ward;

(O) a person who seeks unsupervised visits with a ward of the Department of Family and Protective [~~and Regulatory~~] Services, including a relative of the ward; or

(P) an employee, volunteer, or applicant volunteer of a children's advocacy center under Subchapter E, Chapter 264, Family Code, including a member of the governing board of a center.

(4) Subject to Section 411.087, the Department of Family and Protective [~~and Regulatory~~] Services is entitled to:

(A) obtain through the Federal Bureau of Investigation criminal history record information maintained or indexed by that bureau that pertains to a person described by Subdivision (2); and

(B) 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 Subdivision (2) or (3). Law enforcement entities shall expedite the furnishing of such information to Department of Family and Protective ~~[and Regulatory]~~ Services workers to ensure prompt criminal background checks for the safety of alleged victims and Department of Family and Protective ~~[and Regulatory]~~ Services workers.

(5) The Department of Family and Protective ~~[and Regulatory]~~ Services may not use the authority granted under this section to harass an employee or volunteer. The executive commissioner of the Health and Human Services Commission ~~[Board of Protective and Regulatory Services]~~ shall adopt rules to prevent the harassment of an employee or volunteer through the request and use of criminal records.

(6) Criminal history record information obtained by the Department of Family and Protective ~~[and Regulatory]~~ Services under this subsection may not be released to any person except:

(A) on court order;

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

(C) for purposes of an administrative hearing held by the Department of Family and Protective ~~[and Regulatory]~~ Services concerning the person who is the subject of the criminal history record information; or

(D) as provided by Subdivision (7).

(7) The Department of Family and Protective ~~[and Regulatory]~~ Services is not prohibited from releasing criminal history record information obtained under this subsection to:

(A) the person who is the subject of the criminal history record information;

(B) a child-care facility, child-placing agency, or family home~~[-or maternity home]~~ listed in Subdivision (2) that employs or is considering employing the person who is the subject of the criminal history record information;

(C) a person or business entity described by Subdivision (2)(E) or (3) who uses or intends to use the services of the volunteer or employs or is considering employing the person who is the subject of the criminal history record information; or

(D) an adult residing with a child, elderly person, or person with a disability and the person who is the subject of the criminal history record information, if the Department of Family and Protective ~~[and Regulatory]~~ Services determines that the release of information to the adult is necessary to ensure the safety or welfare of the child, elderly person, or person with a disability or the adult.

SECTION 14. Subsection (e), Section 81.042, Health and Safety Code, is amended to read as follows:

(e) The following persons shall report to the local health authority or the department a suspected case of a reportable disease and all information known concerning the person who has or is suspected of having the disease if a report is not made as required by Subsections (a)-(d):

(1) a professional registered nurse;

- (2) an administrator or director of a public or private temporary or permanent child-care facility;
  - (3) an administrator or director of a nursing home, personal care home, ~~maternity home,~~ adult respite care center, or adult day-care center;
  - (4) an administrator of a home health agency;
  - (5) an administrator or health official of a public or private institution of higher education;
  - (6) an owner or manager of a restaurant, dairy, or other food handling or processing establishment or outlet;
  - (7) a superintendent, manager, or health official of a public or private camp, home, or institution;
  - (8) a parent, guardian, or householder;
  - (9) a health professional;
  - (10) an administrator or health official of a penal or correctional institution;
- or

(11) emergency medical service personnel, a peace officer, or a firefighter.

SECTION 15. (a) The Department of Family and Protective Services shall develop and implement a procedure by which a maternity home that provides residential child care to a minor mother and that holds a license issued under Chapter 249, Health and Safety Code, before September 1, 2012, may convert the license to a residential child-care facility license issued under Chapter 42, Human Resources Code.

(b) The Department of Family and Protective Services may waive requirements for an initial inspection or initial background and criminal history checks with respect to a maternity home seeking to convert a license under Subsection (a) of this section if the department determines that previously conducted inspections or background and criminal history checks, as applicable, are sufficient to ensure the safety of children receiving care at the facility.

SECTION 16. The following laws are repealed:

- (1) Chapter 249, Health and Safety Code; and
- (2) Subsection (g-2), Section 42.042, Human Resources Code.

SECTION 17. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2011.

(b) The changes in law made by this Act by the amendment of Subsection (a), Section 411.114, Government Code, and Subsection (e), Section 81.042, Health and Safety Code, the enactment of Subchapter G, Chapter 42, Human Resources Code, and the repeal of Chapter 249, Health and Safety Code, and Subsection (g-2), Section 42.042, Human Resources Code, take effect September 1, 2012.

The amendment was read.

Senator Nelson moved to concur in the House amendment to **SB 1178**.

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

### **SENATE BILL 1422 WITH HOUSE AMENDMENT**

Senator Nelson called **SB 1422** from the President's table for consideration of the House amendment to the bill.



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

### Amendment

Amend **SB 1422** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to coordinated county transportation authorities; creating an offense.

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

SECTION 1. Section 460.106(d), Transportation Code, is amended to read as follows:

(d) Except as provided by Subchapter I, a [A] service plan may be implemented in an area of the county participating in the authority only if a majority of votes received favor the authorization of a tax levy by the authority.

SECTION 2. Subchapter C, Chapter 460, Transportation Code, is amended by adding Sections 460.1091 and 460.1092 to read as follows:

Sec. 460.1091. ENFORCEMENT OF FARES AND OTHER CHARGES; PENALTIES. (a) A board of directors by resolution may prohibit the use of the public transportation system by a person without payment of the appropriate fare for the use of the system and may establish reasonable and appropriate methods to ensure that persons using the public transportation system pay the appropriate fare for that use.

(b) A board of directors by resolution may provide that a fare for or charge for the use of the public transportation system that is not paid incurs a reasonable administrative fee.

(c) An authority shall post signs designating each area in which a person is prohibited from using the transportation system without payment of the appropriate fare.

(d) A person commits an offense if the person or another for whom the person is criminally responsible under Section 7.02, Penal Code, uses the public transportation system without paying the appropriate fare.

(e) If the person fails to provide proof that the person paid the appropriate fare for the use of the public transportation system and fails to pay any administrative fee assessed under Subsection (b) on or before the 30th day after the date the authority notifies the person that the person is required to pay the amount of the fare and the administrative fee, it is prima facie evidence that the person used the public transportation system without paying the appropriate fare.

(f) The notice required by Subsection (e) may be included in a citation issued to the person by a peace officer under Article 14.06, Code of Criminal Procedure, or by a fare enforcement officer under Section 460.1092, in connection with an offense relating to the nonpayment of the appropriate fare for the use of the public transportation system.

(g) It is an exception to the application of Subsection (d) that on or before the 30th day after the date the authority notified the person that the person is required to pay the amount of the fare and any administrative fee assessed under Subsection (b), the person:

(1) provided proof that the person paid the appropriate fare at the time the person used the transportation system or at a later date or that the person was exempt from payment; and

(2) paid the administrative fee assessed under Subsection (b), if applicable.

(h) An offense under Subsection (d) is:

(1) a misdemeanor punishable by a fine not to exceed \$100; and

(2) not a crime of moral turpitude.

(i) A justice court located in the service area of the authority may enter into an agreement with the authority to try all criminal cases that arise under Subsection (d). Notwithstanding Articles 4.12 and 4.14, Code of Criminal Procedure, if a justice court enters into an agreement with the authority:

(1) a criminal case that arises under Subsection (d) must be tried in the justice court; and

(2) the justice court has exclusive jurisdiction in all criminal cases that arise under Subsection (d).

Sec. 460.1092. FARE ENFORCEMENT OFFICERS. (a) An authority may employ persons to serve as fare enforcement officers to enforce the payment of fares for use of the public transportation system by:

(1) requesting and inspecting evidence showing payment of the appropriate fare from a person using the public transportation system; and

(2) issuing a citation to a person described by Section 460.1091(d).

(b) Before commencing duties as a fare enforcement officer, a person must complete at least eight hours of training approved by the authority that is appropriate to the duties required of a fare enforcement officer.

(c) While performing duties, a fare enforcement officer shall:

(1) wear a distinctive uniform, badge, or insignia that identifies the person as a fare enforcement officer; and

(2) work under the direction of the authority's chief administrative officer.

(d) A fare enforcement officer may:

(1) request evidence showing payment of the appropriate fare from passengers of the public transportation system or evidence showing exemption from the payment requirement;

(2) request personal identification or other documentation designated by the authority from a passenger who does not produce evidence showing payment of the appropriate fare on request by the officer;

(3) instruct a passenger to immediately leave the public transportation system if the passenger does not possess evidence showing payment or exemption from payment of the appropriate fare; or

(4) file a complaint in the appropriate court that charges the person with an offense under Section 460.1091(d).

(e) A fare enforcement officer may not carry a weapon while performing duties under this section unless the officer is a certified peace officer.

(f) A fare enforcement officer who is not a certified peace officer is not a peace officer and has no authority to enforce a criminal law, except as provided by this section.

SECTION 3. Section 460.406(c), Transportation Code, is amended to read as follows:

(c) The board of directors may authorize the negotiation of a contract without competitive sealed bids or proposals if:

(1) the aggregate amount involved in the contract is \$50,000 [~~\$25,000~~] or less;

(2) the contract is for construction for which not more than one bid or proposal is received;

(3) the contract is for services or property for which there is only one source or for which it is otherwise impracticable to obtain competition;

(4) the contract is to respond to an emergency for which the public exigency does not permit the delay incident to the competitive process;

(5) the contract is for personal or professional services or services for which competitive bidding is precluded by law;

(6) the contract, without regard to form and which may include bonds, notes, loan agreements, or other obligations, is for the purpose of borrowing money or is a part of a transaction relating to the borrowing of money, including:

(A) a credit support agreement, such as a line or letter of credit or other debt guaranty;

(B) a bond, note, debt sale or purchase, trustee, paying agent, remarketing agent, indexing agent, or similar agreement;

(C) an agreement with a securities dealer, broker, or underwriter; and

(D) any other contract or agreement considered by the board of directors to be appropriate or necessary in support of the authority's financing activities;

(7) the contract is for work that is performed and paid for by the day as the work progresses;

(8) the contract is for the purchase of land or a right-of-way;

(9) the contract is for the purchase of personal property sold:

(A) at an auction by a state licensed auctioneer;

(B) at a going out of business sale held in compliance with Subchapter F, Chapter 17, Business & Commerce Code; or

(C) by a political subdivision of this state, a state agency, or an entity of the federal government;

(10) the contract is for services performed by blind or severely disabled persons;

(11) the contract is for the purchase of electricity; or

(12) the contract is one awarded for alternate project delivery under Sections 271.117-271.119, Local Government Code.

SECTION 4. Chapter 460, Transportation Code, is amended by adding Subchapter I to read as follows:

SUBCHAPTER I. PARTICIPATION IN AUTHORITY THROUGH TAX  
INCREMENT PAYMENTS

Sec. 460.601. DEFINITION. In this subchapter, "tax increment" means the amount of revenue generated from ad valorem taxes, sales and use taxes imposed by a municipality under Section 321.101(a), Tax Code, or both ad valorem and sales and

use taxes that are attributable to a public transportation financing area designated under this subchapter that exceeds the amount attributable to the area for the year in which the area was designated.

Sec. 460.602. PARTICIPATION IN SERVICE PLAN; AGREEMENT WITH MUNICIPALITY. A service plan may be implemented in an area of a municipality that has not authorized the authority's sales and use tax levy if:

(1) the authorization by the municipality of the authority's sales and use tax levy, when combined with the rates of all sales and use taxes imposed by other political subdivisions in the municipality, would exceed two percent in any location in the municipality; and

(2) the municipality has entered into an agreement with the authority to provide public transportation services in a public transportation financing area designated under this subchapter in exchange for all or a portion of the tax increment in the area.

Sec. 460.603. DESIGNATION OF PUBLIC TRANSPORTATION FINANCING AREA. The governing body of a municipality by ordinance may designate a contiguous geographic area in the jurisdiction of the municipality to be a public transportation financing area. The geographic area:

(1) must have one or more transit facilities that include a structure provided for or on behalf of the authority for embarkation on and disembarkation from public transportation services provided by the authority, which may include a transit stop, transit shelter, transit garage, or transit terminal;

(2) may include any territory located in the municipality's jurisdiction; and

(3) must include an area one-half mile on either side of the proposed service route served by a structure under Subdivision (1), to the extent that that area is included in the municipality's boundaries.

Sec. 460.604. HEARING. (a) Before adopting an ordinance designating a public transportation financing area, the municipality must hold a public hearing on the creation of the public transportation financing area and its benefits to the municipality and to property in the proposed public transportation financing area. At the hearing, an interested person may speak for or against the designation of the public transportation financing area.

(b) Not later than the 30th day before the date of the hearing, notice of the hearing must be published in a newspaper having general circulation in the municipality.

Sec. 460.605. DESIGNATION OF TAX INCREMENT. (a) In the ordinance designating an area as a public transportation financing area, the municipality must:

(1) designate a portion or amount of the tax increment to be paid to the authority and deposited in the tax increment account under Section 460.606; and

(2) state whether the tax increment will be generated from ad valorem tax revenue, sales and use tax revenue, or both.

(b) The amount designated for payment and deposit may not exceed the equivalent of the amount that would be collected by the authority if the municipality had authorized the authority's sales and use tax levy.

(c) Notwithstanding Subsection (b), if the amount designated under Subsection (b) is not sufficient to compensate the authority for the maintenance and operating expenses of providing service to the public transportation financing area and for any capital cost incurred for the benefit of the public transportation financing area, the authority may request and the municipality shall designate that the entire portion or amount of the tax increment be deposited in the tax increment account, regardless of whether that amount exceeds the authority's sales and use tax levy equivalent, until any amounts owed for all previous years' maintenance and operating expenses and for any capital cost incurred for the benefit of the public transportation financing area have been paid.

Sec. 460.606. TAX INCREMENT ACCOUNT; USE OF TAXES. (a) An authority that enters into an agreement with a municipality to provide services to a public transportation financing area must establish a tax increment account and maintain the account as a fiduciary of the municipality.

(b) The taxes to be deposited into the tax increment account may be disbursed from the account only to:

(1) compensate the authority for maintenance and operating expenses of providing services to the public transportation financing area, including compensation for expansion, improvement, rehabilitation, or enhancement amounts owed for previous years' maintenance and operating expenses for the public transportation financing area;

(2) compensate the authority for any capital cost incurred for the benefit of the public transportation financing area;

(3) notwithstanding Section 321.506, Tax Code, satisfy claims of holders of tax increment bonds, notes, or other obligations issued or incurred for projects or services that directly or indirectly benefit the public transportation financing area through the expansion, improvement, rehabilitation, or enhancement of transportation service by the authority under the service plan; and

(4) pay any capital recovery fee required by the authority.

Sec. 460.607. AGREEMENT WITH COMPTROLLER. Before pledging or otherwise committing money in the tax increment account under Section 460.606, the governing body of a municipality must enter into an agreement under Subchapter E, Chapter 271, Local Government Code, to authorize and direct the comptroller to:

(1) withhold from any payment to which the municipality may be entitled the amount of the payment due to the tax increment account;

(2) deposit that amount into the tax increment account; and

(3) continue withholding and making additional payments into the tax increment account until an amount sufficient to satisfy the amount due to the account has been met.

Sec. 460.608. ACCOUNTING OF MAINTENANCE AND OPERATING EXPENSES. An authority shall, under an agreement under Section 460.602:

(1) provide to the municipality an annual accounting, with supporting documentation, of the annual maintenance and operating expenses of providing service to the public transportation financing area; and

(2) notify the municipality when amounts owed for all previous years' maintenance and operating expenses and for any capital cost incurred for the benefit of the public transportation financing area have been fully paid.

Sec. 460.609. CAPITAL RECOVERY FEE. An agreement to provide services to a public transportation financing area may require the municipality to pay the authority a capital recovery fee. An authority that requires a capital recovery fee shall:

(1) apply toward the amount owed for the capital recovery fee any amount in the tax increment account that exceeds the amount necessary to compensate the authority for:

(A) the annual maintenance and operating expenses of providing service to the public transportation financing area, including amounts for expansion, improvement, rehabilitation, or enhancement that may be owed for previous years' maintenance and operating expenses; and

(B) any capital cost incurred for the benefit of the public transportation financing area; and

(2) notify the municipality when the amount owed for the capital recovery fee has been fully paid.

Sec. 460.610. USE OF SURPLUS TAX INCREMENT PAYMENT AMOUNTS. After any applicable capital recovery fee has been paid, the authority and the municipality shall negotiate to determine use of the amount of tax increment payments that exceeds the amount necessary to compensate the authority for the annual maintenance and operating expenses of providing service to the public transportation financing area. The excess amounts may be used to develop infrastructure enhancement, replacement, or improvement projects in the public transportation financing area that benefit both the municipality and the authority.

Sec. 460.611. TERMINATION OF PUBLIC TRANSPORTATION FINANCING AREA. If the tax increment is pledged to the payment of bonds and interest on the bonds or to the payment of any other obligations, the public transportation financing area or an agreement for services under Section 460.602 may not be terminated by agreement of the parties unless the municipality that created the public transportation financing area deposits or causes to be deposited with a trustee or other escrow agent authorized by law funds in an amount that, together with the interest on the investment of the funds in direct obligations of the United States, will be sufficient to pay:

(1) the principal of, premium, if any, and interest on all bonds issued on behalf of the public transportation financing area at maturity or at the date fixed for redemption of the bonds; and

(2) any other amounts that may become due, including compensation due or to become due to the trustee or escrow agent, as well as to pay the principal of and interest on any other obligations incurred on behalf of the public transportation financing area.

SECTION 5. This Act takes effect September 1, 2011.

The amendment was read.

Senator Nelson moved to concur in the House amendment to **SB 1422**.

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

**SENATE BILL 1649 WITH HOUSE AMENDMENT**

Senator Watson called **SB 1649** from the President's table for consideration of the House amendment to the bill.

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

**Floor Amendment No. 1**

Amend **SB 1649** (house committee report) in SECTION 1 of the bill by striking proposed Section 772.0071(a)(2), Government Code (page 2, lines 1 through 12), and substituting the following:

(2) "Border region" means the portion of this state that is located in a county that is adjacent to:

(A) an international border; or

(B) a county described by Paragraph (A).

The amendment was read.

Senator Watson moved to concur in the House amendment to **SB 1649**.

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

**SENATE BILL 760 WITH HOUSE AMENDMENT**

Senator West called **SB 760** from the President's table for consideration of the House amendment to the bill.

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

**Amendment**

Amend **SB 760** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to the term of interlocal contracts.

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

SECTION 1. Section 791.011, Government Code, is amended by amending Subsection (f) and adding Subsection (i) to read as follows:

(f) An interlocal contract may be renewed [~~annually~~].

(i) Notwithstanding Subsection (d), an interlocal contract may have a specified term of years.

SECTION 2. This Act takes effect on the date on which the constitutional amendment proposed by the 82nd Legislature, Regular Session, 2011, to authorize the legislature to allow cities or counties to enter into interlocal contracts with other cities or counties without the imposition of a tax or the provision of a sinking fund is approved by the voters. If that amendment is not approved by the voters, this Act has no effect.

The amendment was read.

Senator West moved to concur in the House amendment to **SB 760**.

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

**SENATE BILL 1179 WITH HOUSE AMENDMENT**

Senator Nelson called **SB 1179** from the President's table for consideration of the House amendment to the bill.

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

**Floor Amendment No. 1**

Amend **SB 1179** (house committee report) as follows:

(1) Strike Section 20 of the bill, amending Section 122.0095(a), Human Resources Code (page 13, lines 3-13).

(2) In Section 26 of the bill, strike Subdivision (124) of that section repealing Sections 122.0095(b)-(e), Human Resources Code (page 23, lines 12 and 13).

(3) Renumber the SECTIONS of the bill and the subdivisions within those sections accordingly.

The amendment was read.

Senator Nelson moved to concur in the House amendment to **SB 1179**.

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

**SENATE BILL 1234 WITH HOUSE AMENDMENT**

Senator West called **SB 1234** from the President's table for consideration of the House amendment to the bill.

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

**Amendment**

Amend **SB 1234** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to municipal management districts.

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

SECTION 1. Sections 375.003(3) and (4), Local Government Code, are amended to read as follows:

(3) "Commission" means the Texas Commission on Environmental Quality [~~Natural Resource Conservation Commission~~].

(4) "Disadvantaged business" means:

(A) a corporation formed for the purpose of making a profit and at least 51 percent of all classes of the shares of stock or other equitable securities of which are owned by one or more persons who are socially disadvantaged because of their identification as members of certain groups that have suffered the effects of discriminatory practices or similar insidious circumstances over which they have no control, including black Americans, Hispanic Americans, women, Asian Pacific Americans, and American Indians;



(B) a sole proprietorship formed for the purpose of making a profit that is owned, operated, and controlled exclusively by one or more persons described by Paragraph (A);

(C) a partnership that is formed for the purpose of making a profit, in which 51 percent of the assets and interest in the partnership is owned by one or more persons described by Paragraph (A), and in which minority or women partners have a proportionate interest in the control, operation, and management of the partnership affairs;

(D) a joint venture between minority and women's group members formed for the purpose of making a profit and the minority participation in which is based on the sharing of real economic interest, including equally proportionate control over management, interest in capital, and interest earnings, other than a joint venture in which majority group members own or control debt securities, leasehold interest, management contracts, or other interests; ~~or~~

(E) a supplier contract between persons described in Paragraph (A) and a prime contractor in which the disadvantaged business is directly involved for the manufacture or distribution of the supplies or materials or otherwise for warehousing and shipping the supplies; or

(F) a person certified as a disadvantaged business by:

(i) this state;

(ii) a political subdivision of this state; or

(iii) a regional planning commission, council of governments, or similar regional planning agency created under Chapter 391.

SECTION 2. Section 375.022(c), Local Government Code, is amended to read as follows:

(c) The petition must:

(1) describe the boundaries of the proposed district:

(A) by metes and bounds;

(B) by verifiable landmarks, including a road, creek, or railroad line; or

(C)~~]~~ if there is a recorded map or plat and survey of the area, by lot and block number;

(2) state the specific purposes for which the district will be created;

(3) state the general nature of the work, projects, or services proposed to be provided, the necessity for those services, and the costs as estimated by the persons filing the petition;

(4) include a name of the district, which must be generally descriptive of the location of the district, followed by "Management District" or "Improvement District";

(5) include a proposed list of initial directors that includes the directors' experience and initial term of service; and

(6) include a resolution of the governing body of the municipality in support of the creation of the district.

SECTION 3. Section 375.043, Local Government Code, is amended to read as follows:

Sec. 375.043. ANNEXATION. A district may annex land as provided by Section 49.301 and Chapter 54, Water Code, subject to the approval of the governing body of the municipality.

SECTION 4. Section 375.044(b), Local Government Code, is amended to read as follows:

(b) The board shall call a hearing on the exclusion of land or other property from the district if a signed petition evidencing the consent of the owners of a majority of the acreage in the district, according to the most recent certified tax roll of the county, is filed ~~[landowner or property owner in the district files]~~ with the secretary of the board ~~[a written petition]~~ requesting the hearing before the issuance of bonds.

SECTION 5. Section 375.061, Local Government Code, is amended to read as follows:

Sec. 375.061. NUMBER OF DIRECTORS; TERMS. A district is governed by a board of at least five ~~[nine]~~ but not more than 30 directors who serve staggered four-year terms.

SECTION 6. Section 375.071, Local Government Code, is amended to read as follows:

Sec. 375.071. QUORUM. One-half of the servicing directors constitutes a quorum, and a concurrence of a majority of a quorum of directors is required for any official action of the district. The written consent of at least two-thirds of the directors is required to authorize the levy of assessments, the levy of taxes, the imposition of impact fees, or the issuance of bonds.

SECTION 7. Section 375.091, Local Government Code, is amended to read as follows:

Sec. 375.091. GENERAL POWERS OF DISTRICT. ~~[(a)]~~ A district has the rights, powers, privileges, authority, and functions conferred by the general law of this state applicable to conservation and reclamation districts created under Article XVI, Section 59, of the Texas Constitution, including those conferred by Chapter 54, Water Code.

~~[(b) The district may contract and manage its affairs and funds for any corporate purpose in accordance with Chapter 54, Water Code.~~

~~[(c) The district has all the rights, powers, privileges, authority, and functions of road districts and road utility districts created pursuant to Article III, Section 52, of the Texas Constitution, including the power to levy ad valorem taxes for the construction, maintenance, and operation of macadamized, graveled, or paved roads and turnpikes, or in aid thereof. This power includes the power to levy ad valorem taxes to provide for mass transit systems in the manner and subject to the limitations provided in Article III, Section 52, and Article III, Section 52(a), of the Texas Constitution.~~

~~[(d) A district has those powers conferred by Chapters 365 and 441, Transportation Code, and the additional rights, privileges, authority, and functions contained in those chapters.]~~

SECTION 8. Subchapter E, Chapter 375, Local Government Code, is amended by adding Sections 375.0921 and 375.0922 to read as follows:

Sec. 375.0921. AUTHORITY FOR ROAD PROJECTS. (a) Under Section 52, Article III, Texas Constitution, a 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.

(b) The district may impose ad valorem taxes to provide for mass transit systems in the manner and subject to the limitations provided by Section 52, Article III, and Section 52-a, Article III, Texas Constitution.

Sec. 375.0922. 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.

SECTION 9. Section 375.097(a), Local Government Code, is amended to read as follows:

(a) The board may appoint a hearings examiner to conduct any hearing called by the board, including a hearing required by Chapter 395. The hearings examiner may be an employee or contractor of the district, or a member of the district's board.

SECTION 10. Subchapter E, Chapter 375, Local Government Code, is amended by adding Section 375.098 to read as follows:

Sec. 375.098. DISTRICT ACT OR PROCEEDING PRESUMED VALID. (a) A governmental act or proceeding of a district is conclusively presumed, as of the date it occurred, valid and to have occurred in accordance with all applicable statutes and rules if:

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

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

(b) This section does not apply to:

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

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

(3) a rule that, at the time it was passed, was preempted by a statute of this state or the United States, including Section 1.06 or 109.57, Alcoholic Beverage Code; or

(4) a matter that on the effective date of this section:

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

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

SECTION 11. Section 375.112(a)(1), Local Government Code, is amended to read as follows

(1) landscaping, lighting, banners, and signs; streets and sidewalks; pedestrian skywalks, crosswalks, and tunnels; seawalls; marinas; drainage and navigation improvements; pedestrian malls; solid waste, water, sewer and power facilities, including electrical, gas, steam, cogeneration, and chilled water facilities; parks, plazas, lakes, rivers, bayous, ponds, and recreation and scenic areas; historic areas; fountains; works of art; off-street parking facilities, bus terminals, heliports, and mass transit systems; theatres, studios, exhibition halls, production facilities and ancillary facilities in support of the foregoing; and the cost of any demolition in connection with providing any of the improvement projects;

SECTION 12. Section 375.114, Local Government Code, is amended to read as follows:

Sec. 375.114. PETITION REQUIRED. The board may not finance services and improvement projects under this chapter unless a written petition has been filed with the board requesting those improvements or services signed by:

(1) the owners of 50 percent or more of the assessed value of the property in the district subject to assessment, according to ~~[as determined from]~~ the most recent certified county property tax rolls; or

(2) the owners of 50 percent or more of the surface area of the district, excluding roads, streets, highways, and utility rights-of-way, other public areas, and any other property exempt from assessment under Section 375.162 or 375.163, according to ~~[as determined from]~~ the most recent certified county property tax rolls.

SECTION 13. Section 375.202(e), Local Government Code, is amended to read as follows:

(e) If provided by the bond order or resolution, the proceeds from the sale of bonds may be used to pay interest on the bonds during and after the period of the acquisition or construction of any improvement project to be provided through the issuance of the bonds, to pay administrative and operation expenses to create a reserve fund for the payment of the principal of and interest on the bonds, to pay costs associated with the issuance of the bonds, and to create any other funds. ~~The proceeds of the bonds may be placed on time deposit or invested, until needed, in securities in the manner provided by the bond order or resolution.~~

SECTION 14. Section 375.205(a), Local Government Code, is amended to read as follows:

(a) The district shall submit bonds and the appropriate proceedings authorizing their issuance to the attorney general for examination. This subsection applies only to bonds that are public securities, as that term is defined by Section 1202.001, Government Code.

SECTION 15. Subchapter J, Chapter 375, Local Government Code, is amended by adding Section 375.209 to read as follows:

Sec. 375.209. 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.

SECTION 16. Section 375.221, Local Government Code, is amended to read as follows:

Sec. 375.221. APPLICABILITY OF WATER DISTRICTS LAW TO COMPETITIVE BIDDING ON CERTAIN [PUBLIC WORKS] CONTRACTS. (a) Except as provided by Subsection (b) of this section, Subchapter I, Chapter 49, Water Code, applies to a district contract for construction work, equipment, materials, or machinery.

~~(b) [A contract, other than a contract for services, for more than \$50,000 for the construction of improvements or the purchase of material, machinery, equipment, supplies, and other property, except real property, may be entered into only after competitive bids. Notice of the contract for the purpose of soliciting bids shall be published once a week for two consecutive weeks in a newspaper with general circulation in the area in which the district is located. The first publication of notice must be not later than the 14th day before the date set for receiving bids.]~~ The board may adopt rules governing receipt of bids and the award of the contract and providing for the waiver of the competitive bid requirement if:

- (1) there is an emergency;
- (2) the needed materials are available from only one source;
- (3) in a procurement requiring design by the supplier competitive bidding would not be appropriate and competitive negotiation, with proposals solicited from an adequate number of qualified sources, would permit reasonable competition consistent with the nature and requirements of the procurement; or
- (4) after solicitation, it is ascertained that there will be only one bidder.

~~[(b) If a proposed contract for works, plant improvements, facilities other than land, or the purchase of equipment, appliances, materials, or supplies is for an estimated amount of more than \$50,000 or for a duration of more than two years, competitive sealed proposals shall be asked from at least three persons.]~~

SECTION 17. Section 375.263(a), Local Government Code, is amended to read as follows:

(a) The ~~[Except as limited by Section 375.264, the]~~ governing body of a municipality in which a district is wholly located, by a vote of not less than two-thirds of its membership, may adopt an ordinance dissolving the district.

SECTION 18. Section 375.264, Local Government Code, is amended to read as follows:

Sec. 375.264. LIMITATION ON DISSOLUTION BY BOARD. A district may not be dissolved by its board ~~[or by a municipality]~~ if the district has any outstanding bonded indebtedness until that bonded indebtedness has been repaid or defeased in accordance with the order or resolution authorizing the issuance of the bonds.

SECTION 19. Subchapter N, Chapter 375, Local Government Code, is amended by adding Section 375.282 to read as follows:

Sec. 375.282. STRATEGIC PARTNERSHIP AGREEMENT. A district with territory in the extraterritorial jurisdiction of a municipality may negotiate and enter into a written strategic partnership with the municipality under Section 43.0751.

SECTION 20. Sections 375.021, 375.027, and 375.064(f), Local Government Code, are repealed.

SECTION 21. The change in law made by this Act to Section 375.221, Local Government Code, applies only to a contract awarded on or after January 1, 2012. A contract awarded before January 1, 2012, is governed by the law in effect on the date the contract was awarded, and that law is continued in effect for that purpose.

SECTION 22. This Act takes effect September 1, 2011.

The amendment was read.

Senator West moved to concur in the House amendment to **SB 1234**.

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

Nays: Ogden.

### SENATE BILL 1616 WITH HOUSE AMENDMENT

Senator West called **SB 1616** from the President's table for consideration of the House amendment to the bill.

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

#### Committee Amendment No. 1

SECTION \_\_\_\_\_. Amend **SB 1616** (engrossed version) with the following:

(1) Section 1 Article 38.43, Code of Criminal Procedure (page 3, line 20 and 21) unstrike "~~described by Subsection (b)~~"

(2) On page 3, line 21, replace "~~(b)~~" with "(a)".

(3) On page 3, line 21 and 22, strike "after expiration of the retention period specified by Subsection (c)".

(4) On page 3, line 22, unstrike "~~, but only~~".

The amendment was read.

Senator West moved to concur in the House amendment to **SB 1616**.

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

### SENATE BILL 197 WITH HOUSE AMENDMENTS

Senator West called **SB 197** from the President's table for consideration of the House amendments to the bill.

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

#### Floor Amendment No. 1

Amend **SB 197** (house committee report) as follows:

(1) In SECTION 5 of the bill, after added Section 548.6015(b), Transportation Code, insert the following:

(c) A penalty imposed under this section is in lieu of a civil or administrative penalty imposed under another provision of this chapter for the same violation.

(2) In SECTION 6 of the bill, in added Section 548.6036(a), Transportation Code, after "subject to", add "an administrative or civil penalty or criminal".

**Floor Amendment No. 2**

Amend **SB 197** (house committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. (a) The Department of Public Safety and the Texas Department of Motor Vehicles shall conduct a study regarding the feasibility of and best practices for using an electronic motor vehicle inspection system to consolidate the inspection and registration of motor vehicles in this state.

(b) Not later than December 1, 2012, the Department of Public Safety and the Texas Department of Motor Vehicles shall report the results of the study conducted under this section to the standing committees in the senate and the house of representatives that have primary jurisdiction over transportation.

The amendments were read.

Senator West moved to concur in the House amendments to **SB 197**.

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

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

Nays: Birdwell, Patrick.

**SENATE BILL 462 WITH HOUSE AMENDMENTS**

Senator West called **SB 462** from the President's table for consideration of the House amendments to the bill.

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

**Amendment**

Amend **SB 462** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to the expunction of records and files relating to a person's arrest.

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

SECTION 1. Article 55.01, Code of Criminal Procedure, is amended by amending Subsections (a) and (a-1) and adding Subsection (a-2) 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) 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 the offense, unless the offense is a Class C misdemeanor, provided that [each of the following conditions exist]:

(A) regardless of whether any statute of limitations exists for the offense and whether any limitations period for the offense has expired, an indictment or information charging the person with the commission of a felony or misdemeanor offense arising out of the transaction for which the person was arrested:

(i) has not been presented against the person at any time following the arrest, and:

(a) at least 180 days have elapsed from the date of arrest if the arrest was for an offense punishable as a Class C misdemeanor;

(b) at least one year has elapsed from the date of arrest if the arrest was for an offense punishable as a Class B or A misdemeanor;

(c) at least three years have elapsed from the date of arrest if the arrest was for an offense punishable as a felony; or

(d) the attorney representing the state certifies that the applicable arrest records and files are not needed for use in any criminal investigation or prosecution, including an investigation or prosecution of another person; or

(ii) [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 at any time following the arrest, was[, 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 the indictment or information [is] was void; or

(B) prosecution of the person for the offense for which the person was arrested is no longer possible because the limitations period has expired [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].

(a-1) Notwithstanding any other provision of this article, a person may not expunge records and files relating to an arrest that occurs pursuant to a warrant issued under Section 21, Article 42.12 [Subsection (a)(2)(C), a person's conviction of a felony in the five years preceding the date of the arrest does not affect the person's entitlement to expunction for purposes of an ex parte petition filed on behalf of the person by the director of the Department of Public Safety under Section 2(e), Article 55.02].



(a-2) Notwithstanding any other provision of this article, a person who intentionally or knowingly absconds from the jurisdiction after being released under Chapter 17 following an arrest is not eligible under Subsection (a)(2)(A)(i)(a), (b), or (c) or Subsection (a)(2)(B) for an expunction of the records and files relating to that arrest.

SECTION 2. Section 4, Article 55.02, Code of Criminal Procedure, is amended to read as follows:

Sec. 4. (a) If the state establishes that the person who is the subject of an expunction order is still subject to conviction for an offense arising out of the transaction for which the person was arrested because the statute of limitations has not run and there is reasonable cause to believe that the state may proceed against the person for the offense, the court may provide in its expunction order that the law enforcement agency and the prosecuting attorney responsible for investigating the offense may retain any records and files that are necessary to the investigation.

(a-1) The court shall provide in its expunction order that the applicable law enforcement agency and prosecuting attorney may retain the arrest records and files of any person who becomes entitled to an expunction of those records and files based on the expiration of a period described by Article 55.01(a)(2)(A)(i)(a), (b), or (c), but without the certification of the prosecuting attorney as described by Article 55.01(a)(2)(A)(i)(d).

(a-2) In the case of a person who is the subject of an expunction order on the basis of an acquittal, the court may provide in the expunction order that the law enforcement agency and the prosecuting attorney retain records and files if:

(1) the records and files are necessary to conduct a subsequent investigation and prosecution of a person other than the person who is the subject of the expunction order; or

(2) the state establishes that the records and files are necessary for use in:

(A) another criminal case, including a prosecution, motion to adjudicate or revoke community supervision, parole revocation hearing, mandatory supervision revocation hearing, punishment hearing, or bond hearing; or

(B) a civil case, including a civil suit or suit for possession of or access to a child.

(b) Unless the person who is the subject of the expunction order is again arrested for or charged with an offense arising out of the transaction for which the person was arrested or unless the court provides for the retention of records and files under Subsection (a-1) or (a-2) [~~(a) of this section~~], the provisions of Articles 55.03 and 55.04 [~~of this code~~] apply to files and records retained under this section.

SECTION 3. This Act applies to an expunction of arrest records and files for any criminal offense that occurred before, on, or after the effective date of this Act.

SECTION 4. This Act takes effect September 1, 2011.

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

Amend **CSSB 462** (house committee report) in SECTION 1 of the bill as follows:

(1) In amended Article 55.01(a)(2)(A), Code of Criminal Procedure (page 2, lines 1 and 2), strike "felony or misdemeanor offense arising out of the" and substitute "misdemeanor offense based on the person's arrest or charging the person with the commission of any felony offense arising out of the same".

(2) Strike added Articles 55.01(a)(2)(A)(i)(a)-(c), Code of Criminal Procedure (page 2, lines 6-14), and substitute the following:

(a) at least 180 days have elapsed from the date of arrest if the arrest for which the expunction was sought was for an offense punishable as a Class C misdemeanor and if there was no felony charge arising out of the same transaction for which the person was arrested;

(b) at least one year has elapsed from the date of arrest if the arrest for which the expunction was sought was for an offense punishable as a Class B or A misdemeanor and if there was no felony charge arising out of the same transaction for which the person was arrested;

(c) at least three years have elapsed from the date of arrest if the arrest for which the expunction was sought was for an offense punishable as a felony or if there was a felony charge arising out of the same transaction for which the person was arrested; or

The amendments were read.

Senator West moved to concur in the House amendments to **SB 462**.

The motion prevailed by the following vote: Yeas 26, Nays 5.

Yeas: Birdwell, Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Gallegos, Hegar, Hinojosa, Huffman, Jackson, Lucio, Ogden, Rodriguez, Seliger, Shapiro, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Fraser, Harris, Nelson, Nichols, Patrick.

### **SENATE BILL 1000 WITH HOUSE AMENDMENT**

Senator Eltife called **SB 1000** from the President's table for consideration of the House amendment to the bill.

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

#### **Amendment**

Amend **SB 1000** by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to self-directed and semi-independent status of the Texas Real Estate Commission; making an appropriation.

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

SECTION 1. Subtitle A, Title 7, Occupations Code, is amended by adding Chapter 1105 to read as follows:

#### CHAPTER 1105. SELF-DIRECTED AND SEMI-INDEPENDENT STATUS OF TEXAS REAL ESTATE COMMISSION

Sec. 1105.001. DEFINITIONS. In this section:

(1) "Agency" means the commission and the board.

(2) "Board" means the Texas Appraiser Licensing and Certification Board.

(3) "Commission" means the Texas Real Estate Commission.

Sec. 1105.002. SELF-DIRECTED AND SEMI-INDEPENDENT STATUS. (a) Notwithstanding any other provision of law, the agency is self-directed and semi-independent as specified by this chapter. Any Act of the 82nd Legislature that relates to the agency and that is inconsistent with the agency being self-directed and semi-independent may be implemented by the administrator of the agency only on authorization by the agency.

(b) This chapter does not affect the board's status as an independent subdivision of the commission as provided by Section 1103.051.

Sec. 1105.003. BUDGET, REVENUES, AND EXPENSES. (a) Notwithstanding any other provision of law, including the General Appropriations Act, the commission and the board shall each adopt a separate budget annually using generally accepted accounting principles.

(b) The commission shall be responsible for all direct and indirect costs of the commission's existence and operation. The board shall be responsible for all direct and indirect costs of the board's existence and operation. The agency may not directly or indirectly cause the general revenue fund to incur any cost.

(c) Notwithstanding any other provision of law, the commission and the board may each set the amounts of the respective fees, penalties, charges, and revenues required or permitted by statute or rule as necessary for the purpose of carrying out the separate functions of the commission and the board and funding the respective budgets of the commission and the board adopted and approved under Subsection (a).

(d) Except as provided by Subsection (e), all fees and funds collected by the commission or the board and any funds appropriated to the commission or the board shall be deposited in interest-bearing deposit accounts in the Texas Treasury Safekeeping Trust Company. The comptroller shall contract with the commission and the board for the maintenance of the deposit accounts under terms comparable to a contract between a commercial banking institution and the institution's customers.

(e) A fee collected under:

(1) Section 1101.153(b)(2) shall be deposited in Fund 0193 in the state treasury; and

(2) Section 1101.153(b)(3) shall be deposited in Fund 0001 in the state treasury.

(f) Not later than August 31 of each fiscal year, the agency shall remit \$750,000 to the general revenue fund.

(g) The fiscal year for the agency begins on September 1 and ends on August 31.

Sec. 1105.004. AUDITS. (a) This chapter does not affect the duty of the state auditor to audit the agency. The state auditor shall enter into a contract and schedule with the agency to conduct audits.

(b) Not later than August 31 of each fiscal year, the agency shall remit a nonrefundable retainer to the state auditor in an amount not less than \$10,000. The agency shall reimburse the state auditor for all costs incurred, in excess of the aggregate nonrefundable retainer amounts paid each fiscal year, in performing the audits and shall provide to the governor a copy of any audit performed.

Sec. 1105.005. RECORDS; REPORTING REQUIREMENTS. (a) The agency shall keep financial and statistical information as necessary to disclose completely and accurately the financial condition and results of operations of the agency.

(b) Before the beginning of each regular session of the legislature, the agency shall submit to the legislature and the governor a report describing all of the agency's activities in the previous biennium. The report must include:

- (1) an audit as required by Section 1105.004;
- (2) a financial report of the previous fiscal year, including reports on the financial condition and results of operations;
- (3) a description of all changes in fees imposed on regulated persons;
- (4) a report on changes in the regulatory jurisdiction of the agency; and
- (5) a list of all new rules adopted or repealed.

(c) In addition to the reporting requirements of Subsection (b), not later than November 1 of each year, the agency shall submit to the governor, the committee of each house of the legislature that has jurisdiction over appropriations, and the Legislative Budget Board a report that contains:

- (1) the salary for all agency personnel and the total amount of per diem expenses and travel expenses paid for all agency employees;
- (2) the total amount of per diem expenses and travel expenses paid for each member of the agency;
- (3) the agency's operating plan and the annual budgets of the commission and the board; and
- (4) a detailed report of all revenue received and all expenses incurred by the agency in the previous 12 months.

Sec. 1105.006. ABILITY TO CONTRACT. (a) To carry out and promote the objectives of this chapter, the commission or board may enter into contracts and do all other acts incidental to those contracts that are necessary for the administration of the commission's or board's respective affairs and for the attainment of the commission's or board's respective purposes, except as limited by Subsection (b).

(b) Any indebtedness, liability, or obligation of the commission or board incurred under this section may not:

- (1) create a debt or other liability of this state or another entity other than the commission or board, as appropriate; or
- (2) create any personal liability on the part of the members or employees of the agency.

Sec. 1105.007. PROPERTY. The commission or board may:

- (1) acquire by purchase, lease, gift, or any other manner provided by law and maintain, use, and operate any real, personal, or mixed property, or any interest in property, necessary or convenient to the exercise of the respective powers, rights, privileges, or functions of the commission or board;

(2) sell or otherwise dispose of any real, personal, or mixed property, or any interest in property, that the commission or board, as appropriate, determines is not necessary or convenient to the exercise of the commission's or board's respective powers, rights, privileges, or functions;

(3) construct, extend, improve, maintain, and reconstruct, or cause to construct, extend, improve, maintain, and reconstruct, and use and operate all facilities necessary or convenient to the exercise of the respective powers, rights, privileges, or functions of the commission or board; and

(4) borrow money, as may be authorized from time to time by an affirmative vote of a two-thirds majority of the commission or board, as appropriate, for a period not to exceed five years if necessary or convenient to the exercise of the commission's or board's respective powers, rights, privileges, or functions.

Sec. 1105.008. SUITS. (a) The office of the attorney general shall represent the agency in any litigation.

(b) Not later than August 31 of each fiscal year, the agency shall remit a nonrefundable retainer to the office of the attorney general in an amount of not less than \$75,000. The nonrefundable retainer shall be applied to any services provided to the agency. If additional litigation services are required, the attorney general may assess and collect from the agency reasonable attorney's fees, in excess of the aggregate nonrefundable retainer amount paid each fiscal year, associated with any litigation under this section.

Sec. 1105.009. ADMINISTRATIVE HEARINGS. (a) Not later than August 31 of each fiscal year, the agency shall remit a nonrefundable retainer to the State Office of Administrative Hearings in an amount of not less than \$75,000 for hearings conducted by the State Office of Administrative Hearings under a law administered by the commission or the board.

(b) The nonrefundable retainer shall be applied to the costs associated with conducting the hearings. If additional costs are incurred, the State Office of Administrative Hearings may assess and collect from the agency reasonable fees, in excess of the nonrefundable retainer amount paid each fiscal year, associated with conducting the hearings.

Sec. 1105.010. POST-PARTICIPATION LIABILITY. (a) If the agency no longer has status under this chapter as a self-directed semi-independent agency for any reason, the agency shall be liable for any expenses or debts incurred by the agency during the time the agency was a self-directed semi-independent agency. The agency's liability under this section includes liability for any lease entered into by the agency. This state is not liable for any expense or debt covered by this subsection, and money from the general revenue fund may not be used to repay the expense or debt.

(b) If the agency no longer has status under this chapter as a self-directed semi-independent agency for any reason, ownership of any property or other asset acquired by the agency during the time the agency was a self-directed semi-independent agency, including unexpended fees in a deposit account in the Texas Treasury Safekeeping Trust Company, shall be transferred to this state.

Sec. 1105.011. DUE PROCESS; OPEN GOVERNMENT. The commission and the board are governmental bodies for purposes of Chapters 551 and 552, Government Code. The commission is a state agency for purposes of Chapters 2001 and 2005, Government Code.

Sec. 1105.012. MEMBERSHIP IN EMPLOYEES RETIREMENT SYSTEM. Employees of the agency are members of the Employees Retirement System of Texas under Chapter 812, Government Code, and the commission's and the board's transition to independent status as provided by this chapter has no effect on their membership or any benefits under that system.

SECTION 2. Section 1101.059(c), Occupations Code, is amended to read as follows:

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

SECTION 3. Section 1101.101(d), Occupations Code, is amended to read as follows:

(d) The commission shall determine the salaries of the administrator, officers, and employees of the commission. ~~[The amounts of the salaries may not exceed the amounts specified by the General Appropriations Act.]~~

SECTION 4. Section 1103.103(b), Occupations Code, is repealed.

SECTION 5. (a) To provide a reasonable period for the Texas Real Estate Commission to establish itself as a self-directed and semi-independent agency under Chapter 1105, Occupations Code, as added by this Act, the following amounts are appropriated out of the general revenue fund:

(1) for the state fiscal year ending August 31, 2012, an amount equal to 50 percent of the amount of general revenue appropriated to the agency for the state fiscal year ending August 31, 2011; and

(2) for the state fiscal year ending August 31, 2013, an amount equal to 50 percent of the amount of general revenue appropriated to the agency for the state fiscal year ending August 31, 2011.

(b) Subject to Chapter 1105, Occupations Code, as added by this Act, the appropriations made by Subsection (a) of this section may be spent by the Texas Real Estate Commission as the commission directs. The Texas Real Estate Commission shall repay to the general revenue fund the appropriation made to the commission for the state fiscal year ending August 31, 2012, not later than that date and as funds become available. The Texas Real Estate Commission shall repay to the general revenue fund the appropriation made to the commission for the state fiscal year ending August 31, 2013, not later than that date and as funds become available.

SECTION 6. The transfer of the Texas Real Estate Commission to self-directed and semi-independent status under Chapter 1105, Occupations Code, as added by this Act, and the expiration of self-directed and semi-independent status may not act to cancel, suspend, or prevent:

(1) any debt owed to or by the commission or the Texas Appraiser Licensing and Certification Board;

(2) any fine, tax, penalty, or obligation of any party;

(3) any contract or other obligation of any party; or

(4) any action taken by the commission or the board in the administration or enforcement of the commission's or the board's duties.

SECTION 7. The Texas Real Estate Commission and the Texas Appraiser Licensing and Certification Board shall continue to have and exercise the powers and duties allocated to the commission or the board in the commission's or the board's enabling legislation, except as specifically amended by this Act.

SECTION 8. Title to or ownership of all supplies, materials, records, equipment, books, papers, and furniture used by the Texas Real Estate Commission or the Texas Appraiser Licensing and Certification Board is transferred to the commission or the board, respectively. This Act does not affect any property owned by the commission or the board on or before the effective date of this Act.

SECTION 9. The Texas Real Estate Commission and the Texas Appraiser Licensing and Certification Board shall relocate to state-owned office space not later than September 1, 2011, and shall pay rent to this state in a reasonable amount to be determined by the Texas Facilities Commission for the use and occupancy of the office space. Aggregate rental payments may not be less than \$550,000 per fiscal year for the state fiscal years ending August 31, 2012, and August 31, 2013. Aggregate rental payments may not be less than \$425,000 per fiscal year for each state fiscal year ending August 31, 2014, August 31, 2015, and August 31, 2016.

SECTION 10. This Act takes effect September 1, 2011.

The amendment was read.

Senator Eltife moved to concur in the House amendment to **SB 1000**.

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

### **SENATE BILL 1760 WITH HOUSE AMENDMENT**

Senator Lucio called **SB 1760** from the President's table for consideration of the House amendment to the bill.

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

#### **Committee Amendment No. 1**

Amend **SB 1760** (engrossed), on page 1, lines 19 and 20 by striking "THE (NAME OF COUNTY) AND THE SHERIFF'S DEPARTMENT ARE ACTING ONLY AS CONDUITS OF INFORMATION.".

The amendment was read.

Senator Lucio moved to concur in the House amendment to **SB 1760**.

The motion prevailed by the following vote: Yeas 26, Nays 5.

Yeas: Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Hegar, Hinojosa, Huffman, Jackson, Lucio, Nichols, Ogden, Rodriguez, Seliger, Shapiro, Uresti, Van de Putte, Watson, West, Whitmire, Williams, Zaffirini.

Nays: Birdwell, Harris, Nelson, Patrick, Wentworth.

**SENATE BILL 1413 WITH HOUSE AMENDMENT**

Senator Hegar called **SB 1413** from the President's table for consideration of the House amendment to the bill.

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

**Amendment**

Amend **SB 1413** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to the authority of certain counties to impose a county hotel occupancy tax and to the rate of the tax.

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

SECTION 1. Section 352.002, Tax Code, is amended by adding Subsection (p) to read as follows:

(p) The commissioners court of a county that has a population of 80,000 or less, in which two state parks are located, and through which the Colorado River flows but that is not bordered by that river may impose a tax as authorized by Subsection (a).

SECTION 2. Section 352.003, Tax Code, is amended by adding Subsection (o) to read as follows:

(o) Except as otherwise provided by this subsection, the tax rate in a county authorized to impose the tax under Section 352.002(p) may not exceed seven percent of the price paid for a room in a hotel. The county shall impose the tax authorized under Section 352.002(p) at a rate that may not exceed 0.75 percent of the price paid for a room in a hotel if the hotel is located in:

(1) a municipality that imposes a tax under Chapter 351 applicable to the hotel; or

(2) the extraterritorial jurisdiction of that municipality and the municipality imposes a tax in that area under Section 351.0025 applicable to the hotel.

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, 2011.

The amendment was read.

Senator Hegar moved to concur in the House amendment to **SB 1413**.

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

**SENATE BILL 8 WITH HOUSE AMENDMENTS**

Senator Nelson called **SB 8** from the President's table for consideration of the House amendments to the bill.

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

**Floor Amendment No. 1**

Amend **SB 8** (house committee printing) as follows:



(1) In SECTION 2.01 of the bill, in added Section 1002.001, Health and Safety Code (page 4, line 3, through page 5, line 27), strike Subdivisions (8), (9), (10), (11), (12), and (13) and substitute:

(8) "Potentially preventable admission" means an admission of a person to a hospital or long-term care facility that may have reasonably been prevented with adequate access to ambulatory care or health care coordination.

(9) "Potentially preventable ancillary service" means a health care service provided or ordered by a physician or other health care provider to supplement or support the evaluation or treatment of a patient, including a diagnostic test, laboratory test, therapy service, or radiology service, that may not be reasonably necessary for the provision of quality health care or treatment.

(10) "Potentially preventable complication" means a harmful event or negative outcome with respect to a person, including an infection or surgical complication, that:

(A) occurs after the person's admission to a hospital or long-term care facility; and

(B) may have resulted from the care, lack of care, or treatment provided during the hospital or long-term care facility stay rather than from a natural progression of an underlying disease.

(11) "Potentially preventable event" means a potentially preventable admission, a potentially preventable ancillary service, a potentially preventable complication, a potentially preventable emergency room visit, a potentially preventable readmission, or a combination of those events.

(12) "Potentially preventable emergency room visit" means treatment of a person in a hospital emergency room or freestanding emergency medical care facility for a condition that may not require emergency medical attention because the condition could be, or could have been, treated or prevented by a physician or other health care provider in a nonemergency setting.

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

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

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

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

(2) In SECTION 2.01 of the bill, in added Section 1002.052(b)(7), Health and Safety Code (page 7, line 1), strike "and".

(3) In SECTION 2.01 of the bill, in added Section 1002.052(b), Health and Safety Code (page 7, line 2), between "(8)" and "a representative", insert: the commissioner of the Department of Aging and Disability Services;

(9) the executive director of the Texas Workforce Commission;

(10) the commissioner of the Texas Higher Education Coordinating Board;

and

(11)

(4) In SECTION 2.01 of the bill, strike added Section 1002.053(a), Health and Safety Code (page 7, lines 12-14), and substitute:

(a) Appointed members of the board serve staggered terms of four years, with the terms of as close to one-half of the members as possible expiring January 31 of each odd-numbered year.

(5) In SECTION 2.01 of the bill, in added Section 1002.061(c), Health and Safety Code (page 10, line 16), strike "Each" and substitute "Except as otherwise prohibited by law, each".

(6) In SECTION 2.01 of the bill, in added Section 1002.061, Health and Safety Code (page 10, between lines 20 and 21), insert:

(d) This section does not permit the sale of information that is confidential under Section 1002.060.

(7) In SECTION 2.01 of the bill, in added Section 1002.101(1)(C), Health and Safety Code (page 11, line 9), between "efficiency" and the underlined semicolon, insert:

⋮

(i) using nationally accredited measures; or

(ii) if no nationally accredited measures exist, using measures

based on expert consensus

(8) In SECTION 2.01 of the bill, in added Section 1002.102(a)(2), Health and Safety Code (page 12, line 1), after the underlined semicolon, strike "and".

(9) In SECTION 2.01 of the bill, in added Section 1002.102(a), Health and Safety Code (page 12, line 5), between "care" and the underlined period, insert:

; and

(4) meaningful use of electronic health records by providers and electronic exchange of health information among providers

(10) In SECTION 2.01 of the bill, immediately after added Section 1002.102(b), Health and Safety Code (page 12, between lines 14 and 15), insert the following new subsections and reletter the subsequent subsections of Section 1002.102 appropriately:

(c) In developing recommendations under Subsection (b), the institute shall use nationally accredited measures or, if no nationally accredited measures exist, measures based on expert consensus.

(d) The institute may study and develop recommendations for measuring the quality of care and efficiency in state or federally funded health care delivery systems other than those described by Subsection (b).

(11) In SECTION 2.01 of the bill, in added Section 1002.151(b)(5), Health and Safety Code (page 13, line 10), after the underlined semicolon, strike "and".

(12) In SECTION 2.01 of the bill, in added Section 1002.151(b)(6), Health and Safety Code (page 13, line 11), between "satisfaction" and the underlined period, insert:

; and

(7) the meaningful use of electronic health records by providers and electronic exchange of health information among providers

(13) In SECTION 2.01 of the bill, in added Section 1002.201(a), Health and Safety Code (page 13, line 17), strike "state and how the public and health care providers" and substitute "state, what information is available to the public, and how the public and health care providers currently benefit and could potentially".

(14) In SECTION 2.01 of the bill, in added Section 1002.201(b)(1), Health and Safety Code (page 13, line 23), between "providers" and the underlined semicolon, insert "and payors".

(15) In SECTION 2.01 of the bill, immediately after added Section 1002.202(a), Health and Safety Code (page 14, between lines 8 and 9), insert:

(b) The study described by Subsection (a) shall:

(1) use the assessment described by Section 1002.201 to develop recommendations relating to the adequacy of existing data sources for carrying out the state's purposes under this chapter and Chapter 848, Insurance Code;

(2) determine whether the establishment of an all payor claims database would reduce the need for some data submissions provided by payors;

(3) identify the best available sources of data necessary for the state's purposes under this chapter and Chapter 848, Insurance Code, that are not collected by the state under existing law;

(4) describe how an all payor claims database may facilitate carrying out the state's purposes under this chapter and Chapter 848, Insurance Code;

(5) identify national standards for claims data collection and use, including standardized data sets, standardized methodology, and standard outcome measures of health care quality and efficiency; and

(6) estimate the costs of implementing an all payor claims database, including:

(A) the costs to the state for collecting and processing data;

(B) the cost to the payors for supplying the data; and

(C) the available funding mechanisms that might support an all payor claims database.

(16) In SECTION 2.01 of the bill, in added Section 1002.202, Health and Safety Code (page 14, line 9), reletter Subsection (b) as Subsection (c).

(17) In SECTION 2.04 of the bill (page 14, line 25), between "SECTION 2.04." and "The governor", insert "(a)".

(18) After SECTION 2.04 of the bill (page 15, between lines 2 and 3), insert:

(b) In making the initial appointments under this section, the governor shall designate seven members to terms expiring January 31, 2013, and eight members to terms expiring January 31, 2015.

(19) In SECTION 2.05(a)(4) of the bill (page 15, line 17), between "micro businesses," and "and health care providers", insert "payors,".

(20) In SECTION 2.05(b)(2) of the bill (page 16, lines 1-2), strike "Subsection (b)" and substitute "Subsection (c)".

(21) In SECTION 2.05(b)(4) of the bill (page 16, line 7), between "micro businesses," and "and health care providers", insert "payors,".

(22) In SECTION 3.01 of the bill, strike added Section 848.001(2), Insurance Code (page 16, line 18, through page 17, line 3), and substitute:

(2) "Health care collaborative" means an entity:

(A) that undertakes to arrange for medical and health care services for insurers, health maintenance organizations, and other payors in exchange for payments in cash or in kind;

(B) that accepts and distributes payments for medical and health care services;

(C) that consists of:

(i) physicians;

(ii) physicians and other health care providers;

(iii) physicians and insurers or health maintenance organizations; or

(iv) physicians, other health care providers, and insurers or health maintenance organizations; and

(D) that is certified by the commissioner under this chapter to lawfully accept and distribute payments to physicians and other health care providers using the reimbursement methodologies authorized by this chapter.

(23) In SECTION 3.01 of the bill, in added Section 848.004, Insurance Code (page 19, line 25), between "LAWS." and "An", insert "(a)".

(24) In SECTION 3.01 of the bill, in added Section 848.004, Insurance Code (page 20, between lines 4 and 5), insert:

(b) The following provisions of this code apply to a health care collaborative in the same manner and to the same extent as they apply to an individual or entity otherwise subject to the provision:

(1) Section 38.001;

(2) Subchapter A, Chapter 542;

(3) Chapter 541;

(4) Chapter 543;

(5) Chapter 602;

(6) Chapter 701;

(7) Chapter 803; and

(8) Chapter 804.

(25) In SECTION 3.01 of the bill, strike added Section 848.005, Insurance Code (page 20, lines 5-10), and substitute:

Sec. 848.005. CERTAIN INFORMATION CONFIDENTIAL. (a) Except as provided by Subsection (b), an application, filing, or report required under this chapter is public information subject to disclosure under Chapter 552, Government Code.

(b) The following information is confidential and is not subject to disclosure under Chapter 552, Government Code:

(1) a contract, agreement, or document that establishes another arrangement:

(A) between a health care collaborative and a governmental or private entity for all or part of health care services provided or arranged for by the health care collaborative; or

(B) between a health care collaborative and participating physicians and health care providers;

(2) a written description of a contract, agreement, or other arrangement described by Subdivision (1);

(3) information relating to bidding, pricing, or other trade secrets submitted to:

(A) the department under Sections 848.057(5) and (6); or

(B) the attorney general under Section 848.059;

(4) information relating to the diagnosis, treatment, or health of a patient who receives health care services from a health care collaborative under a contract for services; and

(5) information relating to quality improvement or peer review activities of a health care collaborative.

(26) In SECTION 3.01 of the bill, in added Section 848.052(e), Insurance Code (page 21, lines 17-18), strike "may include nonvoting ex officio members" and substitute "must include at least three nonvoting ex officio members who represent the community in which the health care collaborative operates".

(27) In SECTION 3.01 of the bill, in the heading to added Section 848.053, Insurance Code (page 22, line 12), strike "COMMITTEE." and substitute "COMMITTEE; SHARING OF CERTAIN DATA. (a)".

(28) In SECTION 3.01 of the bill, after added Section 848.053, Insurance Code (page 22, after line 27), insert:

(b) A health care collaborative shall establish and enforce policies to prevent the sharing of charge, fee, and payment data among nonparticipating physicians and health care providers.

(29) In SECTION 3.01 of the bill, after added Section 848.055(b), Insurance Code (page 23, between lines 18 and 19), insert:

(c) A medical school, medical and dental unit, or health science center as described by Section 61.003, 61.501, or 74.601, Education Code, is not required to obtain a certificate of authority under this chapter to the extent that the medical school, medical and dental unit, or health science center contracts to deliver medical care services within a health care collaborative. This chapter is otherwise applicable to a medical school, medical and dental unit, or health science center.

(d) An entity licensed under the Health and Safety Code that employs a physician under a specific statutory authority is not required to obtain a certificate of authority under this chapter to the extent that the entity contracts to deliver medical care services and health care services within a health care collaborative. This chapter is otherwise applicable to the entity.

(30) In SECTION 3.01 of the bill, after added Section 848.056(c), Insurance Code (page 24, between lines 14 and 15), insert:

(d) The commissioner by rule may:

(1) extend the date by which an application is due under this section; and

(2) require the disclosure of any additional information necessary to implement and administer this chapter, including information necessary to antitrust review and oversight.

(31) In SECTION 3.01 of the bill, in added Section 848.057, Insurance Code (page 24, line 15), after "APPLICATION.", insert "(a)".

(32) In SECTION 3.01 of the bill, in added Section 848.057(2)(A)(ii), Insurance Code (page 25, line 1), between "promotes" and "quality-based", insert "improvement in".

(33) In SECTION 3.01 of the bill, in added Section 848.057(2)(A)(ii), Insurance Code (page 25, line 2), between "outcomes," and "patient", insert "patient safety,".

(34) In SECTION 3.01 of the bill, in added Section 848.057(2)(C), Insurance Code (page 25, line 8), between "statistics" and "relating", insert "on performance measures".

(35) In SECTION 3.01 of the bill, after added Section 848.057, Insurance Code (page 26, between lines 1 and 2), insert:

(b) A certificate of authority is effective for a period of one year, subject to Section 848.060(d).

(36) In SECTION 3.01 of the bill, strike added Section 848.059, Insurance Code (page 26, line 10, through page 27, line 15), and substitute:

Sec. 848.059. CONCURRENCE OF ATTORNEY GENERAL. (a) If the commissioner determines that an application for a certificate of authority filed under Section 848.056 complies with the requirements of Section 848.057, the commissioner shall forward the application, and all data, documents, and analysis considered by the commissioner in making the determination, to the attorney general. The attorney general shall review the application and the data, documents, and analysis and, if the attorney general concurs with the commissioner's determination under Sections 848.057(a)(5) and (6), the attorney general shall notify the commissioner.

(b) If the attorney general does not concur with the commissioner's determination under Sections 848.057(a)(5) and (6), the attorney general shall notify the commissioner.

(c) A determination under this section shall be made not later than the 60th day after the date the attorney general receives the application and the data, documents, and analysis from the commissioner.

(d) If the attorney general lacks sufficient information to make a determination under Sections 848.057(a)(5) and (6), within 60 days of the attorney general's receipt of the application and the data, documents, and analysis the attorney general shall inform the commissioner that the attorney general lacks sufficient information as well as what information the attorney general requires. The commissioner shall then either provide the additional information to the attorney general or request the additional information from the applicant. The commissioner shall promptly deliver any such additional information to the attorney general. The attorney general shall then have 30 days from receipt of the additional information to make a determination under Subsection (a) or (b).

(e) If the attorney general notifies the commissioner that the attorney general does not concur with the commissioner's determination under Sections 848.057(a)(5) and (6), then, notwithstanding any other provision of this subchapter, the commissioner shall deny the application.

(f) In reviewing the commissioner's determination, the attorney general shall consider the findings, conclusions, or analyses contained in any other governmental entity's evaluation of the health care collaborative.

(g) The attorney general at any time may request from the commissioner additional time to consider an application under this section. The commissioner shall grant the request and notify the applicant of the request. A request by the attorney general or an order by the commissioner granting a request under this section is not subject to administrative or judicial review.

(37) In SECTION 3.01 of the bill, in added Section 848.060(a), Insurance Code (page 27, line 19), between "issued" and the underlined comma, insert "or most recently renewed".

(38) In SECTION 3.01 of the bill, in added Section 848.060(b)(2)(E), Insurance Code (page 28, line 13), after the underlined semicolon, strike "and".

(39) In SECTION 3.01 of the bill, in added Section 848.060(b)(2)(F), Insurance Code (page 28, line 16), strike "848.107." and substitute "848.107; and".

(40) In SECTION 3.01 of the bill, after added Section 848.060(b)(2)(F), Insurance Code (page 28, between lines 16 and 17), insert:

(G) any other information required by the commissioner.

(41) In SECTION 3.01 of the bill, strike added Section 848.060(c)(1), Insurance Code (page 28, lines 19-22), and substitute:

(1) the commissioner shall conduct a review under Section 848.057 as if the application for renewal were a new application, and, on approval by the commissioner, the attorney general shall review the application under Section 848.059 as if the application for renewal were a new application; and

(42) In SECTION 3.01 of the bill, in added Section 848.060(d), Insurance Code (page 29, line 2), between "issued" and the comma, insert "or renewed".

(43) In SECTION 3.01 of the bill, after added Section 848.060(d), Insurance Code (page 29, between lines 6 and 7), insert:

(e) A health care collaborative shall report to the department a material change in the size or composition of the collaborative. On receipt of a report under this subsection, the department may require the collaborative to file an application for renewal before the date required by Subsection (a).

(44) In SECTION 3.01 of the bill, strike added Section 848.103(b), Insurance Code (page 31, lines 5-10), and substitute:

(b) Notwithstanding any other law, a health care collaborative that is in compliance with this code, including Chapters 841, 842, and 843, as applicable, may contract for, accept, and distribute payments from governmental or private payors based on fee-for-service or alternative payment mechanisms, including:

(1) episode-based or condition-based bundled payments;

(2) capitation or global payments; or

(3) pay-for-performance or quality-based payments.

(c) Except as provided by Subsection (d), a health care collaborative may not contract for and accept from a governmental or private entity payments on a prospective basis, including bundled or global payments, unless the health care collaborative is licensed under Chapter 843.

(d) A health care collaborative may contract for and accept from an insurance company or a health maintenance organization payments on a prospective basis, including bundled or global payments.

(45) In SECTION 3.01 of the bill, in added Section 848.106(a)(2), Insurance Code (page 32, line 5), strike "and monitoring" and substitute "monitoring, and evaluation".

(46) In SECTION 3.01 of the bill, in added Section 848.106(a)(3), Insurance Code (page 32, line 11), strike "and monitoring" and substitute "monitoring, and evaluation".

(47) In SECTION 3.01 of the bill, in added Section 848.106(a)(4), Insurance Code (page 32, lines 15-16), strike "participating physicians and health care providers" and substitute "participating physicians, health care providers, and patients".

(48) In SECTION 3.01 of the bill, in added Section 848.153(a), Insurance Code (page 36, line 9), strike "attorney general" and substitute "commissioner".

(49) In SECTION 3.01 of the bill, after added Section 848.153(d), Insurance Code (page 36, after line 27), insert:

(e) The commissioner or attorney general may disclose the results of an examination conducted under this section or documentation provided under this section to a governmental agency that contracts with a health care collaborative for the purpose of determining financial stability, readiness, or other contractual compliance needs.

(50) In SECTION 3.01 of the bill, in added Section 848.201(b)(7), Insurance Code (page 38, line 8), after the underlined semicolon, strike "or".

(51) In SECTION 3.01 of the bill, in added Section 848.201(b)(8), Insurance Code (page 38, line 15), strike "reasonable." and substitute "reasonable; or".

(52) In SECTION 3.01 of the bill, after added Section 848.201(b)(8), Insurance Code (page 38, between lines 15 and 16), insert:

(9) has or is utilizing market power in an anticompetitive manner, in accordance with established antitrust principles of market power analysis.

(53) In SECTION 3.01 of the bill, after added Section 848.203, Insurance Code (page 39, between lines 13 and 14), insert:

Sec. 848.204. NOTICE. The commissioner shall:

(1) report any action taken under this subchapter to:

(A) the relevant state licensing or certifying agency or board; and

(B) the United States Department of Health and Human Services

National Practitioner Data Bank; and

(2) post notice of the action on the department's Internet website.

Sec. 848.205. INDEPENDENT AUTHORITY OF ATTORNEY GENERAL. (a) The attorney general may:

(1) investigate a health care collaborative with respect to anticompetitive behavior that is contrary to the goals and requirements of this chapter; and

(2) request that the commissioner:

(A) impose a penalty or sanction;

(B) issue a cease and desist order; or

(C) suspend or revoke the health care collaborative's certificate of

authority.

(b) This section does not limit any other authority or power of the attorney general.



(54) In SECTION 3.03 of the bill, in the recital (page 40, line 4), strike "Sections 1301.0625 and 1301.0626" and substitute "Section 1301.0625".

(55) In SECTION 3.03 of the bill, strike added Sections 1301.0625 and 1301.0626, Insurance Code (page 40, lines 6-26), and substitute:

Sec. 1301.0625. HEALTH CARE COLLABORATIVES. (a) Subject to the requirements of this chapter, a health care collaborative may be designated as a preferred provider under a preferred provider benefit plan and may offer enhanced benefits for care provided by the health care collaborative.

(b) A preferred provider contract between an insurer and a health care collaborative may use a payment methodology other than a fee-for-service or discounted fee methodology. A reimbursement methodology used in a contract under this subsection is not subject to Chapter 843.

(c) A contract authorized by Subsection (b) must specify that the health care collaborative and the physicians or providers providing health care services on behalf of the collaborative will hold an insured harmless for payment of the cost of covered health care services if the insurer or the health care collaborative do not pay the physician or health care provider for the services.

(d) An insurer issuing an exclusive provider benefit plan authorized by another law of this state may limit access to only preferred providers participating in a health care collaborative if the limitation is consistent with all requirements applicable to exclusive provider benefit plans.

(56) Strike SECTION 3.04 of the bill (page 40, line 27, through page 41, line 11) and substitute:

SECTION 3.04. Subtitle F, Title 4, Health and Safety Code, is amended by adding Chapter 315 to read as follows:

CHAPTER 315. ESTABLISHMENT OF HEALTH CARE COLLABORATIVES

Sec. 315.001. AUTHORITY TO ESTABLISH HEALTH CARE COLLABORATIVE. A public hospital created under Subtitle C or D or a hospital district created under general or special law may form and sponsor a nonprofit health care collaborative that is certified under Chapter 848, Insurance Code.

(57) Strike SECTION 3.07 of the bill (page 43, lines 4-8) and substitute:

SECTION 3.07. Not later than September 1, 2012, the commissioner of insurance and the attorney general shall adopt rules as necessary to implement this article.

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

SECTION 3. \_\_\_\_\_. As soon as practicable after the effective date of this Act, the commissioner of insurance shall designate or employ staff with antitrust expertise sufficient to carry out the duties required by this Act.

(59) In the recital to SECTION 5.01 of the bill (page 44, line 16), strike "Subdivision (10-a)" and substitute "Subdivisions (8-a) and (10-a)".

(60) In SECTION 5.01 of the bill, in amended Section 98.001, Health and Safety Code, as added by Chapter 359 (**SB 288**), Acts of the 80th Legislature, Regular Session, 2007 (page 44, between lines 17 and 18), immediately after the recital, insert the following:

(8-a) "Health care professional" means an individual licensed, certified, or otherwise authorized to administer health care, for profit or otherwise, in the ordinary course of business or professional practice. The term does not include a health care facility.

(61) In SECTION 5.05 of the bill, strike added Section 98.1046(a), Health and Safety Code (page 46, lines 20-24), and substitute the following:

(a) In consultation with the Texas Institute of Health Care Quality and Efficiency under Chapter 1002, the department, using data submitted under Chapter 108, shall publicly report for hospitals in this state risk-adjusted outcome rates for those potentially preventable complications and potentially preventable readmissions that the department, in consultation with the institute, has determined to be the most effective measures of quality and efficiency.

(62) In SECTION 5.05 of the bill, in added Section 98.1046(c), Health and Safety Code (page 47, line 2), strike "health care provider" and substitute "health care professional".

(63) In SECTION 5.05 of the bill, in added Section 98.1047(a), Health and Safety Code (page 47, line 5), after "(a)", strike "The" and substitute "In consultation with the Texas Institute of Health Care Quality and Efficiency under Chapter 1002, the".

(64) In SECTION 5.08 of the bill, strike added Section 98.1065, Health and Safety Code (page 48, line 20, through page 49, line 4), and substitute the following:

Sec. 98.1065. STUDY OF INCENTIVES AND RECOGNITION FOR HEALTH CARE QUALITY. The department, in consultation with the Texas Institute of Health Care Quality and Efficiency under Chapter 1002, shall conduct a study on developing a recognition program to recognize exemplary health care facilities for superior quality of health care and make recommendations based on that study.

(65) In SECTION 5.10 of the bill, in amended Section 98.110, Health and Safety Code, as added by Chapter 359 (**SB 288**), Acts of the 80th Legislature, Regular Session, 2007 (page 50, lines 2-3), between "Centers for Disease Control and Prevention" and "for public health research", insert ", or any other agency of the United States Department of Health and Human Services,".

(66) Add the following appropriately numbered SECTIONS to ARTICLE 5 of the bill and renumber subsequent SECTIONS of the ARTICLE accordingly:

SECTION 5.\_\_\_\_. Section 98.109(a), Health and Safety Code, as added by Chapter 359 (**SB 288**), Acts of the 80th Legislature, Regular Session, 2007, is amended to read as follows:

(a) Except as provided by Sections 98.1046, 98.106, and 98.110, all information and materials obtained or compiled or reported by the department under this chapter or compiled or reported by a health care facility under this chapter, and all related information and materials, are confidential and:

(1) are not subject to disclosure under Chapter 552, Government Code, or discovery, subpoena, or other means of legal compulsion for release to any person; and

(2) may not be admitted as evidence or otherwise disclosed in any civil, criminal, or administrative proceeding.

SECTION 5.\_\_\_\_. (a) Not later than December 1, 2012, the Department of State Health Services shall submit a report regarding recommendations for improved health care reporting to the governor, the lieutenant governor, the speaker of the house of representatives, and the chairs of the appropriate standing committees of the legislature outlining:

(1) the initial assessment in the study conducted under Section 98.1065, Health and Safety Code, as added by this Act;

(2) based on the study described by Subdivision (1) of this subsection, the feasibility and desirability of establishing a recognition program to recognize exemplary health care facilities for superior quality of health care;

(3) the recommendations developed under Section 98.1065, Health and Safety Code, as added by this Act; and

(4) the changes in existing law that would be necessary to implement the recommendations described by Subdivision (3) of this subsection.

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

Amend Amendment No. 1 by Kolkhorst (82R29960) to **SB 8** (house committee printing) as follows:

(1) In item 24 of the amendment, in added Section 848.004(b), Insurance Code (page 7, line 20), strike "The" and substitute "Except as provided by Subsection (c), the".

(2) In item 24 of the amendment, after added Section 848.004(b), Insurance Code (page 7, after line 31), add the following:

(c) The remedies available under this chapter in the manner provided by Chapter 541 do not include:

(1) a private cause of action under Subchapter D, Chapter 541; or

(2) a class action under Subchapter F, Chapter 541.

(3) Add the following appropriately numbered item to the amendment and renumber subsequent items of the amendment accordingly:

( ) In SECTION 3.01 of the bill, strike added Section 848.057(6), Insurance Code (page 25, line 27, through page 26, line 1), and substitute the following:

(6) the pro-competitive benefits of the applicant's proposed health care collaborative are likely to substantially outweigh the anti-competitive effects of any increase in market power.

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

Amend **SB 8** (house committee printing) in SECTION 2.01 of the bill as follows:

(1) Strike added Section 1002.001(6)(E), Health and Safety Code (page 3, lines 22-23), and reletter subsequent paragraphs of Subdivision (6) accordingly.

(2) Strike added Sections 1002.001(13)(B)-(D), Health and Safety Code (page 5, lines 20-27), and substitute the following:

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

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

(3) Strike added Section 1002.061(b), Health and Safety Code (page 10, lines 13-15), and reletter subsequent subsections of Section 1002.061 accordingly.

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

Amend **SB 8** (house committee printing) in SECTION 2.01 of the bill, in added Section 1002.054(a), Health and Safety Code (page 7, line 17), following "commission.", by adding the following:

The commission shall collaborate with other health-related institutes to provide administrative support to the institute.

#### **Floor Amendment No. 5**

Amend **SB 8** (house committee printing) in ARTICLE 2 of the bill by adding the following appropriately numbered SECTION to that ARTICLE and renumbering subsequent SECTIONS of that ARTICLE appropriately:

SECTION 2.\_\_\_\_. (a) The Texas Institute of Health Care Quality and Efficiency under Chapter 1002, Health and Safety Code, as added by this Act, shall conduct a study:

(1) evaluating how the legislature may promote a consumer-driven health care system, including by increasing the adoption of high-deductible insurance products with health savings accounts by consumers and employers to lower health care costs and increase personal responsibility for health care; and

(2) examining the issue of differing amounts of payment in full accepted by a provider for the same or similar health care services or supplies, including bundled health care services and supplies, and addressing:

(A) the extent of the differences in the amounts accepted as payment in full for a service or supply;

(B) the reasons that amounts accepted as payment in full differ for the same or similar services or supplies;

(C) the availability of information to the consumer regarding the amount accepted as payment in full for a service or supply;

(D) the effects on consumers of differing amounts accepted as payment in full; and

(E) potential methods for improving consumers' access to information in relation to the amounts accepted as payment in full for health care services or supplies, including the feasibility and desirability of requiring providers to:

(i) publicly post the amount that is accepted as payment in full for a service or supply; and

(ii) adhere to the posted amount.

(b) The institute shall submit a report to the legislature outlining the results of the study conducted under this section and any recommendations for potential legislation not later than January 1, 2013.

(c) This section expires September 1, 2013.

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

Amend **SB 8** (house committee printing) in SECTION 3.01 of the bill, in added Section 848.101(c), Insurance Code (page 29, lines 22-23), by striking "after the termination of the physician's contract with the health care collaborative".

**Floor Amendment No. 10**

Amend **SB 8** (house committee report) as follows:

(1) In the recital to SECTION 6.04 of the bill, amending Section 108.013, Health and Safety Code (page 51, line 22), strike "(n)" and substitute "(o)".

(2) In SECTION 6.04 of the bill, immediately following proposed Section 108.013(n), Health and Safety Code (page 54, between lines 5 and 6), insert the following:

(o) The department as the department determines appropriate may, subject to Section 166.054(c), include data collected in Section 166.054 in the data collected or disclosed under this section.

(3) Add the following appropriately numbered SECTION to ARTICLE 6 of the bill and renumber subsequent SECTIONS of ARTICLE 6 accordingly:

SECTION \_\_\_\_\_. Subchapter B, Chapter 166, Health and Safety Code, is amended by adding Section 166.054 to read as follows:

Sec. 166.054. REPORTING REQUIREMENTS. (a) The executive commissioner of the Health and Human Services Commission by rule shall require appropriate health care facilities in this state to annually provide to the department the following information:

(1) for cases in which an attending physician refused to comply with an advance directive or health care or treatment decision and did not wish to follow the procedure established by Section 166.046:

(A) the total number of cases;

(B) for each case:

(i) whether the attending physician objected to providing or to withholding treatment;

(ii) the patient's diagnosis and a statement as to whether the diagnosis is of an irreversible condition or terminal condition;

(iii) the race, gender, age, national origin, disability, if any, and financial status, including insurance status, of the patient;

(iv) the type of health care facility, including a hospital, long-term care facility, or institution licensed under Chapter 242, including a skilled nursing facility, to which a transfer was sought; and

(v) whether the transfer occurred; and

(C) for each case in which a transfer was not made:

(i) whether the patient died;

(ii) the number of days between the date on which the opportunity to transfer the patient was first afforded and the date of the patient's death, if applicable; and

(iii) whether life-sustaining treatment had been withheld or withdrawn before the patient's death;

(2) for cases in which an attending physician's refusal to honor an advance directive or health care or treatment decision made by or on behalf of a patient was reviewed under Section 166.046:

(A) the total number of cases;

(B) for each case:

(i) whether the attending physician objected to providing or to withholding treatment;

(ii) the patient's diagnosis and a statement as to whether the diagnosis is of an irreversible condition or terminal condition;

(iii) the race, gender, age, national origin, disability, if any, and financial status, including insurance status, of the patient;

(iv) whether an ethics or medical committee meeting was held;

(v) whether the ethics or medical committee agreed with the physician or with the patient or the person responsible for the health care decisions of the patient;

(vi) the type of health care facility, including a hospital, long-term care facility, or institution licensed under Chapter 242, including a skilled nursing facility, to which a transfer was sought;

(vii) whether the transfer occurred; and

(viii) the number of days between the date the person received the written explanation to which the person is entitled under Section 166.046(b)(4)(B) and the date of the patient's transfer or death, if applicable; and

(C) for each case in which a transfer was not made:

(i) whether the patient died;

(ii) the number of days between the date on which the opportunity to transfer the patient was first afforded and the date of the patient's death, if applicable; and

(iii) whether life-sustaining treatment had been withheld or withdrawn before the patient's death; and

(3) for each case in which the health care facility or its agents attempted to assist in finding another facility willing and able to accept transfer of the patient:

(A) the number of other facilities contacted and asked to consider accepting transfer; and

(B) to the extent provided to the reporting facility, the reasons given by the other facilities for refusing to accept or for accepting transfer.

(b) Not later than February 1 of each year, the department shall issue a public report cumulating the data reported under Subsection (a) for the previous calendar year and provide a copy of the report to the governor, lieutenant governor, and speaker of the house of representatives. The report must include the aggregate data for the entire state and, subject to Subsection (c), data for each reporting health care facility. The department must allow researchers access to the database of reported data to conduct studies based on cross-tabulation, subject to Subsection (c).

(c) Except to the extent waived by a patient or the patient's legally authorized representative, the department shall ensure that information made public or available to researchers under Subsection (b) does not compromise patient confidentiality.

(d) The reporting required under this section shall be integrated, to the extent practicable, with the uniform reporting and collection system established under Section 311.032. The department shall encourage the use of electronic reporting to the extent practicable. The department shall consult with the Department of Information Resources on developing an appropriate format for use in implementing this subsection.

**Floor Amendment No. 11**

Amend Amendment No. 10 by Hughes to **SB 8** (house committee printing) by adding the following appropriately numbered item to the amendment:

(\_\_\_\_) Add the following appropriately numbered ARTICLE to the bill and renumber subsequent ARTICLES and SECTIONS of the bill accordingly:

ARTICLE \_\_\_\_ . INTERIM STUDY OF ADVANCE DIRECTIVES AND HEALTH CARE AND TREATMENT DECISIONS

SECTION \_\_\_\_ .01. INTERIM STUDY OF ADVANCE DIRECTIVES AND HEALTH CARE AND TREATMENT DECISIONS. (a) The lieutenant governor shall issue an interim charge to the standing committee of the senate with jurisdiction over health care treatment to conduct a study as described by Subsection (b).

(b) The study must examine the provisions of Chapter 166, Health and Safety Code, including:

- (1) the scope of medical and physical conditions covered by the chapter;
- (2) forms for executing advance directives;
- (3) operational issues, including the conflict resolution process;
- (4) reporting requirements;
- (5) due process provisions;
- (6) forms for executing physicians' orders; and

(7) court intervention that was sought, for damages or injunctive relief, during or arising from the health care provided and treatment decisions made pursuant to Chapter 166, Health and Safety Code.

(c) Not later than January 1, 2013, the committee shall report the committee's findings and recommendations to the lieutenant governor, the speaker of the house, and the governor. The committee shall include in its recommendations specific changes to statutes and agency rules that may be necessary, based on the results of the committee's study conducted under this section.

(d) Not later than November 1, 2011, the lieutenant governor shall issue the interim charge required by this section.

(e) This section expires January 1, 2013.

**Floor Amendment No. 13**

Amend **SB 8** (house committee printing) by adding the following appropriately numbered ARTICLE to the bill and renumbering subsequent ARTICLES and SECTIONS of the bill accordingly:

ARTICLE \_\_\_\_ . MONITORING AND ENHANCEMENT OF HEALTH AND HUMAN SERVICES INFORMATION TECHNOLOGY SYSTEMS

SECTION \_\_\_\_ .01. Section 531.458, Government Code, is amended to read as follows:

Sec. 531.458. EXPIRATION. This subchapter expires September 1, 2015 [~~2011~~].

**Floor Amendment No. 14**

Amend **SB 8** by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Subchapter D, Chapter 62, Health and Safety Code, is amended by adding Section 62.160 to read as follows:

Sec. 62.160. PILOT PROJECT TO INCREASE ENROLLEE ACCESS TO PRIMARY CARE SERVICES AND SIMPLIFY ENROLLMENT PROCEDURES.

(a) In this section:

(1) "CPT code" means the number assigned to identify a specific health care procedure performed by a health care provider under the American Medical Association's "Current Procedural Terminology 2011 Professional Edition" or a subsequent edition of that publication adopted by the executive commissioner of the Health and Human Services Commission by rule.

(2) "Lower-cost medical setting" means a facility, clinic, center, office, or other setting primarily used to provide primary care services.

(3) "Primary care services" means health services generally provided through a general, family, internal medicine, or pediatrics practice. The term does not include services provided through a hospital emergency room or surgical services.

(4) "Service area" means the geographical area determined by the commission that is coterminous with one or more Medicaid service areas and in which the pilot project is established.

(b) The commission shall establish a two-year pilot project in one or more Medicaid service areas that is designed to:

(1) increase child health plan enrollee access to primary care services; and

(2) simplify child health plan enrollment procedures.

(c) In establishing the pilot project under this section, the executive commissioner of the Health and Human Services Commission shall:

(1) for each service area, establish health care provider reimbursement rates for primary care services provided in lower-cost medical settings that are comparable to the federal Medicare program rates for the same or similar services;

(2) identify CPT codes that represent primary care services for purposes of Subdivision (1);

(3) prescribe and use an alternative application for child health plan coverage that is written on a sixth-grade reading comprehension level; and

(4) require any enrollment services provider in a service area to reduce application processing delays and procedural denials and increase renewal rates.

(d) An individual who resides in the service area and who is determined eligible for coverage under the child health plan remains eligible for benefits until the expiration of the period provided by Section 62.102(a), subject to Section 62.102(b).

(e) The commission shall provide at least one point of service contact in each county in the service area where trained personnel are available to personally assist interested individuals who reside in the service area with the application form and procedures for child health plan coverage.

(f) The commission may enroll an individual in the child health plan program under the pilot project established under this section during only the first year of the project.

(g) Not later than January 1, 2013, the commission shall submit an initial report to the governor, the lieutenant governor, the speaker of the house of representatives, and the presiding officers of the standing committees of the senate and house of



representatives having primary jurisdiction over the child health plan program. The report must evaluate the operation of the pilot project and make recommendations regarding the continuation or expansion of the pilot project. The report must:

(1) state whether:

(A) a higher percentage of eligible individuals in the service area enrolled in the child health plan as a result of the pilot project, as compared to percentages in other areas;

(B) a higher percentage of health plan providers in the service area participated in the child health plan as a result of the pilot project, as compared to percentages in other areas; and

(C) the enrollment changes implemented under the pilot project:

(i) reduced application processing delays and procedural denials;

and

(ii) affected reenrollment rates; and

(2) include recommendations for the statewide implementation of successful pilot project strategies.

(h) The commission shall submit a final report regarding the results of the pilot project in the manner prescribed by Subsection (g) not later than the 60th day after the date the pilot project terminates. The report must contain the information required by Subsection (g).

(i) The executive commissioner of the Health and Human Services Commission shall adopt rules necessary to implement this section.

(j) This section expires January 1, 2015.

SECTION \_\_\_\_\_. (a) Subject to Subsection (b) of this section, not later than October 1, 2011, the Health and Human Services Commission shall establish the pilot project required under Section 62.160, Health and Safety Code, as added by this Act.

(b) 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.

### **Floor Amendment No. 15**

Amend **SB 8** (house committee printing) as follows:

(1) In SECTION 2.01 of the bill, in added Section 1002.101(2), Health and Safety Code (page 11, line 17), following the underlined semicolon, strike "and".

(2) In SECTION 2.01 of the bill, in added Section 1002.101(3), Health and Safety Code (page 11, line 20), following "Insurance Code", strike the underlined period and substitute "; and".

(3) In SECTION 2.01 of the bill, in added Section 1002.101, Health and Safety Code (page 11, between lines 20 and 21), insert the following:

(4) establishing a database of ambulatory surgical centers licensed under Chapter 243 to enable those centers to be reimbursed using a charge-based methodology to promote competition in accordance with Chapter 1301, Insurance Code.

**Floor Amendment No. 16**

Amend **SB 8** (house committee report) by adding the following appropriately numbered ARTICLE to the bill and renumbering subsequent ARTICLES and SECTIONS of the bill accordingly:

ARTICLE \_\_\_\_\_. **ADOPTION OF VACCINE PREVENTABLE DISEASES POLICY BY HEALTH CARE FACILITIES**

SECTION \_\_\_\_\_.01. The heading to Subtitle A, Title 4, Health and Safety Code, is amended to read as follows:

SUBTITLE A. **FINANCING, CONSTRUCTING, REGULATING, AND INSPECTING HEALTH FACILITIES**

SECTION \_\_\_\_\_.02. Subtitle A, Title 4, Health and Safety Code, is amended by adding Chapter 224 to read as follows:

**CHAPTER 224. POLICY ON VACCINE PREVENTABLE DISEASES**

**Sec. 224.001. DEFINITIONS. In this chapter:**

(1) "Covered individual" means:

(A) an employee of the health care facility;

(B) an individual providing direct patient care under a contract with a health care facility; or

(C) an individual to whom a health care facility has granted privileges to provide direct patient care.

(2) "Health care facility" means:

(A) a facility licensed under Subtitle B, including a hospital as defined by Section 241.003; or

(B) a hospital maintained or operated by this state.

(3) "Regulatory authority" means a state agency that regulates a health care facility under this code.

(4) "Vaccine preventable diseases" means the diseases included in the most current recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention.

**Sec. 224.002. VACCINE PREVENTABLE DISEASES POLICY REQUIRED.**

(a) Each health care facility shall develop and implement a policy to protect its patients from vaccine preventable diseases.

(b) The policy must:

(1) require covered individuals to receive vaccines for the vaccine preventable diseases specified by the facility based on the level of risk the individual presents to patients by the individual's routine and direct exposure to patients;

(2) specify the vaccines a covered individual is required to receive based on the level of risk the individual presents to patients by the individual's routine and direct exposure to patients;

(3) include procedures for verifying whether a covered individual has complied with the policy;

(4) include procedures for a covered individual to be exempt from the required vaccines for the medical conditions identified as contraindications or precautions by the Centers for Disease Control and Prevention;

(5) for a covered individual who is exempt from the required vaccines, include procedures the individual must follow to protect facility patients from exposure to disease, such as the use of protective medical equipment, such as gloves and masks, based on the level of risk the individual presents to patients by the individual's routine and direct exposure to patients;

(6) prohibit discrimination or retaliatory action against a covered individual who is exempt from the required vaccines for the medical conditions identified as contraindications or precautions by the Centers for Disease Control and Prevention, except that required use of protective medical equipment, such as gloves and masks, may not be considered retaliatory action for purposes of this subdivision;

(7) require the health care facility to maintain a written or electronic record of each covered individual's compliance with or exemption from the policy; and

(8) include disciplinary actions the health care facility is authorized to take against a covered individual who fails to comply with the policy.

(c) The policy may include procedures for a covered individual to be exempt from the required vaccines based on reasons of conscience, including a religious belief.

Sec. 224.003. DISASTER EXEMPTION. (a) In this section, "public health disaster" has the meaning assigned by Section 81.003.

(b) During a public health disaster, a health care facility may prohibit a covered individual who is exempt from the vaccines required in the policy developed by the facility under Section 224.002 from having contact with facility patients.

Sec. 224.004. DISCIPLINARY ACTION. A health care facility that violates this chapter is subject to an administrative or civil penalty in the same manner, and subject to the same procedures, as if the facility had violated a provision of this code that specifically governs the facility.

Sec. 224.005. RULES. The appropriate rulemaking authority for each regulatory authority shall adopt rules necessary to implement this chapter.

SECTION \_\_\_\_ .03. Not later than June 1, 2012, a state agency that regulates a health care facility subject to Chapter 224, Health and Safety Code, as added by this article, shall adopt the rules necessary to implement that chapter.

SECTION \_\_\_\_ .04. Notwithstanding Chapter 224, Health and Safety Code, as added by this article, a health care facility subject to that chapter is not required to have a policy on vaccine preventable diseases in effect until September 1, 2012.

### **Floor Amendment No. 17**

Amend **SB 8** (senate engrossed version) in SECTION 3.01 of the bill, after added Section 848.005, Insurance Code (page 20, between lines 10 and 11), by inserting:

Sec. 848.006. COVERAGE BY HEALTH CARE COLLABORATIVE NOT REQUIRED. (a) Except as provided by Subsection (b), an individual may not be required to obtain or maintain coverage under:

(1) an individual health insurance policy written through a health care collaborative; or

(2) any plan or program for health care services provided on an individual basis through a health care collaborative.

(b) Subsection (a) does not apply to an individual:

(1) who is required to obtain or maintain health benefit plan coverage:

(A) written by an institution of higher education at which the individual is or will be enrolled as a student; or

(B) under an order requiring medical support for a child; or

(2) who voluntarily applies for benefits under a state administered program under Title XIX of the Social Security Act (42 U.S.C. Section 1396 et seq.), or Title XXI of the Social Security Act (42 U.S.C. Section 1397aa et seq.).

(c) Except as provided by Subsection (d), a fine or penalty may not be imposed on an individual if the individual chooses not to obtain or maintain coverage described by Subsection (a).

(d) Subsection (c) does not apply to a fine or penalty imposed on an individual described in Subsection (b) for the individual's failure to obtain or maintain health benefit plan coverage.

### **Floor Amendment No. 18**

Amend Amendment No. 17 by Creighton to **SB 8** (house committee printing) as follows:

(1) in added Section 848.006(a), Insurance Code (page 1, line 5), between "(b)" and the underlined comma, insert "and subject to Chapter 843 and Section 1301.0625".

(2) After added Section 848.006(a), Insurance Code (page 1, between lines 11 and 12), insert:

(a-1) This chapter does not require an individual to obtain or maintain health insurance coverage.

### **Floor Amendment No. 19**

Amend **SB 8** (senate engrossed version) in SECTION 4 of the bill by inserting the following appropriately lettered subsection to the SECTION and relettering subsequent subsections of the SECTION accordingly:

SECTION \_\_\_\_\_. Chapter 1560, Insurance Code, is amended by adding Section 1560.005 to read as follows:

Sec. 1560.005. REVIEW OF PHARMACY CLAIMS. (a) The state auditor may conduct a biennial review of prescriptions intended for a 90-day supply to determine compliance with this chapter and to verify community retail and mail order pharmacies' parity in all factors of reimbursement, including average wholesale price and maximum allowable cost.

(b) The state auditor shall submit a review conducted under this section to the board of trustees for the Employees Retirement System of Texas and the trustee for the Teacher Retirement System of Texas.

(c) The Employees Retirement System of Texas and the Teacher Retirement System of Texas shall reimburse the state auditor for all costs of a review under this section.

(d) If in the course of a review the state auditor finds evidence of improper practices or illegal transactions, the state auditor shall report the evidence in accordance with Section 321.016, Government Code.

**Floor Amendment No. 20**

Amend **SB 8** (house committee report) by adding the following appropriately numbered ARTICLE to the bill and renumbering subsequent ARTICLES and SECTIONS of the bill accordingly:

ARTICLE \_\_\_\_ . PROVIDER NETWORK CONTRACT ARRANGEMENTS

SECTION \_\_\_\_ .001. Subtitle F, Title 8, Insurance Code, is amended by adding Chapter 1458 to read as follows:

CHAPTER 1458. PROVIDER NETWORK CONTRACT ARRANGEMENTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1458.001. GENERAL DEFINITIONS. In this chapter:

(1) "Affiliate" means a person who, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with another person.

(2) "Contracting entity" means a person who:

(A) enters into a direct contract with a provider for the delivery of health care services to covered individuals; and

(B) in the ordinary course of business establishes a provider network or networks for access by another party.

(3) "Covered individual" means an individual who is covered under a health benefit plan.

(4) "Direct notification" means a written or electronic communication from a contracting entity to a physician or other health care provider documenting third party access to a provider network.

(5) "Health care services" means services provided for the diagnosis, prevention, treatment, or cure of a health condition, illness, injury, or disease.

(6) "Person" has the meaning assigned by Section 823.002.

(7) "Provider" means a physician, a professional association composed solely of physicians, a single legal entity authorized to practice medicine owned by two or more physicians, a nonprofit health corporation certified by the Texas Medical Board under Chapter 162, Occupations Code, a partnership composed solely of physicians, a physician-hospital organization that acts exclusively as an administrator for a provider to facilitate the provider's participation in health care contracts, or an institution that is licensed under Chapter 241, Health and Safety Code. The term does not include a physician-hospital organization that leases or rents the physician-hospital organization's network to a third party.

(8) "Provider network contract" means a contract between a contracting entity and a provider for the delivery of, and payment for, health care services to a covered individual.

(9) "Third party" means a person that contracts with a contracting entity or another party to gain access to a provider network contract.

Sec. 1458.002. DEFINITION OF HEALTH BENEFIT PLAN. (a) In this chapter, "health benefit plan" means:

(1) a hospital and medical expense incurred policy;

(2) a nonprofit health care service plan contract;

(3) a health maintenance organization subscriber contract; or

(4) any other health care plan or arrangement that pays for or furnishes medical or health care services.

(b) "Health benefit plan" does not include one or more or any combination of the following:

(1) coverage only for accident or disability income insurance or any combination of those coverages;

(2) credit-only insurance;

(3) coverage issued as a supplement to liability insurance;

(4) liability insurance, including general liability insurance and automobile liability insurance;

(5) workers' compensation or similar insurance;

(6) a discount health care program, as defined by Section 7001.001;

(7) coverage for on-site medical clinics;

(8) automobile medical payment insurance; or

(9) other similar insurance coverage, as specified by federal regulations issued under the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191), under which benefits for medical care are secondary or incidental to other insurance benefits.

(c) "Health benefit plan" does not include the following benefits if they are provided under a separate policy, certificate, or contract of insurance, or are otherwise not an integral part of the coverage:

(1) dental or vision benefits;

(2) benefits for long-term care, nursing home care, home health care, community-based care, or any combination of these benefits;

(3) other similar, limited benefits, including benefits specified by federal regulations issued under the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191); or

(4) a Medicare supplement benefit plan described by Section 1652.002.

(d) "Health benefit plan" does not include coverage limited to a specified disease or illness or hospital indemnity coverage or other fixed indemnity insurance coverage if:

(1) the coverage is provided under a separate policy, certificate, or contract of insurance;

(2) there is no coordination between the provision of the coverage and any exclusion of benefits under any group health benefit plan maintained by the same plan sponsor; and

(3) the coverage is paid with respect to an event without regard to whether benefits are provided with respect to such an event under any group health benefit plan maintained by the same plan sponsor.

Sec. 1458.003. EXEMPTIONS. This chapter does not apply:

(1) to a provider network contract for services provided to a beneficiary under the Medicaid program, the Medicare program, or the state child health plan established under Chapter 62, Health and Safety Code, or the comparable plan under Chapter 63, Health and Safety Code;

(2) under circumstances in which access to the provider network is granted to an entity that operates under the same brand licensee program as the contracting entity; or

(3) to a contract between a contracting entity and a discount health care program operator, as defined by Section 7001.001.

[Sections 1458.004-1458.050 reserved for expansion]

#### SUBCHAPTER B. REGISTRATION REQUIREMENTS

Sec. 1458.051. REGISTRATION REQUIRED. (a) Unless the person holds a certificate of authority issued by the department to engage in the business of insurance in this state or operate a health maintenance organization under Chapter 843, a person must register with the department not later than the 30th day after the date on which the person begins acting as a contracting entity in this state.

(b) Notwithstanding Subsection (a), under Section 1458.055 a contracting entity that holds a certificate of authority issued by the department to engage in the business of insurance in this state or is a health maintenance organization shall file with the commissioner an application for exemption from registration under which the affiliates may access the contracting entity's network.

(c) An application for an exemption filed under Subsection (b) must be accompanied by a list of the contracting entity's affiliates. The contracting entity shall update the list with the commissioner on an annual basis.

(d) A list of affiliates filed with the commissioner under Subsection (c) is public information and is not exempt from disclosure under Chapter 552, Government Code.

Sec. 1458.052. DISCLOSURE OF INFORMATION. (a) A person required to register under Section 1458.051 must disclose:

(1) all names used by the contracting entity, including any name under which the contracting entity intends to engage or has engaged in business in this state;

(2) the mailing address and main telephone number of the contracting entity's headquarters;

(3) the name and telephone number of the contracting entity's primary contact for the department; and

(4) any other information required by the commissioner by rule.

(b) The disclosure made under Subsection (a) must include a description or a copy of the applicant's basic organizational structure documents and a copy of organizational charts and lists that show:

(1) the relationships between the contracting entity and any affiliates of the contracting entity, including subsidiary networks or other networks; and

(2) the internal organizational structure of the contracting entity's management.

Sec. 1458.053. SUBMISSION OF INFORMATION. Information required under this subchapter must be submitted in a written or electronic format adopted by the commissioner by rule.

Sec. 1458.054. FEES. The department may collect a reasonable fee set by the commissioner as necessary to administer the registration process. Fees collected under this chapter shall be deposited in the Texas Department of Insurance operating fund.

Sec. 1458.055. EXEMPTION FOR AFFILIATES. (a) The commissioner shall grant an exemption for affiliates of a contracting entity if the contracting entity holds a certificate of authority issued by the department to engage in the business of insurance in this state or is a health maintenance organization if the commissioner determines that:

(1) the affiliate is not subject to a disclaimer of affiliation under Chapter 823; and

(2) the relationships between the person who holds a certificate of authority and all affiliates of the person, including subsidiary networks or other networks, are disclosed and clearly defined.

(b) An exemption granted under this section applies only to registration. An entity granted an exemption is otherwise subject to this chapter.

(c) The commissioner shall establish a reasonable fee as necessary to administer the exemption process.

[Sections 1458.056-1458.100 reserved for expansion]

### SUBCHAPTER C. RIGHTS AND RESPONSIBILITIES OF A CONTRACTING ENTITY

Sec. 1458.101. CONTRACT REQUIREMENTS. A contracting entity may not provide a person access to health care services or contractual discounts under a provider network contract unless the provider network contract specifically states that:

(1) the contracting entity may contract with a third party to provide access to the contracting entity's rights and responsibilities under a provider network contract; and

(2) the third party must comply with all applicable terms, limitations, and conditions of the provider network contract.

Sec. 1458.102. DUTIES OF CONTRACTING ENTITY. (a) A contracting entity that has granted access to health care services and contractual discounts under a provider network contract shall:

(1) notify each provider of the identity of, and contact information for, each third party that has or may obtain access to the provider's health care services and contractual discounts;

(2) provide each third party with sufficient information regarding the provider network contract to enable the third party to comply with all relevant terms, limitations, and conditions of the provider network contract;

(3) require each third party to disclose the identity of the contracting entity and the existence of a provider network contract on each remittance advice or explanation of payment form; and

(4) notify each third party of the termination of the provider network contract not later than the 30th day after the effective date of the contract termination.

(b) If a contracting entity knows that a third party is making claims under a terminated contract, the contracting entity must take reasonable steps to cause the third party to cease making claims under the provider network contract. If the steps taken by the contracting entity are unsuccessful and the third party continues to make claims under the terminated provider network contract, the contracting entity must:

(1) terminate the contracting entity's contract with the third party; or

(2) notify the commissioner, if termination of the contract is not feasible.



(c) Any notice provided by a contracting entity to a third party under Subsection (b) must include a statement regarding the third party's potential liability under this chapter for using a provider's contractual discount for services provided after the termination date of the provider network contract.

(d) The notice required under Subsection (a)(1):

(1) must be provided by:

(A) providing for a subscription to receive the notice by e-mail; or

(B) posting the information on an Internet website at least once each calendar quarter; and

(2) must include a separate prominent section that lists:

(A) each third party that the contracting entity knows will have access to a discounted fee of the provider in the succeeding calendar quarter; and

(B) the effective date and termination or renewal dates, if any, of the third party's contract to access the network.

(e) The e-mail notice described by Subsection (d) may contain a link to an Internet web page that contains a list of third parties that complies with this section.

(f) The notice described by Subsection (a)(1) is not required to include information regarding payors who are not insurers or health maintenance organizations.

Sec. 1458.103. EFFECT OF CONTRACT TERMINATION. Subject to continuity of care requirements, agreements, or contractual provisions:

(1) a third party may not access health care services and contractual discounts after the date the provider network contract terminates;

(2) claims for health care services performed after the termination date may not be processed or paid under the provider network contract after the termination; and

(3) claims for health care services performed before the termination date and processed after the termination date may be processed and paid under the provider network contract after the date of termination.

Sec. 1458.104. AVAILABILITY OF CODING GUIDELINES. (a) A contract between a contracting entity and a provider must provide that:

(1) the provider may request a description and copy of the coding guidelines, including any underlying bundling, recoding, or other payment process and fee schedules applicable to specific procedures that the provider will receive under the contract;

(2) the contracting entity or the contracting entity's agent will provide the coding guidelines and fee schedules not later than the 30th day after the date the contracting entity receives the request;

(3) the contracting entity or the contracting entity's agent will provide notice of changes to the coding guidelines and fee schedules that will result in a change of payment to the provider not later than the 90th day before the date the changes take effect and will not make retroactive revisions to the coding guidelines and fee schedules; and

(4) if the requested information indicates a reduction in payment to the provider from the amounts agreed to on the effective date of the contract, the contract may be terminated by the provider on written notice to the contracting entity on or

before the 30th day after the date the provider receives information requested under this subsection without penalty or discrimination in participation in other health care products or plans.

(b) A provider who receives information under Subsection (a) may only:

(1) use or disclose the information for the purpose of practice management, billing activities, and other business operations; and

(2) disclose the information to a governmental agency involved in the regulation of health care or insurance.

(c) The contracting entity shall, on request of the provider, provide the name, edition, and model version of the software that the contracting entity uses to determine bundling and unbundling of claims.

(d) The provisions of this section may not be waived, voided, or nullified by contract.

(e) If a contracting entity is unable to provide the information described by Subsection (a)(1), (a)(3), or (c), the contracting entity shall by telephone provide a readily available medium in which providers may obtain the information, which may include an Internet website.

[Sections 1458.105-1458.150 reserved for expansion]

#### SUBCHAPTER D. RIGHTS AND RESPONSIBILITIES OF THIRD PARTY

Sec. 1458.151. THIRD-PARTY RIGHTS AND RESPONSIBILITIES. A third party that leases, sells, aggregates, assigns, or otherwise conveys a provider's contractual discount to another party, who is not a covered individual, must comply with the responsibilities of a contracting entity under Subchapters C and E.

Sec. 1458.152. DISCLOSURE BY THIRD PARTY. (a) A third party shall disclose, to the contracting entity and providers under the provider network contract, the identity of a person, who is not a covered individual, to whom the third party leases, sells, aggregates, assigns, or otherwise conveys a provider's contractual discount through an electronic notification that complies with Section 1458.102 and includes a link to the Internet website described by Section 1458.102(d).

(b) A third party that uses an Internet website under this section must update the website on a quarterly basis. On request, a contracting entity shall disclose the information by telephone or through direct notification.

[Sections 1458.153-1458.200 reserved for expansion]

#### SUBCHAPTER E. UNAUTHORIZED ACCESS TO PROVIDER NETWORK CONTRACTS

Sec. 1458.201. UNAUTHORIZED ACCESS TO OR USE OF DISCOUNT. (a) A person who knowingly accesses or uses a provider's contractual discount under a provider network contract without a contractual relationship established under this chapter commits an unfair or deceptive act in the business of insurance that violates Subchapter B, Chapter 541. The remedies available for a violation of Subchapter B, Chapter 541, under this subsection do not include a private cause of action under Subchapter D, Chapter 541, or a class action under Subchapter F, Chapter 541.

(b) A contracting entity or third party must comply with the disclosure requirements under Sections 1458.102 and 1458.152 concerning the services listed on a remittance advice or explanation of payment. A provider may refuse a discount taken without a contract under this chapter or in violation of those sections.

(c) Notwithstanding Subsection (b), an error in the remittance advice or explanation of payment may be corrected by a contracting entity or third party not later than the 30th day after the date the provider notifies in writing the contracting entity or third party of the error.

Sec. 1458.202. ACCESS TO THIRD PARTY. A contracting entity may not provide a third party access to a provider network contract unless the third party is:

(1) a payor or person who administers or processes claims on behalf of the payor;

(2) a preferred provider benefit plan issuer or preferred provider network, including a physician-hospital organization; or

(3) a person who transports claims electronically between the contracting entity and the payor and does not provide access to the provider's services and discounts to any other third party.

[Sections 1458.203-1458.250 reserved for expansion]

#### SUBCHAPTER F. ENFORCEMENT

Sec. 1458.251. UNFAIR CLAIM SETTLEMENT PRACTICE. (a) A contracting entity that violates this chapter commits an unfair claim settlement practice under Subchapter A, Chapter 542, and is subject to sanctions under that subchapter as if the contracting entity were an insurer.

(b) A provider who is adversely affected by a violation of this chapter may make a complaint under Subchapter A, Chapter 542.

Sec. 1458.252. REMEDIES NOT EXCLUSIVE. The remedies provided by this subchapter are in addition to any other defense, remedy, or procedure provided by law, including common law.

SECTION \_\_\_\_ .002. The change in law made by this article applies only to a provider network contract entered into or renewed on or after January 1, 2012. A provider network contract entered into or renewed before January 1, 2012, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

#### **Floor Amendment No. 21**

Amend **SB 8** (house committee printing) as follows:

(1) Add the following SECTION to Article 6 of the bill to read as follows:

SECTION 6. \_\_\_\_ . Chapter 108, Health and Safety Code, is amended by adding Section 108.0131 to read as follows:

Sec. 108.0131. NOTICE REQUIRED. (a) A provider who submits data under Section 108.009 shall provide notice to the provider's patients that:

(1) the provider may submit data as required by this chapter; and

(2) the data may be sold, collected, identified, or distributed to third parties.

(b) The department shall post on the department's Internet website a list of each entity that purchases or receives data collected under this chapter.

(2) Renumber subsequent SECTIONS of the Article accordingly.

#### **Floor Amendment No. 22**

Amend **SB 8** (house committee printing) by adding the following appropriately numbered ARTICLE to the bill and renumbering the remaining ARTICLES and SECTIONS of the bill accordingly:

ARTICLE \_\_\_\_\_. FISCAL AND ADMINISTRATIVE MATTERS CONCERNING  
THE TEXAS EMERGENCY AND TRAUMA CARE EDUCATION  
PARTNERSHIP PROGRAM

SECTION \_\_\_\_\_.01. Chapter 61, Education Code, is amended by adding Subchapter GG to read as follows:

SUBCHAPTER GG. TEXAS EMERGENCY AND TRAUMA CARE EDUCATION  
PARTNERSHIP PROGRAM

Sec. 61.9801. DEFINITIONS. In this subchapter:

(1) "Emergency and trauma care education partnership" means a partnership that:

(A) consists of one or more hospitals in this state and one or more graduate professional nursing or graduate medical education programs in this state; and

(B) serves to increase training opportunities in emergency and trauma care for doctors and registered nurses at participating graduate medical education and graduate professional nursing programs.

(2) "Participating education program" means a graduate professional nursing program as that term is defined by Section 54.221 or a graduate medical education program leading to board certification by the American Board of Medical Specialties that participates in an emergency and trauma care education partnership.

Sec. 61.9802. PROGRAM: ESTABLISHMENT; ADMINISTRATION; PURPOSE. (a) The Texas emergency and trauma care education partnership program is established.

(b) The board shall administer the program in accordance with this subchapter and rules adopted under this subchapter.

(c) Under the program, to the extent funds are available under Section 61.9805, the board shall make grants to emergency and trauma care education partnerships to assist those partnerships to meet the state's needs for doctors and registered nurses with training in emergency and trauma care by offering one-year or two-year fellowships to students enrolled in graduate professional nursing or graduate medical education programs through collaboration between hospitals and graduate professional nursing or graduate medical education programs and the use of the existing expertise and facilities of those hospitals and programs.

Sec. 61.9803. GRANTS: CONDITIONS; LIMITATIONS. (a) The board may make a grant under this subchapter to an emergency and trauma care education partnership only if the board determines that:

(1) the partnership will meet applicable standards for instruction and student competency for each program offered by each participating education program;

(2) each participating education program will, as a result of the partnership, enroll in the education program a sufficient number of additional students as established by the board;

(3) each hospital participating in an emergency and trauma care education partnership will provide to students enrolled in a participating education program clinical placements that:

(A) allow the students to take part in providing or to observe, as appropriate, emergency and trauma care services offered by the hospital; and

(B) meet the clinical education needs of the students; and  
(4) the partnership will satisfy any other requirement established by board rule.

(b) A grant under this subchapter may be spent only on costs related to the development or operation of any emergency and trauma care education partnership that prepares a student to complete a graduate professional nursing program with a specialty focus on emergency and trauma care or earn board certification by the American Board of Medical Specialties.

Sec. 61.9804. PRIORITY FOR FUNDING. In awarding a grant under this subchapter, the board shall give priority to an emergency and trauma care education partnership that submits a proposal that:

(1) provides for collaborative educational models between one or more participating hospitals and one or more participating education programs that have signed a memorandum of understanding or other written agreement under which the participants agree to comply with standards established by the board, including any standards the board may establish that:

(A) provide for program management that offers a centralized decision-making process allowing for inclusion of each entity participating in the partnership;

(B) provide for access to clinical training positions for students in graduate professional nursing and graduate medical education programs that are not participating in the partnership; and

(C) specify the details of any requirement relating to a student in a participating education program being employed after graduation in a hospital participating in the partnership, including any details relating to the employment of students who do not complete the program, are not offered a position at the hospital, or choose to pursue other employment;

(2) includes a demonstrable education model to:

(A) increase the number of students enrolled in, the number of students graduating from, and the number of faculty employed by each participating education program; and

(B) improve student or resident retention in each participating education program;

(3) indicates the availability of money to match a portion of the grant money, including matching money or in-kind services approved by the board from a hospital, private or nonprofit entity, or institution of higher education;

(4) can be replicated by other emergency and trauma care education partnerships or other graduate professional nursing or graduate medical education programs; and

(5) includes plans for sustainability of the partnership.

Sec. 61.9805. GRANTS, GIFTS, AND DONATIONS. In addition to money appropriated by the legislature, the board may solicit, accept, and spend grants, gifts, and donations from any public or private source for the purposes of this subchapter.

Sec. 61.9806. RULES. The board shall adopt rules for the administration of the Texas emergency and trauma care education partnership program. The rules must include:

(1) provisions relating to applying for a grant under this subchapter; and  
(2) standards of accountability consistent with other graduate professional nursing and graduate medical education programs to be met by any emergency and trauma care education partnership awarded a grant under this subchapter.

Sec. 61.9807. ADMINISTRATIVE COSTS. A reasonable amount, not to exceed three percent, of any money appropriated for purposes of this subchapter may be used to pay the costs of administering this subchapter.

SECTION \_\_\_\_\_.02. As soon as practicable after the effective date of this article, the Texas Higher Education Coordinating Board shall adopt rules for the implementation and administration of the Texas emergency and trauma care education partnership program established under Subchapter GG, Chapter 61, Education Code, as added by this article. The board may adopt the initial rules in the manner provided by law for emergency rules.

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

Amend **SB 8** on third reading by adding the following appropriately numbered ARTICLE to the bill and renumbering the subsequent ARTICLES of the bill accordingly:

ARTICLE \_\_\_\_\_. INTERSTATE HEALTH CARE COMPACT

SECTION \_\_\_\_\_.01. Title 15, Insurance Code, is amended by adding Chapter 5002 to read as follows:

CHAPTER 5002. INTERSTATE HEALTH CARE COMPACT

Sec. 5002.001. EXECUTION OF COMPACT. This state enacts the Interstate Health Care Compact and enters into the compact with all other states legally joining in the compact in substantially the following form:

Whereas, the separation of powers, both between the branches of the Federal government and between Federal and State authority, is essential to the preservation of individual liberty;

Whereas, the Constitution creates a Federal government of limited and enumerated powers, and reserves to the States or to the people those powers not granted to the Federal government;

Whereas, the Federal government has enacted many laws that have preempted State laws with respect to Health Care, and placed increasing strain on State budgets, impairing other responsibilities such as education, infrastructure, and public safety;

Whereas, the Member States seek to protect individual liberty and personal control over Health Care decisions, and believe the best method to achieve these ends is by vesting regulatory authority over Health Care in the States;

Whereas, by acting in concert, the Member States may express and inspire confidence in the ability of each Member State to govern Health Care effectively; and

Whereas, the Member States recognize that consent of Congress may be more easily secured if the Member States collectively seek consent through an interstate compact;

NOW THEREFORE, the Member States hereto resolve, and by the adoption into law under their respective State Constitutions of this Health Care Compact, agree, as follows:

Sec. 1. Definitions. As used in this Compact, unless the context clearly indicates otherwise:

"Commission" means the Interstate Advisory Health Care Commission.

"Effective Date" means the date upon which this Compact shall become effective for purposes of the operation of State and Federal law in a Member State, which shall be the later of:

a) the date upon which this Compact shall be adopted under the laws of the Member State, and

b) the date upon which this Compact receives the consent of Congress pursuant to Article I, Section 10, of the United States Constitution, after at least two Member States adopt this Compact.

"Health Care" means care, services, supplies, or plans related to the health of an individual and includes but is not limited to:

(a) preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care and counseling, service, assessment, or procedure with respect to the physical or mental condition or functional status of an individual or that affects the structure or function of the body, and

(b) sale or dispensing of a drug, device, equipment, or other item in accordance with a prescription, and

(c) an individual or group plan that provides, or pays the cost of, care, services, or supplies related to the health of an individual, except any care, services, supplies, or plans provided by the United States Department of Defense and United States Department of Veteran Affairs, or provided to Native Americans.

"Member State" means a State that is signatory to this Compact and has adopted it under the laws of that State.

"Member State Base Funding Level" means a number equal to the total Federal spending on Health Care in the Member State during Federal fiscal year 2010. On or before the Effective Date, each Member State shall determine the Member State Base Funding Level for its State, and that number shall be binding upon that Member State.

"Member State Current Year Funding Level" means the Member State Base Funding Level multiplied by the Member State Current Year Population Adjustment Factor multiplied by the Current Year Inflation Adjustment Factor.

"Member State Current Year Population Adjustment Factor" means the average population of the Member State in the current year less the average population of the Member State in Federal fiscal year 2010, divided by the average population of the Member State in Federal fiscal year 2010, plus 1. Average population in a Member State shall be determined by the United States Census Bureau.

"Current Year Inflation Adjustment Factor" means the Total Gross Domestic Product Deflator in the current year divided by the Total Gross Domestic Product Deflator in Federal fiscal year 2010. Total Gross Domestic Product Deflator shall be determined by the Bureau of Economic Analysis of the United States Department of Commerce.

Sec. 2. Pledge. The Member States shall take joint and separate action to secure the consent of the United States Congress to this Compact in order to return the authority to regulate Health Care to the Member States consistent with the goals and principles articulated in this Compact. The Member States shall improve Health Care policy within their respective jurisdictions and according to the judgment and discretion of each Member State.

Sec. 3. Legislative Power. The legislatures of the Member States have the primary responsibility to regulate Health Care in their respective States.

Sec. 4. State Control. Each Member State, within its State, may suspend by legislation the operation of all federal laws, rules, regulations, and orders regarding Health Care that are inconsistent with the laws and regulations adopted by the Member State pursuant to this Compact. Federal and State laws, rules, regulations, and orders regarding Health Care will remain in effect unless a Member State expressly suspends them pursuant to its authority under this Compact. For any federal law, rule, regulation, or order that remains in effect in a Member State after the Effective Date, that Member State shall be responsible for the associated funding obligations in its State.

Sec. 5. Funding. (a) Each Federal fiscal year, each Member State shall have the right to Federal monies up to an amount equal to its Member State Current Year Funding Level for that Federal fiscal year, funded by Congress as mandatory spending and not subject to annual appropriation, to support the exercise of Member State authority under this Compact. This funding shall not be conditional on any action of or regulation, policy, law, or rule being adopted by the Member State.

(b) By the start of each Federal fiscal year, Congress shall establish an initial Member State Current Year Funding Level for each Member State, based upon reasonable estimates. The final Member State Current Year Funding Level shall be calculated, and funding shall be reconciled by the United States Congress based upon information provided by each Member State and audited by the United States Government Accountability Office.

Sec. 6. Interstate Advisory Health Care Commission. (a) The Interstate Advisory Health Care Commission is established. The Commission consists of members appointed by each Member State through a process to be determined by each Member State. A Member State may not appoint more than two members to the Commission and may withdraw membership from the Commission at any time. Each Commission member is entitled to one vote. The Commission shall not act unless a majority of the members are present, and no action shall be binding unless approved by a majority of the Commission's total membership.

(b) The Commission may elect from among its membership a Chairperson. The Commission may adopt and publish bylaws and policies that are not inconsistent with this Compact. The Commission shall meet at least once a year, and may meet more frequently.

(c) The Commission may study issues of Health Care regulation that are of particular concern to the Member States. The Commission may make non-binding recommendations to the Member States. The legislatures of the Member States may consider these recommendations in determining the appropriate Health Care policies in their respective States.

(d) The Commission shall collect information and data to assist the Member States in their regulation of Health Care, including assessing the performance of various State Health Care programs and compiling information on the prices of Health Care. The Commission shall make this information and data available to the legislatures of the Member States. Notwithstanding any other provision in this



Compact, no Member State shall disclose to the Commission the health information of any individual, nor shall the Commission disclose the health information of any individual.

(e) The Commission shall be funded by the Member States as agreed to by the Member States. The Commission shall have the responsibilities and duties as may be conferred upon it by subsequent action of the respective legislatures of the Member States in accordance with the terms of this Compact.

(f) The Commission shall not take any action within a Member State that contravenes any State law of that Member State.

Sec. 7. Congressional Consent. This Compact shall be effective on its adoption by at least two Member States and consent of the United States Congress. This Compact shall be effective unless the United States Congress, in consenting to this Compact, alters the fundamental purposes of this Compact, which are:

(a) To secure the right of the Member States to regulate Health Care in their respective States pursuant to this Compact and to suspend the operation of any conflicting federal laws, rules, regulations, and orders within their States; and

(b) To secure Federal funding for Member States that choose to invoke their authority under this Compact, as prescribed by Section 5 above.

Sec. 8. Amendments. The Member States, by unanimous agreement, may amend this Compact from time to time without the prior consent or approval of Congress and any amendment shall be effective unless, within one year, the Congress disapproves that amendment. Any State may join this Compact after the date on which Congress consents to the Compact by adoption into law under its State Constitution.

Sec. 9. Withdrawal; Dissolution. Any Member State may withdraw from this Compact by adopting a law to that effect, but no such withdrawal shall take effect until six months after the Governor of the withdrawing Member State has given notice of the withdrawal to the other Member States. A withdrawing State shall be liable for any obligations that it may have incurred prior to the date on which its withdrawal becomes effective. This Compact shall be dissolved upon the withdrawal of all but one of the Member States.

SECTION \_\_\_\_ .02. This article takes effect immediately if the Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this article takes effect September 1, 2011.

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

Amend **SB 8** on third reading by striking added Section 1560.005(c), Insurance Code (as added by Floor Amendment No. \_\_\_\_ by Miller), and relettering subsequent subsections of that section accordingly.

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

Amend **SB 8** on third reading by inserting the following new sections, appropriately numbered, and renumbering subsequent sections accordingly:

SECTION \_\_\_\_ . Section 1451.109, Insurance Code, is amended to read as follows:

Sec. 1451.109. SELECTION OF CHIROPRACTOR. (a) An insured may select a chiropractor to provide the medical or surgical services or procedures scheduled in the health insurance policy that are within the scope of the chiropractor's license.

(b) If physical modalities and procedures are covered services under a health insurance policy and within the scope of the license of a chiropractor and one or more other type of practitioner, a health insurance policy issuer may not:

(1) deny payment or reimbursement for physical modalities and procedures provided by a chiropractor if:

(A) the chiropractor provides the modalities and procedures in strict compliance with laws and rules relating to a chiropractor's license; and

(B) the health insurance policy issuer allows payment or reimbursement for the same physical modalities and procedures performed by another type of practitioner;

(2) make payment or reimbursement for particular covered physical modalities and procedures within the scope of a chiropractor's practice contingent on treatment or examination by a practitioner that is not a chiropractor; or

(3) establish other limitations on the provision of covered physical modalities and procedures that would prohibit an insured from seeking the covered physical modalities and procedures from a chiropractor to the same extent that the insured may obtain covered physical modalities and procedures from another type of practitioner.

(c) Nothing in this section requires a health insurance policy issuer to cover particular services or affects the ability of a health insurance policy issuer to determine whether specific procedures for which payment or reimbursement is requested are medically necessary.

(d) This section does not apply to:

(1) workers' compensation insurance coverage as defined by Section 401.011, Labor Code;

(2) a self-insured employee welfare benefit plan subject to the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.);

(3) the child health plan program under Chapter 62, Health and Safety Code, or the health benefits plan for children under Chapter 63, Health and Safety Code; or

(4) a Medicaid managed care program operated under Chapter 533, Government Code, or a Medicaid program operated under Chapter 32, Human Resources Code.

SECTION \_\_\_\_\_. The changes in law made by this Act to Section 1451.109, Insurance Code, apply only to a health insurance policy that is delivered, issued for delivery, or renewed on or after the effective date of this Act. A policy delivered, issued for delivery, or renewed 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.

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

Amend **SB 8** on third reading as amended by Floor Amendment No. \_\_\_\_ in Section 2.01 of the bill as follows:

(1) In added Section 1002.101, add the following subsection (3), renumbering the succeeding subsection accordingly:

(3) improving the utilization of diagnostic imaging services and the quality and efficiency of the provision of those services in offices, clinics, imaging centers, and other locations where those services are provided; and

(2) In added section 1002.202(b), add the following subsection (5), renumbering the succeeding subsections accordingly:

(5) determine the feasibility of obtaining from offices, clinics, imaging centers and other locations where diagnostic imaging services are provided data regarding the quality and efficiency of the operation of diagnostic imaging equipment and the provision of diagnostic imaging services;

### **Floor Amendment No. 5 on Third Reading**

Amend **SB 8** on third reading in added Section 224.002(c), Health and Safety Code, between "The policy" and "include", by striking "may" and substituting "must".

The amendments were read.

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

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **SB 8** before appointment.

Senator Carona moved to instruct the conferees to retain the language of House Third Reading Floor Amendment No. 3, which amends Section 1451.109, Insurance Code, relating to the reimbursement of chiropractors by health insurance policy issuers. This language is a portion of SB 1001, which was passed unanimously by the Senate.

The motion to instruct the conferees prevailed without objection.

Accordingly, the President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Nelson, Chair; Huffman, Shapiro, Patrick, and Carona.

### **CONFERENCE COMMITTEE ON HOUSE BILL 300**

Senator Nelson called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 300** and moved that the request be granted.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **HB 300** before appointment.

There were no motions offered.

Accordingly, the President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Nelson, Chair; Huffman, Uresti, Shapiro, and Nichols.

### CONFERENCE COMMITTEE ON HOUSE BILL 272

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 272** and moved that the request be granted.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **HB 272** before appointment.

There were no motions offered.

Accordingly, the President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Carona, Chair; Fraser, Nelson, Nichols, and Watson.

### CONFERENCE COMMITTEE ON HOUSE BILL 1103

Senator Ellis 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 1103** and moved that the request be granted.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **HB 1103** before appointment.

There were no motions offered.

Accordingly, the President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Ellis, Chair; Seliger, Lucio, Whitmire, and Huffman.

### ACKNOWLEDGMENT

The President Pro Tempore acknowledged the presence of Governor Rick Perry.

The Senate welcomed its guest.

### CONFERENCE COMMITTEE ON HOUSE BILL 3246

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 3246** and moved that the request be granted.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **HB 3246** before appointment.

There were no motions offered.

Accordingly, the President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators West, Chair; Wentworth, Nichols, Shapiro, and Watson.

**CONFERENCE COMMITTEE ON HOUSE BILL 1400**

Senator West called from the President Pro Tempore 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 1400** and moved that the request be granted.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **HB 1400** before appointment.

There were no motions offered.

Accordingly, the President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators West, Chair; Wentworth, Nichols, Shapiro, and Watson.

**CONFERENCE COMMITTEE ON HOUSE BILL 2093**

Senator Van de Putte 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 2093** and moved that the request be granted.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **HB 2093** before appointment.

There were no motions offered.

Accordingly, the President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Van de Putte, Chair; Duncan, Deuell, Jackson, and Lucio.

**CONFERENCE COMMITTEE ON HOUSE BILL 213**

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 213** and moved that the request be granted.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **HB 213** before appointment.

There were no motions offered.

Accordingly, the President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Lucio, Chair; Carona, Estes, Eltife, and Van de Putte.

**SENATE BILL 1733 WITH HOUSE AMENDMENT**

Senator Van de Putte called **SB 1733** from the President's table for consideration of the House amendment to the bill.

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

**Amendment**

Amend **SB 1733** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to the occupational licensing of spouses of members of the military.

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

SECTION 1. The heading to Chapter 55, Occupations Code, is amended to read as follows:

CHAPTER 55. ~~RENEWAL OF~~ LICENSE WHILE ON MILITARY DUTY AND  
FOR MILITARY SPOUSE

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

Sec. 55.004. ALTERNATIVE LICENSE PROCEDURE FOR MILITARY SPOUSE. (a) A state agency that issues a license shall adopt rules for the issuance of the license to an applicant who is the spouse of a person serving on active duty as a member of the armed forces of the United States and:

(1) holds a current license issued by another state that has licensing requirements that are substantially equivalent to the requirements for the license; or

(2) within the five years preceding the application date held the license in this state that expired while the applicant lived in another state for at least six months.

(b) Rules adopted under this section must include provisions to allow alternative demonstrations of competency to meet the requirements for obtaining the license.

(c) The executive director of a state agency may issue a license by endorsement in the same manner as the Texas Commission of Licensing and Regulation under Section 51.404 to an applicant described by Subsection (a).

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, 2011.

The amendment was read.

Senator Van de Putte moved to concur in the House amendment to **SB 1733**.

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

**SENATE BILL 1736 WITH HOUSE AMENDMENT**

Senator Van de Putte called **SB 1736** from the President's table for consideration of the House amendment to the bill.

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

**Amendment**

Amend **SB 1736** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to the establishment of the College Credit for Heroes program.

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

SECTION 1. Subchapter A, Chapter 302, Labor Code, is amended by adding Section 302.0031 to read as follows:

Sec. 302.0031. COLLEGE CREDIT FOR HEROES PROGRAM. (a) In this section, "institution of higher education" has the meaning assigned by Section 61.003, Education Code.

(b) The commission shall establish and administer the College Credit for Heroes demonstration program to identify, develop, and support methods to maximize academic or workforce education credit awarded by institutions of higher education to veterans and military servicemembers for military experience, education, and training obtained during military service in order to expedite the entry of veterans and military servicemembers into the workforce.

(c) The commission shall work cooperatively with other state agencies, including the Texas Higher Education Coordinating Board, public junior colleges, and other institutions of higher education, to accomplish the purposes of this section.

(d) The commission may award grants to state, local, or private entities that perform activities related to the purposes of this section.

(e) The commission shall administer the program using money previously appropriated to the commission or received from federal or other sources.

(f) The commission may adopt rules as necessary for the administration of this section.

(g) Not later than November 1, 2012, the commission, after consultation with the Texas Higher Education Coordinating Board, shall report to the legislature and the governor on:

(1) the results of any grants awarded under this section;

(2) the best practices for veterans and military servicemembers to achieve maximum academic or workforce education credit at institutions of higher education for military experience, education, and training obtained during military service;

(3) measures needed to facilitate the award of academic or workforce education credit by institutions of higher education for military experience, education, and training obtained during military service; and

(4) other related measures needed to facilitate the entry of trained, qualified veterans and military servicemembers into the workforce.

(h) This subsection and Subsection (g) expire January 1, 2013.

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, 2011.

The amendment was read.

Senator Van de Putte moved to concur in the House amendment to **SB 1736**.

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

### **SENATE BILL 1796 WITH HOUSE AMENDMENT**

Senator Van de Putte called **SB 1796** from the President's table for consideration of the House amendment to the bill.

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

**Floor Amendment No. 1**

Amend **SB 1796** (senate committee printing) as follows:

- (1) In SECTION 1 of the bill, in added Section 434.153(3), Government Code (page 1, line 38), strike "and".
- (2) In SECTION 1 of the bill, in added Section 434.153(4), Government Code (page 1, line 39), strike the period and substitute "; and".
- (3) In SECTION 1 of the bill, in added Section 434.153, Government Code (page 1, between lines 39 and 40), insert the following:
  - (5) the State Bar of Texas.

The amendment was read.

Senator Van de Putte moved to concur in the House amendment to **SB 1796**.

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

**CONFERENCE COMMITTEE ON HOUSE BILL 1517**

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 1517** and moved that the request be granted.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **HB 1517** before appointment.

There were no motions offered.

Accordingly, the President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Hegar, Chair; Zaffirini, Wentworth, Ellis, and Huffman.

**SENATE BILL 542 WITH HOUSE AMENDMENTS**

Senator Hegar called **SB 542** from the President's table for consideration of the House amendments to the bill.

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

**Floor Amendment No. 1**

Amend **SB 542** (house committee printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering the SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. The heading to Section 96.641, Education Code, is amended to read as follows:

Sec. 96.641. INITIAL TRAINING AND CONTINUING EDUCATION FOR POLICE CHIEFS AND COMMAND STAFF.

SECTION \_\_\_\_\_. Section 96.641, Education Code, is amended by adding Subsection (a-1) to read as follows:



(a-1) The institute may establish and offer a continuing education program for command staff for individuals who are second in command to police chiefs. The command staff continuing education program must satisfy the requirements for the police chief continuing education program under Subsection (a).

SECTION \_\_\_\_\_. Section 1701.351, Occupations Code, is amended by adding Subsection (d) to read as follows:

(d) A peace officer who is second in command to a police chief of a law enforcement agency and who attends a continuing education program for command staff provided by the Bill Blackwood Law Enforcement Management Institute of Texas under Section 96.641, Education Code, is exempt from the continuing education requirements of this subchapter.

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

Amend **SB 542** by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. The heading to Subchapter M, Chapter 1701, Occupations Code, is amended to read as follows:

SUBCHAPTER M. SCHOOL [~~VISITING~~] RESOURCE OFFICERS AND  
[~~OFFICER IN PUBLIC~~] SCHOOL DISTRICT PEACE OFFICERS

SECTION \_\_\_\_\_. Subchapter M, Chapter 1701, Occupations Code, is amended by adding Section 1701.604 to read as follows:

Sec. 1701.604. EDUCATION AND TRAINING PROGRAM. (a) Except as provided by Subsection (b), this section applies only to:

(1) a school district peace officer commissioned under Section 37.081, Education Code; or

(2) a school resource officer, as defined by Section 1701.601.

(b) This section does not apply to a peace officer while the peace officer is assigned to a school-sponsored event at which formal classroom instruction is not offered.

(c) A peace officer may not serve as a school district peace officer for more than 30 days unless the peace officer has completed a 16-hour or longer education and training program approved by the commission under this section, except as provided by Subsection (d), and has received a certificate under Subsection (e). A peace officer may not serve as a school resource officer for more than 90 days unless the officer has completed a 16-hour or longer education and training program approved by the commission under this section, except as provided by Subsection (d), and has received a certificate under Subsection (e).

(d) A peace officer who has received comparable education and training through the Bexar County children's crisis intervention training program or the Texas School Safety Center at Texas State University is not required to complete the education and training program approved by the commission under this section to serve as a school district peace officer or school resource officer.

(e) The commission shall issue a professional achievement or proficiency certificate to a peace officer on successful completion of an education and training program:

(1) approved by the commission under this section; or

(2) described by Subsection (d).

(f) The commission shall appoint 12 members to a school resource curriculum committee to develop the curriculum for the education and training program under this section. The school resource curriculum committee shall be composed as follows:

(1) one representative of the Bexar County children's crisis intervention training program;

(2) one representative of the Texas School Safety Center at Texas State University;

(3) one representative of the commission;

(4) one representative of the Texas Municipal Police Association;

(5) one representative of the Texas Education Agency;

(6) one representative of a local mental health authority, as defined by Section 571.003, Health and Safety Code;

(7) a peace officer with certification in crisis intervention;

(8) a school district peace officer;

(9) one representative of an organization that advocates for juvenile justice;

(10) one representative of an organization that advocates for civil liberties;

(11) one representative of an organization representing parents of public school students; and

(12) one representative of the Texas School District Police Chiefs' Association.

(g) Members of the school resource curriculum committee serve terms of two years.

(h) The school resource curriculum committee shall develop the curriculum for the education and training program under this section based on the model curriculum used for the Bexar County children's crisis intervention training program and in accordance with Subsection (i). The curriculum must be approved by the commission. After developing the program, the committee may review and revise the curriculum for the program annually or as the committee determines necessary. Any revision must be approved by the commission. In carrying out its duties, the committee may use technology, including teleconferencing or videoconferencing, to eliminate travel expenses.

(i) The curriculum for the education and training program under this section must incorporate learning objectives regarding:

(1) child and adolescent development and psychology;

(2) positive behavioral interventions and supports, conflict resolution techniques, and restorative justice techniques;

(3) force usage limitations, including physical restraint, and de-escalation techniques;

(4) children with disabilities or special needs, including mental or behavioral health needs; and

(5) cultural competency.

(j) The education and training program under this section may be provided:

(1) as a collaborative model within a community that:

(A) involves local stakeholders; and

(B) incorporates didactic and experiential training using the best practice model of the Bexar County children's crisis intervention training program;

(2) by a school determined appropriate for operation under Section 1701.251; or

(3) as an online training program sponsored by an online training provider if the training provider also provides training under Section 1701.251.

(k) A school district may offer additional, commission-approved preparatory education or training to its school district peace officers and school resource officers.

(l) The superintendent of a school district that employs a peace officer or to which a school resource officer is assigned shall maintain on file the certification issued to the officer under Subsection (e).

(m) Notwithstanding Section 1701.351(a), the commission may not suspend the license of a peace officer solely because the peace officer fails to meet the requirements of this section.

SECTION \_\_\_\_\_. Not later than March 31, 2012, the Commission on Law Enforcement Officer Standards and Education shall approve the curriculum for the education and training program as required by Section 1701.604, Occupations Code, as added by this Act.

SECTION \_\_\_\_\_. Section 1701.604, Occupations Code, as added by this Act, applies only to a school district peace officer or school resource officer who is serving or has been assigned, appointed, commissioned, or employed by a school district to serve in that capacity on or after March 31, 2012.

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

Amend **SB 542** on third reading by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. The heading to Subchapter M, Chapter 1701, Occupations Code, is amended to read as follows:

SUBCHAPTER M. SCHOOL ~~[VISITING]~~ RESOURCE OFFICERS AND ~~[OFFICER IN PUBLIC]~~ SCHOOL DISTRICT PEACE OFFICERS

SECTION \_\_\_\_\_. Subchapter M, Chapter 1701, Occupations Code, is amended by adding Section 1701.604 to read as follows:

Sec. 1701.604. EDUCATION AND TRAINING PROGRAM. (a) Except as provided by Subsection (b), this section applies only to:

(1) a school district peace officer commissioned under Section 37.081, Education Code; or

(2) a school resource officer, as defined by Section 1701.601.

(b) This section does not apply to a peace officer while the peace officer is assigned to a school-sponsored event at which formal classroom instruction is not offered.

(c) A peace officer may not serve as a school district peace officer for more than one calendar year unless the peace officer has completed a 16-hour or longer education and training program approved by the commission under this section, except as provided by Subsection (d), and has received a certificate under Subsection (e). A peace officer may not serve as a school resource officer for more than one calendar year unless the officer has completed a 16-hour or longer education and training program approved by the commission under this section, except as provided

by Subsection (d), and has received a certificate under Subsection (e). This subsection applies only after the commission determines that regular and online education and training courses are available in the major regions of this state.

(d) A peace officer who has received comparable education and training through the Bexar County children's crisis intervention training program or the Texas School Safety Center at Texas State University is not required to complete the education and training program approved by the commission under this section to serve as a school district peace officer or school resource officer.

(e) The commission shall issue a professional achievement or proficiency certificate to a peace officer on successful completion of an education and training program:

(1) approved by the commission under this section; or

(2) described by Subsection (d).

(f) The commission shall appoint 12 members to a school resource curriculum committee to develop the curriculum for the education and training program under this section. The school resource curriculum committee shall be composed as follows:

(1) one representative of the Bexar County children's crisis intervention training program;

(2) one representative of the Texas School Safety Center at Texas State University;

(3) one representative of the commission;

(4) one representative of the Texas Municipal Police Association;

(5) one representative of the Texas Education Agency;

(6) one representative of a local mental health authority, as defined by Section 571.003, Health and Safety Code;

(7) a peace officer with certification in crisis intervention;

(8) a school district peace officer;

(9) one representative of an organization that advocates for juvenile justice;

(10) one representative of an organization that advocates for civil liberties;

(11) one representative of an organization representing parents of public school students; and

(12) one representative of the Texas School District Police Chiefs' Association.

(g) Members of the school resource curriculum committee serve terms of two years.

(h) The school resource curriculum committee shall develop the curriculum for the education and training program under this section based on the model curriculum used for the Bexar County children's crisis intervention training program and in accordance with Subsection (i). The curriculum must be approved by the commission. After developing the program, the committee may review and revise the curriculum for the program annually or as the committee determines necessary. Any revision must be approved by the commission. In carrying out its duties, the committee may use technology, including teleconferencing or videoconferencing, to eliminate travel expenses. Not later than December 1 of each even-numbered year, the commission

shall review the committee's continuation and functions and make any recommendations to the legislature concerning statutory changes regarding the committee that the commission considers appropriate.

(i) The curriculum for the education and training program under this section must incorporate learning objectives regarding:

(1) child and adolescent development and psychology;

(2) positive behavioral interventions and supports, conflict resolution techniques, and restorative justice techniques;

(3) force usage limitations, including physical restraint, and de-escalation techniques;

(4) children with disabilities or special needs, including mental or behavioral health needs; and

(5) cultural competency.

(j) The education and training program under this section may be provided:

(1) as a collaborative model within a community that:

(A) involves local stakeholders; and

(B) incorporates didactic and experiential training using the best practice model of the Bexar County children's crisis intervention training program;

(2) by a school determined appropriate for operation under Section 1701.251; or

(3) as an online training program sponsored by an online training provider if the training provider also provides training under Section 1701.251.

(k) A school district may offer additional, commission-approved preparatory education or training to its school district peace officers and school resource officers.

(l) The superintendent of a school district that employs a peace officer or to which a school resource officer is assigned shall maintain on file the certification issued to the officer under Subsection (e).

(m) Notwithstanding Section 1701.351(a), the commission may not suspend the license of a peace officer solely because the peace officer fails to meet the requirements of this section.

SECTION \_\_\_\_\_. Not later than March 31, 2012, the Commission on Law Enforcement Officer Standards and Education shall approve the curriculum for the education and training program as required by Section 1701.604, Occupations Code, as added by this Act.

SECTION \_\_\_\_\_. Section 1701.604, Occupations Code, as added by this Act, applies only to a school district peace officer or school resource officer who is serving or has been assigned, appointed, commissioned, or employed by a school district to serve in that capacity on or after March 31, 2012.

The amendments were read.

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

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **SB 542** before appointment.

There were no motions offered.

The President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Hegar, Chair; Huffman, Whitmire, Williams, and Seliger.

### SENATE BILL 1130 WITH HOUSE AMENDMENTS

Senator Hegar called **SB 1130** from the President's table for consideration of the House amendments to the bill.

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

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

Amend **SB 1130** on third reading as follows:

Add the following appropriately numbered SECTIONS to the bill:

SECTION \_\_\_\_\_. Section 11.1826, Tax Code, is amended by adding Subsection (g) to read as follows:

(g) For purposes of determining whether an organization has satisfied the requirements of Subsection (b) or (e) of this section in order to qualify for an exemption under Section 11.1825 or 11.182, respectively, an opinion included in an audit of the organization prepared by an independent auditor who is licensed by this state as a certified public accountant or a determination of tax-exempt status under Section 501(c), Internal Revenue Code of 1986, issued by the United States Internal Revenue Service is prima facie evidence of the facts stated in the opinion or determination.

SECTION \_\_\_\_\_. This Act applies only to ad valorem taxes imposed for a tax year beginning on or after the effective date of this Act.

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

Amend **SB 1130** on third reading by inserting the following appropriately-numbered SECTION and renumbering any subsequent SECTIONS and updating any cross-references accordingly:

SECTION \_\_\_\_\_. Section 1151.204, Occupations Code, is amended to read as follows:

Sec. 1151.204. DISMISSAL OF COMPLAINTS [~~COMPLAINT RELATING TO APPRAISED VALUE~~]. (a) After investigation, the department may dismiss a complaint, in part or entirely, without conducting a hearing if [:-

~~[(4)] the complaint [challenges only the appraised value of a property or another matter for which Title I, Tax Code, specifies a remedy and] does not credibly allege a violation of this chapter or the standards established by the commission for registrants under this chapter[-; and~~

~~[(2) the disagreement has not been resolved in the complaint's favor by an appraisal review board or court].~~

(b) After investigation, the department shall dismiss a complaint, in part or entirely, without conducting a hearing if:

(1) the complaint challenges:

(A) the imposition of or failure to waive penalties or interest under Sections 33.01 and 33.011, Tax Code;

(B) the appraised value of a property;

(C) the appraisal methodology;

(D) the grant or denial of an exemption from taxation; or

(E) any matter for which Title 1, Tax Code, specifies a remedy, including an action that a property owner is entitled to protest before an appraisal review board under Section 41.41(a), Tax Code; and

(2) the subject matter of the complaint has not been finally resolved in the complainant's favor by an appraisal review board, a governing body, an arbitrator, a court, or the State Office of Administrative Hearings under Section 2003.901, Government Code.

(c) This section does not apply to:

(1) a matter referred to the department by the comptroller under Section 5.102, Tax Code, or a successor statute;

(2) a complaint concerning a registrant's failure to comply with the registration and certification requirements of this chapter; or

(3) a complaint concerning a newly appointed chief appraiser's failure to complete the training program described by Section 1151.164.

SECTION \_\_\_\_\_. The change in law made by this Act to Section 1151.204, Occupations Code, applies only to a complaint filed on or after the effective date of this Act. A complaint filed before that date is governed by the law in effect on the date the complaint was filed, and the former law is continued in effect for that purpose.

The amendments were read.

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

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **SB 1130** before appointment.

There were no motions offered.

The President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Hegar, Chair; Wentworth, Deuell, Eltife, and Birdwell.

### **CONFERENCE COMMITTEE ON HOUSE BILL 2910**

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 2910** and moved that the request be granted.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **HB 2910** before appointment.

There were no motions offered.

Accordingly, the President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Zaffirini, Chair; Watson, Carona, Wentworth, and Eltife.

#### **CONFERENCE COMMITTEE ON HOUSE BILL 1560**

Senator Hinojosa called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 1560** and moved that the request be granted.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **HB 1560** before appointment.

There were no motions offered.

Accordingly, the President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Hinojosa, Chair; Ogden, Watson, Jackson, and Birdwell.

#### **CONFERENCE COMMITTEE ON HOUSE BILL 335**

Senator Birdwell 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 335** and moved that the request be granted.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **HB 335** before appointment.

There were no motions offered.

Accordingly, the President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Birdwell, Chair; Nelson, Patrick, Ellis, and Huffman.

#### **CONFERENCE COMMITTEE ON HOUSE BILL 2439**

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 2439** and moved that the request be granted.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **HB 2439** before appointment.

There were no motions offered.

Accordingly, the President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Watson, Chair; Ellis, Whitmire, Carona, and Jackson.



**CONFERENCE COMMITTEE ON HOUSE BILL 1242**

Senator Harris called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 1242** and moved that the request be granted.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **HB 1242** before appointment.

There were no motions offered.

Accordingly, the President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Harris, Chair; Jackson, Lucio, Estes, and Watson.

**MESSAGE FROM THE HOUSE**

HOUSE CHAMBER

Austin, Texas

Friday, May 27, 2011 - 3

The Honorable President of the Senate  
Senate Chamber  
Austin, Texas

Mr. President:

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

THE HOUSE HAS PASSED THE FOLLOWING MEASURES:

**HCR 173** Thompson

Instructing the enrolling clerk of the house to make corrections in H.B. No. 1451.

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

**HB 232** (144 Yeas, 0 Nays, 2 Present, not voting)

**HB 1760** (143 Yeas, 1 Nays, 2 Present, not voting)

**HB 2004** (143 Yeas, 0 Nays, 2 Present, not voting)

**HB 2596** (141 Yeas, 0 Nays, 2 Present, not voting)

**HB 2853** (142 Yeas, 0 Nays, 2 Present, not voting)

**HB 2857** (141 Yeas, 1 Nays, 2 Present, not voting)

**HB 2909** (139 Yeas, 0 Nays, 2 Present, not voting)

**HB 3771** (91 Yeas, 47 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 6** (non-record vote)

House Conferees with Instructions: Eissler - Chair/Branch/Hochberg/Huberty/Strama

**HB 362** (non-record vote)

House Conferees: Solomons - Chair/Bohac/Deshotel/Giddings/Orr

**HB 1000** (non-record vote)

House Conferees: Branch - Chair/Button/Geren/Johnson/Madden

**HB 2194** (non-record vote)

House Conferees: Taylor, Larry - Chair/Davis, Sarah/Farias/King, Phil/Pena

**HB 2549** (non-record vote)

House Conferees: Crownover - Chair/Davis, John/Lewis/McClendon/Taylor, Larry

**HB 2847** (non-record vote)

House Conferees: Madden - Chair/Button/Carter/Lozano/Taylor, Van

Respectfully,

/s/Robert Haney, Chief Clerk  
House of Representatives

### **BILLS AND RESOLUTIONS SIGNED**

The President Pro Tempore announced the signing of the following enrolled bills and resolutions in the presence of the Senate after the captions had been read:

**HB 3580, HB 3597, HB 3674, HB 3724, HB 3730, HB 3746, HB 3813, HB 3831, HB 3834, HB 3837, HB 3840, HB 3842, HB 3843, HB 3844, HB 3856, HB 3866, HCR 129, HCR 142, HCR 162.**

### **HOUSE CONCURRENT RESOLUTION 172**

The President Pro Tempore laid before the Senate the following resolution:

WHEREAS, House Bill No. 2643 has been adopted by the house of representatives and the senate and is being prepared for enrollment; and

WHEREAS, The bill contains technical errors that should be corrected; now, therefore, be it

RESOLVED, by the 82nd Legislature of the State of Texas, That the enrolling clerk of the house of representatives be instructed to correct House Bill No. 2643, in the SECTION of the bill amending Section 1302.263, Occupations Code, by striking "A person licensed as a contractor under this subchapter [~~chapter~~]" and substituting "A person licensed as a contractor under this chapter".

WATSON

**HCR 172** was read.

On motion of Senator Watson, the resolution was considered immediately and was adopted by the following vote: Yeas 31, Nays 0.

**MESSAGE FROM THE HOUSE**

HOUSE CHAMBER

Austin, Texas

Friday, May 27, 2011 - 4

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 218** (134 Yeas, 6 Nays, 2 Present, not voting)

**HB 422** (128 Yeas, 10 Nays, 2 Present, not voting)

**HB 680** (140 Yeas, 0 Nays, 2 Present, not voting)

**HB 992** (107 Yeas, 32 Nays, 3 Present, not voting)

**HB 1199** (141 Yeas, 2 Nays, 2 Present, not voting)

**HB 1638** (139 Yeas, 0 Nays, 2 Present, not voting)

**HB 2102** (136 Yeas, 5 Nays, 2 Present, not voting)

**HB 2265** (98 Yeas, 45 Nays, 2 Present, not voting)

**HB 2655** (142 Yeas, 0 Nays, 2 Present, not voting)

**HB 2662** (142 Yeas, 0 Nays, 2 Present, not voting)

**HB 2931** (137 Yeas, 0 Nays, 3 Present, not voting)

**HB 3395** (140 Yeas, 1 Nays, 2 Present, not voting)

**HB 3453** (77 Yeas, 62 Nays, 2 Present, not voting)

**HB 3743** (142 Yeas, 0 Nays, 2 Present, not voting)

**HB 3804** (140 Yeas, 0 Nays, 2 Present, not voting)

**HB 3845** (141 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 2327** (non-record vote)

House Conferees: McClendon - Chair/Fletcher/Harper-Brown/Pickett/Rodriguez, Eddie

**HB 3025** (non-record vote)

House Conferees: Branch - Chair/Bonnen/Howard, Donna/Johnson/Ritter

**HB 3117** (non-record vote)

House Conferees: Vo - Chair/Eiland/Sheets/Smithee/Taylor, Larry

**HB 3468** (non-record vote)

House Conferees: Patrick, Diane - Chair/Aycock/Branch/Howard, Donna/Shelton

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

**HB 3691** (140 Yeas, 1 Nays, 2 Present, not voting)

Respectfully,

/s/Robert Haney, Chief Clerk  
House of Representatives

**SENATE RESOLUTION 1177**

Senator Hegar offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 82nd Legislature, Regular Session, 2011, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the differences on Senate Bill 321 (employee's transportation and storage of certain firearms or ammunition while on certain property owned or controlled by the employee's employer) to consider and take action on the following matter:

Senate Rule 12.03(1) is suspended to permit the committee to change text not in disagreement in proposed SECTION 1 of the bill, in added Section 52.063, Labor Code, to read as follows:

Sec. 52.063. IMMUNITY FROM CIVIL LIABILITY. (a) Except in cases of gross negligence, a public or private employer, or the employer's principal, officer, director, employee, or agent, is not liable in a civil action for personal injury, death, property damage, or any other damages resulting from or arising out of an occurrence involving a firearm or ammunition that the employer is required to allow on the employer's property under this subchapter.

(b) The presence of a firearm or ammunition on an employer's property under the authority of this subchapter does not by itself constitute a failure by the employer to provide a safe workplace.

(c) For purposes of this section, a public or private employer, or the employer's principal, officer, director, employee, or agent, does not have a duty:

(1) to patrol, inspect, or secure:

(A) any parking lot, parking garage, or other parking area the employer provides for employees; or

(B) any privately owned motor vehicle located in a parking lot, parking garage, or other parking area described by Paragraph (A); or

(2) to investigate, confirm, or determine an employee's compliance with laws related to the ownership or possession of a firearm or ammunition or the transportation and storage of a firearm or ammunition.

Explanation: This change is necessary to clarify the responsibilities and immunity from civil liability of persons under this Act.

**SR 1177** was read and was adopted by the following vote: Yeas 29, Nays 2.

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

Nays: Rodriguez, West.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 321 ADOPTED**

Senator Hegar called from the President's table the Conference Committee Report on **SB 321**. The Conference Committee Report was filed with the Senate on Monday, May 23, 2011.

On motion of Senator Hegar, the Conference Committee Report was adopted by the following vote: Yeas 29, Nays 2.

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

Nays: Rodriguez, West.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 3302 ADOPTED**

Senator Hegar called from the President's table the Conference Committee Report on **HB 3302**. The Conference Committee Report was filed with the Senate on Tuesday, May 24, 2011.

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

**CONFERENCE COMMITTEE ON HOUSE BILL 6  
(Motion In Writing)**

Senator Shapiro 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 6** and moved that the request be granted.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **HB 6** before appointment.

There were no motions offered.

Accordingly, the President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Shapiro, Chair; Duncan, Van de Putte, Carona, and Nelson.

**CONFERENCE COMMITTEE ON HOUSE BILL 2770**  
**(Motion In Writing)**

Senator Williams 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 2770** and moved that the request be granted.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **HB 2770** before appointment.

There were no motions offered.

Accordingly, the President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Williams, Chair; Ellis, Whitmire, Jackson, and Nichols.

**CONFERENCE COMMITTEE ON HOUSE BILL 2365**  
**(Motion In Writing)**

Senator Shapiro 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 2365** and moved that the request be granted.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **HB 2365** before appointment.

There were no motions offered.

Accordingly, the President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Shapiro, Chair; Carona, Nelson, Huffman, and Birdwell.

**BILLS SIGNED**

The President Pro Tempore announced the signing of the following enrolled bills in the presence of the Senate after the captions had been read:

**HB 2256, HB 2266, HB 2296, HB 2310, HB 2315, HB 2330, HB 2338, HB 2346, HB 2363, HB 2396, HB 2460, HB 2492, HB 2496, HB 2541, HB 2575, HB 2577, HB 2584, HB 2636, HB 2651, HB 2678, HB 2722, HB 2869, HB 2960, HB 2966, HB 2996, HB 2997, HB 3003, HB 3030, HB 3076, HB 3079, HB 3096, HB 3125, HB 3197, HB 3208, HB 3216, HB 3369, HB 3384, HB 3399, HB 3462, HB 3474, HB 3475.**

**HOUSE CONCURRENT RESOLUTION 166**

The President Pro Tempore laid before the Senate the following resolution:

WHEREAS, May 18, 2011, marked the 10th anniversary of the untimely passing of John Austin Pena of Edinburg, and a new drug treatment center being completed in Hidalgo County has been named the John Austin Pena Memorial Center in honor of this beloved young man; and

WHEREAS, We stand together in commemoration of John's life with his loving family members: his father and stepmother, Aaron Pena, Jr., and Monica Pena; his mother, Criselda Pena; his dear siblings, Adrienne Pena-Garza, Aaron Leonel Pena, Alyssa Victoria Pena, and Michael Anthony Pena; his beloved young daughter, Chelsea Pena, and all his other relatives; and

WHEREAS, John Austin Pena was born at Park Place Hospital in Houston on October 4, 1984; he was a bright, spirited, cheerful young man who had many good friends; his broad spectrum of interests ranged from sports—especially basketball, soccer, and baseball—to skateboarding and playing laser tag with his pals and playing video games with his younger brother "Mikey"; endowed with a lively imagination and curiosity, he also enjoyed writing and traveling; and

WHEREAS, On May 18, 2001, the limitless potential that was embodied in the life of John Austin Pena was tragically brought to an untimely end when he and two other young people attending a social gathering were encouraged to ingest a substance, distributed at the gathering, that later proved to be deadly to all three; his death and absence caused considerable anguish among his friends and relatives, particularly his parents and siblings; many were led to channel their deep remorse by seeking solutions to the growing drug epidemic among our youth, with particular attention to those living along the Texas-Mexico border; and

WHEREAS, In June 2002, John's father, Aaron Pena, embarked on a journey to examine how Texas was dealing with rising drug abuse; he began visiting drug treatment centers across Texas to raise awareness of the growing problem, and the endeavor culminated with a visit to La Hacienda Drug Treatment Center in Hunt; in order to bring attention to the lack of treatment facilities in Texas, Representative Pena walked 125 miles from La Hacienda treatment center to our state Capitol in Austin; as a result of that visit, he made a promise to bring a drug treatment center to South Texas; and

WHEREAS, In 2004, to further this goal of drug abuse awareness, the John Austin Pena Memorial Scholarship was established in John's memory by the Texas Association of Addiction Professionals; the scholarship is presented annually to a student in recovery who is pursuing a college degree; and

WHEREAS, On May 18, 2007, through the diligent work of his father, State Representative Aaron Pena, the Texas House of Representatives gave budgetary approval for a drug treatment facility in the Rio Grande Valley; on March 26, 2010, Hidalgo County held a ground-breaking ceremony for the substance abuse treatment facility located at 3341 E. Richardson Road in Edinburg; and

WHEREAS, On May 17, 2011, the Hidalgo County Commissioners Court unanimously voted to not only memorialize the legacy of a young life cut short, but also recognize the efforts of those inspired by that tragedy to combat the evils of drug abuse, by ordering that the Hidalgo County Substance Abuse Treatment Facility be designated the John Austin Pena Memorial Center; and

WHEREAS, The new John Austin Pena Memorial Center, opening in the fall of 2011, will provide substance abuse treatment services to adolescents on an outpatient basis; although John Pena is deeply missed by his loved ones, the scholarship and the

drug treatment center that bear his name increase awareness and offer hope of a brighter future to young people struggling to move beyond addiction; now, therefore, be it

RESOLVED, That the 82nd Legislature of the State of Texas hereby pay tribute to the memory of John Austin Pena on the 10th anniversary of his passing and commemorate the naming of the John Austin Pena Memorial Center in his honor.

LUCIO

**HCR 166** was read.

On motion of Senator Lucio, the resolution was considered immediately and was adopted by a viva voce vote.

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

#### **CONFERENCE COMMITTEE ON HOUSE BILL 2194**

Senator Jackson called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2194** and moved that the request be granted.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **HB 2194** before appointment.

There were no motions offered.

Accordingly, the President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Jackson, Chair; Duncan, Huffman, Van de Putte, and Lucio.

#### **CONFERENCE COMMITTEE ON HOUSE BILL 1000**

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 1000** and moved that the request be granted.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **HB 1000** before appointment.

There were no motions offered.

Accordingly, the President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Zaffirini, Chair; Williams, Shapiro, Wentworth, and Ellis.

#### **BILLS SIGNED**

The President Pro Tempore announced the signing of the following enrolled bills in the presence of the Senate after the captions had been read:

**HB 1930, HB 1967, HB 1969, HB 1981, HB 1994, HB 2119, HB 2124, HB 2133, HB 2136, HB 2138, HB 2141, HB 2220, HB 2247.**



**MESSAGE FROM THE HOUSE**

HOUSE CHAMBER  
Austin, Texas  
Friday, May 27, 2011 - 5  
(Revised Message)

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 550** (139 Yeas, 0 Nays, 2 Present, not voting)
- HB 742** (140 Yeas, 2 Nays, 2 Present, not voting)
- HB 811** (142 Yeas, 0 Nays, 2 Present, not voting)
- HB 1111** (141 Yeas, 0 Nays, 2 Present, not voting)
- HB 1413** (143 Yeas, 0 Nays, 2 Present, not voting)
- HB 1496** (140 Yeas, 0 Nays, 2 Present, not voting)
- HB 2089** (142 Yeas, 0 Nays, 2 Present, not voting)
- HB 2463** (143 Yeas, 0 Nays, 2 Present, not voting)
- HB 2702** (140 Yeas, 2 Nays, 2 Present, not voting)
- HB 2947** (139 Yeas, 0 Nays, 2 Present, not voting)
- HB 2949** (142 Yeas, 0 Nays, 2 Present, not voting)
- HB 2975** (140 Yeas, 0 Nays, 2 Present, not voting)
- HB 2981** (140 Yeas, 1 Nays, 2 Present, not voting)
- HB 3099** (140 Yeas, 0 Nays, 2 Present, not voting)
- HB 3409** (140 Yeas, 0 Nays, 2 Present, not voting)
- HB 3827** (139 Yeas, 3 Nays, 3 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 3328** (non-record vote)

House Conferees: Keffer - Chair/Burnam/Crownover/Parker/Strama

Respectfully,

/s/Robert Haney, Chief Clerk  
House of Representatives

**CONFERENCE COMMITTEE ON HOUSE BILL 2847**  
**(Motion In Writing)**

Senator Whitmire called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2847** and moved that the request be granted.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **HB 2847** before appointment.

There were no motions offered.

Accordingly, the President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Whitmire, Chair; Huffman, Hegar, Patrick, and Hinojosa.

**BILLS SIGNED**

The President Pro Tempore announced the signing of the following enrolled bills in the presence of the Senate after the captions had been read:

**HB 1651, HB 1690, HB 1721, HB 1737, HB 1750, HB 1784, HB 1823, HB 1856, HB 1887, HB 1891, HB 1897.**

**SENATE BILL 660 WITH HOUSE AMENDMENTS**

Senator Hinojosa called **SB 660** from the President's table for consideration of the House amendments to the bill.

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

**Amendment**

Amend **SB 660** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to the review and functions of the Texas Water Development Board, including the functions of the board and related entities in connection with the process for establishing and appealing desired future conditions in a groundwater management area.

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

SECTION 1. SECTION 6.013, Water Code, is amended to read as follows:

Sec. 6.013. SUNSET PROVISION. The Texas Water Development Board is subject to review under Chapter 325, Government Code (Texas Sunset Act), but is not abolished under that chapter. The board shall be reviewed during the period in which state agencies abolished in 2023 [~~2011~~] and every 12th year after 2023 [~~2011~~] are reviewed.

SECTION 2. Subchapter D, Chapter 6, Water Code, is amended by adding Sections 6.113, 6.114, and 6.115 to read as follows:

Sec. 6.113. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION. (a) The board shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of board rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the board's jurisdiction.

(b) The board's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The board shall:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) provide training as needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures.

Sec. 6.114. FINANCIAL ASSISTANCE PROGRAMS: DEFAULT, REMEDIES, AND ENFORCEMENT. (a) In this section:

(1) "Default" means:

(A) default in payment of the principal of or interest on bonds, securities, or other obligations purchased or acquired by the board;

(B) failure to perform any covenant related to a bond, security, or other obligation purchased or acquired by the board;

(C) a failure to perform any of the terms of a loan, grant, or other financing agreement; or

(D) any other failure to perform an obligation, breach of a term of an agreement, or default as provided by any proceeding or agreement evidencing an obligation or agreement of a recipient, beneficiary, or guarantor of financial assistance provided by the board.

(2) "Financial assistance program recipient" means a recipient or beneficiary of funds administered by the board under this code, including a borrower, grantee, guarantor, or other beneficiary.

(b) In the event of a default and on request by the board, the attorney general shall seek:

(1) a writ of mandamus to compel a financial assistance program recipient or the financial assistance program recipient's officers, agents, and employees to cure the default; and

(2) any other legal or equitable remedy the board and the attorney general consider necessary and appropriate.

(c) A proceeding authorized by this section shall be brought and venue is in a district court in Travis County.

(d) In a proceeding under this section, the attorney general may recover reasonable attorney's fees, investigative costs, and court costs incurred on behalf of the state in the proceeding in the same manner as provided by general law for a private litigant.

Sec. 6.115. RECEIVERSHIP. (a) In this section, "financial assistance program recipient" has the meaning assigned by Section 6.114.

(b) In addition to the remedies available under Section 6.114, at the request of the board, the attorney general shall bring suit in a district court in Travis County for the appointment of a receiver to collect the assets and carry on the business of a financial assistance program recipient if:

(1) the action is necessary to cure a default by the recipient; and

(2) the recipient is not:

(A) a municipality or county; or

(B) a district or authority created under Section 52, Article III, or

Section 59, Article XVI, Texas Constitution.

(c) The court shall vest a receiver appointed by the court with any power or duty the court finds necessary to cure the default, including the power or duty to:

(1) perform audits;

(2) raise wholesale or retail water or sewer rates or other fees;

(3) fund reserve accounts;

(4) make payments of the principal of or interest on bonds, securities, or other obligations purchased or acquired by the board; and

(5) take any other action necessary to prevent or to remedy the default.

(d) The receiver shall execute a bond in an amount to be set by the court to ensure the proper performance of the receiver's duties.

(e) After appointment and execution of bond, the receiver shall take possession of the books, records, accounts, and assets of the financial assistance program recipient specified by the court. Until discharged by the court, the receiver shall perform the duties that the court directs and shall strictly observe the final order involved.

(f) On a showing of good cause by the financial assistance program recipient, the court may dissolve the receivership.

SECTION 3. Section 6.154, Water Code, is amended to read as follows:

Sec. 6.154. COMPLAINT FILE. (a) The board shall maintain a system to promptly and efficiently act on complaints [file on each written complaint] filed with the board. The board shall maintain information about parties to the complaint, [file must include:

(1) the name of the person who filed the complaint;

(2) the date the complaint is received by the board;

(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 the complaint's disposition[; and

(6) an explanation of the reason the file was closed, if the agency closed the file without taking action other than to investigate the complaint].

(b) The board shall make information available describing its [provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the board's policies and] procedures for [relating to] complaint investigation and resolution.

SECTION 4. Section 6.155, Water Code, is amended to read as follows:

Sec. 6.155. NOTICE OF COMPLAINT. The board~~[at least quarterly until final disposition of the complaint,]~~ shall periodically notify the ~~[person filing the]~~ complaint parties ~~[and each person who is a subject of the complaint]~~ of the status of the complaint until final disposition ~~[investigation unless the notice would jeopardize an undercover investigation].~~

SECTION 5. Section 11.1271, Water Code, is amended by amending Subsection (f) and adding Subsection (g) to read as follows:

(f) The commission shall adopt rules:

(1) establishing criteria and deadlines for submission of water conservation plans, including any required amendments, and for submission of implementation reports; and

(2) requiring the uniform water use calculation system developed under Section 16.403 to be used in the water conservation plans required by this section.

(g) At a minimum, rules adopted under Subsection (f)(2) must require an entity to report the most detailed level of municipal water use data currently available to the entity. The commission may not adopt a rule that requires an entity to report municipal water use data that is more detailed than the entity's billing system is capable of producing.

SECTION 6. Section 16.021, Water Code, is amended by amending Subsections (c), (d), and (e) and adding Subsections (d-1) and (g) to read as follows:

(c) The executive administrator shall designate the director of the Texas Natural Resources Information System to serve as the state geographic information officer. The state geographic information officer shall:

(1) coordinate the acquisition and use of high-priority imagery and data sets;

(2) establish, support, and disseminate authoritative statewide geographic data sets;

(3) support geographic data needs of emergency management responders during emergencies;

(4) monitor trends in geographic information technology; and

(5) support public access to state geographic data and resources ~~[The Texas Geographic Information Council (TGIC) is created to provide strategic planning and coordination in the acquisition and use of geo-spatial data and related technologies in the State of Texas. The executive administrator and the executive director of the Department of Information Resources shall designate entities to be members of the TGIC. The chief administrative officer of each member entity shall select one representative to serve on the TGIC. The duties of the TGIC shall include providing guidance to the executive administrator in carrying out the executive administrator's duties under this section and guidance to the Department of Information Resources for development of rules related to statewide geo-spatial data and technology standards].~~

(d) Not later than December 1, 2016, and before the end of each successive five-year period after that date, the board shall submit to the governor, lieutenant governor, and speaker of the house of representatives a report that contains recommendations regarding:

(1) statewide geographic data acquisition needs and priorities, including updates on progress in maintaining the statewide digital base maps described by Subsection (e)(6);

(2) policy initiatives to address the acquisition, use, storage, and sharing of geographic data across the state;

(3) funding needs to acquire data, implement technologies, or pursue statewide policy initiatives related to geographic data; and

(4) opportunities for new initiatives to improve the efficiency, effectiveness, or accessibility of state government operations through the use of geographic data  
~~Member entities of the TGIC that are state agencies shall, and member entities that are not state agencies may, provide information to the TGIC about their investments in geographic information and plans for its use. Not later than November 1 of each even numbered year, the TGIC shall prepare and provide to the board, the Department of Information Resources, the governor, and the legislature a report that:~~

~~[(1) describes the progress made by each TGIC member entity toward achieving geographic information system goals and in implementing geographic information systems initiatives; and~~

~~[(2) recommends additional initiatives to improve the state's geographic information systems programs].~~

(d-1) The board shall consult with stakeholders in preparing the report required by Subsection (d).

(e) The ~~[Under the guidance of the TGIC, the]~~ executive administrator shall:

(1) further develop the Texas Natural Resources Information System by promoting and providing for effective acquisition, archiving, documentation, indexing, and dissemination of natural resource and related digital and nondigital data and information;

(2) obtain information in response to disagreements regarding names and name spellings for natural and cultural features in the state and provide this information to the Board on Geographic Names of the United States Department of the Interior;

(3) make recommendations to the Board on Geographic Names of the United States Department of the Interior for naming any natural or cultural feature subject to the limitations provided by Subsection (f);

(4) make recommendations to the Department of Information Resources to adopt and promote standards that facilitate sharing of digital natural resource data and related socioeconomic data among federal, state, and local governments and other interested parties;

(5) acquire and disseminate natural resource and related socioeconomic data describing the Texas-Mexico border region; and

(6) coordinate, conduct, and facilitate the development, maintenance, and use of mutually compatible statewide digital base maps depicting natural resources and man-made features.

(g) The board may establish one or more advisory committees to assist the board or the executive administrator in implementing this section, including by providing information in connection with the preparation of the report required by Subsection (d). In appointing members to an advisory committee, the board shall consider including representatives of:

(1) state agencies that are major users of geographic data;

(2) federal agencies;

(3) local governments; and

(4) the Department of Information Resources.

SECTION 7. Subsection (b), Section 16.023, Water Code, is amended to read as follows:

(b) The account may be appropriated only to the board to:

(1) develop, administer, and implement the strategic mapping program;

(2) provide grants to political subdivisions for projects related to the development, use, and dissemination of digital, geospatial information; and

(3) administer, implement, and operate other programs of the Texas Natural Resources Information System, including:

(A) the operation of a Texas-Mexico border region information center for the purpose of implementing Section 16.021(e)(5);

(B) the acquisition, storage, and distribution of historical maps, photographs, and paper map products;

(C) the maintenance and enhancement of information technology; and

(D) the production, storage, and distribution of other digital base maps, as determined by the executive administrator [~~or a state agency that is a member of the Texas Geographic Information Council~~].

SECTION 8. Section 16.051, Water Code, is amended by adding Subsections (a-1) and (a-2) to read as follows:

(a-1) The state water plan must include:

(1) an evaluation of the state's progress in meeting future water needs, including an evaluation of the extent to which water management strategies and projects implemented after the adoption of the preceding state water plan have affected that progress; and

(2) an analysis of the number of projects included in the preceding state water plan that received financial assistance from the board.

(a-2) To assist the board in evaluating the state's progress in meeting future water needs, the board may obtain implementation data from the regional water planning groups.

SECTION 9. Subsections (c) and (e), Section 16.053, Water Code, are amended to read as follows:

(c) No later than 60 days after the designation of the regions under Subsection (b), the board shall designate representatives within each regional water planning area to serve as the initial coordinating body for planning. The initial coordinating body may then designate additional representatives to serve on the regional water planning group. The initial coordinating body shall designate additional representatives if necessary to ensure adequate representation from the interests comprising that region, including the public, counties, municipalities, industries, agricultural interests, environmental interests, small businesses, electric generating utilities, river authorities, water districts, and water utilities. The regional water planning group shall maintain adequate representation from those interests. In addition, the groundwater conservation districts located in each management area, as defined by Section 36.001, located in the regional water planning area shall appoint one representative of a groundwater conservation district located in the management area and in the regional water planning area to serve on the regional water planning group. In addition,

representatives of the board, the Parks and Wildlife Department, and the Department of Agriculture shall serve as ex officio members of each regional water planning group.

(e) Each regional water planning group shall submit to the development board a regional water plan that:

(1) is consistent with the guidance principles for the state water plan adopted by the development board under Section 16.051(d);

(2) provides information based on data provided or approved by the development board in a format consistent with the guidelines provided by the development board under Subsection (d);

(2-a) is consistent with the desired future conditions adopted under Section 36.108 for the relevant aquifers located in the regional water planning area as of the date the board most recently adopted a state water plan under Section 16.051 or, at the option of the regional water planning group, established subsequent to the adoption of the most recent plan;

(3) identifies:

(A) each source of water supply in the regional water planning area, including information supplied by the executive administrator on the amount of managed available groundwater in accordance with the guidelines provided by the development board under Subsections (d) and (f);

(B) factors specific to each source of water supply to be considered in determining whether to initiate a drought response;

(C) actions to be taken as part of the response; and

(D) existing major water infrastructure facilities that may be used for interconnections in the event of an emergency shortage of water;

(4) has specific provisions for water management strategies to be used during a drought of record;

(5) includes but is not limited to consideration of the following:

(A) any existing water or drought planning efforts addressing all or a portion of the region;

(B) approved groundwater conservation district management plans and other plans submitted under Section 16.054;

(C) all potentially feasible water management strategies, including but not limited to improved conservation, reuse, and management of existing water supplies, conjunctive use, acquisition of available existing water supplies, and development of new water supplies;

(D) protection of existing water rights in the region;

(E) opportunities for and the benefits of developing regional water supply facilities or providing regional management of water supply facilities;

(F) appropriate provision for environmental water needs and for the effect of upstream development on the bays, estuaries, and arms of the Gulf of Mexico and the effect of plans on navigation;

(G) provisions in Section 11.085(k)(1) if interbasin transfers are contemplated;



(H) voluntary transfer of water within the region using, but not limited to, regional water banks, sales, leases, options, subordination agreements, and financing agreements; and

(I) emergency transfer of water under Section 11.139, including information on the part of each permit, certified filing, or certificate of adjudication for nonmunicipal use in the region that may be transferred without causing unreasonable damage to the property of the nonmunicipal water rights holder;

(6) identifies river and stream segments of unique ecological value and sites of unique value for the construction of reservoirs that the regional water planning group recommends for protection under Section 16.051;

(7) assesses the impact of the plan on unique river and stream segments identified in Subdivision (6) if the regional water planning group or the legislature determines that a site of unique ecological value exists; and

(8) describes the impact of proposed water projects on water quality.

SECTION 10. Section 16.402, Water Code, is amended by amending Subsection (e) and adding Subsection (f) to read as follows:

(e) The board and commission jointly shall adopt rules:

(1) identifying the minimum requirements and submission deadlines for the annual reports required by Subsection (b); ~~and~~

(2) requiring the uniform water use calculation system developed under Section 16.403 to be used in the reports required by Subsection (b); and

(3) providing for the enforcement of this section and rules adopted under this section.

(f) At a minimum, rules adopted under Subsection (e)(2) must require an entity to report the most detailed level of municipal water use data currently available to the entity. The board and commission may not adopt a rule that requires an entity to report municipal water use data that is more detailed than the entity's billing system is capable of producing.

SECTION 11. Subchapter K, Chapter 16, Water Code, is amended by adding Section 16.403 to read as follows:

Sec. 16.403. UNIFORM WATER USE CALCULATION SYSTEM. The board and the commission, in consultation with the Water Conservation Advisory Council, shall develop a uniform system for calculating municipal water use in gallons per capita per day to be used by each entity required to submit a water conservation plan to the board or the commission under this code.

SECTION 12. Section 17.003, Water Code, is amended by adding Subsections (c), (d), (e), and (f) to read as follows:

(c) Water financial assistance bonds that have been authorized but have not been issued are not considered to be state debt payable from the general revenue fund for purposes of Section 49-j, Article III, Texas Constitution, until the legislature makes an appropriation from the general revenue fund to the board to pay the debt service on the bonds.

(d) In requesting approval for the issuance of bonds under this chapter, the executive administrator shall certify to the bond review board whether the bonds are reasonably expected to be paid from:

(1) the general revenues of the state; or

(2) revenue sources other than the general revenues of the state.

(e) The bond review board shall verify whether debt service on bonds to be issued by the board under this chapter is state debt payable from the general revenues of the state, in accordance with the findings made by the board in the resolution authorizing the issuance of the bonds and the certification provided by the executive administrator under Subsection (d).

(f) Bonds issued under this chapter that are designed to be paid from the general revenues of the state shall cease to be considered bonds payable from those revenues if:

(1) the bonds are backed by insurance or another form of guarantee that ensures payment from a source other than the general revenues of the state; or

(2) the board demonstrates to the satisfaction of the bond review board that the bonds no longer require payment from the general revenues of the state and the bond review board so certifies to the Legislative Budget Board.

SECTION 13. Section 17.9022, Water Code, is amended to read as follows:

Sec. 17.9022. FINANCING OF GRANT OR LOAN FOR POLITICAL SUBDIVISION; DEFAULT; VENUE. ~~[(a)]~~ The board may make a loan or grant available to a political subdivision in any manner the board considers economically feasible, including purchase of bonds or securities of the political subdivision or execution of a loan or grant agreement with the political subdivision. The board may not purchase bonds or securities that have not been approved by the attorney general and registered by the comptroller.

~~[(b) In the event of a default in payment of the principal of or interest on bonds or securities purchased by the board, or any other default as defined in the proceedings or indentures authorizing the issuance of bonds, or a default of any of the terms of a loan agreement, the attorney general shall seek a writ of mandamus or other legal remedy to compel the political subdivision or its officers, agents, and employees to cure the default by performing the duties they are legally obligated to perform. The proceedings shall be brought and venue is in a district court in Travis County. This subsection is cumulative of any other rights or remedies to which the board may be entitled.]~~

SECTION 14. Section 36.001, Water Code, is amended by adding Subdivision (30) to read as follows:

(30) "Desired future condition" means a quantitative description, adopted in accordance with Section 36.108, of the desired condition of the groundwater resources in a management area at one or more specified future times.

SECTION 15. Section 36.063, Water Code, is amended to read as follows:

Sec. 36.063. NOTICE OF MEETINGS. (a) Except as provided by Subsections (b) and (c), notice ~~[Notice]~~ of meetings of the board shall be given as set forth in the Open Meetings Act, Chapter 551, Government Code. Neither failure to provide notice of a regular meeting nor an insubstantial defect in notice of any meeting shall affect the validity of any action taken at the meeting.

(b) At least 10 days before a hearing under Section 36.108(d-2) or a meeting at which a district will adopt a desired future condition under Section 36.108(d-4), the board must post notice that includes:

(1) the proposed desired future conditions and a list of any other agenda items;

(2) the date, time, and location of the meeting or hearing;

(3) the name, telephone number, and address of the person to whom questions or requests for additional information may be submitted;

(4) the names of the other districts in the district's management area; and

(5) information on how the public may submit comments.

(c) Except as provided by Subsection (b), notice of a hearing described by Subsection (b) must be provided in the manner prescribed for a rulemaking hearing under Section 36.101(d).

SECTION 16. Subsections (a) and (e), Section 36.1071, Water Code, are amended to read as follows:

(a) Following notice and hearing, the district shall, in coordination with surface water management entities on a regional basis, develop a comprehensive management plan which addresses the following management goals, as applicable:

(1) providing the most efficient use of groundwater;

(2) controlling and preventing waste of groundwater;

(3) controlling and preventing subsidence;

(4) addressing conjunctive surface water management issues;

(5) addressing natural resource issues;

(6) addressing drought conditions;

(7) addressing conservation, recharge enhancement, rainwater harvesting, precipitation enhancement, or brush control, where appropriate and cost-effective; and

(8) addressing ~~in a quantitative manner~~ the desired future conditions adopted by the district under Section 36.108 ~~[of the groundwater resources]~~.

(e) In the management plan described under Subsection (a), the district shall:

(1) identify the performance standards and management objectives under which the district will operate to achieve the management goals identified under Subsection (a);

(2) specify, in as much detail as possible, the actions, procedures, performance, and avoidance that are or may be necessary to effect the plan, including specifications and proposed rules;

(3) include estimates of the following:

(A) managed available groundwater in the district based on the desired future condition adopted ~~[established]~~ under Section 36.108;

(B) the amount of groundwater being used within the district on an annual basis;

(C) the annual amount of recharge from precipitation, if any, to the groundwater resources within the district;

(D) for each aquifer, the annual volume of water that discharges from the aquifer to springs and any surface water bodies, including lakes, streams, and rivers;

(E) the annual volume of flow into and out of the district within each aquifer and between aquifers in the district, if a groundwater availability model is available;

(F) the projected surface water supply in the district according to the most recently adopted state water plan; and

(G) the projected total demand for water in the district according to the most recently adopted state water plan; and

(4) consider the water supply needs and water management strategies included in the adopted state water plan.

SECTION 17. Subchapter D, Chapter 36, Water Code, is amended by amending Section 36.108 and adding Sections 36.1081 through 36.1087 to read as follows:

Sec. 36.108. JOINT PLANNING IN MANAGEMENT AREA. (a) In this section:

(1) "Development [~~,"development]~~ board" means the Texas Water Development Board.

(2) "District representative" means the presiding officer or the presiding officer's designee for any district located wholly or partly in the management area.

(b) If two or more districts are located within the boundaries of the same management area, each district shall prepare a comprehensive management plan as required by Section 36.1071 covering that district's respective territory. On completion and approval of the plan as required by Section 36.1072, each district shall forward a copy of the new or revised management plan to the other districts in the management area. The boards of the districts shall consider the plans individually and shall compare them to other management plans then in force in the management area.

(c) The district representatives [~~The presiding officer, or the presiding officer's designee, of each district located in whole or in part in the management area]~~ shall meet at least annually to conduct joint planning with the other districts in the management area and to review the management plans, the [and] accomplishments of [for] the management area, and proposals to adopt new or amend existing desired future conditions. In reviewing the management plans, the districts shall consider:

(1) the goals of each management plan and its impact on planning throughout the management area;

(2) the effectiveness of the measures established by each management plan for conserving and protecting groundwater and preventing waste, and the effectiveness of these measures in the management area generally;

(3) any other matters that the boards consider relevant to the protection and conservation of groundwater and the prevention of waste in the management area; and

(4) the degree to which each management plan achieves the desired future conditions established during the joint planning process.

(d) Not later than September 1, 2010, and every five years thereafter, the districts shall consider groundwater availability models and other data or information for the management area and shall propose for adoption [~~establish~~] desired future conditions for the relevant aquifers within the management area. Before voting on the proposed [~~In establishing the~~] desired future conditions of the aquifers under Subsection (d-2) [this section], the districts shall consider:

(1) aquifer uses or conditions within the management area, including conditions that differ substantially from one geographic area to another;

(2) the water supply needs and water management strategies included in the state water plan;

(3) hydrological conditions, including for each aquifer in the management area the total estimated recoverable storage as provided by the executive administrator, and the average annual recharge, inflows, and discharge;

(4) other environmental impacts, including impacts on spring flow and other interactions between groundwater and surface water;

(5) the impact on subsidence;

(6) socioeconomic impacts reasonably expected to occur;

(7) the impact on the interests and rights in private property, including ownership and the rights of management area landowners and their lessees and assigns in groundwater as recognized under Section 36.002;

(8) whether the desired future conditions are physically possible; and

(9) any other information relevant to the specific desired future conditions [uses or conditions of an aquifer within the management area that differ substantially from one geographic area to another].

(d-1) The districts may establish different desired future conditions for:

(1) each aquifer, subdivision of an aquifer, or geologic strata located in whole or in part within the boundaries of the management area; or

(2) each geographic area overlying an aquifer in whole or in part or subdivision of an aquifer within the boundaries of the management area.

(d-2) [(d-1)] The desired future conditions proposed [established] under Subsection (d) must provide a balance between the highest practicable level of groundwater production and the conservation, preservation, protection, recharging, and prevention of waste of groundwater and control of subsidence in the management area. This subsection does not prohibit the establishment of desired future conditions that provide for the reasonable long-term management of groundwater resources consistent with the management goals under Section 36.1071(a). The desired future conditions proposed under Subsection (d) must be approved [adopted] by a two-thirds vote of all the district representatives for distribution to the districts in the management area. A period of not less than 30 or more than 90 days for public comments begins on the day the proposed desired future conditions are mailed to the districts. During the public comment period and after posting notice as required by Section 36.063, each district shall hold a public hearing on the proposed desired future conditions relevant to that district. During the public comment period, the district shall make available in its office a copy of the proposed desired future conditions and any supporting materials, such as the documentation of factors considered under Subsection (d) and groundwater availability model run results. After the public hearing, the district shall compile for consideration at the next joint planning meeting a summary of relevant comments received, any suggested revisions to the proposed desired future conditions, and the basis for the revisions [present at a meeting];

[(1) at which at least two thirds of the districts located in whole or in part in the management area have a voting representative in attendance; and

[(2) for which all districts located in whole or in part in the management area provide public notice in accordance with Chapter 551, Government Code.

~~[(d-2) Each district in the management area shall ensure that its management plan contains goals and objectives consistent with achieving the desired future conditions of the relevant aquifers as adopted during the joint planning process].~~

(d-3) After the earlier of the date on which all the districts have submitted their district summaries or the expiration of the public comment period under Subsection (d-2), the district representatives shall reconvene to review the reports, consider any district's suggested revisions to the proposed desired future conditions, and finally adopt the desired future conditions for the management area. The desired future conditions must be adopted as a resolution by a two-thirds vote of all the district representatives. The district representatives shall produce a desired future conditions explanatory report for the management area and submit to the development board and each district in the management area proof that notice was posted for the joint planning meeting, a copy of the resolution, and a copy of the explanatory report. The report must:

- (1) identify each desired future condition;
- (2) provide the policy and technical justifications for each desired future condition;
- (3) include documentation that the factors under Subsection (d) were considered by the districts and a discussion of how the adopted desired future conditions impact each factor;
- (4) list other desired future condition options considered, if any, and the reasons why those options were not adopted; and
- (5) discuss reasons why recommendations made by advisory committees and public comments received by the districts were or were not incorporated into the desired future conditions.

(d-4) As soon as possible after a district receives the desired future conditions resolution and explanatory report under Subsection (d-3), the district shall adopt the desired future conditions in the resolution and report that apply to the district.

(e) Except as provided by this section, a ~~[A]~~ joint meeting under this section must be held in accordance with Chapter 551, Government Code. Each district shall comply with Chapter 552, Government Code. The district representatives may elect one district to be responsible for providing the notice of a joint meeting that this section would otherwise require of each district in the management area. Notice of a joint ~~[the]~~ meeting must be provided at least 10 days before the date of the meeting by:

- (1) providing notice to the secretary of state;
- (2) providing notice to the county clerk of each county located wholly or partly in a district that is located wholly or partly in the management area; and
- (3) posting notice at a place readily accessible to the public at the district office of each district located wholly or partly in the management area.

(e-1) The secretary of state and the county clerk of each county described by Subsection (e) shall post notice of the meeting in the manner provided by Section 551.053, Government Code.

(e-2) Notice of a joint meeting must include:

- (1) the date, time, and location of the meeting;
- (2) a summary of any action proposed to be taken;

(3) the name of each district located wholly or partly in the management area; and

(4) the name, telephone number, and address of one or more persons to whom questions, requests for additional information, or comments may be submitted.

(e-3) The failure or refusal of one or more districts to post notice for a joint meeting under Subsection (e)(3) does not invalidate an action taken at the joint meeting [shall be given in accordance with the requirements for notice of district board of directors meetings under that Act].

Sec. 36.1081. TECHNICAL STAFF AND SUBCOMMITTEES FOR JOINT PLANNING. (a) On request, the commission and the Texas Water Development Board shall make technical staff available to serve in a nonvoting advisory capacity to assist with the development of desired future conditions during the joint planning process under Section 36.108.

(b) During the joint planning process under Section 36.108, the district representatives may appoint and convene nonvoting advisory subcommittees who represent social, governmental, environmental, or economic interests to assist in the development of desired future conditions.

Sec. 36.1082. PETITION FOR INQUIRY. (a) In this section, "affected person" means, with respect to a management area:

(1) an owner of land in the management area;

(2) a district in or adjacent to the management area;

(3) a regional water planning group with a water management strategy in the management area;

(4) a person who holds or is applying for a permit from a district in the management area;

(5) a person who, under Section 36.002, has an ownership interest in groundwater in the management area; or

(6) any other person defined as affected by commission rule.

(b) An affected person [~~(f) A district or person with a legally defined interest in the groundwater within the management area~~] may file a petition with the commission requesting an inquiry for any of the following reasons:

(1) a district fails to submit its management plan to the executive administrator;

(2) [~~if~~] a district fails [~~or districts refused~~] to participate [~~join~~] in the joint planning process under Section 36.108;

(3) a district fails to adopt rules;

(4) a district fails to adopt the applicable desired future conditions adopted by the management area at a joint meeting;

(5) a district fails to update its management plan before the second anniversary of the adoption of desired future conditions by the management area;

(6) a district fails to update its rules to implement the applicable desired future conditions before the first anniversary of the date it updated its management plan with the adopted desired future conditions;

(7) [~~or the process failed to result in adequate planning, including the establishment of reasonable future desired conditions of the aquifers, and the petition provides evidence that:~~

~~(1) a district in the groundwater management area has failed to adopt rules;~~  
~~(2) the rules adopted by a district are not designed to achieve the desired future conditions adopted by [condition of the groundwater resources in] the [groundwater] management area [established] during the joint planning process;~~

~~(8) [(3)] the groundwater in the management area is not adequately protected by the rules adopted by a district; or~~

~~(9) [(4)] the groundwater in the [groundwater] management area is not adequately protected due to the failure of a district to enforce substantial compliance with its rules.~~

~~(c) [(g)]~~ Not later than the 90th day after the date the petition is filed, the commission shall review the petition and either:

(1) dismiss the petition if the commission finds that the evidence is not adequate to show that any of the conditions alleged in the petition exist; or

(2) select a review panel as provided in Subsection (d) ~~[(h)]~~.

~~(d) [(h)]~~ If the petition is not dismissed under Subsection (c) ~~[(g)]~~, the commission shall appoint a review panel consisting of a chairman and four other members. A director or general manager of a district located outside the ~~[groundwater]~~ management area that is the subject of the petition may be appointed to the review panel. The commission may not appoint more than two members of the review panel from any one district. The commission also shall appoint a disinterested person to serve as a nonvoting recording secretary for the review panel. The recording secretary may be an employee of the commission. The recording secretary shall record and document the proceedings of the panel.

~~(e) [(i)]~~ Not later than the 120th day after appointment, the review panel shall review the petition and any evidence relevant to the petition and, in a public meeting, consider and adopt a report to be submitted to the commission. The commission may direct the review panel to conduct public hearings at a location in the ~~[groundwater]~~ management area to take evidence on the petition. The review panel may attempt to negotiate a settlement or resolve the dispute by any lawful means.

~~(f) [(j)]~~ In its report, the review panel shall include:

(1) a summary of all evidence taken in any hearing on the petition;

(2) a list of findings and recommended actions appropriate for the commission to take and the reasons it finds those actions appropriate; and

(3) any other information the panel considers appropriate.

~~(g) [(k)]~~ The review panel shall submit its report to the commission. The commission may take action under Section 36.3011.

Sec. 36.1083. ADMINISTRATIVE APPEAL OF DESIRED FUTURE CONDITIONS. (a) In this section:

(1) "Affected person" has the meaning assigned by Section 36.1082.

(2) "Development board" means the Texas Water Development Board.

(3) "Office" means the State Office of Administrative Hearings.

(b) Not later than the 180th day after the date on which a district adopted a desired future condition under Section 36.108(d-4), an affected person may file a petition with the district requesting that the district contract with the office to conduct a hearing to appeal the desired future condition, including the reasonableness of the desired future condition.



(c) Not later than the 45th day after receiving a request under Subsection (b), the district shall:

- (1) contract with the office;
- (2) request a contested case hearing; and
- (3) submit a copy of the petition to the office.

(d) The hearing must be held at a location described by Section 36.403(c). The hearing shall be conducted in accordance with Chapter 2001, Government Code, and rules of the office.

(e) The district may adopt rules for notice and hearings conducted under this section that are consistent with the procedural rules of the office. In the manner prescribed by district and office rules, the district shall provide general notice of the hearing and individual notice of the hearing to the petitioner, any other party in the hearing identified under Subsection (f)(3), each nonparty district and regional water planning group in the management area, the development board, and the commission. Only an affected person may participate as a party in the hearing.

(f) The office shall hold a prehearing conference to determine preliminary matters including:

(1) whether the petition should be dismissed for failure to state a claim on which relief can be granted;

(2) whether a person is an affected person and eligible to participate as a party in the hearing; and

(3) naming parties to the hearing.

(g) The petitioner shall pay all costs associated with the contract for the hearing and shall deposit with the district an amount sufficient to pay the contract amount before the hearing begins. At the conclusion of the hearing, the district shall refund any excess money to the petitioner.

(h) If the administrative law judge finds that a technical analysis is needed related to the hydrogeology of the area or matters within the development board's expertise, the judge may request a study from the development board. In conducting the technical analysis, the development board shall consider any relevant information provided in the petition, as well as any groundwater availability models, published studies, or other information the development board considers relevant. The study must be completed and delivered to the office not later than the 120th day after the date of the request for admission into the evidentiary record for consideration at the hearing. The development board shall make available the relevant staff as expert witnesses during the hearing if requested by any party or the administrative law judge.

(i) On receipt of the administrative law judge's findings of fact and conclusions of law in a proposal for decision, including a dismissal of a petition under Subsection (f), the district's board shall issue a final order stating the district's decision on the contested matter and the district's findings of fact and conclusions of law. The board may change a finding of fact or conclusion of law made by the administrative law judge, or may vacate or modify an order issued by the administrative law judge in the same manner as a state agency under Section 2001.058(e), Government Code. If the district in its final order finds that a desired future condition is unreasonable, the districts in the management area shall reconvene in a joint planning meeting not later than the 30th day after the date of the final order to revise the desired future condition.

(j) A district's final order finding that a desired future condition is unreasonable does not invalidate the desired future condition for a district not subject to the petition.

Sec. 36.1084. COURT APPEAL OF DESIRED FUTURE CONDITION. A final district order under Section 36.1083 may be appealed to a court under the substantial evidence standard of review as provided by Section 2001.174, Government Code. The venue for an appeal is a district court with jurisdiction over any part of the territory in the management area that includes the district whose final order is being appealed. If the court finds that a desired future condition is unreasonable, the court shall strike the desired future condition and order the districts in the management area to reconvene in a joint planning meeting not later than the 30th day after the date of the court's decision to revise the desired future condition.

Sec. 36.1085. MANAGED AVAILABLE GROUNDWATER. (a) The Texas Water Development Board shall require the ~~[(4) A person with a legally defined interest in the groundwater in the groundwater management area, a district in or adjacent to the groundwater management area, or a regional water planning group for a region in the groundwater management area may file a petition with the development board appealing the approval of the desired future conditions of the groundwater resources established under this section. The petition must provide evidence that the districts did not establish a reasonable desired future condition of the groundwater resources in the groundwater management area.~~

~~[(m) The development board shall review the petition and any evidence relevant to the petition. The development board shall hold at least one hearing at a central location in the management area to take testimony on the petition. The development board may delegate responsibility for a hearing to the executive administrator or to a person designated by the executive administrator. If the development board finds that the conditions require revision, the development board shall submit a report to the districts that includes a list of findings and recommended revisions to the desired future conditions of the groundwater resources.~~

~~[(n) The districts shall prepare a revised plan in accordance with development board recommendations and hold, after notice, at least one public hearing at a central location in the groundwater management area. After consideration of all public and development board comments, the districts shall revise the conditions and submit the conditions to the development board for review.~~

~~[(o) The] districts in a management area to ~~[shall]~~ submit to the executive administrator not later than the 60th day after the date on which the districts adopted desired future conditions under Section 36.108(d-3):~~

~~(1) the desired future conditions adopted ~~[established]~~ under Section 36.108;~~

~~(2) proof that notice was posted for the joint planning meeting; and~~

~~(3) the desired future conditions explanatory report ~~[this section to the executive administrator].~~~~

(b) The executive administrator shall provide each district and regional water planning group located wholly or partly in the management area with the managed available groundwater in the management area based upon the desired future conditions adopted by the districts ~~[condition of the groundwater resources established under this section].~~

Sec. 36.1086. MANAGEMENT PLAN GOALS AND OBJECTIVES. Each district in the management area shall ensure that its management plan contains goals and objectives consistent with achieving the desired future conditions of the relevant aquifers as adopted during the joint planning process.

Sec. 36.1087. JOINT EFFORTS BY DISTRICTS IN A MANAGEMENT AREA. ~~(P)~~ Districts located within the same ~~[groundwater]~~ management areas or in adjacent management areas may contract to jointly conduct studies or research, or to construct projects, under terms and conditions that the districts consider beneficial. These joint efforts may include studies of groundwater availability and quality, aquifer modeling, and the interaction of groundwater and surface water; educational programs; the purchase and sharing of equipment; and the implementation of projects to make groundwater available, including aquifer recharge, brush control, weather modification, desalination, regionalization, and treatment or conveyance facilities. The districts may contract under their existing authorizations including those of Chapter 791, Government Code, if their contracting authority is not limited by Sections 791.011(c)(2) and (d)(3) and Section 791.014, Government Code.

SECTION 18. Section 36.3011, Water Code, is amended to read as follows:

Sec. 36.3011. COMMISSION ACTION REGARDING [FAILURE OF] DISTRICT DUTIES [TO CONDUCT JOINT PLANNING]. Not later than the 45th day after receiving the review panel's report under Section 36.1082 ~~[36.108]~~, the executive director or the commission shall take action to implement any or all of the panel's recommendations. The commission may take any action against a district it considers necessary in accordance with Section 36.303 if the commission finds that:

(1) the [a] district has failed to submit its management plan to the executive administrator;

(2) the district has failed to participate in the joint planning process under Section 36.108;

(3) the ~~[(2) a]~~ district has failed to adopt rules;

(4) the district has failed to adopt the applicable desired future conditions adopted by the management area at a joint meeting;

(5) the district has failed to update its management plan before the second anniversary of the adoption of desired future conditions by the management area;

(6) the district has failed to update its rules to implement the applicable desired future conditions before the first anniversary of the date it updated its management plan with the adopted desired future conditions;

(7) ~~[(3)]~~ the rules adopted by the district are not designed to achieve the desired future conditions adopted by ~~[condition of the groundwater resources in]~~ the ~~[groundwater]~~ management area during the joint planning process; ~~[or]~~

(8) ~~[(4)]~~ the groundwater in the management area is not adequately protected by the rules adopted by the district; [5] or

(9) the groundwater in the management area is not adequately protected because of the district's failure to enforce substantial compliance with its rules.

SECTION 19. Sections 15.908 and 17.180, Water Code, are repealed.

SECTION 20. As soon as practicable after the effective date of this Act, groundwater conservation districts shall appoint initial representatives to regional water planning groups as required by Subsection (c), Section 16.053, Water Code, as amended by this Act.

SECTION 21. Not later than January 1, 2013:

(1) the Texas Commission on Environmental Quality shall adopt rules under Subsection (f), Section 11.1271, Water Code, as amended by this Act;

(2) the Texas Water Development Board and the Texas Commission on Environmental Quality jointly shall adopt rules under Subsection (e), Section 16.402, Water Code, as amended by this Act; and

(3) the Texas Water Development Board and the Texas Commission on Environmental Quality, in consultation with the Water Conservation Advisory Council, shall develop the water use calculation system required by Section 16.403, Water Code, as added by this Act.

SECTION 22. The notice provisions of Subsections (b) and (c), Section 36.063, Water Code, as added by this Act, apply only to a meeting or hearing of a groundwater conservation district or a joint planning meeting of groundwater conservation districts held on or after the effective date of this Act. A meeting or hearing held before the effective date of this Act is subject to the notice provisions in effect at the time of the meeting or hearing, and those provisions are continued in effect for that purpose.

SECTION 23. The requirement that a groundwater conservation district's management plan under Subsection (e), Section 36.1071, Water Code, as amended by this Act, include the desired future conditions adopted under Section 36.108, Water Code, as amended by this Act, for submission to the executive administrator of the Texas Water Development Board before the plan is considered administratively complete applies only to a district management plan submitted to the executive administrator on or after the effective date of this Act. A management plan submitted before the effective date of this Act is governed by the law in effect on the date the plan was submitted, and that law is continued in effect for that purpose.

SECTION 24. The procedures for the adoption and reporting of desired future conditions of groundwater resources in a management area under Section 36.108, Water Code, as amended by this Act, and Section 36.1085, Water Code, as added by this Act, apply only to the adoption of desired future conditions that occurs on or after the effective date of this Act. Desired future conditions adopted before the effective date of this Act are governed by the law in effect on the date the desired future conditions were adopted, and that law is continued in effect for that purpose.

SECTION 25. A petition filed and pending on the effective date of this Act before the Texas Water Development Board to appeal the adoption of desired future conditions by a groundwater management area under former Subsection (l), Section 36.108, Water Code, shall be handled by the Texas Water Development Board in compliance with Subsections (l), (m), and (n), Section 36.108, Water Code, as those subsections existed before the effective date of this Act.

SECTION 26. This Act takes effect September 1, 2011.

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

Amend **CSSB 660** (house committee printing) as follows:

(1) In SECTION 9 of the bill, in Section 16.053(e)(3)(A), Water Code (page 13, line 5), strike "managed" and substitute "modeled [managed]".

(2) In SECTION 16 of the bill, in amended Section 36.1071(e)(3)(A), Water Code (page 20, line 7), strike "managed" and substitute "modeled [managed]".

(3) In SECTION 16 of the bill, in amended Section 36.1071(e)(3)(A), Water Code (page 20, lines 8-9), strike "adopted [established]" and substitute "established".

(4) In SECTION 17 of the bill, strike added Section 36.108(d)(8), Water Code (page 23, lines 14-15), and substitute the following:

(8) the feasibility of achieving the desired future condition; and

(5) In SECTION 17 of the bill, in added Section 36.108(d-2), Water Code (page 24, line 13), strike "than 30 or more".

(6) In SECTION 17 of the bill, in added Section 36.108(d-2), Water Code (page 24, line 17), strike "the proposed desired future conditions relevant" and substitute "any proposed desired future conditions relevant".

(7) In SECTION 17 of the bill, in added Section 36.108(d-3)(5), Water Code (page 26, line 7), between "and" and "public", insert "relevant".

(8) In SECTION 17 of the bill, in the heading to added Section 36.1085, Water Code (page 34, line 10), strike "MANAGED" and substitute "MODELED".

(9) In SECTION 17 of the bill, in added Section 36.1085(b), Water Code (page 35, line 24), strike "managed" and substitute "modeled [managed]".

## Floor Amendment No. 2

Amend **CSSB 660** (senate committee printing) as follows:

(1) In SECTION 5 of the bill, in added Section 11.1271(f)(2), Water Code (page 3, line 16), strike "uniform water use calculation system" and substitute "methodology and guidance for calculating water use and conservation".

(2) In SECTION 10 of the bill, in amended Section 16.402(e)(2), Water Code (page 6, line 49), strike "uniform water use calculation system" and substitute "methodology and guidance for calculating water use and conservation".

(3) In SECTION 11 of the bill, in the recital (page 6, line 61), strike "Section 16.403" and substitute "Sections 16.403 and 16.404".

(4) In SECTION 11 of the bill, strike added Section 16.403, Water Code (page 6, lines 62-67), and substitute the following:

Sec. 16.403. WATER USE REPORTING. (a) The board and the commission, in consultation with the Water Conservation Advisory Council, shall develop a uniform, consistent methodology and guidance for calculating water use and conservation to be used by a municipality or water utility in developing water conservation plans and preparing reports required under this code. At a minimum, the methodology and guidance must include:

(1) a method of calculating water use for each sector of water users served by a municipality or water utility;

(2) a method of classifying water users within sectors;

(3) a method of calculating water use in the residential sector that includes both single-family and multifamily residences, in gallons per capita per day;

(4) a method of calculating water use in the industrial, agricultural, commercial, and institutional sectors that is not dependent on a municipality's population or the number of customers served by a water utility; and

(5) guidelines on the use of service populations by a municipality or water utility in developing a per-capita-based method of calculation, including guidance on the use of permanent and temporary populations in making calculations.

(b) The board or the commission, as appropriate, shall use the methodology and guidance developed under Subsection (a) in evaluating a water conservation plan, program of water conservation, survey, or other report relating to water conservation submitted to the board or the commission under:

- (1) Section 11.1271;
- (2) Section 13.146;
- (3) Section 15.106;
- (4) Section 15.607;
- (5) Section 15.975;
- (6) Section 15.995;
- (7) Section 16.012(m);
- (8) Section 16.402;
- (9) Section 17.125;
- (10) Section 17.277;
- (11) Section 17.857; or
- (12) Section 17.927.

(c) The board, in consultation with the commission and the Water Conservation Advisory Council, shall develop a data collection and reporting program for municipalities and water utilities with more than 3,300 connections.

(d) Not later than January 1 of each odd-numbered year, the board shall submit to the legislature a report that includes the most recent data relating to:

- (1) statewide water usage in the residential, industrial, agricultural, commercial, and institutional sectors; and
- (2) the data collection and reporting program developed under Subsection

(c).

Sec. 16.404. RULES AND STANDARDS. The commission and the board, as appropriate, shall adopt rules and standards as necessary to implement this subchapter.

(5) In SECTION 19(3) of the bill (page 13, line 60), strike "calculation system required by Section 16.403" and substitute "and conservation calculation methodology and guidance and the data collection and reporting program required by Sections 16.403(a) and (c)".

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

SECTION \_\_\_\_\_. Not later than January 1, 2015, the Texas Water Development Board shall submit to the legislature the first report required by Section 16.403(d), Water Code, as added by this Act.

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

Amend Amendment No. 2 by Laubenberg to **CSSB 660** (house committee printing) as follows:

(1) In the introductory language (page 1, line 1), strike "Senate" and substitute "house".

(2) In Item (1) of the amendment (page 1, line 4), strike "page 3, line 16" and substitute "page 6, line 14".

(3) In Item (2) of the amendment (page 1, line 8), strike "page 6, line 49" and substitute "page 15, line 11".

(4) In Item (3) of the amendment (page 1, lines 11-12), strike "page 6, line 61" and substitute "page 15, line 23".

(5) In Item (4) of the amendment (page 1, line 15), strike "page 6, lines 62-67" and substitute "page 15, line 24, through page 16, line 2".

(6) In Item (4) of the amendment, at the end of added Section 16.403, Water Code (page 3, between lines 6 and 7), add the following:

(e) Data included in a water conservation plan or report required under this code and submitted to the board or commission must be interpreted in the context of variations in local water use. The data may not be the only factor considered by the commission in determining the highest practicable level of water conservation and efficiency achievable in the jurisdiction of a municipality or water utility for purposes of Section 11.085(l).

(7) In Item (5) of the amendment (page 3, line 10), strike "SECTION 19(3)" and substitute "SECTION 21(3)".

(8) In Item (5) of the amendment (page 3, line 10), strike "page 13, line 60" and substitute "page 38, line 20".

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

Amend **CSSB 660** (house committee printing) as follows:

(1) In SECTION 17 of the bill, in added Section 36.1082(b), Water Code (page 28, line 13), between "affected person" and "~~[(4) A district]~~", insert "who seeks to appeal a desired future condition adopted under Section 36.108 must file a petition under Section 36.1083. Additionally, an affected person".

(2) In SECTION 17 of the bill, in added Section 36.1083(b), Water Code (page 31, line 17), after the period, add "An affected person may not request a hearing under this section for a reason described by Section 36.1082(b)."

(3) In SECTION 17 of the bill, in added Section 36.1083(c), Water Code (page 31, line 18), strike "receiving a request" and substitute "the deadline for filing a petition".

(4) In SECTION 17 of the bill, in added Section 36.1083(c)(3), Water Code (page 31, line 22), strike "copy of the petition to the office" and substitute "copy of any petitions received by the district to the office".

(5) In SECTION 17 of the bill, in added Section 36.1083, Water Code (page 33, between lines 24 and 25), insert the following:

(k) If the administrative law judge considers it appropriate, the administrative law judge may consolidate hearings requested under this section by two or more districts and shall specify the location for the consolidated hearing from the possible locations under Subsection (d). The administrative law judge shall prepare separate findings of fact and conclusions of law for each district included as a party in a multidistrict hearing.

(6) In SECTION 17 of the bill, in added Section 36.1084, Water Code (page 33, line 25), between "CONDITION." and "A", insert "(a)".

(7) In SECTION 17 of the bill, in added Section 36.1084, Water Code (page 34, between lines 9 and 10), insert the following:

(b) A court's finding under this section does not apply to a desired future condition that is not a matter before the court.

(c) A petitioner may file a consolidated suit under this section to appeal the final orders of two or more districts.

### **Floor Amendment No. 5**

Amend **CSSB 660** as follows by adding the following new section to the Water Code:

SECTION \_\_\_\_\_. Sec. 6.301. HYDRAULIC FRACTURING DRINKING WATER STUDY. The board shall conduct a study on the costs, benefits, and effect on both current and future water resources in relation to use of hydraulic fracturing treatment in this state. The study must include considerations of:

(1) the necessity of requiring disclosure of information related to hydraulic fracturing treatment, such as the base fluids, additives, and chemical constituents used by a person in a hydraulic fracturing treatment; and

(2) the protection of groundwater and surface water in this state.

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

Amend Amendment No. 5 by Martinez Fischer to **CSSB 660** (house committee report) by striking the text of the amendment and substituting the following:

Amend **CSSB 660** (house committee report) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. (a) Not later than January 1, 2013, the Texas Water Development Board shall conduct a study and provide a report to the legislature on the costs and benefits to this state of hydraulic fracturing treatments and the effects of hydraulic fracturing treatments on the current and future water resources of this state. The study must include consideration of:

(1) the desirability of requiring disclosure of information related to hydraulic fracturing treatments, such as the identity of the base fluids, additives, and chemical constituents used by a person in performing a hydraulic fracturing treatment; and

(2) the need to protect groundwater and surface water in this state.

(b) The board may request, accept, and administer grants, gifts, appropriations, or other money from any source to implement this section.

(c) Notwithstanding Subsection (a) of this section, the board is required to implement this section only if a sufficient amount of money from appropriations or other sources is available for that purpose.

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

Amend, on third reading, the amendment by Martinez Fischer to **CSSB 660** that was adopted on second reading by striking the amendment and substituting the following:

Amend **CSSB 660** by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Chapter 91, Natural Resources Code, is amended by adding Subchapter S to read as follows:



SUBCHAPTER S. DISCLOSURE OF WATER USAGE AND COMPOSITION OF  
HYDRAULIC FRACTURING FLUIDS

Sec. 91.851. DISCLOSURE OF WATER USAGE AND COMPOSITION OF  
HYDRAULIC FRACTURING FLUIDS. (a) Texas Water Development Board shall  
use the data provided by an annual report submitted by the commission indicating  
total water usage reported by operators under this subchapter for statewide water  
planning purposes.

(b) The commission by rule shall:

(1) require an operator of a well on which a hydraulic fracturing treatment is  
performed to:

(A) complete the form posted on the hydraulic fracturing chemical  
registry Internet website of the Ground Water Protection Council and the Interstate Oil  
and Gas Compact Commission with regard to the well;

(B) include in the form completed under Paragraph (A):

(i) the total volume of water used in the hydraulic fracturing  
treatment; and

(ii) each chemical ingredient that is subject to the requirements of  
29 C.F.R. Section 1910.1200(g)(2);

(C) post the completed form described by Paragraph (A) on the website  
described by that paragraph or, if the website is discontinued or permanently  
inoperable, post the completed form on another publicly accessible Internet website  
specified by the commission;

(D) submit the completed form described by Paragraph (A) to the  
commission with the well completion report for the well; and

(E) in addition to the completed form specified in Paragraph (D),  
provide to the commission a list, to be made available on a publicly accessible  
website, of all other chemical ingredients not listed on the completed form that were  
intentionally included and used for the purpose of creating a hydraulic fracturing  
treatment for the well. The commission rule shall ensure that an operator, service  
company, or supplier is not responsible for disclosing ingredients that:

(i) were not purposely added to the hydraulic fracturing treatment;

(ii) occur incidentally or are otherwise unintentionally present in  
the treatment; or

(iii) in the case of the operator, are not disclosed to the operator by  
a service company or supplier. The commission rule shall not require that the  
ingredients be identified based on the additive in which they are found or that the  
concentration of such ingredients be provided;

(2) require a service company that performs a hydraulic fracturing treatment  
on a well or a supplier of an additive used in a hydraulic fracturing treatment on a well  
to provide the operator of the well with the information necessary for the operator to  
comply with Subdivision (1);

(3) prescribe a process by which an entity required to comply with  
Subdivision (1) or (2) may withhold and declare certain information as a trade secret  
for purposes of Section 552.110, Government Code, including the identity and  
amount of the chemical ingredient used in a hydraulic fracturing treatment;

(4) require a person who desires to challenge a claim of entitlement to trade secret protection under Subdivision (3) to file the challenge not later than the second anniversary of the date the relevant well completion report is filed with the commission;

(5) limit the persons who may challenge a claim of entitlement to trade secret protection under Subdivision (3) to:

(A) the landowner on whose property the relevant well is located;

(B) a landowner who owns property adjacent to property described by Paragraph (A); or

(C) a department or agency of this state; and

(6) prescribe an efficient process for an entity described by Subdivision (1) or (2) to provide information, including information that is a trade secret as defined by Appendix D to 29 C.F.R. Section 1910.1200, to a health professional or emergency responder who needs the information in accordance with Subsection (i) of that section.

(c) The commission shall provide an annual report of the total water usage reported under this subchapter to the Texas Water Development Board.

SECTION \_\_\_\_\_. Subchapter S, Chapter 91, Natural Resources Code, as added by this Act, applies only to a hydraulic fracturing treatment performed on a well for which an initial drilling permit is issued on or after the date the initial rules adopted by the Railroad Commission of Texas under that subchapter take effect. A hydraulic fracturing treatment performed on a well for which an initial drilling permit is issued before the date the initial rules take effect 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 \_\_\_\_\_. The Railroad Commission of Texas shall adopt rules under Subchapter S, Chapter 91, Natural Resources Code, as added by this Act, not later than January 1, 2012.

The amendments were read.

Senator Hinojosa 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.

Senator Fraser raised a point of order that the House amendments to **SB 660** were not germane.

Senator Fraser withdrew the point of order.

The motion to not concur in the House amendments prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **SB 660** before appointment.

There were no motions offered.

The President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Hinojosa, Chair; Hegar, Duncan, Fraser, and Whitmire.

**CONFERENCE COMMITTEE ON HOUSE BILL 3468**  
**(Motion In Writing)**

Senator Shapiro 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 3468** and moved that the request be granted.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **HB 3468** before appointment.

There were no motions offered.

Accordingly, the President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Shapiro, Chair; Nelson, Seliger, West, and Carona.

**BILLS SIGNED**

The President Pro Tempore announced the signing of the following enrolled bills in the presence of the Senate after the captions had been read:

**HB 14, HB 25, HB 42, HB 78, HB 174, HB 274, HB 275** (Signed subject to Sec. 49-a, Art. III, Texas Constitution), **HB 289, HB 336, HB 359, HB 360, HB 371, HB 384, HB 398, HB 427, HB 452, HB 554, HB 559, HB 645, HB 673, HB 709, HB 710, HB 718, HB 748, HB 782, HB 788, HB 790, HB 805, HB 807, HB 844, HB 850, HB 896, HB 961, HB 1009, HB 1033, HB 1083, HB 1118, HB 1205, HB 1247, HB 1293, HB 1301, HB 1314, HB 1330, HB 1376, HB 1402, HB 1429, HB 1473, HB 1476, HB 1500.**

**MESSAGE FROM THE HOUSE**

HOUSE CHAMBER

Austin, Texas

Friday, May 27, 2011 - 6

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 9** (127 Yeas, 14 Nays, 2 Present, not voting)

**HB 167** (137 Yeas, 3 Nays, 2 Present, not voting)

**HB 351** (138 Yeas, 0 Nays, 3 Present, not voting)

**HB 2337** (142 Yeas, 0 Nays, 2 Present, not voting)

**HB 2516** (130 Yeas, 9 Nays, 2 Present, not voting)

**HB 2810** (137 Yeas, 5 Nays, 2 Present, not voting)

**HCR 84** (130 Yeas, 6 Nays, 3 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 1940** (non-record vote)

House Conferees: Perry - Chair/Allen/Cain/Madden/Parker

**HB 3459** (non-record vote)

House Conferees: Eiland - Chair/Dutton/Madden/Perry/Turner

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

**SB 8** (non-record vote)

House Conferees with Instructions: Kolkhorst - Chair/  
Coleman/Geren/Hunter/Schwertner

**SB 100** (non-record vote)

House Conferees: Taylor, Van - Chair/Branch/Madden/Pickett/Taylor, Larry

**SB 293** (non-record vote)

House Conferees: Davis, John - Chair/Hopson/Menendez/Sheets/Truitt

Respectfully,

/s/Robert Haney, Chief Clerk  
House of Representatives

### CONFERENCE COMMITTEE ON HOUSE BILL 3025

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 3025** and moved that the request be granted.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **HB 3025** before appointment.

There were no motions offered.

Accordingly, the President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Zaffirini, Chair; Duncan, Watson, Wentworth, and Carona.

### MOTION TO ADJOURN

On motion of Senator Jackson and by unanimous consent, the Senate at 6:38 p.m. agreed to adjourn, upon completion of the Joint Session, until 2:00 p.m. tomorrow.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 2048**

Senator Deuell submitted the following Conference Committee Report:

Austin, Texas  
May 26, 2011

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 2048** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

DEUELL

NELSON

SELIGER

HINOJOSA

WHITMIRE

On the part of the Senate

LYNE

THOMPSON

MURPHY

FLYNN

GONZALEZ

On the part of the House

The Conference Committee Report on **HB 2048** was filed with the Secretary of the Senate on Friday, May 27, 2011.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 156**

Senator Huffman submitted the following Conference Committee Report:

Austin, Texas  
May 26, 2011

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 156** 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.

HUFFMAN

DEUELL

DUNCAN

NELSON

URESTI

On the part of the Senate

V. GONZALES

COLEMAN

J. DAVIS

KOLKHORST

ZERWAS

On the part of the House

A BILL TO BE ENTITLED  
AN ACT

relating to health care data collected by the Department of State Health Services and access to certain confidential patient information within the department, including data and confidential patient information concerning bleeding and clotting disorders, and other issues related to bleeding and clotting disorders.

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

SECTION 1. Subtitle E, Title 2, Health and Safety Code, is amended by adding Chapter 103A to read as follows:

CHAPTER 103A. TEXAS BLEEDING DISORDERS ADVISORY COUNCIL

Sec. 103A.001. DEFINITIONS. In this chapter:

- (1) "Commissioner" means the commissioner of state health services.
- (2) "Council" means the Texas Bleeding Disorders Advisory Council.
- (3) "Department" means the Department of State Health Services.
- (4) "Hemophilia" has the meaning assigned by Section 41.001.

Sec. 103A.002. COMPOSITION OF COUNCIL. (a) The council is composed of:

(1) the commissioner and the commissioner of insurance, or their designees, serving as nonvoting members; and

(2) 10 voting members jointly appointed by the commissioner and the commissioner of insurance as follows:

(A) one member who is a physician licensed to practice medicine in this state under Subtitle B, Title 3, Occupations Code, who at the time of appointment treats individuals with hemophilia or other bleeding or clotting disorders;

(B) one member who is a nurse licensed under Chapter 301, Occupations Code, who at the time of appointment treats individuals with hemophilia or other bleeding or clotting disorders;

(C) one member who is a social worker licensed under Chapter 505, Occupations Code, who at the time of appointment treats individuals with hemophilia or other bleeding or clotting disorders;

(D) one member who is a representative of a hemophilia treatment center in this state that is federally funded;

(E) one member who is a representative of a health insurer or other health benefit plan issuer that holds a certificate of authority issued by the Texas Department of Insurance;

(F) one member who is a representative of a volunteer or nonprofit health organization that serves residents of this state who have hemophilia or another bleeding or clotting disorder;

(G) one member who has hemophilia or is a caregiver of a person with hemophilia;

(H) one member who has a bleeding disorder other than hemophilia or is a caregiver of a person with a bleeding disorder other than hemophilia;

(I) one member who has a clotting disorder or is a caregiver of a person with a clotting disorder; and

(J) one member who is a pharmacist licensed under Subtitle J, Title 3, Occupations Code, with hemophilia therapy experience, who at the time of appointment represents a pharmacy provider that is not a specialty pharmacy provider participating in the Drug Pricing Program under Section 340B, Public Health Service Act (42 U.S.C. Section 256b).

(b) In addition to council members appointed under Subsection (a), the commissioner and the commissioner of insurance may jointly appoint up to five nonvoting members, including:

(1) persons with hemophilia or other bleeding or clotting disorders or caregivers of persons with hemophilia or other bleeding or clotting disorders; and

(2) persons experienced in the diagnosis, treatment, care, and support of persons with hemophilia or other bleeding or clotting disorders.

Sec. 103A.003. VACANCY. If a vacancy occurs on the council, the commissioner and the commissioner of insurance shall jointly appoint a person to serve for the remainder of the unexpired term.

Sec. 103A.004. PRESIDING OFFICER. Council members shall elect from among the voting council members a presiding officer. The presiding officer retains all voting rights.

Sec. 103A.005. COMPENSATION AND REIMBURSEMENT. A council member may not:

(1) receive compensation for service on the council; and

(2) be reimbursed for actual and necessary expenses incurred while performing council business except to the extent that money available under Section 103A.009 is designated for that purpose.

Sec. 103A.006. MEETINGS. The council shall meet at least quarterly and at the call of the commissioner or presiding officer.

Sec. 103A.007. DUTIES OF COUNCIL. The council using existing resources may conduct studies and advise the department, the Health and Human Services Commission, and the Texas Department of Insurance on:

(1) public use data, outcome data, and other information submitted to or collected by the department under Chapter 108 or other law related to hemophilia or other bleeding or clotting disorders and the department's disclosure and dissemination of that information within and outside the department; and

(2) other issues that affect the health and wellness of persons living with hemophilia or other bleeding or clotting disorders.

Sec. 103A.008. ANNUAL REPORTS BY COUNCIL AND COMMISSIONER.

(a) Not later than December 1 of each even-numbered year, the council using existing resources shall submit a report of its findings and recommendations to the governor, the lieutenant governor, and the speaker of the house of representatives. The council's report must be made public and is subject to public review and comment before adoption by the council.

(b) Not later than six months after the date the council's annual report is issued, the commissioner shall report on efforts to implement the recommendations in the report. The commissioner's annual report must:

(1) be made available to the public; and

(2) include any related state or national activities in which the council participates.

Sec. 103A.009. GIFTS, GRANTS, AND DONATIONS. The commissioner may accept for the council gifts, grants, and donations to fulfill the council's purposes and duties under this chapter. The department is not required to perform any fund-raising activities or to solicit donations for the council.

Sec. 103A.010. CERTAIN FUNDING PROHIBITED. The council may not accept any funds that are appropriated by the legislature for the state fiscal biennium beginning September 1, 2011. This section expires September 1, 2013.

Sec. 103A.011. EXPIRATION. This chapter expires and the council is abolished September 1, 2015.

SECTION 2. Section 108.002, Health and Safety Code, is amended by amending Subdivision (7) and adding Subdivision (8-a) to read as follows:

(7) "Department" means the ~~[Texas]~~ Department of State Health Services.

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

SECTION 3. Chapter 108, Health and Safety Code, is amended by adding Section 108.0026 to read as follows:

Sec. 108.0026. TRANSFER OF DUTIES; REFERENCE TO COUNCIL.

(a) The powers and duties of the Texas Health Care Information Council under this chapter were transferred to the Department of State Health Services in accordance with Section 1.19, Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session, 2003.

(b) In this chapter or other law, a reference to the Texas Health Care Information Council means the Department of State Health Services.

SECTION 4. Subsection (h), Section 108.009, Health and Safety Code, is amended to read as follows:

(h) The department ~~[council]~~ shall coordinate data collection with the data submission formats used by hospitals and other providers. The department ~~[council]~~ shall accept data in the format developed by the American National Standards Institute ~~[National Uniform Billing Committee (Uniform Hospital Billing Form UB 92) and HCFA 1500]~~ or its successor ~~[their successors]~~ or other nationally ~~[universally]~~ accepted standardized forms that hospitals and other providers use for other complementary purposes.

SECTION 5. Section 108.013, Health and Safety Code, is amended by amending Subsections (a), (b), (c), (d), (g), (i), and (j) and adding Subsections (k), (l), (m), and (n) to read as follows:

(a) The data received by the department under this chapter ~~[council]~~ shall be used by the department ~~[council]~~ for the benefit of the public. Subject to specific limitations established by this chapter and executive commissioner ~~[council]~~ rule, the department ~~[council]~~ shall make determinations on requests for information in favor of access.

(b) The executive commissioner ~~[council]~~ by rule shall designate the characters to be used as uniform patient identifiers. The basis for assignment of the characters and the manner in which the characters are assigned are confidential.



(c) Unless specifically authorized by this chapter, the department ~~[council]~~ may not release and a person or entity may not gain access to any data obtained under this chapter:

- (1) that could reasonably be expected to reveal the identity of a patient;
- (2) that could reasonably be expected to reveal the identity of a physician;
- (3) disclosing provider discounts or differentials between payments and billed charges;
- (4) relating to actual payments to an identified provider made by a payer; or
- (5) submitted to the department ~~[council]~~ in a uniform submission format that is not included in the public use data set established under Sections 108.006(f) and (g), except in accordance with Section 108.0135.

(d) Except as provided by this section, all [All] data collected and used by the department ~~[and the council]~~ under this chapter is subject to the confidentiality provisions and criminal penalties of:

- (1) Section 311.037;
- (2) Section 81.103; and
- (3) Section 159.002, Occupations Code.

(g) Except as provided by Subsection (i), the department ~~[The council]~~ may not release data elements in a manner that will reveal the identity of:

- (1) a patient; or
- (2) ~~[The council may not release data elements in a manner that will reveal the identity of]~~ a physician.

(i) Notwithstanding any other law, the ~~[council and the]~~ department may ~~[not]~~ provide information made confidential by this section to the Health and Human Services Commission or a health and human services agency as defined by Section 531.001(4), Government Code, provided that the receiving agency has appropriate controls in place to ensure the confidentiality of any personal information contained in the information shared by the department under this subsection is subject to the limits on further disclosure described by Subsection (d) ~~[any other agency of this state]~~.

(j) The executive commissioner ~~[council]~~ shall by rule~~[, with the assistance of the advisory committee under Section 108.003(g)(5),]~~ develop and implement a mechanism to comply with Subsections (c)(1) and (2).

(k) The department may disclose data collected under this chapter that is not included in public use data to any program within the department if the disclosure is reviewed and approved by the institutional review board under Section 108.0135.

(l) Confidential data collected under this chapter that is disclosed to a program within the department remains subject to the confidentiality provisions of this chapter and other applicable law. The department shall identify the confidential data that is disclosed to a program under Subsection (k). The program shall maintain the confidentiality of the disclosed confidential data.

(m) The following provisions do not apply to the disclosure of data to a department program:

- (1) Section 81.103;
- (2) Sections 108.010(g) and (h);
- (3) Sections 108.011(e) and (f);
- (4) Section 311.037; and

(5) Section 159.002, Occupations Code.

(n) Nothing in this section authorizes the disclosure of physician identifying data.

SECTION 6. Section 108.0135, Health and Safety Code, is amended to read as follows:

Sec. 108.0135. INSTITUTIONAL [SCIENTIFIC] REVIEW BOARD [PANEL]. (a) The department [council] shall establish an institutional [a scientific] review board [panel] to review and approve requests for access to data not contained in [information other than] public use data. The members of the institutional review board must [panel shall] have experience and expertise in ethics, patient confidentiality, and health care data.

(b) To assist the institutional review board [panel] in determining whether to approve a request for information, the executive commissioner [council] shall adopt rules similar to the federal Centers for Medicare and Medicaid Services' [Health Care Financing Administration's] guidelines on releasing data.

(c) A request for information other than public use data must be made on the form prescribed [created] by the department [council].

(d) Any approval to release information under this section must require that the confidentiality provisions of this chapter be maintained and that any subsequent use of the information conform to the confidentiality provisions of this chapter.

SECTION 7. Subdivision (5), Section 108.002, Health and Safety Code, is repealed.

SECTION 8. As soon as practicable after the effective date of this Act and not later than December 1, 2011, the commissioner of state health services and the commissioner of insurance shall jointly appoint members to the Texas Bleeding Disorders Advisory Council as required by Section 103A.002, Health and Safety Code, as added by this Act.

SECTION 9. 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, 2011.

The Conference Committee Report on **SB 156** was filed with the Secretary of the Senate on Friday, May 27, 2011.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 647**

Senator Hegar submitted the following Conference Committee Report:

Austin, Texas

May 26, 2011

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 647** 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.

HEGAR  
NELSON  
URESTI  
HUFFMAN  
BIRDWELL

On the part of the Senate

L. TAYLOR  
SMITHEE  
VO  
HANCOCK

On the part of the House

A BILL TO BE ENTITLED  
AN ACT

relating to the continuation and operation of the office of public insurance counsel.

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

SECTION 1. Section 501.003, Insurance Code, is amended to read as follows:

Sec. 501.003. SUNSET PROVISION. The office is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the office is abolished September 1, 2023 [~~2011~~].

SECTION 2. Subchapter D, Chapter 501, Insurance Code, is amended by adding Section 501.160 to read as follows:

Sec. 501.160. ALTERNATIVE DISPUTE RESOLUTION PROCEDURES. (a) The office shall develop and implement a policy to encourage the use of appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the office's jurisdiction.

(b) The office's procedures relating to alternative dispute resolution must conform, to the extent possible, to model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution procedures by state agencies.

(c) The office shall:

- (1) coordinate the implementation of the policy adopted under Subsection  
(a);  
(2) provide training as needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and  
(3) collect data concerning the effectiveness of those procedures.

SECTION 3. This Act takes effect September 1, 2011.

The Conference Committee Report on **SB 647** was filed with the Secretary of the Senate on Friday, May 27, 2011.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 1951**

Senator Hegar submitted the following Conference Committee Report:

Austin, Texas  
May 26, 2011

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 1951** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

HEGAR	L. TAYLOR
NELSON	SMITHEE
WILLIAMS	BONNEN
URESTI	VO
HUFFMAN	HANCOCK
On the part of the Senate	On the part of the House

The Conference Committee Report on **HB 1951** was filed with the Secretary of the Senate on Friday, May 27, 2011.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 200**

Senator Whitmire submitted the following Conference Committee Report:

Austin, Texas  
May 26, 2011

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 200** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

WHITMIRE	PARKER
ELLIS	WHITE
HEGAR	MARQUEZ
HUFFMAN	MADDEN
PATRICK	PERRY
On the part of the Senate	On the part of the House

The Conference Committee Report on **HB 200** was filed with the Secretary of the Senate on Friday, May 27, 2011.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 1732**

Senator Hinojosa submitted the following Conference Committee Report:

Austin, Texas  
May 26, 2011

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 1732** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

HINOJOSA

RITTER

NELSON

PRICE

WHITMIRE

KEFFER

WILLIAMS

T. KING

SELIGER

On the part of the Senate

On the part of the House

The Conference Committee Report on **HB 1732** was filed with the Secretary of the Senate on Friday, May 27, 2011.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 2560**

Senator Estes submitted the following Conference Committee Report:

Austin, Texas  
May 27, 2011

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 2560** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

ESTES

SHEFFIELD

HEGAR

LAVENDER

HUFFMAN

LOZANO

LUCIO  
WENTWORTH  
On the part of the Senate

FLETCHER  
LEGLER  
On the part of the House

The Conference Committee Report on **HB 2560** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 1335**

Senator Van de Putte submitted the following Conference Committee Report:

Austin, Texas  
May 26, 2011

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 1335** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

VAN DE PUTTE  
CARONA  
LUCIO  
SHAPIRO  
ZAFFIRINI  
On the part of the Senate

ALLEN  
REYNOLDS  
NASH  
MALLORY CARAWAY  
THOMPSON  
On the part of the House

The Conference Committee Report on **HB 1335** was filed with the Secretary of the Senate on Friday, May 27, 2011.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 144**

Senator West submitted the following Conference Committee Report:

Austin, Texas  
May 26, 2011

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 144** 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.

WEST  
CARONA  
ELLIS  
HEGAR  
HUFFMAN  
On the part of the Senate

THOMPSON  
ALONZO  
Y. DAVIS  
DUTTON  
GALLEGO  
On the part of the House

A BILL TO BE ENTITLED  
AN ACT

relating to allowing a person who successfully completes a term of deferred adjudication community supervision to be eligible for a pardon.

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

SECTION 1. Article 48.01, Code of Criminal Procedure, is amended to read as follows:

Art. 48.01. GOVERNOR MAY PARDON. (a) In all criminal cases, except treason and impeachment, the Governor shall have power, after conviction or successful completion of a term of deferred adjudication community supervision, on the written signed recommendation and advice of the Board of Pardons and Paroles, or a majority thereof, to grant reprieves and commutations of punishments and pardons; and upon the written recommendation and advice of a majority of the Board of Pardons and Paroles, he shall have the power to remit fines and forfeitures. The Governor shall have the power to grant one reprieve in any capital case for a period not to exceed 30 days; and he shall have power to revoke conditional pardons. With the advice and consent of the Legislature, the Governor may grant reprieves, commutations of punishment and pardons in cases of treason.

(b) The Board of Pardons and Paroles may recommend that the Governor grant a pardon to a person who:

(1) is placed on deferred adjudication community supervision under Section 5, Article 42.12, and subsequently receives a discharge and dismissal under Section 5(c) of that article; and

(2) on or after the 10th anniversary of the date of discharge and dismissal, submits a written request to the board for a recommendation under this subsection.

SECTION 2. This Act takes effect January 1, 2012, but only if the constitutional amendment proposed by the 82nd Legislature, Regular Session, 2011, authorizing the governor to grant a pardon to a person who successfully completes a term of deferred adjudication community supervision is approved by the voters. If that amendment is not approved by the voters, this Act has no effect.

The Conference Committee Report on **SB 144** was filed with the Secretary of the Senate on Friday, May 27, 2011.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 377**

Senator Huffman submitted the following Conference Committee Report:

Austin, Texas  
May 26, 2011

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 377** 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.

HUFFMAN  
ELTIFE  
PATRICK  
NELSON  
WHITMIRE

RIDDLE  
WEBER  
FLETCHER

On the part of the Senate

On the part of the House

A BILL TO BE ENTITLED  
AN ACT

relating to the murder of a child as a capital offense.

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

SECTION 1. Subsection (a), Section 19.03, Penal Code, is amended to read as follows:

(a) A person commits an offense if the person commits murder as defined under Section 19.02(b)(1) and:

(1) the person murders a peace officer or fireman who is acting in the lawful discharge of an official duty and who the person knows is a peace officer or fireman;

(2) the person intentionally commits the murder in the course of committing or attempting to commit kidnapping, burglary, robbery, aggravated sexual assault, arson, obstruction or retaliation, or terroristic threat under Section 22.07(a)(1), (3), (4), (5), or (6);

(3) the person commits the murder for remuneration or the promise of remuneration or employs another to commit the murder for remuneration or the promise of remuneration;

(4) the person commits the murder while escaping or attempting to escape from a penal institution;

(5) the person, while incarcerated in a penal institution, murders another:

(A) who is employed in the operation of the penal institution; or

(B) with the intent to establish, maintain, or participate in a combination or in the profits of a combination;

(6) the person:

(A) while incarcerated for an offense under this section or Section 19.02, murders another; or

(B) while serving a sentence of life imprisonment or a term of 99 years for an offense under Section 20.04, 22.021, or 29.03, murders another;

(7) the person murders more than one person:

(A) during the same criminal transaction; or



(B) during different criminal transactions but the murders are committed pursuant to the same scheme or course of conduct;

(8) the person murders an individual under 10 [~~six~~] years of age; or

(9) the person murders another person in retaliation for or on account of the service or status of the other person as a judge or justice of the supreme court, the court of criminal appeals, a court of appeals, a district court, a criminal district court, a constitutional county court, a statutory county court, a justice court, or a municipal court.

SECTION 2. 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 governed by the law in effect on the date 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 3. This Act takes effect September 1, 2011.

The Conference Committee Report on **SB 377** was filed with the Secretary of the Senate on Friday, May 27, 2011.

### CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2226

Senator Carona submitted the following Conference Committee Report:

Austin, Texas  
May 27, 2011

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 2226** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

CARONA  
ELTIFE  
GALLEGOS  
NICHOLS  
ZAFFIRINI

On the part of the Senate

TRUITT  
C. ANDERSON  
HERNANDEZ LUNA  
LEGLER  
VEASEY

On the part of the House

The Conference Committee Report on **HB 2226** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 2729**

Senator Watson submitted the following Conference Committee Report:

Austin, Texas  
May 26, 2011

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 2729** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

WATSON  
ELLIS  
ELTIFE  
JACKSON  
ZAFFIRINI

On the part of the Senate

CALLEGARI  
CAIN  
LOZANO  
HUNTER  
PARKER

On the part of the House

The Conference Committee Report on **HB 2729** was filed with the Secretary of the Senate on Friday, May 27, 2011.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 2490**

Senator Carona submitted the following Conference Committee Report:

Austin, Texas  
May 27, 2011

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 2490** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

CARONA  
ELTIFE  
LUCIO  
VAN DE PUTTE  
ZAFFIRINI

On the part of the Senate

SOLOMONS  
ALISEDA  
CHISUM  
LEGLER  
W. SMITH

On the part of the House

The Conference Committee Report on **HB 2490** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 1420**

Senator Hinojosa submitted the following Conference Committee Report:

Austin, Texas  
May 27, 2011

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 1420** 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  
NICHOLS  
NELSON  
WILLIAMS

On the part of the Senate

HARPER-BROWN  
MCCLENDON  
PHILLIPS  
PICKETT

On the part of the House

A BILL TO BE ENTITLED  
AN ACT

relating to the continuation and functions of the Texas Department of Transportation; providing penalties.

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

SECTION 1. (a) Section 12.0011, Parks and Wildlife Code, is amended by adding Subsection (b-1) to read as follows:

(b-1) Recommendations and information submitted by the department under Subsection (b) in response to a request for comments from the Texas Department of Transportation must be submitted not later than the 45th day after the date the department receives the request.

(b) Subsection (b-1), Section 12.0011, Parks and Wildlife Code, as added by this section, applies only to a request for comments from the Texas Department of Transportation received on or after the effective date of this Act.

SECTION 2. Section 201.001, Transportation Code, is amended by adding Subsection (c) to read as follows:

(c) In this chapter, "local transportation entity" means an entity that participates in the transportation planning process, including:

- (1) a regional tollway authority under Chapter 366;
- (2) a rapid transportation authority under Chapter 451;
- (3) a regional transportation authority under Chapter 452;

- (4) a rural transit district under Chapter 458;
- (5) a coordinated county transportation authority under Chapter 460; or
- (6) a metropolitan planning organization under Subchapter D, Chapter 472.

SECTION 3. (a) Section 201.051, Transportation Code, is amended by amending Subsections (b), (d), (f), (g), (h), and (j) and adding Subsection (b-1) to read as follows:

(b) The members shall be appointed to reflect the diverse geographic regions and population groups of this state. One member must reside in a rural area and be a registered voter of a county with a population of less than 150,000.

(b-1) A member of the commission may not accept a contribution to a campaign for election to an elected office. If a commissioner accepts a campaign contribution, the person is considered to have resigned from the office and the office immediately becomes vacant. The vacancy shall be filled in the manner provided by law.

(d) ~~A [Except as provided by Subsection (e), a] person is not eligible to serve [for appointment]~~ as a member of the commission if the person or the person's spouse:

- (1) is employed by or participates in the management of a business entity or other organization that is regulated by or receives funds from the department;
- (2) directly or indirectly owns or controls more than 10 percent interest in a business entity or other organization that is regulated by or receives funds from the department;

(3) uses or receives a substantial amount of tangible goods, services, or funds from the department, other than compensation or reimbursement authorized by law for commission membership, attendance, or expenses; or

(4) is registered, certified, or licensed by the department.

(f) An officer, employee, or paid consultant of a Texas trade association in the field of road construction or maintenance, aviation, or outdoor advertising is not eligible to serve as [or a Texas trade association of automobile dealers may not be] a member of the commission.

(g) The spouse of an officer, manager, or paid consultant of a Texas trade association in the field of road construction or maintenance, aviation, or outdoor advertising is not eligible to serve as [or a Texas association of automobile dealers may not be] a member of the commission.

(h) A person required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the department is not eligible to [may not] serve as a member of the commission.

(j) In this section, "Texas trade association" means a ~~[nonprofit,]~~ cooperative~~[-]~~ and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) Subsection (b), Section 201.051, Transportation Code, as amended by this section, does not affect the right of a commissioner serving on the effective date of this Act to complete the commissioner's term. The requirement of Subsection (b), Section 201.051, Transportation Code, as amended by this section, applies at the time a vacancy occurs in the position held by the person serving as the rural designee on the effective date of this Act.

SECTION 4. Subsection (a), Section 201.053, Transportation Code, is amended to read as follows:

(a) The governor [~~periodically~~] shall designate one commissioner as the chair of the commission, who shall serve as presiding officer of the commission.

SECTION 5. Subsection (a), Section 201.057, Transportation Code, is amended to read as follows:

(a) It is a ground for removal from the commission if a commissioner:

(1) does not have at the time of taking office [~~appointment~~] or maintain during service on the commission the qualifications required by Section 201.051;

(2) violates a prohibition provided by Section 201.051;

(3) cannot discharge the commissioner's duties for a substantial part of the term for which the commissioner is appointed because of illness or disability; or

(4) is absent from more than half of the regularly scheduled commission meetings that the commissioner is eligible to attend during a calendar year, unless the absence is excused by majority vote of the commission.

SECTION 6. Section 201.058, Transportation Code, is amended to read as follows:

Sec. 201.058. INFORMATION ON QUALIFICATIONS AND CONDUCT.

The department shall provide to the members of the commission, as often as necessary, information concerning the members' qualifications for office [~~under Subchapter B~~] and their responsibilities under applicable laws relating to standards of conduct for state officers.

SECTION 7. Subchapter C, Chapter 201, Transportation Code, is amended by adding Section 201.1075 to read as follows:

Sec. 201.1075. CHIEF FINANCIAL OFFICER. (a) The chief financial officer shall ensure that the department's financial activities are conducted in a transparent and reliable manner.

(b) The chief financial officer shall certify each month that any state highway construction and maintenance contracts to be awarded by the department during that month will not create state liability that exceeds the department's most recent cash flow forecast.

SECTION 8. Subchapter C, Chapter 201, Transportation Code, is amended by adding Sections 201.118 and 201.119 to read as follows:

Sec. 201.118. NEGOTIATED RULEMAKING; ALTERNATIVE DISPUTE RESOLUTION PROCEDURES. (a) The commission shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of department rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the department's jurisdiction.

(b) The department's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The department shall:

- (1) coordinate the implementation of the policy adopted under Subsection (a);
- (2) provide training as needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and
- (3) collect data concerning the effectiveness of those procedures.

Sec. 201.119. LEGISLATIVE APPROPRIATIONS REQUEST. (a) Department staff shall deliver the department's legislative appropriations request to the commission in an open meeting not later than the 30th day before the date the department submits the legislative appropriations request to the Legislative Budget Board.

(b) The commission may adopt the legislative appropriations request in the meeting described by Subsection (a) or in a subsequent open meeting.

SECTION 9. Subchapter Y, Chapter 201, Transportation Code, is amended by adding Section 201.2002 to read as follows:

Sec. 201.2002. EDMUND P. KUEMPEL REST AREAS. (a) The eastbound and westbound rest areas located on Interstate Highway 10 in Guadalupe County are designated as the Edmund P. Kuempel Rest Areas.

(b) The department shall design and construct markers at each rest area described by Subsection (a) indicating the designation of those rest areas as the Edmund P. Kuempel Rest Areas and any other appropriate information.

(c) The department shall erect markers at appropriate locations at the rest areas.

(d) Notwithstanding Subsections (b) and (c), the department is not required to design, construct, or erect a marker under this section unless a grant or donation of private funds is made to the department to cover the cost of the design, construction, and erection of the marker.

(e) Money received under Subsection (d) shall be deposited to the credit of the state highway fund.

SECTION 10. Section 201.204, Transportation Code, is amended to read as follows:

Sec. 201.204. SUNSET PROVISION. The Texas Department of Transportation is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the department is abolished September 1, 2015 [~~2011~~].

SECTION 11. Subchapter D, Chapter 201, Transportation Code, is amended by adding Section 201.2041 to read as follows:

Sec. 201.2041. SUBMISSION OF FINANCIAL AUDIT TO SUNSET COMMISSION. (a) The department shall submit with its agency report under Section 325.007, Government Code, a complete and detailed financial audit conducted by an independent certified public accountant.

(b) Subsection (a) does not apply if the department is subject to sunset review during the previous two-year period.

SECTION 12. Subchapter D, Chapter 201, Transportation Code, is amended by adding Sections 201.210 and 201.211 to read as follows:

Sec. 201.210. LEGISLATIVE LOBBYING. (a) In addition to Section 556.006, Government Code, the commission or a department employee may not use money under the department's control or engage in an activity to influence the passage or defeat of legislation.

(b) Violation of Subsection (a) is grounds for dismissal of an employee.

(c) This section does not prohibit the commission or department employee from using state resources to:

(1) provide public information or information responsive to a request; or

(2) communicate with officers and employees of the federal government in pursuit of federal appropriations or programs.

(d) The department may not spend from funds appropriated to the department any money for the purpose of selecting, hiring, or retaining a person required to register under Chapter 305, Government Code, or the Lobbying Disclosure Act of 1995 (2 U.S.C. Section 1601 et seq.), unless that expenditure is allowed under state law.

Sec. 201.211. ETHICS AFFIRMATION AND HOTLINE. (a) A department employee shall annually affirm the employee's adherence to the ethics policy adopted under Section 572.051(c), Government Code.

(b) The department shall establish and operate a telephone hotline that enables a person to call the hotline number, anonymously or not anonymously, to report alleged fraud, waste, or abuse or an alleged violation of the ethics policy adopted under Section 572.051(c), Government Code.

SECTION 13. (a) Subsections (a) and (b), Section 201.401, Transportation Code, are amended to read as follows:

(a) A person may not be an employee of the department who is employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), ~~exempt from the state's position classification plan or compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule~~ if the person is:

(1) an officer, employee, or paid consultant of a Texas trade association[~~:-~~

~~[(A)] in the field of road construction or maintenance or outdoor advertising; or~~

~~[(B) of automobile dealers; or]~~

(2) the spouse of an officer, manager, or paid consultant described by Subdivision (1).

(b) A person may not act as general counsel to the department if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the department. A person who acts as general counsel to the department must be licensed as an attorney in this state.

(b) The changes in law made by this section to Section 201.401, Transportation Code, in the qualifications of the general counsel of the Texas Department of Transportation do not affect the eligibility of a person serving in that position immediately before the effective date of this Act to continue to carry out the position's

functions for the remainder of the person's employment as general counsel. The changes in law apply only to a general counsel hired on or after the effective date of this Act.

SECTION 14. Section 201.404, Transportation Code, is amended by adding Subsections (b-1) and (b-2) to read as follows:

(b-1) If an annual performance evaluation indicates unsatisfactory performance by an employee employed in a position at or above the level of district engineer or division or office director, the commission shall consider whether the employee should be terminated. The annual performance evaluation of a position described by this subsection must include an evaluation of an employee's:

(1) professionalism;

(2) diligence; and

(3) responsiveness to directives and requests from the commission and the legislature.

(b-2) If an annual performance evaluation indicates unsatisfactory performance by an employee employed in a position that is below the level of district engineer, the department shall consider whether the employee should be terminated. The department shall provide a report to the commission regarding employees whose performances were unsatisfactory but who were not terminated.

SECTION 15. (a) Chapter 201, Transportation Code, is amended by adding Subchapter F-1 to read as follows:

#### SUBCHAPTER F-1. COMPLIANCE PROGRAM

Sec. 201.451. ESTABLISHMENT AND PURPOSE. The commission shall establish a compliance program, which must include a compliance office to oversee the program. The compliance office is responsible for:

(1) acting to prevent and detect serious breaches of departmental policy, fraud, waste, and abuse of office, including any acts of criminal conduct within the department;

(2) independently and objectively reviewing, investigating, delegating, and overseeing the investigation of:

(A) conduct described by Subdivision (1);

(B) criminal activity in the department;

(C) allegations of wrongdoing by department employees;

(D) crimes committed on department property; and

(E) serious breaches of department policy;

(3) overseeing the operation of the telephone hotline established under Section 201.211;

(4) ensuring that members of the commission and department employees receive appropriate ethics training; and

(5) performing other duties assigned to the office by the commission.

Sec. 201.452. INVESTIGATION OVERSIGHT. (a) The compliance office has primary jurisdiction for oversight and coordination of all investigations occurring on department property or involving department employees.



(b) The compliance office shall coordinate and provide oversight for an investigation under this subchapter, but the compliance office is not required to conduct the investigation.

(c) The compliance office shall continually monitor an investigation conducted within the department, and shall report to the commission on the status of pending investigations.

Sec. 201.453. INITIATION OF INVESTIGATIONS. The compliance office may only initiate an investigation based on:

(1) authorization from the commission;

(2) approval of the director of the compliance office;

(3) approval of the executive director or deputy executive director of the department; or

(4) commission rules.

Sec. 201.454. REPORTS. (a) The compliance office shall report directly to the commission regarding performance of and activities related to investigations and provide the director with information regarding investigations as appropriate.

(b) The director of the compliance office shall present to the commission at each regularly scheduled commission meeting and at other appropriate times:

(1) reports of investigations; and

(2) a summary of information relating to investigations conducted under this subchapter that includes analysis of the number, type, and outcome of investigations, trends in investigations, and recommendations to avoid future complaints.

Sec. 201.455. COOPERATION WITH LAW ENFORCEMENT OFFICIALS AND OTHER ENTITIES. (a) The director of the compliance office shall provide information and evidence relating to criminal acts to the state auditor's office and appropriate law enforcement officials.

(b) The director of the compliance office shall refer matters for further civil, criminal, and administrative action to appropriate administrative and prosecutorial agencies, including the attorney general.

Sec. 201.456. AUTHORITY OF STATE AUDITOR. This subchapter or other law related to the operation of the department's compliance program does not preempt the authority of the state auditor to conduct an audit or investigation under Chapter 321, Government Code, or other law.

(b) Not later than January 1, 2013, the Texas Department of Transportation shall submit a report to the legislature on the effectiveness of the compliance program described by Subchapter F-1, Chapter 201, Transportation Code, as added by this Act, and any recommended changes in law to increase the effectiveness of the compliance program.

SECTION 16. Section 201.601, Transportation Code, is amended to read as follows:

Sec. 201.601. STATEWIDE TRANSPORTATION PLAN. (a) The department shall develop a statewide transportation plan covering a period of 24 years that contains all modes of transportation, including:

(1) highways and turnpikes;

(2) aviation;

(3) mass transportation;

(4) railroads and high-speed railroads; and

(5) water traffic.

(a-1) The plan must:

(1) contain specific, long-term transportation goals for the state and measurable targets for each goal;

(2) identify priority corridors, projects, or areas of the state that are of particular concern to the department in meeting the goals established under Subdivision (1); and

(3) contain a participation plan specifying methods for obtaining formal input on the goals and priorities identified under this subsection from:

(A) other state agencies;

(B) political subdivisions;

(C) local transportation entities; and

(D) the general public.

(b) ~~[In developing the plan, the department shall seek opinions and assistance from other state agencies and political subdivisions that have responsibility for the modes of transportation listed by Subsection (a).]~~ As appropriate, the department and the entities listed in Subsection (a-1)(3) ~~[such an agency or political subdivision]~~ shall enter into a memorandum of understanding relating to the planning of transportation services.

(c) The plan must include a component that is not financially constrained and identifies transportation improvements designed to relieve congestion. In developing this component of the plan, the department shall seek opinions and assistance from officials who have local responsibility for modes of transportation listed in Subsection (a).

(d) ~~[The plan shall include a component, published annually, that describes the evaluation of transportation improvements based on performance measures, such as indices measuring delay reductions or travel time improvements.]~~ The department shall consider the goals and measurable targets established under Subsection (a-1)(1) ~~[performance measures]~~ in selecting transportation projects ~~[improvements]~~.

(e) The department annually shall provide to the lieutenant governor, the speaker of the house of representatives, and the chair of the standing committee of each house of the legislature with primary jurisdiction over transportation issues an analysis of the department's progress in attaining the goals under Subsection (a-1)(1). The department shall make the information under this subsection available on its Internet website.

(f) The department shall update the plan every four years or more frequently as necessary.

SECTION 17. Subchapter H, Chapter 201, Transportation Code, is amended by adding Section 201.6015 to read as follows:

Sec. 201.6015. INTEGRATION OF PLANS AND POLICY EFFORTS. In developing each of its transportation plans and policy efforts, the department must clearly reference the statewide transportation plan under Section 201.601 and specify how the plan or policy effort supports or otherwise relates to the specific goals under that section.

SECTION 18. (a) Section 201.607, Transportation Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) Not later than January 1, 1997, and every fifth year after that date, the department and each state agency that is responsible for the protection of the natural environment or for the preservation of historical or archeological resources shall examine and revise their memorandum of understanding that:

(1) describes the responsibilities of each agency entering into the memorandum relating to the review of the potential environmental, historical, or archeological effect of a highway project;

(2) specifies the responsibilities of each agency entering into the memorandum relating to the review of a highway project;

(3) specifies the types of information the department must provide to the reviewing agency and the period during which the department must provide the information;

(4) specifies the period during which the reviewing agency must review the highway project and provide comments to the department, as negotiated by the department and the agency but which may not exceed 45 days after the date the agency receives a request for comments from the department; ~~and~~

(5) specifies that comments submitted to the department later than the period specified under Subdivision (4) will be considered by the department to the extent possible; and

(6) includes any other agreement necessary for the effective coordination of the review of the environmental, historical, or archeological effect of a highway project.

(c) The department by rule shall establish procedures concerning coordination with agencies in carrying out responsibilities under agreements under this section.

(b) Subsection (a), Section 201.607, Transportation Code, as amended by this section, applies only to a request for comments from the Texas Department of Transportation received by a state agency on or after the effective date of this Act. As necessary, the Texas Department of Transportation and each affected state agency shall promptly revise the memorandum of understanding required by Section 201.607, Transportation Code, to implement the change made by this section to Subsection (a), Section 201.607, Transportation Code.

SECTION 19. Subchapter H, Chapter 201, Transportation Code, is amended by adding Section 201.620 to read as follows:

Sec. 201.620. COORDINATION WITH METROPOLITAN PLANNING ORGANIZATIONS TO DEVELOP LONG-TERM PLANNING ASSUMPTIONS. The department shall collaborate with metropolitan planning organizations to develop mutually acceptable assumptions for the purposes of long-range federal and state funding forecasts and use those assumptions to guide long-term planning in the statewide transportation plan under Section 201.601.

SECTION 20. Subchapter H, Chapter 201, Transportation Code, is amended by adding Section 201.622 to read as follows:

Sec. 201.622. WILDFIRE EMERGENCY EVACUATION ROUTE. (a) Notwithstanding Section 418.018, Government Code, in a county with a population of less than 75,000 and with a verifiable history of wildfire, the department

may designate an emergency evacuation route for use in the event of a wildfire emergency. The department may establish criteria to determine which areas of a county are subject to a potential wildfire emergency.

(b) The department may assist in the improvement of a designated wildfire emergency evacuation route.

(c) Criteria for determining a wildfire emergency evacuation route must provide for evacuation of commercial establishments such as motels, hotels, and other businesses with overnight accommodations.

(d) A wildfire emergency evacuation route designated under Subsection (a) may include federal or state highways or county roads.

SECTION 21. (a) Chapter 201, Transportation Code, is amended by adding Subchapter I-1 to read as follows:

SUBCHAPTER I-1. ENVIRONMENTAL REVIEW PROCESS

Sec. 201.751. DEFINITIONS. In this subchapter:

(1) "Day" means a calendar day.

(2) "Federal Highway Administration" means the United States Department of Transportation Federal Highway Administration.

(3) "Highway project" means a highway or related improvement that is:

(A) part of the state highway system; or

(B) not part of the state highway system but funded wholly or partly by federal money.

(4) "Local government sponsor" means a political subdivision of the state that:

(A) elects to participate in the planning, development, design, funding, or financing of a highway project; and

(B) is a municipality or a county, a group of adjoining counties, a county acting under Chapter 284, a regional tollway authority operating under Chapter 366, a regional mobility authority operating under Chapter 370, a local government corporation, or a transportation corporation created under Chapter 431.

Sec. 201.752. STANDARDS. (a) The commission by rule shall establish standards for processing an environmental review document for a highway project. The standards must increase efficiency, minimize delays, and encourage collaboration and cooperation by the department with a local government sponsor, with a goal of prompt approval of legally sufficient documents.

(b) The standards apply regardless of whether the environmental review document is prepared by the department or a local government sponsor. The standards apply to work performed by the sponsor and to the department's review process and environmental decision.

(c) The standards must address, for each type of environmental review document:

(1) the issues and subject matter to be included in the project scope prepared under Section 201.754;

(2) the required content of a draft environmental review document;

(3) the process to be followed in considering each type of environmental review document; and

(4) review deadlines, including the deadlines in Section 201.759.

(d) The standards must include a process for resolving disputes arising under this subchapter, provided that the dispute resolution process must be concluded not later than the 60th day after the date either party requests dispute resolution.

(e) For highway projects described in Section 201.753(a), the standards may provide a process and criteria for the prioritization of environmental review documents in the event the department makes a finding that it lacks adequate resources to timely process all documents it receives. Standards established pursuant to this subsection must provide for notification to a local government sponsor if processing of an environmental review document is to be delayed due to prioritization, and must ensure that the environmental review document for each highway project will be completed no later than one year prior to the date planned for publishing notice to let the construction contract for the project, as indicated in a document identifying the project under Section 201.753(a)(1) or a commission order under Section 201.753(a)(2).

Sec. 201.753. ENVIRONMENTAL REVIEW LIMITED TO CERTAIN PROJECTS. (a) A local government sponsor or the department may prepare an environmental review document for a highway project only if the highway project is:

(1) identified in the financially constrained portion of the approved state transportation improvement program or the financially constrained portion of the approved unified transportation program; or

(2) identified by the commission as being eligible for participation under this subchapter.

(b) Notwithstanding Subsection (a), a local government sponsor may prepare an environmental review document for a highway project that is not identified by the commission or in a program described by Subsection (a) if the sponsor submits with its notice under Section 201.755 a fee in an amount established by commission rule, but not to exceed the actual cost of reviewing the environmental review document.

(c) A fee received by the department under Subsection (b) must be deposited in the state highway fund and used to pay costs incurred under this subchapter.

Sec. 201.754. SCOPE OF PROJECT. If an environmental review document is prepared by a local government sponsor, the local government sponsor must prepare a detailed scope of the project in collaboration with the department before the department may process the environmental review document.

Sec. 201.755. NOTICE TO DEPARTMENT. (a) A local government sponsor may submit notice to the department proposing that the local government sponsor prepare the environmental review document for a highway project.

(b) The notice must include:

(1) the project scope prepared under Section 201.754; and

(2) a request for classification of the project.

Sec. 201.756. LOCAL GOVERNMENT SPONSOR RESPONSIBILITIES. A local government sponsor that submits notice under Section 201.755 is responsible for preparing all materials for:

(1) project scope determination;

(2) environmental reports;

(3) the environmental review document;

(4) environmental permits and conditions;

(5) coordination with resource agencies; and

(6) public participation.

Sec. 201.757. DETERMINATION OF ADMINISTRATIVELY COMPLETE ENVIRONMENTAL REVIEW DOCUMENT. (a) A local government sponsor's submission of an environmental review document must include a statement from the local government sponsor that the document is administratively complete, ready for technical review, and compliant with all applicable requirements.

(b) Not later than the 20th day after the date the department receives a local government sponsor's environmental review document, the department shall either:

(1) issue a letter confirming that the document is administratively complete and ready for technical review; or

(2) decline to issue a letter confirming that the document is administratively complete and ready for technical review, in accordance with Section 201.758.

Sec. 201.758. DEPARTMENT DECLINES TO CONFIRM THAT DOCUMENT IS ADMINISTRATIVELY COMPLETE. (a) The department may decline to issue a letter confirming that an environmental review document is administratively complete and ready for technical review only if the department sends a written response to the local government sponsor specifying in reasonable detail the basis for its conclusions, including a listing of any required information determined by the department to be missing from the document.

(b) If the department provides notice under Subsection (a), the department shall undertake all reasonable efforts to cooperate with the local government sponsor in a timely manner to ensure that the environmental review document is administratively complete.

(c) The local government sponsor may resubmit any environmental review document determined by the department under Section 201.757 not to be administratively complete, and the department shall issue a determination letter on the resubmitted document not later than the 20th day after the date the document is resubmitted.

Sec. 201.759. REVIEW DEADLINES. (a) The following deadlines must be included in the standards adopted under Section 201.752:

(1) the department shall issue a classification letter not later than the 30th day after the date the department receives notice from a local government sponsor under Section 201.755;

(2) for a project classified as a programmatic categorical exclusion, the environmental decision must be rendered not later than the 60th day after the date the supporting documentation is received by the department;

(3) for a project classified as a categorical exclusion, the environmental decision must be rendered not later than the 90th day after the date the supporting documentation is received by the department;

(4) for a project that requires the preparation of an environmental assessment:

(A) the department must provide all department comments on a draft environmental assessment not later than the 90th day after the date the draft is received by the department; and

(B) the department must render the environmental decision on the project not later than the 60th day after the later of:

(i) the date the revised environmental assessment is submitted to the department; or

(ii) the date the public involvement process concludes;

(5) the department must render the environmental decision on any reevaluation not later than the 120th day after the date the supporting documentation is received by the department; and

(6) for a project that requires the preparation of an environmental impact statement, the department shall render the environmental decision not later than the 120th day after the date the draft final environmental impact statement is submitted.

(b) Review deadlines under this section specify the date by which the department will render the environmental decision on a project or the time frames by which the department will make a recommendation to the Federal Highway Administration, as applicable.

(c) A deadline that falls on a weekend or official state holiday is considered to occur on the next business day.

Sec. 201.760. SUSPENSION OF TIME PERIODS. The computation of review deadlines under Section 201.759 does not begin until an environmental review document is determined to be administratively complete, and is suspended during any period in which:

(1) the document that is the subject of the review is being revised by or on behalf of the local government sponsor in response to department comments;

(2) the highway project is the subject of additional work, including a change in design of the project, and during the identification and resolution of new significant issues; or

(3) the local government sponsor is preparing a response to any issue raised by legal counsel for the department concerning compliance with applicable law.

Sec. 201.761. AGREEMENT BETWEEN LOCAL GOVERNMENT SPONSOR AND DEPARTMENT. Notwithstanding any provision of this subchapter or any other law, a local government sponsor and the department may enter into an agreement that defines the relative roles and responsibilities of the parties in the preparation and review of environmental review documents for a specific project. For a project for which an environmental decision requires the approval of the Federal Highway Administration and to the extent otherwise permitted by law, the Federal Highway Administration may also be a party to an agreement between a local government sponsor and the department under this section.

Sec. 201.762. REPORTS TO COMMISSION AND LEGISLATURE. (a) Not later than June 30 and December 31 of each year, the department shall submit a report to the commission at a regularly scheduled commission meeting identifying projects being processed under the procedures of this subchapter and the status of each project, including:

(1) how the project was classified for environmental review;

(2) the current status of the environmental review;

(3) the date on which the department is required to make an environmental decision under applicable deadlines;

(4) an explanation of any delays; and

(5) any deadline under Section 201.759 missed by the department.

(b) Not later than December 1 of each year, the department shall submit a report to the members of the standing legislative committees with primary jurisdiction over matters related to transportation regarding the implementation of this subchapter, including a status report for the preceding 12-month period that contains the information described in Subsection (a).

(c) The department shall post copies of the reports required under this section on its Internet website and shall provide a copy of the report required by Subsection (b) to each member of the legislature who has at least one project covered by the report in the member's district.

(d) The department shall make available on its Internet website and update regularly the status of projects being processed under this subchapter.

(b) The Texas Transportation Commission shall adopt rules to implement Subchapter I-1, Chapter 201, Transportation Code, as added by this section, not later than March 1, 2012.

(c) Subchapter I-1, Chapter 201, Transportation Code, as added by this section, applies only to a notice of a local government sponsor proposing the sponsor's preparation of an environmental review document that is received by the Texas Department of Transportation on or after the effective date of this Act. Submissions to the Texas Department of Transportation received before the effective date of this Act are governed by the law in effect on the date the submission was received, and that law is continued in effect for that purpose.

SECTION 22. (a) Section 201.801, Transportation Code, is amended to read as follows:

Sec. 201.801. ~~[INFORMATION ABOUT DEPARTMENT;]~~ COMPLAINTS.

(a) The department shall maintain a system to promptly and efficiently act on complaints filed with the department. The department shall maintain information about the parties to and the subject matter of a complaint and a summary of the results of the review or investigation of the complaint and the disposition of the complaint.

(b) The department shall make information available describing its procedures for complaint investigation and resolution ~~[prepare information of public interest describing the functions of the department and the department's procedures by which a complaint is filed with the department and resolved by the department. The department shall make the information available to the public and appropriate state agencies].~~

~~[(b) The commission by rule shall establish methods by which consumers and service recipients are notified of the department's name, mailing address, and telephone number for directing complaints to the department. The commission may provide for that notification:~~

~~[(1) on each registration form, application, or written contract for services of an individual or entity regulated by the department;~~

~~[(2) on a sign prominently displayed in the place of business of each individual or entity regulated by the department; or~~

~~[(3) in a bill for service provided by an individual or entity regulated by the department.]~~



(c) ~~The department shall:~~

~~[(1) keep an information file about each written complaint filed with the department that the department has the authority to resolve; and~~

~~[(2) provide the person who filed the complaint, and each person or entity that is the subject of the complaint, information about the department's policies and procedures relating to complaint investigation and resolution.~~

~~[(d)] The department[~~, at least quarterly and until final disposition of a written complaint that is filed with the department and that the department has the authority to resolve,~~] shall periodically notify the parties to the complaint of its status until final disposition unless the notice would jeopardize an undercover investigation.~~

(d) The commission shall adopt rules applicable to each division and district to establish a process to act on complaints filed with the department [(e) With regard to each complaint filed with the department, the department shall keep the following information:

~~[(1) the date the complaint is filed;~~

~~[(2) the name of the person filing the complaint;~~

~~[(3) the subject matter of the complaint;~~

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

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

~~[(6) if the department takes no action on the complaint, an explanation of the reasons that no action was taken].~~

(e) The department shall develop a standard form for submitting a complaint and make the form available on its Internet website. The department shall establish a method to submit complaints electronically.

(f) The department shall develop a method for analyzing the sources and types of complaints and violations and establish categories for the complaints and violations. The department shall use the analysis to focus its information and education efforts on specific problem areas identified through the analysis.

(g) The department shall:

(1) compile:

(A) detailed statistics and analyze trends on complaint information,  
including:

(i) the nature of the complaints;

(ii) their disposition; and

(iii) the length of time to resolve complaints;

(B) complaint information on a district and a divisional basis; and

(C) the number of similar complaints filed, and the number of persons who filed each complaint; and

(2) report the information on a monthly basis to the division directors, office directors, and district engineers and on a quarterly basis to the commission.

(b) The Texas Transportation Commission shall adopt rules under Section 201.801, Transportation Code, as amended by this section, not later than March 1, 2012.

SECTION 23. Subsection (a), Section 201.802, Transportation Code, is amended to read as follows:

(a) The commission shall develop and implement policies that provide the public with a reasonable opportunity to appear before the commission and speak on any issue under the jurisdiction of the department ~~[commission]~~.

SECTION 24. (a) Subchapter J, Chapter 201, Transportation Code, is amended by adding Sections 201.807, 201.808, 201.809, 201.810, and 201.811 to read as follows:

Sec. 201.807. PROJECT INFORMATION REPORTING SYSTEM. (a) In this section, "department project" means a highway project under the jurisdiction of the department, including a grouped rehabilitation and preventive maintenance project, that:

- (1) is being developed or is under construction; and
- (2) is identified in the work program required under Section 201.998.

(b) The department shall establish a project information reporting system that makes available in a central location on the department's Internet website easily accessible and searchable information regarding all of the department's transportation plans and programs, including the unified transportation program required by Section 201.991. The department shall post information on its Internet website as required by this subsection as the information becomes available to the department and in a manner that is not cost prohibitive. The project information reporting system shall contain information about:

- (1) each department project, including:
  - (A) the status of the project;
  - (B) each source of funding for the project;
  - (C) benchmarks for evaluating the progress of the project;
  - (D) timelines for completing the project;
  - (E) a list of the department employees responsible for the project,

including information to contact each person on that list; and

- (F) the results of the annual review required under Subsection (e); and

(2) the department's funds, including each source for the department's funds, and the amount and general type or purpose of each expenditure as described in the comptroller's statewide accounting system, reported by each:

- (A) department district;
- (B) program funding category as required by Section 201.991(b)(2);

and

(C) type of revenue, including revenue from a comprehensive development agreement or a toll project.

(c) In developing the project information reporting system, the department shall collaborate with:

- (1) the legislature;
- (2) local transportation entities; and
- (3) members of the public.

(d) The department shall make the statistical information provided under this section available on the department's Internet website in more than one downloadable electronic format.

(e) As a component of the project information reporting system required by this section, the department shall conduct an annual review of the benchmarks and timelines of each project included in the department's transportation plans, including the unified transportation program, to determine the completion rates of the projects and whether the projects were completed on time.

(f) The department shall update the information contained in the project information reporting system on a regular basis, as specified by commission rule.

Sec. 201.808. TRANSPORTATION EXPENDITURE PRIORITIES. (a) The department shall develop a process to identify and distinguish between the transportation projects that are required to maintain the state infrastructure and the transportation projects that would improve the state infrastructure in a manner consistent with the statewide transportation plan required by Section 201.601.

(b) The department shall establish a transportation expenditure reporting system that makes available in a central location on the department's Internet website easily accessible and searchable information regarding the priorities of transportation expenditures for the identified transportation projects.

(c) The department shall include in the transportation expenditure reporting system:

(1) reports prepared by the department or an institution of higher education that evaluate the effectiveness of the department's expenditures on transportation projects to achieve the transportation goal;

(2) information about the condition of the pavement for each highway under the jurisdiction of the department, including the percentage of pavement that the department determines to be in good or better condition;

(3) the condition of bridges, including information about bridge condition scores;

(4) information about peak-hour travel congestion in the eight largest metropolitan areas of the state; and

(5) information about the number of traffic fatalities per 100 million miles traveled.

(d) The department shall provide the information made available under Subsection (c) in a format that allows a person to conduct electronic searches for information regarding a specific county, highway under the jurisdiction of the department, or type of road.

(e) The department shall establish criteria to prioritize the transportation needs for the state that are consistent with the statewide transportation plan.

(f) Each department district shall enter information into the transportation expenditure reporting system, including information about:

(1) each district transportation project; and

(2) the category to which the project has been assigned and the priority of the project in the category under Section 201.995.

(g) The transportation expenditure reporting system shall allow a person to compare information produced by that system to information produced by the project information reporting system.

(h) To provide a means of verifying the accuracy of information being made available through the transportation expenditure reporting system, the department shall retain and archive appropriate documentation supporting the expenditure information or data summary that is detailed in the reporting system, by archiving copies of the original supporting documentation in a digital, electronic, or other appropriate format of storage or imaging that allows departmental management and retrieval of the records. Supporting documentation may include contract or transactional documents, letter agreements, invoices, statements, payment vouchers, requests for object of expenditure payments to be made by or on behalf of the department, and other items establishing the purpose and payment of the expenditure. The documentation shall be retained for the applicable period as set forth in rules for records retention and destruction promulgated by the Texas State Library and Archives Commission.

Sec. 201.809. STATEWIDE TRANSPORTATION REPORT. (a) The department annually shall evaluate and publish a report about the status of each transportation goal for this state. The report must include:

(1) information about the progress of each long-term transportation goal that is identified by the statewide transportation plan;

(2) the status of each project identified as a major priority;

(3) a summary of the number of statewide project implementation benchmarks that have been completed; and

(4) information about the accuracy of previous department financial forecasts.

(b) The department shall disaggregate the information in the report by department district.

(c) The department shall provide a copy of the district report to each member of the legislature for each department district located in the member's legislative district, and at the request of a member, a department employee shall meet with the member to explain the report.

(d) The department shall provide a copy of each district report to the political subdivisions located in the department district that is the subject of the report, including:

(1) a municipality;

(2) a county; and

(3) a local transportation entity.

Sec. 201.810. DEPARTMENT INFORMATION CONSOLIDATION. (a) To the extent practicable and to avoid duplication of reporting requirements, the department may combine the reports required under this subchapter with reports required under other provisions of this code.

(b) The department shall develop a central location on the department's Internet website that provides easily accessible and searchable information to the public contained in the reports required under this subchapter and other provisions of this code.

Sec. 201.811. PUBLIC INVOLVEMENT POLICY. (a) The department shall develop and implement a policy for public involvement that guides and encourages public involvement with the department. The policy must:

(1) provide for the use of public involvement techniques that target different groups and individuals;

(2) encourage continuous contact between the department and persons outside the department throughout the transportation decision-making process;

(3) require the department to make efforts toward:

(A) clearly tying public involvement to decisions made by the department; and

(B) providing clear information to the public about specific outcomes of public input;

(4) apply to all public input with the department, including input:

(A) on statewide transportation policy-making;

(B) in connection with the environmental process relating to specific projects; and

(C) into the commission's rulemaking procedures; and

(5) require a person who makes or submits a public comment, at the time the comment is made or disclosed, to disclose in writing on a witness card whether the person:

(A) does business with the department;

(B) may benefit monetarily from a project; or

(C) is an employee of the department.

(b) The department shall document the number of positive, negative, or neutral public comments received regarding all environmental impact statements as expressed by the public through the department's public involvement process. The department shall:

(1) present this information to the commission in an open meeting; and

(2) report this information on the department's Internet website in a timely manner.

(b) Not later than September 1, 2011, the Texas Department of Transportation shall establish the central location on the department's Internet website required by Section 201.810, Transportation Code, as added by this section.

SECTION 25. Chapter 201, Transportation Code, is amended by adding Subchapter P to read as follows:

SUBCHAPTER P. UNIFIED TRANSPORTATION PROGRAM

Sec. 201.991. UNIFIED TRANSPORTATION PROGRAM. (a) The department shall develop a unified transportation program covering a period of 10 years to guide the development of and authorize construction of transportation projects. The program must:

(1) annually identify target funding levels; and

(2) list all projects that the department intends to develop or begin construction of during the program period.

(b) The commission shall adopt rules that:

(1) specify the criteria for selecting projects to be included in the program;

(2) define program funding categories, including categories for safety, maintenance, and mobility; and

(3) define each phase of a major transportation project, including the planning, programming, implementation, and construction phases.

(c) The department shall publish the entire unified transportation program and summary documents highlighting project benchmarks, priorities, and forecasts in appropriate media and on the department's Internet website in a format that is easily understandable by the public.

(d) In developing the rules required by this section, the commission shall collaborate with local transportation entities.

Sec. 201.992. ANNUAL UPDATE TO UNIFIED TRANSPORTATION PROGRAM. (a) The department shall annually update the unified transportation program.

(b) The annual update must include:

(1) the annual funding forecast required by Section 201.993;

(2) the list of major transportation projects required by Section 201.994(b);

and

(3) the category to which the project has been assigned and the priority of the project in the category under Section 201.995.

(c) The department shall collaborate with local transportation entities to develop the annual update to the unified transportation program.

Sec. 201.993. ANNUAL FUNDING AND CASH FLOW FORECASTS.

(a) The department annually shall:

(1) develop and publish a forecast of all funds the department expects to receive, including funds from this state and the federal government; and

(2) use that forecast to guide planning for the unified transportation program.

(b) The department shall collaborate with local transportation entities to develop scenarios for the forecast required by Subsection (a) based on mutually acceptable funding assumptions.

(c) Not later than September 1 of each year, the department shall prepare and publish a cash flow forecast for a period of 20 years.

Sec. 201.994. MAJOR TRANSPORTATION PROJECTS. (a) The commission by rule shall:

(1) establish criteria for designating a project as a major transportation project;

(2) develop benchmarks for evaluating the progress of a major transportation project and timelines for implementation and construction of a major transportation project; and

(3) determine which critical benchmarks must be met before a major transportation project may enter the implementation phase of the unified transportation program.

(b) The department annually shall update the list of projects that are designated as major transportation projects.

(c) In adopting rules required by this section, the commission shall collaborate with local transportation entities.

Sec. 201.995. PRIORITY PROJECTS IN PROGRAM CATEGORIES. (a) The commission by rule shall:

(1) establish categories in the unified transportation program;

(2) assign each project identified in the program to a category; and

(3) designate the priority ranking of each project within each category.

(b) The department shall collaborate with local transportation entities when assigning each project included in the unified transportation program to a category established under Subsection (a).

(c) The highest priority projects within an applicable category of the unified transportation program must be projects designated as major transportation projects.

Sec. 201.996. FUNDING ALLOCATION. (a) For each funding category established under Section 201.991(b)(2), the commission by rule shall specify the formulas for allocating funds to districts and metropolitan planning organizations for:

(1) preventive maintenance and rehabilitation of the state highway system in all districts;

(2) mobility and added capacity projects in metropolitan and urban areas;

(3) mobility and added capacity projects on major state highways that provide statewide connectivity between urban areas and highway system corridors;

(4) congestion mitigation and air quality improvement projects in nonattainment areas;

(5) metropolitan mobility and added capacity projects within the boundaries of designated metropolitan planning areas of metropolitan planning organizations located in a transportation management area;

(6) transportation enhancements project funding; and

(7) projects eligible for federal or state funding, as determined by the applicable district engineer.

(b) Subject to applicable state and federal law, the commission shall determine the allocation of funds in all of the other categories established under Section 201.991(b)(2), including a category for projects of specific importance to the state, including projects that:

(1) promote economic opportunity;

(2) increase efficiency on military deployment routes or that retain military assets; and

(3) maintain the ability of appropriate entities to respond to emergencies.

(c) The commission shall update the formulas established under this section at least every four years.

Sec. 201.997. FUND DISTRIBUTION. (a) The department shall allocate funds to the department districts based on the formulas adopted under Section 201.996.

(b) In distributing funds to department districts, the department may not exceed the cash flow forecast prepared and published under Section 201.993(c).

Sec. 201.998. WORK PROGRAM. (a) Each department district shall develop a consistently formatted work program based on the unified transportation program covering a period of four years that contains all projects that the district proposes to implement during that period.

(b) The work program must contain:

(1) information regarding the progress of projects designated as major transportation projects, according to project implementation benchmarks and timelines established under Section 201.994; and

(2) a summary of the progress on other district projects.

(c) The department shall use the work program to:

- (1) monitor the performance of the district; and
- (2) evaluate the performance of district employees.

(d) The department shall publish the work program in appropriate media and on the department's Internet website.

SECTION 26. Section 202.021, Transportation Code, is amended by amending Subsection (e) and adding Subsection (e-1) to read as follows:

(e) The commission may waive payment for real property transferred to a governmental entity under this section if:

(1) the estimated cost of future maintenance on the property equals or exceeds the fair value of the property; or

(2) the property is a highway right-of-way and the governmental entity assumes or has assumed jurisdiction, control, and maintenance of the right-of-way for public road purposes.

(e-1) A grant transferring real property under Subsection (e)(2) must contain a reservation providing that if property described by that subsection ceases to be used for public road purposes, that real property shall immediately and automatically revert to this state.

SECTION 27. Subchapter A, Chapter 222, Transportation Code, is amended by adding Sections 222.005 and 222.006 to read as follows:

Sec. 222.005. AUTHORIZATION TO PROVIDE ASSISTANCE TO EXPEDITE ENVIRONMENTAL REVIEW. (a) The department, a county, a regional tollway authority operating under Chapter 366, or a regional mobility authority operating under Chapter 370 may enter into an agreement to provide funds to a state or federal agency to expedite the agency's performance of its duties related to the environmental review process for the applicable entity's transportation projects, including those listed in the applicable metropolitan planning organization's long-range transportation plan under 23 U.S.C. Section 134.

(b) Except as provided by Subsection (c), an agreement entered into under this section:

(1) may specify transportation projects the applicable entity considers to be priorities for review; and

(2) must require the agency receiving money to complete the environmental review in less time than is customary for the completion of environmental review by that agency.

(c) The department may enter into a separate agreement for a transportation project that the department determines has regional importance.

(d) An agreement entered into under this section does not diminish or modify the rights of the public regarding review and comment on transportation projects.

(e) An entity entering into an agreement under this section shall make the agreement available on the entity's Internet website.

Sec. 222.006. ENVIRONMENTAL REVIEW CERTIFICATION PROCESS. The department by rule shall establish a process to certify department district environmental specialists to work on all documents related to state and federal environmental review processes. The certification process must:

- (1) be available to department employees; and
- (2) require continuing education for recertification.



SECTION 28. Subsection (i), Section 222.106, Transportation Code, is amended to read as follows:

(i) All or the portion specified by the municipality of the money deposited to a tax increment account must be used to fund the transportation project for which the zone was designated, as well as aesthetic improvements within the zone. Any remaining money deposited to the tax increment account may be used for other purposes as determined by the municipality. A municipality may issue bonds to pay all or part of the cost of the transportation project and may pledge and assign all or a specified amount of money in the tax increment account to secure repayment of those bonds. ~~Money deposited to a tax increment account must be used to fund projects authorized under Section 222.104, including the repayment of amounts owed under an agreement entered into under that section.~~

SECTION 29. Section 222.107, Transportation Code, is amended by amending Subsections (f) and (h) and adding Subsections (h-1) and (i-1) to read as follows:

(f) The order or resolution designating an area as a transportation reinvestment zone must:

(1) describe the boundaries of the zone with sufficient definiteness to identify with ordinary and reasonable certainty the territory included in the zone;

(2) provide that the zone takes effect immediately on adoption of the order or resolution and that the base year shall be the year of passage of the order or resolution or some year in the future; ~~and~~

(3) assign a name to the zone for identification, with the first zone designated by a county designated as "Transportation Reinvestment Zone Number One, County of (name of county)," and subsequently designated zones assigned names in the same form numbered consecutively in the order of their designation;

(4) designate the base year for purposes of establishing the tax increment base of the county; and

(5) establish an ad valorem tax increment account for the zone.

(h) The commissioners court may:

(1) from taxes collected on property in a zone, pay into a tax increment account for the zone an amount equal to the tax increment produced by the county less any amounts allocated under previous agreements, including agreements under Section 381.004, Local Government Code, or Chapter 312, Tax Code;

(2) by order or resolution ~~may~~ enter into an agreement with the owner of any real property located in the transportation reinvestment zone to abate all or a portion of the ad valorem taxes imposed by the county on the owner's property;

(3) by order or resolution elect to abate all or a portion of the ad valorem taxes imposed by the county on all real property in a zone; or

(4) grant other relief from ad valorem taxes on property in a zone.

(h-1) All abatements or other relief granted by the commissioners court in a transportation reinvestment zone must be equal in rate. ~~In the alternative, the commissioners court by order or resolution may elect to abate a portion of the ad valorem taxes imposed by the county on all real property located in the zone.~~ In any ad valorem tax year, the total amount of the taxes abated or the total amount of relief granted under this section may not exceed the amount calculated under Subsection

(a)(1) for that year, less any amounts allocated under previous agreements, including agreements under Section 381.004, Local Government Code, or Chapter 312, Tax Code.

(i-1) In the event a county collects a tax increment, it may issue bonds to pay all or part of the cost of a transportation project and may pledge and assign all or a specified amount of money in the tax increment account to secure those bonds.

SECTION 30. Section 223.002, Transportation Code, is amended to read as follows:

Sec. 223.002. NOTICE OF BIDS ~~[BY PUBLICATION]~~. ~~[(a)]~~ The department shall give ~~[publish]~~ notice regarding ~~[of]~~ the time and place at which bids on a contract will be opened and the contract awarded. The commission by rule shall determine the most effective method for providing the notice required by this section.

~~[(b) The notice must be published in a newspaper published in the county in which the improvement is to be made once a week for at least two weeks before the time set for awarding the contract and in two other newspapers that the department may designate.~~

~~[(c) Instead of the notice required by Subsection (b), if the department estimates that the contract involves an amount less than \$300,000, notice may be published in two successive issues of a newspaper published in the county in which the improvement is to be made.~~

~~[(d) If a newspaper is not published in the county in which the improvement is to be made, notice shall be published in a newspaper published in the county:~~

~~[(1) nearest the county seat of the county in which the improvement is to be made; and~~

~~[(2) in which a newspaper is published.]~~

SECTION 31. Section 223.201, Transportation Code, is amended by amending Subsections (f) and (i) and adding Subsections (j), (k), (l), and (m) to read as follows:

(f) The department may ~~[Except as provided by Subsections (h) and (i), the authority to]~~ enter into a comprehensive development agreement only for all or part of:

(1) the State Highway 99 (Grand Parkway) project;

(2) the Interstate Highway 35E managed lanes project in Dallas and Denton Counties from Interstate Highway 635 to U.S. Highway 380;

(3) the North Tarrant Express project in Tarrant and Dallas Counties, including:

(A) on State Highway 183 from State Highway 121 to State Highway 161 (Segment 2E);

(B) on Interstate Highway 35W from Interstate Highway 30 to State Highway 114 (Segments 3A, 3B, and 3C); and

(C) on Interstate Highway 820 from State Highway 183 North to south of Randol Mill Road (Segment 4);

(4) the State Highway 183 managed lanes project in Dallas County from State Highway 161 to Interstate Highway 35E;

(5) the State Highway 249 project in Harris and Montgomery Counties from Spring Cypress Road to Farm-to-Market Road 1774;

(6) the State Highway 288 project in Brazoria County and Harris County;  
and

(7) the U.S. Highway 290 Hempstead managed lanes project in Harris County from Interstate Highway 610 to State Highway 99 [agreements provided by this section expires on August 31, 2009].

(i) The authority to enter into a comprehensive development agreement for a project described by Subsection (f), other than the State Highway 99 (Grand Parkway) project [exempted from Subsection (f) or Section 223.210(b)] expires August 31, 2015 [2011].

(j) Before the department may enter into a comprehensive development agreement under Subsection (f), the department must:

(1) obtain, not later than August 31, 2013, the appropriate environmental clearance for any project other than the State Highway 99 (Grand Parkway) project;  
and

(2) present to the commission a full financial plan for the project, including costing methodology and cost proposals.

(k) Not later than December 1, 2012, the department shall present a report to the commission on the status of a project described by Subsection (f). The report must include:

(1) the status of the project's environmental clearance;  
(2) an explanation of any project delays; and  
(3) if the procurement is not completed, the anticipated date for the completion of the procurement.

(l) In this section, "environmental clearance" means:

(1) a finding of no significant impact has been issued for the project; or  
(2) for a project for which an environmental impact statement is prepared, a record of decision has been issued for that project.

(m) The department may not develop a project under this section as a project under Chapter 227.

SECTION 32. Subchapter E, Chapter 223, Transportation Code, is amended by adding Sections 223.2011 and 223.2012 to read as follows:

Sec. 223.2011. LIMITED AUTHORITY FOR CERTAIN PROJECTS USING COMPREHENSIVE DEVELOPMENT AGREEMENTS. (a) Notwithstanding Sections 223.201(f) and 370.305(c), the department or an authority under Section 370.003 may enter into a comprehensive development agreement relating to improvements to, or construction of:

(1) the Loop 1 (MoPac Improvement) project from Farm-to-Market Road 734 to Cesar Chavez Street;

(2) the U.S. 183 (Bergstrom Expressway) project from Springdale Road to Patton Avenue; or

(3) a project consisting of the construction of:

(A) the Outer Parkway Project from U.S. Highway 77/83 to Farm-to-Market Road 1847; and

(B) the South Padre Island Second Access Causeway Project from State Highway 100 to Park Road 100.

(b) Before the department or an authority may enter into a comprehensive development agreement under this section, the department or the authority, as applicable, must meet the requirements under Section 223.201(j).

(c) Not later than December 1, 2012, the department or the authority, as applicable, shall present a report to the commission on the status of a project described by Subsection (a). The report must include:

(1) the status of the project's environmental clearance;

(2) an explanation of any project delays; and

(3) if the procurement is not completed, the anticipated date for the completion of the procurement.

(d) The department may not provide any financial assistance to an authority to pay for the costs of procuring an agreement under this section.

(e) In this section, "environmental clearance" means:

(1) a finding of no significant impact has been issued for the project; or

(2) for a project for which an environmental impact statement is prepared, a record of decision has been issued for that project.

(f) The authority to enter into a comprehensive development agreement under this section expires August 31, 2015.

Sec. 223.2012. NORTH TARRANT EXPRESS PROJECT PROVISIONS.

(a) In this section, the North Tarrant Express project is the project described by Section 223.201(f)(3) entered into on June 23, 2009.

(b) The comprehensive development agreement for the North Tarrant Express project may provide for negotiating and entering into facility agreements for future phases or segments of the project at the times that the department considers advantageous to the department.

(c) The department is not required to use any further competitive procurement process to enter into one or more related facility agreements with the developer or an entity controlled by, to be controlled by, or to be under common control with the developer under the comprehensive development agreement for the North Tarrant Express project.

(d) A facility agreement for the North Tarrant Express project must terminate on or before June 22, 2061. A facility agreement may not be extended or renewed beyond that date.

(e) The department may include or negotiate any matter in a comprehensive development agreement for the North Tarrant Express project that the department considers advantageous to the department.

(f) The comprehensive development agreement for the North Tarrant Express project may provide the developer or an entity controlled by, to be controlled by, or to be under common control with the developer with a right of first negotiation under which the developer may elect to negotiate with the department and enter into one or more related facility agreements for future phases or segments of the project.

SECTION 33. Section 223.203, Transportation Code, is amended by adding Subsections (f-2), (l-1), (l-2), and (p) and amending Subsection (g) to read as follows:

(f-2) A private entity responding to a request for detailed proposals issued under Subsection (f) must identify:

(1) companies that will fill key project roles, including project management, lead design firm, quality control management, and quality assurance management; and

(2) entities that will serve as key task leaders for geotechnical, hydraulics and hydrology, structural, environmental, utility, and right-of-way issues.

(g) In issuing a request for detailed proposals under Subsection (f), the department may solicit input from entities qualified under Subsection (e) or any other person. The department may also solicit input regarding alternative technical concepts after issuing a request under Subsection (f). A technical solution presented with a proposal must be fully responsive to, and have demonstrated resources to be able to fulfill, all technical requirements for the project, including specified quality assurance and quality control program requirements, safety program requirements, and environmental program requirements. A proposal that includes a technical solution that does not meet those requirements is ineligible for further consideration.

(l-1) A private entity selected for a comprehensive development agreement may not make changes to the companies or entities identified under Subsection (f-2) unless the original company or entity:

(1) is no longer in business, is unable to fulfill its legal, financial, or business obligations, or can no longer meet the terms of the teaming agreement with the private entity;

(2) voluntarily removes itself from the team;

(3) fails to provide a sufficient number of qualified personnel to fulfill the duties identified during the proposal stage; or

(4) fails to negotiate in good faith in a timely manner in accordance with provisions established in the teaming agreement proposed for the project.

(l-2) If the private entity makes team changes in violation of Subsection (l-1), any cost savings resulting from the change accrue to the state and not to the private entity.

(p) All teaming agreements and subconsultant agreements must be executed and provided to the department before the execution of the comprehensive development agreement.

SECTION 34. Chapter 223, Transportation Code, is amended by adding Subchapter F to read as follows:

#### SUBCHAPTER F. DESIGN-BUILD CONTRACTS

Sec. 223.241. DEFINITIONS. In this subchapter:

(1) "Design-build contractor" means a partnership, corporation, or other legal entity or team that includes an engineering firm and a construction contractor qualified to engage in the construction of highway projects in this state.

(2) "Design-build method" means a project delivery method by which an entity contracts with a single entity to provide both design and construction services for the construction, rehabilitation, alteration, or repair of a facility.

Sec. 223.242. SCOPE OF AND LIMITATIONS ON CONTRACTS.

(a) Notwithstanding the requirements of Subchapter A and Chapter 2254, Government Code, the department may use the design-build method for the design, construction, expansion, extension, related capital maintenance, rehabilitation, alteration, or repair of a highway project.

(b) A design-build contract under this subchapter may not grant to a private entity:

(1) a leasehold interest in the highway project; or

(2) the right to operate or retain revenue from the operation of a toll project.

(c) In using the design-build method and in entering into a contract for the services of a design-build contractor, the department and the design-build contractor shall follow the procedures and requirements of this subchapter.

(d) The department may enter into a design-build contract for a highway project with a construction cost estimate of \$50 million or more to the department.

(d-1) The department may not enter into more than three contracts under this section in each fiscal year. This subsection expires August 31, 2015.

(e) Money disbursed by the department to pay engineering costs for the design of a project incurred by the design-build contractor under a design-build contract may not be included in the amounts under Section 223.041:

(1) required to be spent in a state fiscal biennium for engineering-related services; or

(2) appropriated in Strategy A.1.1, Plan/Design/Manage or Strategy A.1.2, Contracted Planning and Design of the General Appropriations Act.

Sec. 223.243. USE OF ENGINEER OR ENGINEERING FIRM. (a) To act as the department's representative, independent of a design-build contractor, for the procurement process and for the duration of the work on a highway project, the department shall select or designate:

(1) an engineer;

(2) a qualified firm, selected in accordance with Section 2254.004, Government Code, who is independent of the design-build contractor; or

(3) a general engineering consultant that was previously selected by the department and is selected or designated in accordance with Section 2254.004, Government Code.

(b) The selected or designated engineer or firm has full responsibility for complying with Chapter 1001, Occupations Code.

Sec. 223.244. OTHER PROFESSIONAL SERVICES. (a) The department shall provide or contract for, independently of the design-build contractor, the following services as necessary for the acceptance of the highway project by the department:

(1) inspection services;

(2) construction materials engineering and testing; and

(3) verification testing services.

(b) The department shall ensure that the engineering services contracted for under this section are selected based on demonstrated competence and qualifications.

(c) This section does not preclude a design-build contractor from providing construction quality assurance and quality control under a design-build contract.

Sec. 223.245. REQUEST FOR QUALIFICATIONS. (a) For any highway project to be delivered through the design-build method, the department must prepare and issue a request for qualifications. A request for qualifications must include:

(1) information regarding the proposed project's location, scope, and limits;

(2) information regarding funding that may be available for the project;

(3) criteria that will be used to evaluate the qualifications statements, which must include a proposer's qualifications, experience, technical competence, and ability to develop the project;

(4) the relative weight to be given to the criteria; and

(5) the deadline by which qualifications statements must be received by the department.

(b) The department shall publish notice advertising the issuance of a request for qualifications in the Texas Register and on the department's Internet website.

(c) The department shall evaluate each qualifications statement received in response to a request for qualifications based on the criteria identified in the request. The department may interview responding proposers. Based on the department's evaluation of qualifications statements and interviews, if any, the department shall qualify or short-list proposers to submit proposals.

(d) The department shall qualify or short-list at least two private entities to submit proposals under Section 223.246, but may not qualify or short-list more private entities than the number of private entities designated on the request for qualifications.

(e) The department may withdraw a request for qualifications or request for proposals at any time.

Sec. 223.246. REQUEST FOR PROPOSALS. (a) The department shall issue a request for proposals to proposers short-listed under Section 223.245. A request for proposals must include:

(1) information on the overall project goals;

(2) publicly available cost estimates for the design-build portion of the project;

(3) materials specifications;

(4) special material requirements;

(5) a schematic design approximately 30 percent complete;

(6) known utilities, provided that the department is not required to undertake an effort to locate utilities;

(7) quality assurance and quality control requirements;

(8) the location of relevant structures;

(9) notice of any rules or goals adopted by the department relating to awarding contracts to disadvantaged business enterprises or small business enterprises;

(10) available geotechnical or other information related to the project;

(11) the status of any environmental review of the project;

(12) detailed instructions for preparing the technical proposal required under Subsection (d), including a description of the form and level of completeness of drawings expected;

(13) the relative weighting of the technical and cost proposals required under Subsection (d) and the formula by which the proposals will be evaluated and ranked; and

(14) the criteria to be used in evaluating the technical proposals, and the relative weighting of those criteria.

(b) The formula used to evaluate proposals under Subsection (a)(13) must allocate at least 70 percent of the weighting to the cost proposal.

(c) A request for proposals must also include a general form of the design-build contract that the department proposes and that may be modified as a result of negotiations prior to contract execution.

(d) Each response to a request for proposals must include a sealed technical proposal and a separate sealed cost proposal submitted to the department by the date specified in the request for proposals.

(e) The technical proposal must address:

(1) the proposer's qualifications and demonstrated technical competence, unless that information was submitted to the department and evaluated by the department under Section 223.245;

(2) the feasibility of developing the project as proposed, including identification of anticipated problems;

(3) the proposed solutions to anticipated problems;

(4) the ability of the proposer to meet schedules;

(5) the conceptual engineering design proposed; and

(6) any other information requested by the department.

(f) The department may provide for the submission of alternative technical concepts by a proposer. If the department provides for the submission of alternative technical concepts, the department must prescribe a process for notifying a proposer whether the proposer's alternative technical concepts are approved for inclusion in a technical proposal.

(g) The cost proposal must include:

(1) the cost of delivering the project; and

(2) the estimated number of days required to complete the project.

(h) A response to a request for proposals shall be due not later than the 180th day after the final request for proposals is issued by the department. This subsection does not preclude the release by the department of a draft request for proposals for purposes of receiving input from short-listed proposers.

(i) The department shall first open, evaluate, and score each responsive technical proposal submitted on the basis of the criteria described in the request for proposals and assign points on the basis of the weighting specified in the request for proposals. The department may reject as nonresponsive any proposer that makes a significant change to the composition of its design-build team as initially submitted that was not approved by the department as provided in the request for proposals. The department shall subsequently open, evaluate, and score the cost proposals from proposers that submitted a responsive technical proposal and assign points on the basis of the weighting specified in the request for proposals. The department shall rank the proposers in accordance with the formula provided in the request for proposals.

(j) If the department receives only one response to a request for proposals, an independent bid evaluation by the department must confirm and validate that:

(1) the project procurement delivered value for the public investment; and

(2) no anticompetitive practices were involved in the procurement.



Sec. 223.247. NEGOTIATION. (a) After ranking the proposers under Section 223.246(i), the department shall first attempt to negotiate a contract with the highest-ranked proposer. The department may include in the negotiations alternative technical concepts proposed by other proposers, subject to Section 223.249.

(b) If the department is unable to negotiate a satisfactory contract with the highest-ranked proposer, the department shall, formally and in writing, end all negotiations with that proposer and proceed to negotiate with the next proposer in the order of the selection ranking until a contract is reached or negotiations with all ranked proposers end.

Sec. 223.248. ASSUMPTION OF RISKS AND COSTS. (a) Except as provided by Subsection (b), the department shall assume:

(1) all risks and costs associated with:

(A) changes and modifications to the scope of the project requested by the department;

(B) unknown or differing conditions at the site of the project;

(C) applicable environmental clearance and other regulatory permitting necessary for the project; and

(D) natural disasters and other force majeure events; and

(2) all costs associated with property acquisition, other than costs associated with acquiring a temporary easement or work area used for staging or constructing the project.

(b) A design-build contractor may assume some or all of the risks or costs described by Subsection (a) if the terms of the assumption are reflected in the final request for proposals, including all supplements to the request.

Sec. 223.249. STIPEND AMOUNT FOR UNSUCCESSFUL PROPOSERS.

(a) The department shall pay an unsuccessful proposer that submits a responsive proposal a stipend for the work product contained in the proposal that the department determines can be used by the department in the performance of the department's functions. The stipend must be a minimum of twenty-five hundredths of one percent of the contract amount and must be specified in the initial request for proposals, but may not exceed the value of the work product contained in the proposal that the department determines can be used by the department in the performance of the department's functions. If the department determines that the value of the work product is less than the stipend amount, the department shall provide the proposer with a detailed explanation of the valuation, including the methodology and assumptions used by the department in determining the value of the work product. After payment of the stipend, the department may make use of any work product contained in the unsuccessful proposal, including the techniques, methods, processes, and information contained in the proposal. The use by the department of any design element contained in an unsuccessful proposal is at the sole risk and discretion of the department and does not confer liability on the recipient of the stipend under this subsection.

(b) In a request for proposals, the department shall provide for the payment of a partial stipend in the event that a procurement is terminated before the execution of a design-build contract.

Sec. 223.250. PERFORMANCE OR PAYMENT BOND. (a) The department shall require a design-build contractor to provide:

(1) a performance and payment bond;

(2) an alternative form of security; or

(3) a combination of the forms of security described by Subdivisions (1) and

(2).

(b) Except as provided by Subsection (c), a performance and payment bond, alternative form of security, or combination of the forms shall be in an amount equal to the cost of constructing or maintaining the project.

(c) If the department determines that it is impracticable for a private entity to provide security in the amount described by Subsection (b), the department shall set the amount of the security.

(d) A performance and payment bond is not required for the portion of a design-build contract under this section that includes design services only.

(e) The department may require one or more of the following alternative forms of security:

(1) a cashier's check drawn on a financial entity specified by the department;

(2) a United States bond or note;

(3) an irrevocable bank letter of credit provided by a bank meeting the requirements specified in the request for proposals; or

(4) any other form of security determined suitable by the department.

(f) Section 223.006 of this code and Chapter 2253, Government Code, do not apply to a bond or alternative form of security required under this section.

SECTION 35. Subsection (b), Section 228.012, Transportation Code, is amended to read as follows:

(b) The department shall hold money in a subaccount in trust for the benefit of the region in which a project or system is located and may assign the responsibility for allocating money in a subaccount to a metropolitan planning organization in which the region is located for projects approved by the department. Except as provided by Subsection (c), at the time the project is approved by the department money shall be allocated and distributed to projects authorized by Section 228.0055 or Section 228.006, as applicable.

SECTION 36. Subchapter A, Chapter 228, Transportation Code, is amended by adding Section 228.013 to read as follows:

Sec. 228.013. DETERMINATION OF FINANCIAL TERMS FOR CERTAIN TOLL PROJECTS. (a) This section applies only to a proposed department toll project in which a private entity has a financial interest in the project's performance and for which:

(1) funds dedicated to or controlled by a region will be used;

(2) right-of-way is provided by a municipality or county; or

(3) revenues dedicated to or controlled by a municipality or county will be used.

(b) The distribution of a project's financial risk, the method of financing for a project, and the tolling structure and methodology must be determined by a committee consisting of the following members:

- (1) a representative of the department;
  - (2) a representative of any local toll project entity, as defined by Section 371.001, for the area in which the project is located;
  - (3) a representative of the applicable metropolitan planning organization;
- and
- (4) a representative of each municipality or county that has provided revenue or right-of-way as described by Subsection (a).

SECTION 37. Section 370.305, Transportation Code, is amended to read as follows:

Sec. 370.305. COMPREHENSIVE DEVELOPMENT AGREEMENTS.

(a) ~~[An authority may use a comprehensive development agreement with a private entity to construct, maintain, repair, operate, extend, or expand a transportation project.~~

~~[(b)]~~ A comprehensive development agreement is an agreement with a private entity that, at a minimum, provides for the design and construction of a transportation project, ~~that [and] may [also] provide for the financing, acquisition, maintenance, or operation of a transportation project, and that entitles the private entity to:~~

- (1) a leasehold interest in the transportation project; or
- (2) the right to operate or retain revenue from the operation of the transportation project.

~~(b) [(e)]~~ An authority may negotiate provisions relating to professional and consulting services provided in connection with a comprehensive development agreement.

~~(c) [(d)]~~ Except as provided by this chapter, an authority's ~~[Subsections (e) and (f), the]~~ authority to enter into a comprehensive development agreement ~~[agreements under this section]~~ expires on August 31, 2011 ~~[2009]~~.

~~[(e)]~~ ~~Subsection (d) does not apply to a comprehensive development agreement that does not grant a private entity a right to finance a toll project or a comprehensive development agreement in connection with a project:~~

~~[(1) that includes one or more managed lane facilities to be added to an existing controlled access highway;~~

~~[(2) the major portion of which is located in a nonattainment or near nonattainment air quality area as designated by the United States Environmental Protection Agency; and~~

~~[(3) for which the department has issued a request for qualifications before the effective date of this subsection.~~

~~[(f)]~~ ~~The authority to enter into a comprehensive development agreement for a project exempted from Subsection (d) or Section 223.210(b) expires August 31, 2011.]~~

SECTION 38. Chapter 370, Transportation Code, is amended by adding Subchapter K to read as follows:

SUBCHAPTER K. DESIGN-BUILD CONTRACTSSec. 370.401. SCOPE OF AND LIMITATIONS ON CONTRACTS.

(a) Notwithstanding the requirements of Chapter 2254, Government Code, an authority may use the design-build method for the design, construction, financing, expansion, extension, related capital maintenance, rehabilitation, alteration, or repair of a transportation project.

(b) A design-build contract under this subchapter may not grant to a private entity:

(1) a leasehold interest in the transportation project; or

(2) the right to operate or retain revenue from the operation of the transportation project.

(c) In using the design-build method and in entering into a contract for the services of a design-build contractor, the authority and the design-build contractor shall follow the procedures and requirements of this subchapter.

(d) An authority may enter into not more than two design-build contracts for transportation projects in any fiscal year.

Sec. 370.402. DEFINITIONS. In this subchapter:

(1) "Design-build contractor" means a partnership, corporation, or other legal entity or team that includes an engineering firm and a construction contractor qualified to engage in the construction of transportation projects in this state.

(2) "Design-build method" means a project delivery method by which an entity contracts with a single entity to provide both design and construction services for the construction, rehabilitation, alteration, or repair of a facility.

Sec. 370.403. USE OF ENGINEER OR ENGINEERING FIRM. (a) To act as an authority's representative, independent of a design-build contractor, for the procurement process and for the duration of the work on a transportation project, an authority shall select or designate:

(1) an engineer;

(2) a qualified firm, selected in accordance with Section 2254.004, Government Code, that is independent of the design-build contractor; or

(3) a general engineering consultant that was previously selected by an authority and is selected or designated in accordance with Section 2254.004, Government Code.

(b) The selected or designated engineer or firm has full responsibility for complying with Chapter 1001, Occupations Code.

Sec. 370.404. OTHER PROFESSIONAL SERVICES. (a) An authority shall provide or contract for, independently of the design-build firm, the following services as necessary for the acceptance of the transportation project by the authority:

(1) inspection services;

(2) construction materials engineering and testing; and

(3) verification testing services.

(b) An authority shall ensure that the engineering services contracted for under this section are selected based on demonstrated competence and qualifications.

(c) This section does not preclude the design-build contractor from providing construction quality assurance and quality control under a design-build contract.

Sec. 370.405. REQUEST FOR QUALIFICATIONS. (a) For any transportation project to be delivered through the design-build method, an authority must prepare and issue a request for qualifications. A request for qualifications must include:

(1) information regarding the proposed project's location, scope, and limits;  
(2) information regarding funding that may be available for the project and a description of the financing to be requested from the design-build contractor, as applicable;

(3) criteria that will be used to evaluate the proposals, which must include a proposer's qualifications, experience, technical competence, and ability to develop the project;

(4) the relative weight to be given to the criteria; and

(5) the deadline by which proposals must be received by the authority.

(b) An authority shall publish notice advertising the issuance of a request for qualifications in the Texas Register and on an Internet website maintained by the authority.

(c) An authority shall evaluate each qualifications statement received in response to a request for qualifications based on the criteria identified in the request. An authority may interview responding proposers. Based on the authority's evaluation of qualifications statements and interviews, if any, an authority shall qualify or short-list proposers to submit detailed proposals.

(d) An authority shall qualify or short-list at least two, but no more than five, firms to submit detailed proposals under Section 370.406. If an authority receives only one responsive proposal to a request for qualifications, the authority shall terminate the procurement.

(e) An authority may withdraw a request for qualifications or request for detailed proposals at any time.

Sec. 370.406. REQUEST FOR DETAILED PROPOSALS. (a) An authority shall issue a request for detailed proposals to proposers qualified or short-listed under Section 370.405. A request for detailed proposals must include:

(1) information on the overall project goals;

(2) the authority's cost estimates for the design-build portion of the work;

(3) materials specifications;

(4) special material requirements;

(5) a schematic design approximately 30 percent complete;

(6) known utilities, provided that an authority is not required to undertake an effort to locate utilities;

(7) quality assurance and quality control requirements;

(8) the location of relevant structures;

(9) notice of any rules or goals adopted by the authority pursuant to Section 370.183 relating to awarding contracts to disadvantaged businesses;

(10) available geotechnical or other information related to the project;

(11) the status of any environmental review of the project;

(12) detailed instructions for preparing the technical proposal required under Subsection (c), including a description of the form and level of completeness of drawings expected;

(13) the relative weighting of the technical and cost proposals required under Subsection (c) and the formula by which the proposals will be evaluated and ranked, provided that the formula shall allocate at least 70 percent of the weighting to the cost proposal; and

(14) the criteria and weighting for each element of the technical proposal.

(b) A request for detailed proposals shall also include a general form of the design-build contract that the authority proposes if the terms of the contract may be modified as a result of negotiations prior to contract execution.

(c) Each response to a request for detailed proposals must include a sealed technical proposal and a separate sealed cost proposal.

(d) The technical proposal must address:

(1) the proposer's qualifications and demonstrated technical competence, provided that the proposer shall not be requested to resubmit any information that was submitted and evaluated pursuant to Section 370.405(a)(3);

(2) the feasibility of developing the project as proposed, including identification of anticipated problems;

(3) the proposed solutions to anticipated problems;

(4) the ability of the proposer to meet schedules;

(5) the conceptual engineering design proposed; and

(6) any other information requested by the authority.

(e) An authority may provide for the submission of alternative technical concepts by a proposer. If an authority provides for the submission of alternative technical concepts, the authority must prescribe a process for notifying a proposer whether the proposer's alternative technical concepts are approved for inclusion in a technical proposal.

(f) The cost proposal must include:

(1) the cost of delivering the project;

(2) the estimated number of days required to complete the project; and

(3) any terms for financing for the project that the proposer plans to provide.

(g) A response to a request for detailed proposals shall be due not later than the 180th day after the final request for detailed proposals is issued by the authority. This subsection does not preclude the release by the authority of a draft request for detailed proposals for purposes of receiving input from short-listed proposers.

(h) An authority shall first open, evaluate, and score each responsive technical proposal submitted on the basis of the criteria described in the request for detailed proposals and assign points on the basis of the weighting specified in the request for detailed proposals. The authority may reject as nonresponsive any proposer that makes a significant change to the composition of its design-build team as initially submitted that was not approved by the authority as provided in the request for detailed proposals. The authority shall subsequently open, evaluate, and score the cost proposals from proposers that submitted a responsive technical proposal and assign points on the basis of the weighting specified in the request for detailed proposals. The authority shall rank the proposers in accordance with the formula provided in the request for detailed proposals.

Sec. 370.407. NEGOTIATION. (a) After ranking the proposers under Section 370.406(h), an authority shall first attempt to negotiate a contract with the highest-ranked proposer. If an authority has committed to paying a stipend to unsuccessful proposers in accordance with Section 370.409, an authority may include in the negotiations alternative technical concepts proposed by other proposers.

(b) If an authority is unable to negotiate a satisfactory contract with the highest-ranked proposer, the authority shall, formally and in writing, end all negotiations with that proposer and proceed to negotiate with the next proposer in the order of the selection ranking until a contract is reached or negotiations with all ranked proposers end.

Sec. 370.408. ASSUMPTION OF RISKS. (a) Unless otherwise provided in the final request for detailed proposals, including all addenda and supplements to that request, the authority shall assume:

(1) all risks and costs associated with:

(A) scope changes and modifications, as requested by the authority;

(B) unknown or differing site conditions;

(C) environmental clearance and other regulatory permitting for the

project; and

(D) natural disasters and other force majeure events; and

(2) all costs associated with property acquisition, excluding costs associated with acquiring a temporary easement or work area associated with staging or construction for the project.

(b) Nothing herein shall prevent the parties from agreeing that the design-build contractor should assume some or all of the risks or costs set forth in Subsection (a) provided that such agreement is reflected in the final request for detailed proposals, including all addenda and supplements to the agreement.

Sec. 370.409. STIPEND AMOUNT FOR UNSUCCESSFUL PROPOSERS.

(a) Pursuant to the provisions of the request for detailed proposals, an authority shall pay an unsuccessful proposer that submits a responsive proposal to the request for detailed proposals a stipend for work product contained in the proposal. The stipend must be specified in the initial request for detailed proposals in an amount of at least two-tenths of one percent of the contract amount, but may not exceed the value of the work product contained in the proposal to the authority. In the event the authority determines that the value of the work product is less than the stipend amount, the authority must provide the proposer with a detailed explanation of the valuation, including the methodology and assumptions used in determining value. After payment of the stipend, the authority may make use of any work product contained in the unsuccessful proposal, including the techniques, methods, processes, and information contained in the proposal. The use by the authority of any design element contained in an unsuccessful proposal is at the sole risk and discretion of the authority and does not confer liability on the recipient of the stipend under this subsection.

(b) An authority may provide in a request for detailed proposals for the payment of a partial stipend in the event a procurement is terminated prior to securing project financing and execution of a design-build contract.

Sec. 370.410. PERFORMANCE AND PAYMENT BOND. (a) An authority shall require a design-build contractor to provide:

- (1) a performance and payment bond;
- (2) an alternative form of security; or
- (3) a combination of the forms of security described by Subdivisions (1) and

(2).

(b) Except as provided by Subsection (c), a performance and payment bond, alternative form of security, or combination of the forms of security shall be in an amount equal to the cost of constructing or maintaining the project.

(c) If the authority determines that it is impracticable for a private entity to provide security in the amount described by Subsection (b), the authority shall set the amount of the security.

(d) A performance and payment bond is not required for the portion of a design-build contract under this section that includes design services only.

(e) An authority may require one or more of the following alternative forms of security:

- (1) a cashier's check drawn on a financial entity specified by the authority;
- (2) a United States bond or note;
- (3) an irrevocable bank letter of credit drawn from a federal or Texas

chartered bank; or

- (4) any other form of security determined suitable by the authority.

(f) Chapter 2253, Government Code, does not apply to a bond or alternative form of security required under this section.

SECTION 39. Section 391.004, Transportation Code, is amended to read as follows:

Sec. 391.004. DISPOSITION OF FEES [~~TEXAS HIGHWAY BEAUTIFICATION FUND ACCOUNT~~]. [~~The Texas highway beautification fund account is an account in the general revenue fund.~~] Money the commission receives under this chapter shall be deposited to the credit of the state [~~Texas~~] highway [~~beautification~~] fund [~~account~~]. The commission shall use money in the state [~~Texas~~] highway [~~beautification~~] fund [~~account~~] to administer this chapter and Chapter 394.

SECTION 40. (a) Subchapter A, Chapter 391, Transportation Code, is amended by adding Section 391.006 to read as follows:

Sec. 391.006. COMPLAINTS; RECORDS. (a) The commission by rule shall establish procedures for accepting and resolving written complaints related to outdoor advertising under this chapter. The rules must include:

(1) a process to make information available describing the department's procedures for complaint investigation and resolution, including making information about the procedures available on the department's Internet website;

(2) a system to prioritize complaints so that the most serious complaints receive attention before less serious complaints; and

(3) a procedure for compiling and reporting detailed annual statistics about complaints.

(b) The department shall develop and provide a simple form for filing complaints with the department.



(c) The department shall provide to each person who files a written complaint with the department, and to each person who is the subject of a complaint, information about the department's policies and procedures relating to complaint investigation and resolution.

(d) The department shall keep, in accordance with the department's approved records retention schedule, an information file about each written complaint filed with the department that the department has authority to resolve. The department shall keep the following information for each complaint for the purpose of enforcing this chapter:

- (1) the date the complaint is filed;
- (2) the name of the person filing the complaint;
- (3) the subject matter of the complaint;
- (4) each person contacted in relation to the complaint;
- (5) a summary of the results of the review or investigation of the complaint;

and

(6) if the department does not take action on the complaint, an explanation of the reasons that action was not taken.

(e) If a written complaint is filed with the department that the department has authority to resolve, the department, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an ongoing department investigation.

(b) The Texas Transportation Commission shall adopt rules under Section 391.006, Transportation Code, as added by this section, not later than September 1, 2012.

SECTION 41. Subchapter B, Chapter 391, Transportation Code, is amended by adding Section 391.0355 to read as follows:

Sec. 391.0355. ADMINISTRATIVE PENALTY. (a) In lieu of a suit to collect a civil penalty, the commission, after notice and an opportunity for a hearing before the commission, may impose an administrative penalty against a person who violates this chapter or a rule adopted by the commission under this chapter. Each day a violation continues is a separate violation.

(b) The amount of the administrative penalty may not exceed the maximum amount of a civil penalty under Section 391.035.

(c) A proceeding under this section is a contested case under Chapter 2001, Government Code.

(d) Judicial review of an appeal of an administrative penalty imposed under this section is under the substantial evidence rule.

(e) An administrative penalty collected under this section shall be deposited to the credit of the state highway fund.

SECTION 42. Section 391.063, Transportation Code, is amended to read as follows:

Sec. 391.063. LICENSE FEE. The commission may set the amount of a license fee according to a scale graduated by the number of units of outdoor advertising and the number of off-premise signs under Chapter 394 owned by a license applicant.

SECTION 43. Subsection (b), Section 391.065, Transportation Code, is amended to read as follows:

(b) For the efficient management and administration of this chapter and to reduce the number of employees required to enforce this chapter, the commission shall adopt rules for issuing standardized forms that are for submission by license holders and applicants and that provide for an accurate showing of the number, location, or other information required by the commission for each license holder's or applicant's outdoor advertising or off-premise signs under Chapter 394.

SECTION 44. Section 391.066, Transportation Code, is amended by adding Subsection (d) to read as follows:

(d) The commission may deny the renewal of a license holder's license if the license holder has not complied with the permit requirements of this chapter or Chapter 394.

SECTION 45. Subchapter C, Chapter 391, Transportation Code, is amended by adding Section 391.0661 to read as follows:

Sec. 391.0661. APPLICABILITY OF LICENSE. In addition to authorizing a person to erect or maintain outdoor advertising, a license issued under this chapter authorizes a person to erect or maintain an off-premise sign under Chapter 394.

SECTION 46. Section 394.005, Transportation Code, is amended to read as follows:

Sec. 394.005. DISPOSITION OF FEES. Money the commission receives [~~A registration fee collected~~] under this chapter [~~Section 394.048 by the commission~~] shall be deposited to the credit of the state highway fund.

SECTION 47. (a) Subchapter A, Chapter 394, Transportation Code, is amended by adding Section 394.006 to read as follows:

Sec. 394.006. COMPLAINTS; RECORDS. (a) The commission by rule shall establish procedures for accepting and resolving written complaints related to signs under this chapter. The rules must include:

(1) a process to make information available describing the department's procedures for complaint investigation and resolution, including making information about the procedures available on the department's Internet website;

(2) a system to prioritize complaints so that the most serious complaints receive attention before less serious complaints; and

(3) a procedure for compiling and reporting detailed annual statistics about complaints.

(b) The department shall develop and provide a simple form for filing complaints with the department.

(c) The department shall provide to each person who files a written complaint with the department, and to each person who is the subject of a complaint, information about the department's policies and procedures relating to complaint investigation and resolution.

(d) The department shall keep, pursuant to the department's approved records retention schedule, an information file about each written complaint filed with the department that the department has authority to resolve. The department shall keep the following information for each complaint for the purpose of enforcing this chapter:

(1) the date the complaint is filed;

(2) the name of the person filing the complaint;

(3) the subject matter of the complaint;

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

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

and

(6) if the department does not take action on the complaint, an explanation of the reasons that action was not taken.

(e) If a written complaint is filed with the department that the department has authority to resolve, the department, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an ongoing department investigation.

(b) The Texas Transportation Commission shall adopt rules under Section 394.006, Transportation Code, as added by this section, not later than September 1, 2012.

SECTION 48. The heading to Subchapter B, Chapter 394, Transportation Code, is amended to read as follows:

SUBCHAPTER B. LICENSE AND PERMIT FOR OFF-PREMISE SIGN

SECTION 49. (a) Subchapter B, Chapter 394, Transportation Code, is amended by adding Sections 394.0201, 394.0202, 394.0203, 394.0204, 394.0205, 394.0206, 394.0207, 394.027, 394.028, and 394.029 to read as follows:

Sec. 394.0201. ERECTING OFF-PREMISE SIGN WITHOUT LICENSE; OFFENSE. (a) A person commits an offense if the person wilfully erects or maintains an off-premise sign on a rural road without a license under this subchapter.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than \$500 or more than \$1,000. Each day of the proscribed conduct is a separate offense.

(c) A person is not required to obtain a license to erect or maintain an on-premise sign.

Sec. 394.0202. ISSUANCE AND PERIOD OF LICENSE. (a) The commission shall issue a license to a person who:

(1) files with the commission a completed application form within the time specified by the commission;

(2) pays the appropriate license fee; and

(3) files with the commission a surety bond.

(b) A license may be issued for one year or longer.

(c) At least 30 days before the date on which a person's license expires, the commission shall notify the person of the impending expiration. The notice must be in writing and sent to the person's last known address according to the records of the commission.

Sec. 394.0203. LICENSE FEE. The commission may set the amount of a license fee according to a scale graduated by the number of off-premise signs and units of outdoor advertising under Chapter 391 owned by a license applicant.

Sec. 394.0204. SURETY BOND. (a) The surety bond required of an applicant for a license under Section 394.0202 must be:

(1) in the amount of \$2,500 for each county in the state in which the person erects or maintains an off-premise sign; and

(2) payable to the commission for reimbursement for removal costs of an off-premise sign that the license holder unlawfully erects or maintains.

(b) A person may not be required to provide more than \$10,000 in surety bonds.

Sec. 394.0205. RULES; FORMS. (a) The commission may adopt rules to implement Sections 394.0201(a), 394.0202, 394.0203, 394.0204, and 394.0206.

(b) For the efficient management and administration of this chapter and to reduce the number of employees required to enforce this chapter, the commission shall adopt rules for issuing standardized forms that are for submission by license holders and applicants and that provide for an accurate showing of the number, location, or other information required by the commission for each license holder's or applicant's off-premise signs or outdoor advertising under Chapter 391.

(c) The commission may not adopt a rule under this chapter that restricts competitive bidding or advertising by the holder of a license issued under this chapter other than a rule to prohibit false, misleading, or deceptive practices. The limitation provided by this section applies only to rules relating to the occupation of outdoor advertiser and does not affect the commission's power to regulate the orderly and effective display of an off-premise sign under this chapter. A rule to prohibit false, misleading, or deceptive practices may not:

(1) restrict the use of:

(A) any legal medium for an advertisement;

(B) the license holder's advertisement under a trade name; or

(C) the license holder's personal appearance or voice in an advertisement, if the license holder is an individual; or

(2) relate to the size or duration of an advertisement by the license holder.

Sec. 394.0206. REVOCATION OR SUSPENSION OF LICENSE; APPEAL.

(a) The commission may revoke or suspend a license issued under this subchapter or place on probation a license holder whose license is suspended if the license holder violates this chapter or a rule adopted under this chapter. If the suspension of the license is probated, the department may require the license holder to report regularly to the commission on any matter that is the basis of the probation.

(b) The judicial appeal of the revocation or suspension of a license must be initiated not later than the 15th day after the date of the commission's action.

(c) The commission may adopt rules for the reissuance of a revoked or suspended license and may set fees for the reissuance.

(d) The commission may deny the renewal of a license holder's existing license if the license holder has not complied with the permit requirements of this chapter or Chapter 391.

Sec. 394.0207. APPLICABILITY OF LICENSE. In addition to authorizing a person to erect or maintain an off-premise sign, a license issued under this chapter authorizes a person to erect or maintain outdoor advertising under Chapter 391.

Sec. 394.027. DENIAL OF PERMIT; APPEAL. The commission may create a process by which an applicant may appeal a denial of a permit under this subchapter.

Sec. 394.028. FEE AMOUNTS. The license and permit fees required by this subchapter may not exceed an amount reasonably necessary to cover the administrative costs incurred to enforce this chapter.

Sec. 394.029. EXCEPTIONS FOR CERTAIN NONPROFIT ORGANIZATIONS. (a) The combined license and permit fees under this subchapter may not exceed \$10 for an off-premise sign erected and maintained by a nonprofit

organization in a municipality or a municipality's extraterritorial jurisdiction if the sign relates to or promotes only the municipality or a political subdivision whose jurisdiction is wholly or partly concurrent with the municipality.

(b) The nonprofit organization is not required to file a bond as provided by Section 394.0202(a)(3).

(b) The change in law made by Section 394.0201, Transportation Code, as added by this section, applies only to an off-premise sign erected or for which the permit expires on or after the effective date of this Act. An off-premise sign for which a permit is issued before the effective date of this Act is covered by the law in effect when the permit was issued, and the former law is continued in effect for that purpose.

SECTION 50. Section 394.050, Transportation Code, is amended to read as follows:

Sec. 394.050. ~~[BOARD OF]~~ VARIANCE. The commission or a person designated by the commission [shall provide for a board of variance that], in an appropriate case and subject to an appropriate condition or safeguard, may make a special exception to this chapter regarding a permit for an off-premise outdoor sign on a rural road.

SECTION 51. Subsections (a) and (d), Section 394.082, Transportation Code, are amended to read as follows:

(a) In lieu of a suit to collect a civil penalty, the commission, after notice and an opportunity for a hearing before the commission, may impose an administrative penalty against a person who ~~[intentionally]~~ violates this chapter or a rule adopted by the commission under this chapter. Each day a violation continues is a separate violation.

(d) Judicial review of an appeal of an administrative penalty imposed under this section is under the substantial evidence rule [by trial de novo].

SECTION 52. Subchapter D, Chapter 472, Transportation Code, is amended by adding Section 472.035 to read as follows:

Sec. 472.035. COORDINATION WITH DEPARTMENT TO DEVELOP LONG-TERM PLANNING ASSUMPTIONS. Each metropolitan planning organization shall work with the department to develop mutually acceptable assumptions for the purposes of long-range federal and state funding forecasts and use those assumptions to guide long-term planning in the organization's long-range transportation plan.

SECTION 53. Chapter 544, Transportation Code, is amended by adding Section 544.013 to read as follows:

Sec. 544.013. CHANGEABLE MESSAGE SIGN SYSTEM. (a) In this section, "changeable message sign" means a sign that conforms to the manual and specifications adopted under Section 544.001. The term includes a dynamic message sign.

(b) The Texas Department of Transportation in cooperation with local governments shall actively manage a system of changeable message signs located on highways under the jurisdiction of the department to mitigate traffic congestion by providing current information to the traveling public, including information about traffic incidents, weather conditions, road construction, and alternative routes when applicable.

SECTION 54. Section 621.001, Transportation Code, is amended by amending Subdivisions (3) and (4) and adding Subdivision (13) to read as follows:

(3) "Department" means the Texas Department of Motor Vehicles [~~Transportation~~].

(4) "Director" means the executive director of the Texas Department of Motor Vehicles [~~Transportation~~].

(13) "Board" means the board of the Texas Department of Motor Vehicles.

SECTION 55. Subsection (a), Section 621.003, Transportation Code, is amended to read as follows:

(a) The board [~~commission~~] by rule may authorize the director to enter into with the proper authority of another state an agreement that authorizes:

(1) the authority of the other state to issue on behalf of the department to the owner or operator of a vehicle, or combination of vehicles, that exceeds the weight or size limits allowed by this state a permit that authorizes the operation or transportation on a highway in this state of the vehicle or combination of vehicles; and

(2) the department to issue on behalf of the authority of the other state to the owner or operator of a vehicle, or combination of vehicles, that exceeds the weight or size limits allowed by that state a permit that authorizes the operation or transportation on a highway of that state of the vehicle or combination of vehicles.

SECTION 56. Section 621.004, Transportation Code, is amended to read as follows:

Sec. 621.004. ADMISSIBILITY OF CERTIFICATE OF VERTICAL CLEARANCE. In each civil or criminal proceeding in which a violation of this chapter may be an issue, a certificate of the vertical clearance of a structure, including a bridge or underpass, signed by the executive director of the Texas Department of Transportation is admissible in evidence for all purposes.

SECTION 57. Section 621.006, Transportation Code, is amended to read as follows:

Sec. 621.006. RESTRICTED OPERATION ON CERTAIN HOLIDAYS. The commission [~~department~~] by rule may impose restrictions on the weight and size of vehicles to be operated on state highways on the following holidays only:

- (1) New Year's Day;
- (2) Memorial Day;
- (3) Independence Day;
- (4) Labor Day;
- (5) Thanksgiving Day; and
- (6) Christmas Day.

SECTION 58. Subchapter A, Chapter 621, Transportation Code, is amended by adding Section 621.008 to read as follows:

Sec. 621.008. RULEMAKING AUTHORITY. The board may adopt rules necessary to implement and enforce this chapter.

SECTION 59. Section 621.102, Transportation Code, is amended to read as follows:

Sec. 621.102. [~~COMMISSION'S~~] AUTHORITY TO SET MAXIMUM WEIGHTS. (a) The executive director of the Texas Department of Transportation [~~commission~~] may set the maximum single axle weight, tandem axle weight, or gross

weight of a vehicle, or maximum single axle weight, tandem axle weight, or gross weight of a combination of vehicles and loads, that may be moved over a state highway or a farm or ranch road if the executive director [~~commission~~] finds that heavier maximum weight would rapidly deteriorate or destroy the road or a bridge or culvert along the road. A maximum weight set under this subsection may not exceed the maximum set by statute for that weight.

(b) [~~The commission must set a maximum weight under this section by order entered in its minutes.~~

[~~(e)~~] The executive director of the Texas Department of Transportation [~~commission~~] must make the finding under this section on an engineering and traffic investigation and in making the finding shall consider the width, condition, and type of pavement structures and other circumstances on the road.

(c) [~~(d)~~] A maximum weight or load set under this section becomes effective on a highway or road when appropriate signs giving notice of the maximum weight or load are erected on the highway or road by the Texas Department of Transportation under order of the commission.

(d) [~~(e)~~] A vehicle operating under a permit issued under Section 623.011, 623.071, 623.094, 623.121, 623.142, 623.181, 623.192, or 623.212 may operate under the conditions authorized by the permit over a road for which the executive director of the Texas Department of Transportation [~~commission~~] has set a maximum weight under this section.

(e) [~~(f)~~] For the purpose of this section, a farm or ranch road is a state highway that is shown in the records of the commission to be a farm-to-market or ranch-to-market road.

(f) [~~(g)~~] This section does not apply to a vehicle [~~(g)~~] delivering groceries, farm products, or liquefied petroleum gas.

SECTION 60. Subsections (a) and (b), Section 621.202, Transportation Code, are amended to read as follows:

(a) To comply with safety and operational requirements of federal law, the commission by order may set the maximum width of a vehicle, including the load on the vehicle, at eight feet for a designated highway or segment of a highway if the results of an engineering and traffic study, conducted by the Texas Department of Transportation, that includes an analysis of structural capacity of bridges and pavements, traffic volume, unique climatic conditions, and width of traffic lanes support the change.

(b) An order under this section becomes effective on the designated highway or segment when appropriate signs giving notice of the limitations are erected by the Texas Department of Transportation.

SECTION 61. Subsections (a) and (d), Section 621.301, Transportation Code, are amended to read as follows:

(a) The commissioners court of a county may establish load limits for any county road or bridge only with the concurrence of the Texas Department of Transportation [~~department~~]. A load limit shall be deemed concurred with by the Texas Department of Transportation [~~department~~] 30 days after the county submits to the Texas Department of Transportation [~~department~~] the load limit accompanied by supporting documentation and calculations reviewed and sealed by an engineer

licensed in this state, though the Texas Department of Transportation [~~department~~] may review the load limit and withdraw concurrence at any time after the 30-day period.

(d) A maximum weight set under this section becomes effective on a road when appropriate signs giving notice of the maximum weight are erected by the Texas Department of Transportation on the road under order of the commissioners court.

SECTION 62. Subsection (a), Section 621.352, Transportation Code, is amended to read as follows:

(a) The board [~~commission~~] by rule may establish fees for the administration of Section 621.003 in an amount that, when added to the other fees collected by the department, does not exceed the amount sufficient to recover the actual cost to the department of administering that section. An administrative fee collected under this section shall be sent to the comptroller for deposit to the credit of the state highway fund and may be appropriated only to the department for the administration of Section 621.003.

SECTION 63. Section 621.356, Transportation Code, is amended to read as follows:

Sec. 621.356. FORM OF PAYMENT. The board [~~commission~~] may adopt rules prescribing the method for payment of a fee for a permit issued by the department that authorizes the operation of a vehicle and its load or a combination of vehicles and load exceeding size or weight limitations. The rules may:

(1) authorize the use of electronic funds transfer or a credit card issued by:

(A) a financial institution chartered by a state or the federal government; or

(B) a nationally recognized credit organization approved by the board [~~commission~~]; and

(2) require the payment of a discount or service charge for a credit card payment in addition to the fee.

SECTION 64. Section 621.504, Transportation Code, is amended to read as follows:

Sec. 621.504. BRIDGE OR UNDERPASS CLEARANCE. A person may not operate or attempt to operate a vehicle over or on a bridge or through an underpass or similar structure unless the height of the vehicle, including load, is less than the vertical clearance of the structure as shown by the records of the Texas Department of Transportation [~~department~~].

SECTION 65. Section 622.001, Transportation Code, is amended to read as follows:

Sec. 622.001. DEFINITIONS [~~DEFINITION~~]. In this chapter:

(1) "Commission" means the Texas Transportation Commission.

(2) "Department" [~~,"department"~~] means the Texas Department of Motor Vehicles [~~Transportation~~].

SECTION 66. Subchapter A, Chapter 622, Transportation Code, is amended by adding Section 622.002 to read as follows:

Sec. 622.002. RULEMAKING AUTHORITY. The board of the department may adopt rules necessary to implement and enforce this chapter.



SECTION 67. Subsections (a) and (b), Section 622.013, Transportation Code, are amended to read as follows:

(a) The owner of a ready-mixed concrete truck with a tandem axle weight heavier than 34,000 pounds shall before operating the vehicle on a public highway of this state file with the department a surety bond subject to the approval of the Texas Department of Transportation [department] in the principal amount set by the Texas Department of Transportation [department] not to exceed \$15,000 for each truck.

(b) The bond must be conditioned that the owner of the truck will pay to the Texas Department of Transportation [state], within the limit of the bond, any damage to a highway caused by the operation of the truck.

SECTION 68. Subsections (a) and (b), Section 622.134, Transportation Code, are amended to read as follows:

(a) Except as provided by Subsection (c), the owner of a vehicle covered by this subchapter with a tandem axle weight heavier than 34,000 pounds shall before operating the vehicle on a public highway of this state file with the department a surety bond subject to the approval of the Texas Department of Transportation [department] in the principal amount set by the Texas Department of Transportation [department] not to exceed \$15,000 for each vehicle.

(b) The bond must be conditioned that the owner of the vehicle will pay, within the limits of the bond, to the Texas Department of Transportation [state] any damage to a highway, to a county any damage to a county road, and to a municipality any damage to a municipal street caused by the operation of the vehicle.

SECTION 69. Section 623.001, Transportation Code, is amended by amending Subdivision (1) and adding Subdivisions (4) and (5) to read as follows:

(1) "Department" means the Texas Department of Motor Vehicles [Transportation].

(4) "Board" means the board of the Texas Department of Motor Vehicles.

(5) "Commission" means the Texas Transportation Commission.

SECTION 70. Subchapter A, Chapter 623, Transportation Code, is amended by adding Sections 623.002 and 623.003 to read as follows:

Sec. 623.002. RULEMAKING AUTHORITY. The board may adopt rules necessary to implement and enforce this chapter.

Sec. 623.003. ROUTE DETERMINATION. (a) To the extent the department is required to determine a route under this chapter, the department shall base the department's routing decision on information provided by the Texas Department of Transportation.

(b) The Texas Department of Transportation shall provide the department with all routing information necessary to complete a permit issued under Section 623.071, 623.121, 623.142, or 623.192.

SECTION 71. Section 623.0112, Transportation Code, is amended to read as follows:

Sec. 623.0112. ADDITIONAL ADMINISTRATIVE FEE. When a person applies for a permit under Section 623.011, the person must pay in addition to other fees an administrative fee adopted by board [department] rule in an amount not to exceed the direct and indirect cost to the department of:

(1) issuing a sticker under Section 623.011(d);

- (2) distributing fees under Section 621.353; and
- (3) notifying counties under Section 623.013.

SECTION 72. Subsection (b), Section 623.012, Transportation Code, is amended to read as follows:

(b) The bond or letter of credit must:

(1) be in the amount of \$15,000 payable to the Texas Department of Transportation [department] and the counties of this state;

(2) be conditioned that the applicant will pay the Texas Department of Transportation [department] for any damage to a state highway, and a county for any damage to a road or bridge of the county, caused by the operation of the vehicle for which the permit is issued at a heavier weight than the maximum weights authorized by Subchapter B of Chapter 621 or Section 621.301; and

(3) provide that the issuer is to notify the Texas Department of Transportation [department] and the applicant in writing promptly after a payment is made by the issuer on the bond or letter of credit.

SECTION 73. Subsections (a) and (b), Section 623.016, Transportation Code, are amended to read as follows:

(a) The Texas Department of Transportation [department] or a county may recover on the bond or letter of credit required for a permit issued under Section 623.011 only by a suit against the permit holder and the issuer of the bond or letter of credit.

(b) Venue for a suit by the Texas Department of Transportation [department] is in a district court in:

- (1) the county in which the defendant resides;
- (2) the county in which the defendant has its principal place of business in this state if the defendant is a corporation or partnership; or
- (3) Travis County if the defendant is a corporation or partnership that does not have a principal place of business in this state.

SECTION 74. Subsection (a), Section 623.051, Transportation Code, is amended to read as follows:

(a) A person may operate a vehicle that cannot comply with one or more of the restrictions of Subchapter C of Chapter 621 or Section 621.101 to cross the width of any road or highway under the jurisdiction of the Texas Department of Transportation [department], other than a controlled access highway as defined by Section 203.001, from private property to other private property if the person contracts with the commission to indemnify the Texas Department of Transportation [department] for the cost of maintenance and repair of the part of the highway crossed by the vehicle.

SECTION 75. Subsection (b), Section 623.052, Transportation Code, is amended to read as follows:

(b) Before a person may operate a vehicle under this section, the person must:

(1) contract with the Texas Department of Transportation [department] to indemnify the Texas Department of Transportation [department] for the cost of the maintenance and repair for damage caused by a vehicle crossing that part of the highway; and

(2) execute an adequate surety bond to compensate for the cost of maintenance and repair, approved by the comptroller and the attorney general, with a corporate surety authorized to do business in this state, conditioned on the person fulfilling each obligation of the agreement.

SECTION 76. Subsection (a), Section 623.075, Transportation Code, is amended to read as follows:

(a) Before the department may issue a permit under this subchapter, the applicant shall file with the department a bond in an amount set by the Texas Department of Transportation [~~department~~], payable to the Texas Department of Transportation [~~department~~], and conditioned that the applicant will pay to the Texas Department of Transportation [~~department~~] any damage that might be sustained to the highway because of the operation of the equipment for which a permit is issued.

SECTION 77. Subsections (b) and (c), Section 623.076, Transportation Code, are amended to read as follows:

(b) The board [~~Texas Transportation Commission~~] may adopt rules for the payment of a fee under Subsection (a). The rules may:

(1) authorize the use of electronic funds transfer;

(2) authorize the use of a credit card issued by:

(A) a financial institution chartered by a state or the United States; or

(B) a nationally recognized credit organization approved by the board [~~Texas Transportation Commission~~]; and

(3) require the payment of a discount or service charge for a credit card payment in addition to the fee prescribed by Subsection (a).

(c) An application for a permit under Section 623.071(c)(3) or (d) must be accompanied by the permit fee established by the board, in consultation with the commission, for the permit, not to exceed \$7,000. Of each fee collected under this subsection, the department shall send:

(1) the first \$1,000 to the comptroller for deposit to the credit of the general revenue fund; and

(2) any amount in excess of \$1,000 to the comptroller for deposit to the credit of the state highway fund.

SECTION 78. Section 623.078, Transportation Code, is amended to read as follows:

Sec. 623.078. VEHICLE SUPERVISION FEE. (a) Each applicant for a permit under this subchapter for a vehicle that is heavier than 200,000 pounds must also pay a vehicle supervision fee in an amount determined by the Texas Department of Transportation [~~department~~] and designed to recover the direct cost of providing safe transportation of the vehicle over the state highway system, including the cost of:

(1) bridge structural analysis;

(2) the monitoring of the trip process; and

(3) moving traffic control devices.

(b) The board [~~department~~] shall send each fee collected under Subsection (a) to the comptroller for deposit to the credit of the state highway fund.

SECTION 79. Subsection (a), Section 623.080, Transportation Code, is amended to read as follows:

(a) Except as provided by Subsection (b), a permit under this subchapter must include:

- (1) the name of the applicant;
- (2) the date of issuance;
- (3) the signature of the director of the department [~~or of a division engineer~~];
- (4) a statement of the kind of equipment to be transported over the highway, the weight and dimensions of the equipment, and the kind and weight of each commodity to be transported; and
- (5) a statement of any condition on which the permit is issued.

SECTION 80. Subsection (f), Section 623.093, Transportation Code, is amended to read as follows:

(f) If an application for a permit to move a manufactured house is accompanied by a copy of a writ of possession issued by a court of competent jurisdiction, the applicant is not required to submit the written statement from the chief appraiser [~~set forth in Subsection (d)~~].

SECTION 81. Subsection (b), Section 623.096, Transportation Code, is amended to read as follows:

(b) The board, in consultation with the Texas Department of Transportation, [~~department~~] shall adopt rules concerning fees for each annual permit issued under Section 623.095(c) at a cost not to exceed \$3,000.

SECTION 82. Subsection (e), Section 623.099, Transportation Code, is amended to read as follows:

(e) The Texas Department of Transportation [~~department~~] shall publish and annually revise a map or list of the bridges or overpasses that because of height or width require an escort flag vehicle to stop oncoming traffic while a manufactured house crosses the bridge or overpass.

SECTION 83. Subsections (b) and (c), Section 623.100, Transportation Code, are amended to read as follows:

(b) The Texas Department of Transportation [~~department~~] may limit the hours for travel on certain routes because of heavy traffic conditions.

(c) The Texas Department of Transportation [~~department~~] shall publish the limitation on movements prescribed by this section and the limitations adopted under Subsection (b) and shall make the publications available to the public. Each limitation adopted by the Texas Department of Transportation [~~department~~] must be made available to the public before it takes effect.

SECTION 84. Subsection (a), Section 623.126, Transportation Code, is amended to read as follows:

- (a) A permit issued under this subchapter must:
- (1) contain the name of the applicant;
  - (2) be dated and signed by the director of the department [~~— a division engineer,~~] or a designated agent;
  - (3) state the make and model of the portable building unit or units to be transported over the highways;
  - (4) state the make and model of the towing vehicle;

(5) state the combined length and width of the portable building unit or units and towing vehicle; and

(6) state each highway over which the portable building unit or units are to be moved.

SECTION 85. Subsection (a), Section 623.142, Transportation Code, is amended to read as follows:

(a) The department may, on application, issue a permit for the movement over a road or highway under the jurisdiction of the Texas Department of Transportation [~~department~~] of a vehicle that:

(1) is a piece of fixed-load mobile machinery or equipment used to service, clean out, or drill an oil well; and

(2) cannot comply with the restrictions set out in Subchapter C of Chapter 621 and Section 621.101.

SECTION 86. Sections 623.145 and 623.146, Transportation Code, are amended to read as follows:

Sec. 623.145. RULES; FORMS AND PROCEDURES; FEES. (a) The board, in consultation with the commission, [~~Texas Transportation Commission~~] by rule shall provide for the issuance of permits under this subchapter. The rules must include each matter the board and commission determine [~~determines~~] necessary to implement this subchapter and:

(1) requirements for forms and procedures used in applying for a permit;

(2) conditions with regard to route and time of movement;

(3) requirements for flags, flaggers, and warning devices;

(4) the fee for a permit; and

(5) standards to determine whether a permit is to be issued for one trip only or for a period established by the commission.

(b) In adopting a rule or establishing a fee, the board and commission shall consider and be guided by:

(1) the state's investment in its highway system;

(2) the safety and convenience of the general traveling public;

(3) the registration or license fee paid on the vehicle for which the permit is requested;

(4) the fees paid by vehicles operating within legal limits;

(5) the suitability of roadways and subgrades on the various classes of highways of the system;

(6) the variation in soil grade prevalent in the different regions of the state;

(7) the seasonal effects on highway load capacity;

(8) the highway shoulder design and other highway geometrics;

(9) the load capacity of the highway bridges;

(10) administrative costs;

(11) added wear on highways; and

(12) compensation for inconvenience and necessary delays to highway users.

Sec. 623.146. VIOLATION OF RULE. A permit under this subchapter is void on the failure of an owner or the owner's representative to comply with a rule of the board [~~commission~~] or with a condition placed on the permit, and immediately on the violation, further movement over the highway of an oversize or overweight vehicle violates the law regulating the size or weight of a vehicle on a public highway.

SECTION 87. Subsections (a) and (b), Section 623.163, Transportation Code, are amended to read as follows:

(a) The owner of a vehicle used exclusively to transport solid waste with a tandem axle load heavier than 34,000 pounds shall before operating the vehicle on a public highway of this state file with the department a surety bond subject to the approval of the Texas Department of Transportation [~~department~~] in the principal amount set by the Texas Department of Transportation [~~department~~] not to exceed \$15,000 for each vehicle.

(b) The bond must be conditioned that the owner of the vehicle will pay to the Texas Department of Transportation [~~state~~] and to any municipality in which the vehicle is operated on a municipal street, within the limit of the bond, any damages to a highway or municipal street caused by the operation of the vehicle.

SECTION 88. Subsection (a), Section 623.192, Transportation Code, is amended to read as follows:

(a) The department may, on application, issue a permit to a person to move over a road or highway under the jurisdiction of the Texas Department of Transportation [~~department~~] an unladen lift equipment motor vehicle that cannot comply with the restrictions set out in Subchapter C of Chapter 621 and Section 621.101.

SECTION 89. Sections 623.195 and 623.196, Transportation Code, are amended to read as follows:

Sec. 623.195. RULES; FORMS AND PROCEDURES; FEES. (a) The board, in consultation with the commission, [~~Texas Transportation Commission~~] by rule shall provide for the issuance of a permit under this subchapter. The rules must include each matter the board and the commission determine [~~determines~~] necessary to implement this subchapter and:

- (1) requirements for forms and procedures used in applying for a permit;
- (2) conditions with regard to route and time of movement;
- (3) requirements for flags, flaggers, and warning devices;
- (4) the fee for a permit; and
- (5) standards to determine whether a permit is to be issued for one trip only or for a period established by the commission.

(b) In adopting a rule or establishing a fee, the board and the commission shall consider and be guided by:

- (1) the state's investment in its highway system;
- (2) the safety and convenience of the general traveling public;
- (3) the registration or license fee paid on the vehicle for which the permit is requested;
- (4) the fees paid by vehicles operating within legal limits;
- (5) the suitability of roadways and subgrades on the various classes of highways of the system;
- (6) the variation in soil grade prevalent in the different regions of the state;

- (7) the seasonal effects on highway load capacity;
- (8) the highway shoulder design and other highway geometrics;
- (9) the load capacity of highway bridges;
- (10) administrative costs;
- (11) added wear on highways; and
- (12) compensation for inconvenience and necessary delays to highway

users.

Sec. 623.196. VIOLATION OF RULE. A permit under this subchapter is void on the failure of an owner or the owner's representative to comply with a rule of the board [commission] or with a condition placed on the permit, and immediately on the violation, further movement over a highway of an oversize or overweight vehicle violates the law regulating the size or weight of a vehicle on a public highway.

SECTION 90. Section 623.212, Transportation Code, is amended to read as follows:

Sec. 623.212. PERMITS BY PORT AUTHORITY. The commission [department] may authorize a port authority to issue permits for the movement of oversize or overweight vehicles carrying cargo on state highways located in counties contiguous to the Gulf of Mexico or a bay or inlet opening into the gulf and bordering the United Mexican States.

SECTION 91. Subsection (b), Section 623.215, Transportation Code, is amended to read as follows:

(b) A port authority shall report to the Texas Department of Transportation [department] all permits issued under this subchapter.

SECTION 92. Section 623.233, Transportation Code, is amended to read as follows:

Sec. 623.233. MAINTENANCE CONTRACTS. The district shall make payments to the Texas Department of Transportation [department] to provide funds for the maintenance of state highways subject to this subchapter.

SECTION 93. Subsection (b), Section 623.235, Transportation Code, is amended to read as follows:

(b) The district shall report to the Texas Department of Transportation [department] all permits issued under this subchapter.

SECTION 94. Section 623.253, Transportation Code, is amended to read as follows:

Sec. 623.253. MAINTENANCE CONTRACTS. The county shall make payments to the Texas Department of Transportation [department] to provide funds for the maintenance of state highways subject to this subchapter.

SECTION 95. Section 623.304, Transportation Code, is amended to read as follows:

Sec. 623.304. MAINTENANCE CONTRACTS. The port authority shall make payments to the Texas Department of Transportation [department] to provide funds for the maintenance of state highways subject to this subchapter.

SECTION 96. Subsection (c), Section 547.304, Transportation Code, is amended to read as follows:

(c) Except for Sections 547.323 and 547.324, a provision of this chapter that requires a vehicle to be equipped with lamps, reflectors, and lighting equipment does not apply to a mobile home if the mobile home:

(1) is moved under a permit issued by the Texas Department of Motor Vehicles [~~Transportation~~] under Subchapter D, Chapter 623; and

(2) is not moved at a time or under a condition specified by Section 547.302(a).

SECTION 97. Subsection (b), Section 1001.002, Transportation Code, is amended to read as follows:

(b) In addition to the other duties required of the Texas Department of Motor Vehicles, the department shall administer and enforce:

(1) Subtitle A;

(2) Chapters 621, 622, 623, 642, 643, 645, 646, and 648; and

(3) Chapters 2301 and 2302, Occupations Code.

SECTION 98. Subsections (a), (b), and (c), Section 1201.161, Occupations Code, are amended to read as follows:

(a) Notwithstanding any other statute or rule or ordinance, a licensed retailer or licensed installer is not required to obtain a permit, certificate, or license or pay a fee to transport manufactured housing to the place of installation except as required by the Texas Department of Motor Vehicles [~~Transportation~~] under Subchapter E, Chapter 623, Transportation Code.

(b) The department shall cooperate with the Texas Department of Motor Vehicles [~~Transportation~~] by providing current lists of licensed manufacturers, retailers, and installers.

(c) The Texas Department of Motor Vehicles [~~Transportation~~] shall send the department monthly:

(1) a copy of each permit issued in the preceding month for the movement of manufactured housing on the highways; or

(2) a list of the permits issued in the preceding month and the information on the permits.

SECTION 99. Section 201.0545, Subsection (h), Section 223.201, and Section 370.314, Transportation Code, are repealed.

SECTION 100. (a) A governmental act taken or a decision made by the Texas Department of Transportation and the Texas Transportation Commission under Subchapter E, Chapter 223, Transportation Code, before the effective date of this Act, to negotiate, execute, or otherwise enter into a comprehensive development agreement or facility agreement relating to the North Tarrant Express project is conclusively presumed, as of the date the act or decision occurred, to be valid and to have occurred in accordance with all applicable law.

(b) This Act does not validate any governmental act or decision that:

(1) is inconsistent with Section 223.201, Transportation Code, as amended by this Act, and Section 223.2012, Transportation Code, as added by this Act, relating to the North Tarrant Express project;

(2) was void at the time the act or decision occurred;

(3) violates the terms of federal law or a federal waiver; or



(4) was a misdemeanor or a felony under a statute of this state or the United States at the time the act or decision occurred.

(c) This Act does not apply to any matter that on the effective date of this Act:

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

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

SECTION 101. This section and the sections of this Act that amend Section 223.201, Transportation Code, add Sections 223.2011 and 223.2012, Transportation Code, repeal Subsection (h), Section 223.201, Transportation Code, and provide transitional information related to those sections take effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, those provisions take effect September 1, 2011.

SECTION 102. (a) Except as otherwise provided by this Act, not later than January 1, 2012, the following are transferred from the Texas Department of Transportation to the Texas Department of Motor Vehicles:

(1) the powers, duties, functions, programs, activities, and rights of action of the Texas Department of Transportation relating to oversize and overweight vehicles under Chapters 621, 622, and 623, Transportation Code;

(2) any obligations, funds, negotiations, grants, memoranda of understanding, leases, rights, and contracts of the Texas Department of Transportation that are directly related to implementing a power, duty, function, program, activity, or right of action transferred under this subsection; and

(3) all personnel, furniture, computers, equipment, other property, records, and related materials in the custody of the Texas Department of Transportation that are related to a power, duty, function, program, activity, or right of action transferred under this subsection and all funds appropriated by the legislature for that power, duty, function, program, activity, or right of action.

(b) The Texas Department of Motor Vehicles shall continue any case or proceeding relating to oversize and overweight vehicles under Chapters 621, 622, and 623, Transportation Code, that was brought before the effective date of this Act in accordance with the law in effect on the date the case or proceeding was brought, and the former law is continued in effect for that purpose.

(c) A certificate, license, document, permit, registration, or other authorization issued by the Texas Department of Transportation relating to oversize and overweight vehicles under Chapters 621, 622, and 623, Transportation Code, that is in effect on the effective date of this Act remains valid for the period for which it was issued unless suspended or revoked by the Texas Department of Motor Vehicles.

(d) The unobligated and unexpended balance of any appropriations made to the Texas Department of Transportation in connection with or relating to oversize and overweight vehicles under Chapter 621, 622, or 623, Transportation Code, for the state fiscal biennium ending August 31, 2011, is transferred and reappropriated to the Texas Department of Motor Vehicles for the purpose of implementing the powers, duties, obligations, and rights of action transferred to that department.

(e) The Texas Department of Transportation shall continue, as necessary, to perform the duties and functions that are being transferred to the Texas Department of Motor Vehicles under this Act until the transfer of agency duties and functions is complete.

(f) A rule or form adopted by the Texas Department of Transportation that relates to a power, duty, function, program, activity, or right of action transferred under Subsection (a) of this section is a rule or form of the Texas Department of Motor Vehicles and remains in effect until altered by the Texas Department of Motor Vehicles.

(g) A reference in law to the Texas Department of Transportation that relates to a power, duty, function, program, activity, or right of action transferred under Subsection (a) of this section means the Texas Department of Motor Vehicles.

SECTION 103. (a) The Texas Department of Motor Vehicles may enter into a memorandum of understanding with a state agency, including the Texas Department of Transportation, if the board of the Texas Department of Motor Vehicles determines the memorandum is necessary or appropriate to implement the changes made by this Act to Chapters 621, 622, and 623, Transportation Code.

(b) The memorandum of understanding described by Subsection (a) of this section may:

(1) coordinate the Texas Department of Motor Vehicles' and the Texas Department of Transportation's information systems to allow for the sharing of information so each department may effectively and efficiently perform the functions and duties assigned to the department;

(2) provide for implementing the memorandum using existing personnel and resources from the Texas Department of Motor Vehicles and the Texas Department of Transportation;

(3) allow for the sharing of otherwise confidential information subject to the same confidentiality requirements and legal restrictions on access to the information that are imposed by law on the agency that originally obtained or collected the information;

(4) allow for the sharing of information without the consent of the person who is the subject of the information; and

(5) include an agreement for:

(A) the provision of office space, utilities, and other facility services;

(B) the need for full-time equivalent positions of the Texas Department of Transportation to provide support services in addition to the positions transferred to the Texas Department of Motor Vehicles under Subdivision (3), Subsection (a), Section 102 of this Act;

(C) support services; and

(D) the transfer of information technology as necessary or appropriate to effectuate the transfer of the powers and duties of the Texas Department of Transportation to the Texas Department of Motor Vehicles.

(c) The Texas Department of Motor Vehicles and the Texas Department of Transportation may not impose, collect, or charge a fee in connection with the sharing of information under a memorandum of understanding entered into or revised under this section.

SECTION 104. Except as otherwise provided by this Act, this Act takes effect September 1, 2011.

The Conference Committee Report on **SB 1420** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 563**

Senator Jackson submitted the following Conference Committee Report:

Austin, Texas  
May 27, 2011

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 563** 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.

JACKSON  
FRASER  
HARRIS  
ELTIFE  
WATSON

On the part of the Senate

TORRES  
GARZA  
HARPER-BROWN  
LUCIO  
ZEDLER

On the part of the House

**A BILL TO BE ENTITLED  
AN ACT**

relating to the efficiency of the operations of, and certain information regarding services provided by, the Texas Workforce Commission; providing a criminal penalty.

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

SECTION 1. Subchapter D, Chapter 301, Labor Code, is amended by adding Section 301.068 to read as follows:

Sec. 301.068. EFFICIENCY PILOT PROGRAM. (a) The commission shall establish a pilot program to:

(1) improve the efficiency and quality of commission operations while reducing costs; and

(2) adopt a structured approach for identifying the wasteful use of state resources and improving commission processes.

(b) In implementing the pilot program, the commission shall use:

(1) a methodology that includes a define, measure, analyze, improve, and control structure for reviewing project management;

(2) a continuous improvement technique that:

(A) identifies value and a value stream;

(B) creates a flow for activities;

(C) allows consumers to pull products or services through the process;  
and

(D) allows for the process to be perfected over time; and

(3) a measurement system analysis to evaluate data.

(c) Not later than August 1, 2012, the commission shall submit a written report on the effectiveness of the pilot program to the:

(1) governor;

(2) lieutenant governor;

(3) speaker of the house of representatives;

(4) Senate Committee on Government Organization;

(5) House Government Efficiency and Reform Committee; and

(6) house and senate committees with primary jurisdiction over state affairs.

(d) The commission shall implement the pilot program from available funds that may be used for that purpose.

(e) A state agency, other than the commission, may implement the pilot program established under this section with respect to the agency. An agency that implements the pilot program shall:

(1) submit the written report in the time and manner described by Subsection (c); and

(2) use available resources to fund the pilot program.

(f) A report required by this section may be submitted electronically.

(g) This section expires September 1, 2013.

SECTION 2. The heading to Section 301.085, Labor Code, is amended to read as follows:

Sec. 301.085. UNEMPLOYMENT COMPENSATION AND JOB MATCHING SERVICES INFORMATION; OFFENSE; PENALTY.

SECTION 3. Section 301.085, Labor Code, is amended by amending Subsections (a), (c), and (d) and adding Subsection (b-1) to read as follows:

(a) In this section:

(1) "Job matching services information" means information in the records of the commission that pertains to the commission's job matching services provided to employers and job seekers through the Internet, workforce centers, or other means.

(2) "Unemployment[~~,"unemployment~~] compensation information" means information in the records of the commission that pertains to the administration of Subtitle A, including any information collected, received, developed, or maintained in the administration of unemployment compensation benefits or the unemployment compensation tax system.

(b-1) The commission shall adopt and enforce reasonable rules governing the confidentiality, custody, use, preservation, and disclosure of job matching services information. The rules must include safeguards to protect the confidentiality of identifying information regarding any individual or any past or present employer or employing unit contained in job matching services information, including any information that foreseeably could be combined with other publicly available information to reveal identifying information regarding the individual, employer, or employing unit, as applicable.

(c) Unemployment compensation information and job matching services information are ~~is~~ not public information for purposes of Chapter 552, Government Code.

(d) Unless permitted by this subchapter or commission rule, a person commits an offense if the person solicits, discloses, receives, or uses, or authorizes, permits, participates in, or acquiesces in another person's use of, unemployment compensation information or job matching services information that reveals:

(1) identifying information regarding any individual or past or present employer or employing unit; or

(2) information that foreseeably could be combined with other publicly available information to reveal identifying information regarding any individual or past or present employer or employing unit.

SECTION 4. This Act takes effect September 1, 2011.

The Conference Committee Report on **SB 563** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 158**

Senator Williams submitted the following Conference Committee Report:

Austin, Texas  
May 27, 2011

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 158** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

WILLIAMS  
ELTIFE  
HINOJOSA  
HUFFMAN  
WEST

On the part of the Senate

FLETCHER  
DESHOTEL  
GALLEGO  
HOPSON  
WOOLLEY

On the part of the House

**A BILL TO BE ENTITLED  
AN ACT**

relating to offenses involving the fraudulent or unlawful obtaining, delivering, dispensing, distributing, or diverting of a controlled substance; providing penalties.

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

SECTION 1. Subchapter D, Chapter 481, Health and Safety Code, is amended by adding Section 481.1285 to read as follows:

Sec. 481.1285. OFFENSE: DIVERSION OF CONTROLLED SUBSTANCE BY REGISTRANTS, DISPENSERS, AND CERTAIN OTHER PERSONS. (a) This section applies only to a registrant, a dispenser, or a person who, pursuant to Section 481.062(a)(1) or (2), is not required to register under this subchapter.

(b) A person commits an offense if the person knowingly:

(1) converts to the person's own use or benefit a controlled substance to which the person has access by virtue of the person's profession or employment; or

(2) diverts to the unlawful use or benefit of another person a controlled substance to which the person has access by virtue of the person's profession or employment.

(c) An offense under Subsection (b)(1) is a state jail felony. An offense under Subsection (b)(2) is a felony of the third degree.

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

SECTION 2. Section 481.129, Health and Safety Code, is amended by adding Subsections (a-1) and (d-1) to read as follows:

(a-1) A person commits an offense if the person, with intent to obtain a controlled substance or combination of controlled substances that is not medically necessary for the person or an amount of a controlled substance or substances that is not medically necessary for the person, obtains or attempts to obtain from a practitioner a controlled substance or a prescription for a controlled substance by misrepresentation, fraud, forgery, deception, subterfuge, or concealment of a material fact. For purposes of this subsection, a material fact includes whether the person has an existing prescription for a controlled substance issued for the same period of time by another practitioner.

(d-1) An offense under Subsection (a-1) is:

(1) a felony of the second degree if any controlled substance that is the subject of the offense is listed in Schedule I or II;

(2) a felony of the third degree if any controlled substance that is the subject of the offense is listed in Schedule III or IV; and

(3) a Class A misdemeanor if any controlled substance that is the subject of the offense is listed in Schedule V.

SECTION 3. Subsection (a), Section 71.02, Penal Code, as amended by Chapters 153 (S.B. 2225), 1130 (H.B. 2086), and 1357 (S.B. 554), Acts of the 81st Legislature, Regular Session, 2009, is reenacted and amended to read as follows:

(a) A person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination or as a member of a criminal street gang, the person commits or conspires to commit one or more of the following:

(1) murder, capital murder, arson, aggravated robbery, robbery, burglary, theft, aggravated kidnapping, kidnapping, aggravated assault, aggravated sexual assault, sexual assault, forgery, deadly conduct, assault punishable as a Class A misdemeanor, burglary of a motor vehicle, or unauthorized use of a motor vehicle;

(2) any gambling offense punishable as a Class A misdemeanor;

(3) promotion of prostitution, aggravated promotion of prostitution, or compelling prostitution;

(4) unlawful manufacture, transportation, repair, or sale of firearms or prohibited weapons;

(5) unlawful manufacture, delivery, dispensation, or distribution of a controlled substance or dangerous drug, or unlawful possession of a controlled substance or dangerous drug through forgery, fraud, misrepresentation, or deception;

(5-a) causing the unlawful delivery, dispensation, or distribution of a controlled substance or dangerous drug in violation of Subtitle B, Title 3, Occupations Code;

(6) any unlawful wholesale promotion or possession of any obscene material or obscene device with the intent to wholesale promote the same;

(7) any offense under Subchapter B, Chapter 43, depicting or involving conduct by or directed toward a child younger than 18 years of age;

(8) any felony offense under Chapter 32;

(9) any offense under Chapter 36;

(10) any offense under Chapter 34 or 35;

(11) any offense under Section 37.11(a);

(12) any offense under Chapter 20A;

(13) any offense under Section 37.10; ~~[or]~~

(14) any offense under Section 38.06, 38.07, 38.09, or 38.11;

(15) ~~[(44)]~~ any offense under Section 42.10; or

(16) ~~[(44)]~~ any offense under Section 46.06(a)(1) or 46.14.

SECTION 4. Subsections (b) and (c), Section 71.02, Penal Code, as amended by Chapters 761 (H.B. 354) and 900 (S.B. 1067), Acts of the 73rd Legislature, Regular Session, 1993, are reenacted to read as follows:

(b) Except as provided in Subsections (c) and (d), an offense under this section is one category higher than the most serious offense listed in Subsection (a) that was committed, and if the most serious offense is a Class A misdemeanor, the offense is a state jail felony, except that if the most serious offense is a felony of the first degree, the offense is a felony of the first degree.

(c) Conspiring to commit an offense under this section is of the same degree as the most serious offense listed in Subsection (a) that the person conspired to commit.

SECTION 5. Subsection (a), Section 71.05, Penal Code, as amended by Chapters 761 (H.B. 354) and 900 (S.B. 1067), Acts of the 73rd Legislature, Regular Session, 1993, is reenacted and amended to read as follows:

(a) It is an affirmative defense to prosecution under Section 71.02 that under circumstances manifesting a voluntary and complete renunciation of the actor's ~~[his]~~ criminal objective, the actor withdrew from the combination before commission of an offense listed in ~~[Subsection (a) of]~~ Section 71.02(a) ~~[71.02]~~ and took further affirmative action that prevented the commission of the offense.

SECTION 6. Subsection (c), Section 71.05, Penal Code, is amended to read as follows:

(c) Evidence that the defendant withdrew from the combination before commission of an offense listed in ~~[Subdivisions (1) through (7) or Subdivision (10) of Subsection (a) of]~~ Section 71.02(a) ~~[71.02 of this code]~~ and made substantial effort

to prevent the commission of an offense listed in [~~Subdivisions (1) through (7) or Subdivision (10) of Subsection (a) of~~] Section 71.02(a) [~~71.02 of this code~~] shall be admissible as mitigation at the hearing on punishment if the actor [~~he~~] has been found guilty under Section 71.02 [~~of this code~~], and in the event of a finding of renunciation under this subsection, the punishment shall be one grade lower than that provided under Section 71.02 [~~of this code~~].

SECTION 7. 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 8. To the extent of any conflict, this Act prevails over another Act of the 82nd Legislature, Regular Session, 2011, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 9. This Act takes effect September 1, 2011.

The Conference Committee Report on **SB 158** was filed with the Secretary of the Senate.

### **CONFERENCE COMMITTEE REPORT ON SENATE BILL 747**

Senator Carona submitted the following Conference Committee Report:

Austin, Texas  
May 27, 2011

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 747** 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  
ELTIFE  
JACKSON  
LUCIO  
WATSON

On the part of the Senate

HAMILTON  
KUEMPEL  
DRIVER  
QUINTANILLA  
THOMPSON

On the part of the House

### A BILL TO BE ENTITLED AN ACT

relating to the professions regulated by the Texas Real Estate Commission.

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



SECTION 1. Section 1101.002, Occupations Code, is amended by amending Subdivision (1) and adding Subdivision (1-a) to read as follows:

(1) "Broker":

(A) means a person who, in exchange for a commission or other valuable consideration or with the expectation of receiving a commission or other valuable consideration, performs for another person one of the following acts:

- (i) sells, exchanges, purchases, or leases real estate;
- (ii) offers to sell, exchange, purchase, or lease real estate;
- (iii) negotiates or attempts to negotiate the listing, sale, exchange, purchase, or lease of real estate;
- (iv) lists or offers, attempts, or agrees to list real estate for sale, lease, or exchange;
- (v) ~~appraises or offers, attempts, or agrees to appraise real estate;~~
- ~~(vi)~~ auctions or offers, attempts, or agrees to auction real estate;
- (vi) ~~(vii)~~ deals in options on real estate, including buying, selling, or offering to buy or sell options on real estate;
- (vii) ~~(viii)~~ aids or offers or attempts to aid in locating or obtaining real estate for purchase or lease;
- (viii) ~~(ix)~~ procures or assists in procuring a prospect to effect the sale, exchange, or lease of real estate; ~~or~~
- (ix) ~~(x)~~ procures or assists in procuring property to effect the sale, exchange, or lease of real estate;
- (x) controls the acceptance or deposit of rent from a resident of a single-family residential real property unit; or
- (xi) provides a written analysis, opinion, or conclusion relating to the estimated price of real property if the analysis, opinion, or conclusion:
  - (a) is not referred to as an appraisal;
  - (b) is provided in the ordinary course of the person's business;

and

(c) is related to the actual or potential management, acquisition, disposition, or encumbrance of an interest in real property; and

(B) includes a person who:

- (i) is employed by or for an owner of real estate to sell any portion of the real estate; or
- (ii) engages in the business of charging an advance fee or contracting to collect a fee under a contract that requires the person primarily to promote the sale of real estate by:
  - (a) listing the real estate in a publication primarily used for listing real estate; or
  - (b) referring information about the real estate to brokers.

(1-a) "Business entity" means a "domestic entity" or "foreign entity" as those terms are defined by Section 1.002, Business Organizations Code.

SECTION 2. Section 1101.005, Occupations Code, is amended to read as follows:

Sec. 1101.005. APPLICABILITY OF CHAPTER. This chapter does not apply to:

- (1) an attorney licensed in this ~~any~~ state;
- (2) an attorney-in-fact authorized under a power of attorney to conduct a real estate transaction;
- (3) a public official while engaged in official duties;
- (4) an auctioneer licensed under Chapter 1802 while conducting the sale of real estate by auction if the auctioneer does not perform another act of a broker or salesperson;
- (5) a person conducting a real estate transaction under a court order or the authority of a will or written trust instrument;
- (6) a person employed by an owner in the sale of structures and land on which structures are located if the structures are erected by the owner in the course of the owner's business;
- (7) an on-site manager of an apartment complex;
- (8) an owner or the owner's employee who leases the owner's improved or unimproved real estate; or
- (9) ~~[a partnership or limited liability partnership acting as a broker or salesperson through a partner who is a licensed broker; or~~  
~~(10)~~ a transaction involving:
  - (A) the sale, lease, or transfer of a mineral or mining interest in real property;
  - (B) the sale, lease, or transfer of a cemetery lot;
  - (C) the lease or management of a hotel or motel; or
  - (D) the sale of real property under a power of sale conferred by a deed of trust or other contract lien.

SECTION 3. Subchapter D, Chapter 1101, Occupations Code, is amended by adding Section 1101.161 to read as follows:

Sec. 1101.161. GIFTS, GRANTS, AND DONATIONS. The commission may solicit and accept a gift, grant, donation, or other item of value from any source to pay for any activity under this chapter or Chapter 1102 or 1103.

SECTION 4. Section 1101.301, Occupations Code, is amended by amending Subsection (c) and adding Subsection (d) to read as follows:

(c) In establishing accreditation standards for an educational program under Subsection (a), the commission shall adopt rules setting an examination passage rate benchmark for each category of license issued by the commission under this chapter or Chapter 1102. The benchmark must be based on the average percentage of examinees that pass the licensing exam on the first attempt. A program must meet or exceed the benchmark for each license category ~~[that require a program to establish that at least 55 percent of the program's graduates have passed a licensing exam the first time the exam has been taken by the graduates]~~ before the commission may renew the program's accreditation for the license category.

(d) The commission may deny an application for accreditation if the applicant owns or controls, or has previously owned or controlled, an educational program or course of study for which accreditation was revoked.

SECTION 5. Section 1101.351, Occupations Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) Unless a business entity holds a license issued under this chapter, the business entity may not act as a broker.

SECTION 6. Section 1101.352, Occupations Code, is amended by adding Subsection (d) to read as follows:

(d) At the time an application is submitted under Subsection (a), each applicant shall provide the commission with the applicant's current mailing address and telephone number, and e-mail address if available. The applicant shall notify the commission of any change in the applicant's mailing or e-mail address or telephone number during the time the application is pending.

SECTION 7. Section 1101.355, Occupations Code, is amended to read as follows:

Sec. 1101.355. ADDITIONAL GENERAL ELIGIBILITY REQUIREMENTS FOR ~~CERTAIN~~ BUSINESS ENTITIES. (a) To be eligible for a license under this chapter, a business entity must:

(1) ~~[a corporation must]~~ designate one of its managing officers as its agent for purposes of this chapter; and

(2) provide proof that the entity maintains errors and omissions insurance with a minimum annual limit of \$1 million for each occurrence if the designated agent owns less than 10 percent of the business entity ~~[a limited liability company must designate one of its managers as its agent for purposes of this chapter].~~

(b) A business entity ~~[corporation or limited liability company]~~ may not act as a broker unless the entity's designated agent is a licensed broker in active status and good standing according to the commission's records.

(c) A business entity that receives compensation on behalf of a license holder must be licensed as a broker under this chapter.

SECTION 8. Section 1101.356, Occupations Code, is amended by amending Subsection (a) and adding Subsection (b-1) to read as follows:

(a) An applicant for a broker license must provide to the commission satisfactory evidence that the applicant:

(1) has had at least four ~~[two]~~ years of active experience in this state as a license holder during the 60 ~~[36]~~ months preceding the date the application is filed; and

(2) has successfully completed at least 60 semester hours, or equivalent classroom hours, of postsecondary education, including:

(A) at least 18 semester hours or equivalent classroom hours of core real estate courses, two semester hours of which must be real estate brokerage; and

(B) at least 42 hours of core real estate courses or related courses accepted by the commission.

(b-1) The commission by rule shall establish what constitutes active experience for purposes of this section and Section 1101.357.

SECTION 9. Section 1101.357, Occupations Code, is amended to read as follows:

Sec. 1101.357. BROKER LICENSE: ALTERNATE EXPERIENCE REQUIREMENTS FOR CERTAIN APPLICANTS. An applicant for a broker license who does not satisfy the experience requirements of Section 1101.356 must provide to the commission satisfactory evidence that:

(1) the applicant:

(A) is a licensed real estate broker in another state;

(B) has had at least four [~~two~~] years of active experience in that state as a licensed real estate broker or salesperson during the 60 [~~36~~] months preceding the date the application is filed; and

(C) has satisfied the educational requirements prescribed by Section 1101.356; or

(2) the applicant was licensed in this state as a broker in the year preceding the date the application is filed.

SECTION 10. Section 1101.358, Occupations Code, is amended to read as follows:

Sec. 1101.358. SALESPERSON LICENSE: EDUCATION REQUIREMENTS.

(a) An applicant for a salesperson license must provide to the commission satisfactory evidence that the applicant has completed at least 12 [~~14~~] semester hours, or equivalent classroom hours, of postsecondary education consisting of, [~~including~~]:

(1) at least four semester hours of core real estate courses on principles of real estate; and

(2) at least two semester hours of each of the following core real estate courses:

(A) agency law;

(B) contract law; [~~and~~]

(C) contract forms and addendums; and

(D) real estate finance [~~one additional core real estate course~~; and

~~(3) at least four semester hours of core real estate courses or related courses~~].

(b) The commission shall waive the education requirements of Subsection (a) if the applicant has been licensed in this state as a broker or salesperson within the six months [~~year~~] preceding the date the application is filed.

(c) If an applicant for a salesperson license was licensed as a salesperson within the six months [~~year~~] preceding the date the application is filed and the license was issued under the conditions prescribed by Section 1101.454, the commission shall require the applicant to provide the evidence of successful completion of education requirements that would have been required if the license had been maintained without interruption during the preceding six months [~~year~~].

SECTION 11. Subsection (c), Section 1101.367, Occupations Code, is amended to read as follows:

(c) As a condition of returning to active status, an inactive salesperson whose license is not subject to the [~~annual~~] education requirements of Section 1101.454 must provide to the commission proof of attending at least 15 hours of continuing education as specified by Section 1101.455 during the two years preceding the date the application to return to active status is filed.

SECTION 12. Subsection (f), Section 1101.401, Occupations Code, is amended to read as follows:

(f) An applicant must satisfy the examination requirement not later than one year [~~six months~~] after the date the license application is filed.

SECTION 13. Subsections (e) and (f), Section 1101.451, Occupations Code, are amended to read as follows:

(e) A person whose license has been expired for 90 days or less may renew the license by paying to the commission a fee equal to 1-1/2 times the required renewal fee. If a license has been expired for more than 90 days but less than ~~six months~~ ~~[one year]~~, the person may renew the license by paying to the commission a fee equal to two times the required renewal fee.

(f) If a person's license has been expired for ~~six months~~ ~~[one year]~~ or longer, the person may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license.

SECTION 14. Subsection (a), Section 1101.452, Occupations Code, is amended to read as follows:

(a) To renew an active license that is not subject to the ~~[annual]~~ education requirements of Section 1101.454, the license holder must provide to the commission proof of compliance with the continuing education requirements of Section 1101.455.

SECTION 15. Section 1101.453, Occupations Code, is amended to read as follows:

Sec. 1101.453. ADDITIONAL RENEWAL REQUIREMENTS FOR ~~[CERTAIN]~~ BUSINESS ENTITIES. (a) To renew a license under this chapter, a business entity must:

(1) ~~[a corporation must]~~ designate one of its managing officers as its agent for purposes of this chapter; and

(2) provide proof that the entity maintains errors and omissions insurance with a minimum annual limit of \$1 million for each occurrence if the designated agent owns less than 10 percent of the business entity [a limited liability company must designate one of its managers as its agent for purposes of this chapter].

(b) A business entity ~~[corporation or limited liability company]~~ may not act as a broker unless the entity's designated agent is a licensed broker in active status and good standing according to the commission's records.

SECTION 16. Subsection (a), Section 1101.454, Occupations Code, is amended to read as follows:

(a) An applicant applying for the first renewal of a salesperson license must provide to the commission satisfactory evidence of completion of at least 18 semester hours, or equivalent classroom hours, ~~[of postsecondary education, including 14 hours]~~ of core real estate courses.

SECTION 17. Subsection (b), Section 1101.455, Occupations Code, is amended to read as follows:

(b) A license holder who is not subject to the ~~[annual]~~ education requirements of Section 1101.454 must attend during the term of the current license at least 15 classroom hours of continuing education courses approved by the commission.

SECTION 18. Subchapter J, Chapter 1101, Occupations Code, is amended by adding Section 1101.458 to read as follows:

Sec. 1101.458. ADDITIONAL EDUCATION REQUIREMENTS FOR CERTAIN LICENSE HOLDERS. (a) A broker who sponsors a salesperson, or a license holder who supervises another license holder, must attend during the term of the current license at least six classroom hours of broker responsibility education courses approved by the commission.

(b) The commission by rule shall prescribe the title, content, and duration of broker responsibility education courses required under this section.

(c) Broker responsibility education course hours may be used to satisfy the hours described by Section 1101.455(f).

(d) This section does not apply to a broker who is exempt from continuing education requirements under Section 1101.456.

SECTION 19. Subsection (b), Section 1101.502, Occupations Code, is amended to read as follows:

(b) To be eligible to receive a certificate of registration or a renewal certificate under this subchapter, a business [~~corporation, limited liability company, partnership, limited liability partnership, or other~~] entity must designate as its agent one of its managing officers [~~, partners, or managers~~] who is registered under this subchapter.

SECTION 20. Subchapter K, Chapter 1101, Occupations Code, is amended by adding Section 1101.5041 to read as follows:

Sec. 1101.5041. CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR CERTIFICATE. An applicant for an original certificate of registration or renewal of a certificate of registration must comply with the criminal history record check requirements of Section 1101.3521.

SECTION 21. Section 1101.552, Occupations Code, is amended by adding Subsection (e) to read as follows:

(e) A license holder shall provide the commission with the license holder's current mailing address and telephone number, and e-mail address if available. A license holder shall notify the commission of a change in the license holder's mailing or e-mail address or telephone number.

SECTION 22. Section 1101.554, Occupations Code, is amended to read as follows:

Sec. 1101.554. COPY [~~CUSTODY~~] OF SALESPERSON LICENSE. [(a)] The commission shall deliver or mail a copy of each salesperson license to the broker with whom the salesperson is associated.

~~[(b) The broker shall keep the license under the broker's custody and control.]~~

SECTION 23. Subchapter N, Chapter 1101, Occupations Code, is amended by adding Section 1101.6561 to read as follows:

Sec. 1101.6561. SUSPENSION OR REVOCATION OF EDUCATIONAL PROGRAM ACCREDITATION. The commission may suspend or revoke an accreditation issued under Subchapter G or take any other disciplinary action authorized by this chapter if the provider of an educational program or course of study violates this chapter or a rule adopted under this chapter.

SECTION 24. Subsection (c), Section 1101.356, Occupations Code, is repealed.

SECTION 25. (a) Not later than December 1, 2011, the Texas Real Estate Commission shall adopt rules necessary to implement Section 1101.301, Occupations Code, as amended by this Act, and Subsection (b-1), Section 1101.356, and Section 1101.458, Occupations Code, as added by this Act.

(b) Subsection (e), Section 1101.552, Occupations Code, as added by this Act, applies only to a broker or salesperson license issued or renewed on or after December 1, 2011. A license issued or renewed before that date is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

(c) Subsection (b), Section 1101.502, Occupations Code, as amended by this Act, and Section 1101.5041, Occupations Code, as added by this Act, apply only to an application for a certificate of registration or renewal of a certificate of registration filed with the Texas Real Estate Commission on or after December 1, 2011. An application filed before that date is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

(d) Section 1101.458, Occupations Code, as added by this Act, applies only to a license issued or renewed on or after September 1, 2012. A license issued or renewed before that date is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

(e) Sections 1101.352, 1101.355, and 1101.401, Occupations Code, as amended by this Act, apply only to an application for a real estate broker or salesperson license submitted to the Texas Real Estate Commission on or after the effective date of this Act. An application for a license submitted before that date is governed by the law in effect on the date the application was submitted, and the former law is continued in effect for that purpose.

(f) Sections 1101.356 and 1101.357, Occupations Code, as amended by this Act, apply only to an application for a real estate broker license submitted to the Texas Real Estate Commission on or after January 1, 2012. An application for a license submitted before that date is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

(g) Section 1101.358, Occupations Code, as amended by this Act, applies only to an application for a real estate salesperson license submitted to the Texas Real Estate Commission on or after September 1, 2012. An application for a license submitted before that date is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

(h) Section 1101.454, Occupations Code, as amended by this Act, applies only to the renewal of a real estate salesperson license that expires on or after September 1, 2012. A license that expires before that date is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

(i) Sections 1101.451 and 1101.453, Occupations Code, as amended by this Act, apply only to the renewal of a real estate broker or salesperson license that expires on or after the effective date of this Act. A license that expires before that date is governed by the law in effect on the date the license expires, and the former law is continued in effect for that purpose.

(j) A person who holds a license as a real estate broker issued before the effective date of this Act may continue to renew that license without complying with the changes in law made by this Act to Sections 1101.356 and 1101.357, Occupations Code.

(k) Sections 1101.002 and 1101.005, Occupations Code, as amended by this Act, apply, with respect to conduct that constitutes acting as a broker or salesperson under Chapter 1101, Occupations Code, only to conduct engaged in on or after the effective date of this Act. Conduct engaged in before the effective date of this Act is governed by the law in effect when the conduct was engaged in, and the former law is continued in effect for that purpose.

SECTION 26. This Act takes effect September 1, 2011.

The Conference Committee Report on **SB 747** was filed with the Secretary of the Senate.

### CONFERENCE COMMITTEE REPORT ON SENATE BILL 875

Senator Fraser submitted the following Conference Committee Report:

Austin, Texas  
May 27, 2011

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 875** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

FRASER  
DUNCAN  
ESTES  
JACKSON

HANCOCK  
BONNEN  
CHISUM  
EILAND  
W. SMITH

On the part of the Senate

On the part of the House

#### A BILL TO BE ENTITLED AN ACT

relating to compliance with state and federal environmental permits as a defense to certain actions for nuisance or trespass.

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

SECTION 1. Subchapter F, Chapter 7, Water Code, is amended by adding Section 7.257 to read as follows:

Sec. 7.257. DEFENSE TO NUISANCE OR TRESPASS. (a) A person, as defined by Section 382.003, Health and Safety Code, who is subject to an administrative, civil, or criminal action brought under this chapter for nuisance or



trespass arising from greenhouse gas emissions has an affirmative defense to that action if the person's actions that resulted in the alleged nuisance or trespass were authorized by a rule, permit, order, license, certificate, registration, approval, or other form of authorization issued by the commission or the federal government or an agency of the federal government and:

(1) the person was in substantial compliance with that rule, permit, order, license, certificate, registration, approval, or other authorization while the alleged nuisance or trespass was occurring; or

(2) the commission or the federal government or an agency of the federal government exercised enforcement discretion in connection with the actions that resulted in the alleged nuisance or trespass.

(b) This section does not apply to nuisance actions solely based on a noxious odor.

SECTION 2. Section 7.257, Water Code, as added by this Act, applies only to an administrative enforcement action, a civil action, or a prosecution that is commenced on or after the effective date of this Act. An administrative enforcement action, a civil action, or a prosecution commenced before the effective date of this Act is governed by the law in effect on the date the action or prosecution commenced, and that law is continued in effect for that purpose.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2011.

The Conference Committee Report on **SB 875** was filed with the Secretary of the Senate.

### CONFERENCE COMMITTEE REPORT ON SENATE BILL 1134

Senator Hegar submitted the following Conference Committee Report:

Austin, Texas  
May 27, 2011

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 1134** 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.

HEGAR  
DEUELL  
FRASER  
JACKSON

CRADDICK  
LOZANO  
HANCOCK  
SHEFFIELD

WHITMIRE  
On the part of the Senate

W. SMITH  
On the part of the House

A BILL TO BE ENTITLED  
AN ACT

relating to the issuance of permits for certain facilities regulated by the Texas Commission on Environmental Quality.

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

SECTION 1. Subchapter C, Chapter 382, Health and Safety Code, is amended by adding Sections 382.051961, 382.051962, 382.051963, and 382.051964 to read as follows:

Sec. 382.051961. PERMIT FOR CERTAIN OIL AND GAS FACILITIES.

(a) This section applies only to new facilities or modifications of existing facilities that belong to Standard Industrial Classification Codes 1311 (Crude Petroleum and Natural Gas), 1321 (Natural Gas Liquids), 4612 (Crude Petroleum Pipelines), 4613 (Refined Petroleum Pipelines), 4922 (Natural Gas Transmission), and 4923 (Natural Gas Transmission and Distribution).

(b) The commission may not adopt a new permit by rule or a new standard permit or amend an existing permit by rule or an existing standard permit relating to a facility to which this section applies unless the commission:

(1) conducts a regulatory analysis as provided by Section 2001.0225, Government Code;

(2) determines, based on the evaluation of credible air quality monitoring data, that the emissions limits or other emissions-related requirements of the permit are necessary to ensure that the intent of this chapter is not contravened, including the protection of the public's health and physical property;

(3) establishes any required emissions limits or other emissions-related requirements based on:

(A) the evaluation of credible air quality monitoring data; and

(B) credible air quality modeling that is not based on the worst-case scenario of emissions or other worst-case modeling scenarios unless the actual air quality monitoring data and evaluation of that data indicate that the worst-case scenario of emissions or other worst-case modeling scenarios yield modeling results that reflect the actual air quality monitoring data and evaluation; and

(4) considers whether the requirements of the permit should be imposed only on facilities that are located in a particular geographic region of the state.

(c) The air quality monitoring data and the evaluation of that data under Subsection (b):

(1) must be relevant and technically and scientifically credible, as determined by the commission; and

(2) may be generated by an ambient air quality monitoring program conducted by or on behalf of the commission in any part of the state or by another governmental entity of this state, a local or federal governmental entity, or a private organization.

Sec. 382.051962. AUTHORIZATION FOR PLANNED MAINTENANCE, START-UP, OR SHUTDOWN ACTIVITIES RELATING TO CERTAIN OIL AND GAS FACILITIES. (a) In this section, "planned maintenance, start-up, or shutdown activity" means an activity with emissions or opacity that:

(1) is not expressly authorized by commission permit, rule, or order and involves the maintenance, start-up, or shutdown of a facility;

(2) is part of normal or routine facility operations;

(3) is predictable as to timing; and

(4) involves the type of emissions normally authorized by permit.

(b) The commission may adopt one or more permits by rule or one or more standard permits and may amend one or more existing permits by rule or standard permits to authorize planned maintenance, start-up, or shutdown activities for facilities described by Section 382.051961(a). The adoption or amendment of a permit under this subsection must comply with Section 382.051961(b).

(c) An unauthorized emission or opacity event from a planned maintenance, start-up, or shutdown activity is subject to an affirmative defense as established by commission rules as those rules exist on the effective date of this section if:

(1) the emission or opacity event occurs at a facility described by Section 382.051961(a);

(2) an application or registration to authorize the planned maintenance, start-up, or shutdown activities of the facility is submitted to the commission on or before the earlier of:

(A) January 5, 2014; or

(B) the 120th day after the effective date of a new or amended permit adopted by the commission under Subsection (b); and

(3) the affirmative defense criteria in the rules are met.

(d) The affirmative defense described by Subsection (c) is not available for a facility on or after the date that an application or registration to authorize the planned maintenance, start-up, or shutdown activities of the facility is approved, denied, or voided.

Sec. 382.051963. AMENDMENT OF CERTAIN PERMITS. (a) A permit by rule or standard permit that has been adopted by the commission under this subchapter and is in effect on the effective date of this section may be amended to require:

(1) the permit holder to provide to the commission information about a facility authorized by the permit, including the location of the facility; and

(2) any facility handling sour gas to be a minimum distance from a recreational area, a residence, or another structure not occupied or used solely by the operator of the facility or by the owner of the property upon which the facility is located.

(b) The amendment of a permit under this section is not subject to Section 382.051961(b).

Sec. 382.051964. AGGREGATION OF FACILITIES. Notwithstanding any other provision of this chapter, the commission may not aggregate a facility that belongs to a Standard Industrial Classification code identified by Section 382.051961(a) with another facility that belongs to a Standard Industrial

Classification code identified by that section for purposes of consideration as an oil and gas site, a stationary source, or another single source in a permit by rule or a standard permit unless the facilities being aggregated:

(1) are under the control of the same person or are under the control of persons under common control;

(2) belong to the same first two-digit major grouping of Standard Industrial Classification codes;

(3) are operationally dependant; and

(4) are located not more than one-quarter mile from a condensate tank, oil tank, produced water storage tank, or combustion facility that:

(A) is under the control of the same person who controls the facilities being aggregated or is under the control of persons under common control;

(B) belongs to the same first two-digit major grouping of Standard Industrial Classification codes as the facilities being aggregated; and

(C) is operationally dependant on the facilities being aggregated.

SECTION 2. (a) Sections 382.051961, 382.051962, 382.051963, and 382.051964, Health and Safety Code, as added by this Act, apply only to a new permit by rule or a new standard permit or any amendment to an existing permit by rule or amendment to an existing standard permit adopted by the Texas Commission on Environmental Quality on or after the effective date of this Act.

(b) A permit by rule or standard permit adopted by the Texas Commission on Environmental Quality and in effect before the effective date of this Act is not subject to Sections 382.051961, 382.051962, and 382.051964, Health and Safety Code, as added by 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, 2011.

The Conference Committee Report on **SB 1134** was filed with the Secretary of the Senate.

### **CONFERENCE COMMITTEE REPORT ON SENATE BILL 1331**

Senator Watson submitted the following Conference Committee Report:

Austin, Texas  
May 26, 2011

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 1331** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

WATSON  
WHITMIRE  
ELLIS  
HUFFMAN  
CARONA

GALLEGO  
ALISEDA  
CHRISTIAN  
RODRIGUEZ  
ZEDLER

On the part of the Senate

On the part of the House

A BILL TO BE ENTITLED  
AN ACT

relating to criminal offenses regarding the possession or consumption of alcoholic beverages by a minor and providing alcoholic beverages to a minor.

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

SECTION 1. Section 106.04, Alcoholic Beverage Code, is amended by adding Subsection (e) to read as follows:

(e) Subsection (a) does not apply to a minor who:

(1) requested emergency medical assistance in response to the possible alcohol overdose of the minor or another person;

(2) was the first person to make a request for medical assistance under Subdivision (1); and

(3) if the minor requested emergency medical assistance for the possible alcohol overdose of another person:

(A) remained on the scene until the medical assistance arrived; and

(B) cooperated with medical assistance and law enforcement personnel.

SECTION 2. Section 106.05, Alcoholic Beverage Code, is amended by adding Subsection (d) to read as follows:

(d) Subsection (a) does not apply to a minor who:

(1) requested emergency medical assistance in response to the possible alcohol overdose of the minor or another person;

(2) was the first person to make a request for medical assistance under Subdivision (1); and

(3) if the minor requested emergency medical assistance for the possible alcohol overdose of another person:

(A) remained on the scene until the medical assistance arrived; and

(B) cooperated with medical assistance and law enforcement personnel.

SECTION 3. Section 106.06, Alcoholic Beverage Code, is amended by adding Subsections (d) and (e) to read as follows:

(d) A judge, acting under Article 42.12, Code of Criminal Procedure, who places a defendant charged with an offense under this section on community supervision under that article shall, if the defendant committed the offense at a

gathering where participants were involved in the abuse of alcohol, including binge drinking or forcing or coercing individuals to consume alcohol, in addition to any other condition imposed by the judge:

(1) require the defendant to:

(A) perform community service for not less than 20 or more than 40 hours; and

(B) attend an alcohol awareness program approved under Section 106.115; and

(2) order the Department of Public Safety to suspend the driver's license or permit of the defendant or, if the defendant does not have a driver's license or permit, to deny the issuance of a driver's license or permit to the defendant for 180 days.

(e) Community service ordered under Subsection (d) is in addition to any community service ordered by the judge under Section 16, Article 42.12, Code of Criminal Procedure, and must be related to education about or prevention of misuse of alcohol if programs or services providing that education are available in the community in which the court is located. If programs or services providing that education are not available, the court may order community service that the court considers appropriate for rehabilitative purposes.

SECTION 4. (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 is committed before the effective date of this Act if any element of the offense occurs before the effective 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 5. This Act takes effect September 1, 2011.

The Conference Committee Report on **SB 1331** was filed with the Secretary of the Senate on Friday, May 27, 2011.

### **CONFERENCE COMMITTEE REPORT ON SENATE BILL 1534**

Senator Shapiro submitted the following Conference Committee Report:

Austin, Texas  
May 27, 2011

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 1534** 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.

SHAPIRO

J. DAVIS

JACKSON  
ZAFFIRINI  
ELTIFE  
HARRIS

On the part of the Senate

REYNOLDS  
R. ANDERSON  
MURPHY

On the part of the House

A BILL TO BE ENTITLED  
AN ACT

relating to the operation, certification, and accountability of career schools or colleges.

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

SECTION 1. Section 61.0904, Education Code, is amended to read as follows:

Sec. 61.0904. REVIEW OF INSTITUTIONAL GROUPINGS. (a) At least once every 10 years, the board shall conduct a review of the institutional groupings under the board's higher education accountability system, including a review of the criteria for and definitions assigned to those groupings.

(b) The board shall include within the board's higher education accountability system any career schools and colleges in this state that offer degree programs. Regardless of whether the board is conducting a periodic review of institutional groupings as required by Subsection (a), the board shall determine whether to create one or more separate institutional groupings for entities to which this subsection applies. In implementing this subsection, the board shall:

(1) consult with affected career schools and colleges regarding the imposition of reporting requirements on those entities; and

(2) adopt rules that clearly define the types and amounts of information to be reported to the board.

(c) In advance of each regular session of the legislature, the board shall report to each standing legislative committee with primary jurisdiction over higher education regarding any entities to which Subsection (b) applies that do not participate in the board's higher education accountability system as provided by that subsection.

SECTION 2. Subdivisions (1) and (4), Section 132.001, Education Code, are amended to read as follows:

(1) "Career school or college":

(A) means any business enterprise operated for a profit or on a nonprofit basis that maintains a physical place of business within this state or solicits business within this state, that is not specifically exempted by this chapter, and:

(i) [~~(A)~~] that offers or maintains a course or courses of instruction or study; or

(ii) [~~(B)~~] at which place of business such a course or courses of instruction or study are available through classroom instruction or by distance education, or both, to a person for the purpose of training or preparing the person for a field of endeavor in a business, trade, technical, or industrial occupation, or for avocational or personal improvement; and

(B) does not include a school or educational institution that:

(i) is physically located in another state;

(ii) is legally authorized by the state of its physical location to offer postsecondary education and award degrees;

(iii) is accredited by a regional or national accrediting organization recognized by the United States secretary of education under the Higher Education Act of 1965 (20 U.S.C. Section 1001 et seq.); and

(iv) offers in this state only postsecondary distance or correspondence programs of instruction.

(4) "Representative" means a person employed by a career school or college [~~whether the school or college is located within or without this state,~~] to act as an agent, solicitor, broker, or independent contractor to directly procure students for the school or college by solicitation within [~~or without~~] this state at any place.

SECTION 3. Sections 132.052 and 132.151, Education Code, are amended to read as follows:

Sec. 132.052. APPLICATION FOR CERTIFICATE OF APPROVAL. Every career school or college desiring to operate in this state [~~or do business in this state~~] shall make written application to the commission for a certificate of approval. Such application shall be verified, be in such form as may be prescribed by the commission, and shall furnish the commission such information as the commission may require.

Sec. 132.151. PROHIBITIONS. A person may not:

(1) operate a career school or college without a certificate of approval issued by the commission;

(2) solicit prospective students for or on behalf of a career school or college without being registered as a representative of the career school or college as required by this chapter;

(3) accept contracts or enrollment applications for or on behalf of a career school or college from a representative who is not bonded as required by this chapter;

(4) utilize advertising designed to mislead or deceive prospective students;

(5) fail to notify the commission of the closure [~~discontinuance of the operation~~] of any career school or college within 72 hours of cessation of classes and make available accurate records as required by this chapter;

(6) negotiate any promissory instrument received as payment of tuition or other charge by a career school or college prior to completion of 75 percent of the applicable program, provided that prior to such time, the instrument may be transferred by assignment to a purchaser who shall be subject to all the defenses available against the career school or college named as payee; or

(7) violate any provision of this chapter.

SECTION 4. Subchapter G, Chapter 132, Education Code, is amended by adding Section 132.202 to read as follows:

Sec. 132.202. REQUIRED POSTING BY CERTAIN SCHOOLS OR EDUCATIONAL INSTITUTIONS NOT OPERATING IN THIS STATE. A school or educational institution described by Section 132.001(1)(B) shall post a conspicuous notice on the home page of its website stating:

(1) that the career school or college is not regulated in Texas under this chapter;

(2) the name of any regulatory agencies that approve and regulate the school's programs in the state where the school is physically located and in which it has legal authorization to operate; and



(3) how to file complaints or make other contact with applicable regulatory agencies.

SECTION 5. Subsection (d), Section 132.059, Education Code, is repealed.

SECTION 6. The changes in law made by this Act apply only to a certificate of approval issued, an action filed, or any other proceeding commenced under Chapter 132, Education Code, on or after the effective date of this Act. A certificate of approval issued, an action filed, or any other proceeding commenced before the effective date of this Act is covered by the law in effect at the time the certificate of approval was issued, the action was filed, or the other proceeding was commenced, and the former law is continued in effect for that purpose.

SECTION 7. This Act takes effect September 1, 2011.

The Conference Committee Report on **SB 1534** was filed with the Secretary of the Senate.

### CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1286

Senator Davis submitted the following Conference Committee Report:

Austin, Texas  
May 27, 2011

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 1286** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

DAVIS  
DEUELL  
NICHOLS

OGDEN  
PATRICK

On the part of the Senate

D. HOWARD

DARBY  
PATRICK

VEASEY  
AYCOCK

On the part of the House

The Conference Committee Report on **HB 1286** was filed with the Secretary of the Senate.

### CONFERENCE COMMITTEE REPORT ON SENATE BILL 958

Senator Wentworth submitted the following Conference Committee Report:

Austin, Texas  
May 27, 2011

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 958** 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  
ELTIFE  
HEGAR  
URESTI  
WATSON

LARSON  
KUEMPEL  
GUILLEN  
RODRIGUEZ

On the part of the Senate

On the part of the House

A BILL TO BE ENTITLED  
AN ACT

relating to the regulation of certain animals.

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

SECTION 1. Section 822.007, Health and Safety Code, is amended to read as follows:

Sec. 822.007. LOCAL REGULATION OF DOGS. (a) Except as provided by Subsection (c), this [This] subchapter does not prohibit a municipality or county from adopting leash or registration requirements applicable to dogs.

(b) A volunteer search and rescue service dog that is part of a volunteer search and rescue team is not considered a dangerous wild animal for purposes of this chapter.

(c) In this section, "volunteer search and rescue team" means an individual or an organized group of volunteers issued a written document by a law enforcement department that recognizes the individual or group as a person or group that trains dogs to assist in the location of a lost or missing person or for law enforcement purposes. A municipality may not adopt or enforce an ordinance, including a leash law, that restricts the ability of a volunteer search and rescue team to train a service dog for search and rescue or law enforcement purposes.

SECTION 2. Section 822.101, Health and Safety Code, is amended by adding Subdivision (8) to read as follows:

(8) "Wildlife sanctuary" means a public charitable organization that:

(A) is exempt from taxation under Section 501(a), Internal Revenue Code of 1986, by being listed as an exempt organization under Section 501(c)(3) of that code;

(B) is described by Section 170(b)(1)(A)(vi), Internal Revenue Code of 1986;

(C) operates a place of refuge where an abused, neglected, unwanted, impounded, abandoned, orphaned, or displaced wild animal is:

(i) provided care for the animal's lifetime;

(ii) transferred to another wildlife sanctuary; or

(iii) released back to the animal's natural habitat; and

- (D) with respect to a wild animal owned by the organization, does not:  
(i) conduct any commercial activity; or  
(ii) breed the animal.

SECTION 3. Section 822.102(a), Health and Safety Code, is amended to read as follows:

(a) This subchapter does not apply to:

(1) a county, municipality, or agency of the state or an agency of the United States or an agent or official of a county, municipality, or agency acting in an official capacity;

(2) a research facility, as that term is defined by Section 2(e), Animal Welfare Act (7 U.S.C. Section 2132), and its subsequent amendments, that is licensed by the secretary of agriculture of the United States under that Act;

(3) an organization that is an accredited member of the American Zoo and Aquarium Association;

(4) an injured, infirm, orphaned, or abandoned dangerous wild animal while being transported for care or treatment;

(5) a sick or ~~an~~ injured~~[, infirm, orphaned, or abandoned]~~ dangerous wild animal while being rehabilitated or~~[,]~~ treated~~[, or cared for]~~ by and in the temporary possession of a licensed veterinarian~~[, an incorporated humane society or animal shelter,]~~ or a person who holds a rehabilitation permit issued under Subchapter C, Chapter 43, Parks and Wildlife Code, for the animal being rehabilitated or treated;

(6) a dangerous wild animal owned by and in the custody and control of a transient circus company that is not based in this state if:

(A) the animal is used as an integral part of the circus performances; and

(B) the animal is kept within this state only during the time the circus is performing in this state or for a period not to exceed 30 days while the circus is performing outside the United States;

(7) a dangerous wild animal while in the temporary custody or control of a television or motion picture production company during the filming of a television or motion picture production in this state;

(8) a dangerous wild animal owned by and in the possession, custody, or control of a college or university solely as a mascot for the college or university;

(9) a dangerous wild animal while being transported in interstate commerce through the state in compliance with the Animal Welfare Act (7 U.S.C. Section 2131 et seq.) and its subsequent amendments and the regulations adopted under that Act;

(10) a nonhuman primate owned by and in the control and custody of a person whose only business is supplying nonhuman primates directly and exclusively to biomedical research facilities and who holds a Class "A" or Class "B" dealer's license issued by the secretary of agriculture of the United States under the Animal Welfare Act (7 U.S.C. Section 2131 et seq.) and its subsequent amendments;

(11) a dangerous wild animal that is:

(A) owned by or in the possession, control, or custody of a person who is a participant in a species survival plan of the American Zoo and Aquarium Association for that species; and

(B) an integral part of that species survival plan; ~~[and]~~

(12) in a county west of the Pecos River that has a population of less than 25,000, a cougar, bobcat, or coyote in the possession, custody, or control of a person that has trapped the cougar, bobcat, or coyote as part of a predator or depredation control activity;

(13) an organization that is an accredited member of the Zoological Association of America; and

(14) a wildlife sanctuary that is verified or accredited by:

(A) the Global Federation of Animal Sanctuaries;

(B) the American Sanctuary Association and that received initial verification or accreditation from that association before May 1, 2011; or

(C) a successor nonprofit organization that is similar to the Global Federation of Animal Sanctuaries and is designated by the Department of State Health Services if the Global Federation of Animal Sanctuaries ceases to exist.

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, 2011.

The Conference Committee Report on **SB 958** was filed with the Secretary of the Senate.

### CONFERENCE COMMITTEE REPORT ON HOUSE BILL 628

Senator Jackson submitted the following Conference Committee Report:

Austin, Texas

May 27, 2011

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 628** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

JACKSON

FRASER

SELIGER

VAN DE PUTTE

CALLEGARI

HUNTER

P. KING

LUCIO

W. SMITH

On the part of the Senate

On the part of the House

The Conference Committee Report on **HB 628** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 1711**

Senator Jackson submitted the following Conference Committee Report:

Austin, Texas  
May 27, 2011

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 1711** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

JACKSON  
ELTIFE  
HUFFMAN  
LUCIO  
WILLIAMS

J. DAVIS  
R. ANDERSON  
HARDCASTLE

On the part of the Senate

On the part of the House

The Conference Committee Report on **HB 1711** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 1816**

Senator Zaffirini submitted the following Conference Committee Report:

Austin, Texas  
May 26, 2011

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 1816** 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  
RODRIGUEZ  
CARONA  
FRASER  
LUCIO

RAYMOND  
MARGO  
HILDERBRAN  
PENA

On the part of the Senate

On the part of the House

A BILL TO BE ENTITLED  
AN ACT

relating to county and municipal land development regulation.

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

SECTION 1. Section 405.021, Government Code, is amended by adding Subsection (g-1) to read as follows:

(g-1) A system described by Subsection (g):

(1) must include a method for a municipality or county, on a form prescribed by the secretary of state, to nominate an area for identification as a colonia; and

(2) may provide for the review of a nominated area by the Texas Water Development Board, the office of the attorney general, or any other appropriate state agency as determined by the secretary of state.

SECTION 2. Subsections (a) and (d), Section 232.022, Local Government Code, are amended to read as follows:

(a) This subchapter applies only to:

(1) a county any part of which is located within 50 miles of an international border; ~~or~~

(2) a county:

(A) any part of which is located within 100 miles of an international border;

(B) that contains the majority of the area of a municipality with a population of more than 250,000; and

(C) to which Subdivision (1) does not apply; or

(3) a county in which the commissioners court by order:

(A) has adopted the model rules adopted under Section 16.343, Water Code; and

(B) elects to operate under this subchapter.

(d) This subchapter does not apply if all ~~each~~ of the lots of the subdivision are more than ~~is~~ 10 ~~or more~~ acres.

SECTION 3. Section 232.023, Local Government Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a) A subdivider of land must have a plat of the subdivision prepared if at least one of the lots of the subdivision is five acres or less. A commissioners court by order may require a subdivider of land to prepare a plat if none of the lots is five acres or less but at least one of the lots of a subdivision is more than five acres but not more than 10 acres.

(a-1) A subdivision of a tract under this section ~~[subsection]~~ includes a subdivision of real property by any method of conveyance, including a contract for deed, oral contract, contract of sale, or other type of executory contract, regardless of whether the subdivision is made by using a metes and bounds description.

SECTION 4. Section 232.072, Local Government Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a) The owner of a tract of land that divides the tract in any manner that creates at least one lot [~~lots~~] of five acres or less intended for residential purposes must have a plat of the subdivision prepared. A commissioners court by order may require each subdivider of land to prepare a plat if none of the lots is five acres or less but at least one of the lots of the subdivision is more than five acres but not more than 10 acres.

(a-1) A subdivision of a tract under this section includes a subdivision of real property by any method of conveyance, including a contract for deed, oral contract, contract of sale, or other type of executory contract, regardless of whether the subdivision is made by using a metes and bounds description.

SECTION 5. Section 16.343, Water Code, is amended by adding Subsection (f) and amending Subsection (g) to read as follows:

(f) To augment regulatory compliance by political subdivisions, the model rules may impose requirements for platting, replatting, or any other method authorized by law. Notwithstanding any other law to the contrary and except as may be required by an agreement developed under Chapter 242, Local Government Code, a municipality that has adopted the model rules under this section may impose the platting requirements of Chapter 212, Local Government Code, and a county that has adopted the model rules under this section may impose the applicable platting requirements of Chapter 232, Local Government Code, to a division of real property that is required to be platted or replatted by the model rules.

(g) Before an application for funds under Section 15.407 or Subchapter P, Chapter 15, or Subchapter K, Chapter 17, may be considered by the board, if the applicant is located:

(1) in a municipality, the municipality must adopt and enforce the model rules in accordance with this section;

(2) in the extraterritorial jurisdiction of a municipality, the applicant must demonstrate that the model rules have been adopted and are enforced in the extraterritorial jurisdiction by the municipality or the county; or

(3) outside the extraterritorial jurisdiction of a municipality, the county must adopt and enforce the model rules in accordance with this section [~~a political subdivision must adopt the model rules pursuant to this section. If the applicant is a district, nonprofit water supply corporation, or colonia, the applicant must be located in a city or county that has adopted such rules. Applicants for funds under Section 15.407 or Subchapter P, Chapter 15, or Subchapter K, Chapter 17, may not receive funds under those provisions unless the applicable political subdivision adopts and enforces the model rules].~~

SECTION 6. The changes in law made by this Act to Chapter 232, Local Government Code, apply only to a subdivision plat application submitted for approval on or after the effective date of this Act. A subdivision plat application submitted for approval before the effective date of this Act is governed by the law in effect when the application was submitted, and the former law is continued in effect for that purpose.

SECTION 7. This Act takes effect September 1, 2011.

The Conference Committee Report on **SB 1816** was filed with the Secretary of the Senate on Friday, May 27, 2011.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 2457**

Senator Jackson submitted the following Conference Committee Report:

Austin, Texas  
May 27, 2011

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 2457** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

JACKSON  
FRASER  
ELTIFE  
WATSON

On the part of the Senate

J. DAVIS  
REYNOLDS  
MURPHY

PENA

On the part of the House

The Conference Committee Report on **HB 2457** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 652**

Senator Hegar submitted the following Conference Committee Report:

Austin, Texas  
May 27, 2011

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 652** 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.

HEGAR  
HINOJOSA  
HUFFMAN  
NICHOLS  
WHITMIRE

On the part of the Senate

BONNEN  
ANCHIA  
COOK  
HARPER-BROWN  
L. TAYLOR

On the part of the House



A BILL TO BE ENTITLED  
AN ACT

relating to governmental and certain quasi-governmental entities subject to the sunset review process.

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

ARTICLE 1. ENTITIES GIVEN 2013 SUNSET DATE

SECTION 1.01. WINDHAM SCHOOL DISTRICT WITHIN TEXAS DEPARTMENT OF CRIMINAL JUSTICE. Chapter 19, Education Code, is amended by adding Section 19.0021 to read as follows:

Sec. 19.0021. LIMITED PURPOSE REVIEW. (a) As part of its review of the Texas Department of Criminal Justice for the 83rd Legislature, the Sunset Advisory Commission shall conduct a limited purpose review of the structure, management, and operations of the Windham School District.

(b) The Sunset Advisory Commission shall include in the commission's report to the 83rd Legislature any recommendations relating to the Windham School District that the commission considers appropriate.

(c) This section expires September 1, 2013.

SECTION 1.02. TEXAS HIGHER EDUCATION COORDINATING BOARD.

Section 61.0211, Education Code, is amended to read as follows:

Sec. 61.0211. SUNSET PROVISION. The Texas Higher Education Coordinating Board is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2013 ~~[2015]~~.

SECTION 1.03. TEXAS ETHICS COMMISSION. Section 571.022, Government Code, is amended to read as follows:

Sec. 571.022. SUNSET PROVISION. The commission is subject to review under Chapter 325 (Texas Sunset Act), but is not abolished under that chapter. The commission shall be reviewed during the periods in which state agencies abolished in 2013 ~~[2015]~~ and every 12th year after that year are reviewed.

SECTION 1.04. TEXAS WINDSTORM INSURANCE ASSOCIATION.

Subsection (b), Section 2210.002, Insurance Code, is amended to read as follows:

(b) The association is subject to review under Chapter 325, Government Code (Texas Sunset Act), but is not abolished under that chapter. The association shall be reviewed during the period in which state agencies abolished in 2013 ~~[2015]~~ are reviewed. The association shall pay the costs incurred by the Sunset Advisory Commission in performing the review of the association under this subsection. The Sunset Advisory Commission shall determine the costs of the review performed under this subsection, and the association shall pay the amount of those costs promptly on receipt of a statement from the Sunset Advisory Commission regarding those costs. This subsection expires September 1, 2013 ~~[2015]~~.

SECTION 1.05. TEXAS BOARD OF PROFESSIONAL ENGINEERS. Section

1001.005, Occupations Code, is amended to read as follows:

Sec. 1001.005. APPLICATION OF SUNSET ACT. The Texas Board of Professional Engineers is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2013 ~~[2015]~~.

SECTION 1.06. TEXAS BOARD OF ARCHITECTURAL EXAMINERS. Section 1051.003, Occupations Code, is amended to read as follows:

Sec. 1051.003. APPLICATION OF SUNSET ACT. The Texas Board of Architectural Examiners is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this subtitle expires September 1, 2013 [~~2015~~].

SECTION 1.07. RAILROAD COMMISSION OF TEXAS. (a) Section 81.01001, Natural Resources Code, is amended to read as follows:

Sec. 81.01001. SUNSET PROVISION. The Railroad Commission of Texas is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished September 1, 2013 [~~2011~~].

(b) This section takes effect only if the 82nd Legislature, Regular Session, 2011, does not enact other legislation that becomes law and that amends Section 81.01001, Natural Resources Code, to extend the sunset date of the Railroad Commission of Texas. If the 82nd Legislature, Regular Session, 2011, enacts legislation of that kind, this section has no effect.

(c) The review of the Railroad Commission of Texas by the Sunset Advisory Commission in preparation for the work of the 83rd Legislature in Regular Session is not limited to the appropriateness of recommendations made by the commission to the 82nd Legislature. In the commission's report to the 83rd Legislature, the commission may include any recommendations it considers appropriate.

SECTION 1.08. PUBLIC UTILITY COMMISSION OF TEXAS. (a) Section 12.005, Utilities Code, is amended to read as follows:

Sec. 12.005. APPLICATION OF SUNSET ACT. The Public Utility Commission of Texas is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter or by Chapter 39, the commission is abolished and this title expires September 1, 2013 [~~2011~~].

(b) This section takes effect only if the 82nd Legislature, Regular Session, 2011, does not enact other legislation that becomes law and that amends Section 12.005, Utilities Code, to extend the sunset date of the Public Utility Commission of Texas. If the 82nd Legislature, Regular Session, 2011, enacts legislation of that kind, this section has no effect.

SECTION 1.09. ELECTRIC RELIABILITY COUNCIL OF TEXAS. (a) Section 39.151, Utilities Code, is amended by adding Subsections (n) and (n-1) to read as follows:

(n) An independent organization certified by the commission under this section is subject to review under Chapter 325, Government Code (Texas Sunset Act), but is not abolished under that chapter. The independent organization shall be reviewed during the periods in which the Public Utility Commission of Texas is reviewed.

(n-1) Notwithstanding Subsection (n), an independent organization certified by the commission under this section is not subject to review in preparation for the work of the 83rd Legislature in Regular Session. This subsection expires September 1, 2013.

(b) This section takes effect only if the 82nd Legislature, Regular Session, 2011, does not enact other legislation that becomes law and that amends Section 39.151, Utilities Code, to subject an independent organization certified by the Public Utility Commission of Texas under that section to sunset review during the periods in which the commission is reviewed. If the 82nd Legislature, Regular Session, 2011, enacts legislation of that kind, this section has no effect.

SECTION 1.10. PORT OF HOUSTON AUTHORITY. Chapter 97, Acts of the 40th Legislature, 1st Called Session, 1927, is amended by adding Section 9 to read as follows:

Sec. 9. SUNSET REVIEW. (a) The Port of Houston Authority of Harris County, Texas, is subject to review under Chapter 325, Government Code (Texas Sunset Act), as if it were a state agency but may not be abolished under that chapter. The review shall be conducted as if the authority were scheduled to be abolished September 1, 2013.

(b) The reviews must assess the authority's governance, management, and operating structure, and the authority's compliance with legislative requirements.

(c) The authority shall pay the cost incurred by the Sunset Advisory Commission in performing a review of the authority under this section. The Sunset Advisory Commission shall determine the cost, and the authority shall pay the amount promptly on receipt of a statement from the Sunset Advisory Commission detailing the cost.

(d) This section expires September 1, 2013.

#### ARTICLE 2. ENTITIES GIVEN 2015 SUNSET DATE

SECTION 2.01. REGIONAL EDUCATION SERVICE CENTERS. Subchapter A, Chapter 8, Education Code, is amended by adding Section 8.010 to read as follows:

Sec. 8.010. SUNSET PROVISION. Regional education service centers are subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the centers are abolished and this chapter expires September 1, 2015.

SECTION 2.02. FINANCE COMMISSION OF TEXAS. Section 11.108, Finance Code, is amended to read as follows:

Sec. 11.108. SUNSET PROVISION. The finance commission is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished September 1, 2015 ~~[2013]~~.

SECTION 2.03. OFFICE OF BANKING COMMISSIONER. Section 12.109, Finance Code, is amended to read as follows:

Sec. 12.109. SUNSET PROVISION. The office of banking commissioner is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the office is abolished September 1, 2015 ~~[2013]~~.

SECTION 2.04. OFFICE OF SAVINGS AND MORTGAGE LENDING COMMISSIONER AND THE DEPARTMENT OF SAVINGS AND MORTGAGE LENDING. Section 13.012, Finance Code, is amended to read as follows:

Sec. 13.012. SUNSET PROVISION. The office of savings and mortgage lending commissioner and the Department of Savings and Mortgage Lending are subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the office and department are abolished September 1, 2015 [2013].

SECTION 2.05. OFFICE OF CONSUMER CREDIT COMMISSIONER. Section 14.066, Finance Code, is amended to read as follows:

Sec. 14.066. SUNSET PROVISION. The office is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the office is abolished September 1, 2015 [2013].

SECTION 2.06. HEALTH AND HUMAN SERVICES COMMISSION. Section 531.004, Government Code, is amended to read as follows:

Sec. 531.004. SUNSET PROVISION. The Health and Human Services Commission is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished and this chapter expires September 1, 2015 [2013].

SECTION 2.07. TAX DIVISION OF THE STATE OFFICE OF ADMINISTRATIVE HEARINGS. Subsection (b), Section 2003.102, Government Code, is amended to read as follows:

(b) The Sunset Advisory Commission shall evaluate the tax division and present to the 84th [83rd] Legislature a report on that evaluation and the commission's recommendations in relation to the tax division.

SECTION 2.08. CONFORMING AMENDMENT RELATING TO FORMER TEXAS BOARD OF HEALTH AND TEXAS DEPARTMENT OF HEALTH. Section 11.003, Health and Safety Code, is amended to read as follows:

Sec. 11.003. SUNSET PROVISION. The Texas Board of Health and the Texas Department of Health were abolished by Section 1.26, Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session, 2003, and the powers and duties of those entities under this chapter were transferred to other agencies, which are subject to Chapter 325, Government Code (Texas Sunset Act). Unless the agencies to which those powers and duties are transferred are continued in existence as provided by that chapter, [the board and the department are abolished and] this chapter expires September 1, 2015 [2011].

SECTION 2.09. TEXAS HEALTH SERVICES AUTHORITY. Section 182.052, Health and Safety Code, is amended to read as follows:

Sec. 182.052. APPLICATION OF SUNSET ACT. The corporation is subject to Chapter 325, Government Code. Unless continued in existence as provided by that chapter, the corporation is abolished and this chapter expires September 1, 2015 [2013]. The governor may order the dissolution of the corporation at any time the governor declares that the purposes of the corporation have been fulfilled or that the corporation is inoperative or abandoned.

SECTION 2.10. CONFORMING AMENDMENT RELATING TO FORMER TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION. Section 532.002, Health and Safety Code, is amended to read as follows:

Sec. 532.002. SUNSET PROVISION. The Texas Department of Mental Health and Mental Retardation was abolished by Section 1.26, Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session, 2003, and the powers and duties of that agency under this chapter were transferred to other agencies, which are [is] subject to Chapter 325, Government Code (Texas Sunset Act). Unless the agencies to which those powers and duties are transferred are continued in existence as provided by that Act, [the department is abolished and] this chapter expires September 1, 2015 [2014].

SECTION 2.11. DEPARTMENT OF STATE HEALTH SERVICES. Section 1001.003, Health and Safety Code, is amended to read as follows:

Sec. 1001.003. SUNSET PROVISION. The Department of State Health Services is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the department is abolished and this chapter expires September 1, 2015 [2013].

SECTION 2.12. CONFORMING AMENDMENT RELATING TO FORMER TEXAS DEPARTMENT OF HUMAN SERVICES. Section 21.002, Human Resources Code, is amended to read as follows:

Sec. 21.002. SUNSET PROVISION. The Texas Department of Human Services was abolished by Section 1.26, Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session, 2003, and the powers and duties of that agency under this chapter were transferred to other agencies, which are [is] subject to Chapter 325, Government Code (Texas Sunset Act). Unless the agencies to which those powers and duties are transferred are continued in existence as provided by that chapter, [the department is abolished and] this title expires September 1, 2015 [2014], except that Chapter 40 expires as provided by Section 40.003.

SECTION 2.13. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES. Section 40.003, Human Resources Code, is amended to read as follows:

Sec. 40.003. SUNSET PROVISION. The Department of Family and Protective Services is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the department is abolished and this chapter expires September 1, 2015 [2013].

SECTION 2.14. CONFORMING AMENDMENT RELATING TO FORMER TEXAS COMMISSION FOR THE DEAF AND HARD OF HEARING. Section 81.004, Human Resources Code, is amended to read as follows:

Sec. 81.004. SUNSET PROVISION. The Texas Commission for the Deaf and Hard of Hearing was abolished by Section 1.26, Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session, 2003, and the powers and duties of that agency under this chapter were transferred to other agencies, which are [is] subject to Chapter 325, Government Code (Texas Sunset Act). Unless the agencies to which those powers and duties are transferred are [commission is] continued in existence as provided by that chapter, [the commission is abolished and] this chapter expires September 1, 2015 [2014].

SECTION 2.15. CONFORMING AMENDMENT RELATING TO FORMER TEXAS COMMISSION FOR THE BLIND. Section 91.001, Human Resources Code, is amended to read as follows:

Sec. 91.001. SUNSET PROVISION. The Texas Commission for the Blind was abolished by Section 1.26, Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session, 2003, and the powers and duties of that agency under this chapter were transferred to other agencies, which are ~~is~~ subject to Chapter 325, Government Code (Texas Sunset Act). Unless the agencies to which those powers and duties are transferred are continued in existence as provided by that chapter, ~~the commission is abolished and~~ this chapter expires effective September 1, 2015 ~~[2011]~~.

SECTION 2.16. CONFORMING AMENDMENT RELATING TO FORMER TEXAS REHABILITATION COMMISSION. Section 111.012, Human Resources Code, is amended to read as follows:

Sec. 111.012. SUNSET PROVISION. The Texas Rehabilitation Commission was abolished by Section 1.26, Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session, 2003, and the powers and duties of that agency under this chapter were transferred to other agencies, which are ~~is~~ subject to Chapter 325, Government Code (Texas Sunset Act). Unless the agencies to which those powers and duties are transferred are continued in existence as provided by that chapter, ~~the commission is abolished and~~ this chapter expires September 1, 2015 ~~[2011]~~.

SECTION 2.17. TEXAS COUNCIL FOR DEVELOPMENTAL DISABILITIES. Section 112.023, Human Resources Code, is amended to read as follows:

Sec. 112.023. SUNSET PROVISION. The Texas Council for Developmental Disabilities is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the council is abolished and this chapter expires September 1, 2015 ~~[2013]~~.

SECTION 2.18. GOVERNOR'S COMMITTEE ON PEOPLE WITH DISABILITIES. Section 115.005, Human Resources Code, is amended to read as follows:

Sec. 115.005. SUNSET PROVISION. The Governor's Committee on People with Disabilities is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the committee is abolished and this chapter expires September 1, 2015 ~~[2013]~~.

SECTION 2.19. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES. Section 117.003, Human Resources Code, is amended to read as follows:

Sec. 117.003. SUNSET PROVISION. The Department of Assistive and Rehabilitative Services is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the department is abolished and this chapter expires September 1, 2015 ~~[2013]~~.

SECTION 2.20. TEXAS COUNCIL ON PURCHASING FROM PEOPLE WITH DISABILITIES. Section 122.006, Human Resources Code, is amended to read as follows:

Sec. 122.006. SUNSET PROVISION. The Texas Council on Purchasing from People with Disabilities is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the council is abolished and this chapter expires September 1, 2015 ~~[2013]~~.

SECTION 2.21. DEPARTMENT OF AGING AND DISABILITY SERVICES. Section 161.003, Human Resources Code, is amended to read as follows:

Sec. 161.003. SUNSET PROVISION. The Department of Aging and Disability Services is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the department is abolished and this chapter expires September 1, 2015 [~~2013~~].

SECTION 2.22. TEXAS WORKFORCE COMMISSION. Section 301.008, Labor Code, is amended to read as follows:

Sec. 301.008. APPLICATION OF SUNSET ACT. The Texas Workforce Commission is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished September 1, 2015 [~~2013~~].

SECTION 2.23. STATE SECURITIES BOARD. Subsection O, Section 2, The Securities Act (Article 581-2, Vernon's Texas Civil Statutes), is amended to read as follows:

O. The State Securities Board is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this Act expires September 1, 2015 [~~2013~~].

#### ARTICLE 3. ENTITIES GIVEN 2017 SUNSET DATE

SECTION 3.01. COURT REPORTERS CERTIFICATION BOARD. Section 52.014, Government Code, is amended to read as follows:

Sec. 52.014. SUNSET PROVISION. The Court Reporters Certification Board is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished September 1, 2017 [~~2015~~].

SECTION 3.02. LICENSED COURT INTERPRETER ADVISORY BOARD. Section 57.051, Government Code, is amended to read as follows:

Sec. 57.051. SUNSET. The licensed court interpreter advisory board is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this subchapter expires September 1, 2017 [~~2013~~].

SECTION 3.03. PROCESS SERVER REVIEW BOARD. Chapter 72, Government Code, is amended by adding Subchapter F to read as follows:

#### SUBCHAPTER F. PROCESS SERVER REVIEW BOARD

Sec. 72.091. SUNSET REVIEW. The process server review board established by supreme court order is subject to review under Chapter 325 (Texas Sunset Act), as if it were a state agency but may not be abolished under that chapter. The review shall be conducted as if the process server review board were scheduled to be abolished September 1, 2017.

SECTION 3.04. STATE BAR OF TEXAS. Section 81.003, Government Code, is amended to read as follows:

Sec. 81.003. SUNSET PROVISION. The state bar is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, this chapter expires September 1, 2017 [~~2015~~].

SECTION 3.05. BOARD OF LAW EXAMINERS. Section 82.006, Government Code, is amended to read as follows:

Sec. 82.006. SUNSET PROVISION. The Board of Law Examiners is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished September 1, 2017 [~~2015~~].

SECTION 3.06. STATE BOARD OF DENTAL EXAMINERS. Section 251.005, Occupations Code, is amended to read as follows:

Sec. 251.005. APPLICATION OF SUNSET ACT. The State Board of Dental Examiners is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished September 1, 2017 [2015].

SECTION 3.07. EXECUTIVE COUNCIL OF PHYSICAL THERAPY AND OCCUPATIONAL THERAPY EXAMINERS. Section 452.002, Occupations Code, is amended to read as follows:

Sec. 452.002. APPLICATION OF SUNSET ACT. The Executive Council of Physical Therapy and Occupational Therapy Examiners is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the executive council is abolished and the following laws expire September 1, 2017 [2013]:

- (1) this chapter;
- (2) Chapter 453; and
- (3) Chapter 454.

SECTION 3.08. TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS. Section 453.002, Occupations Code, is amended to read as follows:

Sec. 453.002. APPLICATION OF SUNSET ACT. The Texas Board of Physical Therapy Examiners is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2017 [2013].

SECTION 3.09. TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS. Section 454.003, Occupations Code, is amended to read as follows:

Sec. 454.003. APPLICATION OF SUNSET ACT. The Texas Board of Occupational Therapy Examiners is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2017 [2013].

SECTION 3.10. TEXAS BOARD OF ORTHOTICS AND PROSTHETICS. Section 605.003, Occupations Code, is amended to read as follows:

Sec. 605.003. APPLICATION OF SUNSET ACT. The Texas Board of Orthotics and Prosthetics is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2017 [2013].

#### ARTICLE 4. ENTITIES GIVEN 2019 SUNSET DATE

SECTION 4.01. DEPARTMENT OF PUBLIC SAFETY OF THE STATE OF TEXAS. Subsection (c), Section 411.002, Government Code, is amended to read as follows:

(c) The Department of Public Safety of the State of Texas is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the department is abolished and Subsections (a) and (b) expire September 1, 2019 [2015].

SECTION 4.02. ADJUTANT GENERAL'S DEPARTMENT. Section 431.023, Government Code, is amended to read as follows:



Sec. 431.023. SUNSET PROVISION. The adjutant general's department is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the department is abolished and this subchapter expires September 1, 2019 [~~2015~~].

SECTION 4.03. TEXAS VETERANS COMMISSION. Subsection (a), Section 434.002, Government Code, is amended to read as follows:

(a) The Texas Veterans Commission is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished September 1, 2019 [~~2013~~].

SECTION 4.04. SCHOOL LAND BOARD. Section 32.003, Natural Resources Code, is amended to read as follows:

Sec. 32.003. APPLICATION OF SUNSET ACT. The School Land Board is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished September 1, 2019 [~~2017~~].

SECTION 4.05. TEXAS COMMISSION OF LICENSING AND REGULATION AND THE TEXAS DEPARTMENT OF LICENSING AND REGULATION. Section 51.002, Occupations Code, is amended to read as follows:

Sec. 51.002. APPLICATION OF SUNSET ACT. The Texas Commission of Licensing and Regulation and the Texas Department of Licensing and Regulation are subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission and the department are abolished September 1, 2019 [~~2015~~].

SECTION 4.06. TEXAS FUNERAL SERVICE COMMISSION. Section 651.002, Occupations Code, is amended to read as follows:

Sec. 651.002. APPLICATION OF SUNSET ACT. The Texas Funeral Service Commission is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished and this chapter expires September 1, 2019 [~~2015~~].

SECTION 4.07. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS. Section 1002.003, Occupations Code, is amended to read as follows:

Sec. 1002.003. APPLICATION OF SUNSET ACT. The Texas Board of Professional Geoscientists is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2019 [~~2015~~].

SECTION 4.08. TEXAS BOARD OF PROFESSIONAL LAND SURVEYING. Section 1071.003, Occupations Code, is amended to read as follows:

Sec. 1071.003. APPLICATION OF SUNSET ACT. The Texas Board of Professional Land Surveying is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2019 [~~2015~~].

SECTION 4.09. TEXAS STATE BOARD OF PLUMBING EXAMINERS. Section 1301.003, Occupations Code, is amended to read as follows:

Sec. 1301.003. APPLICATION OF SUNSET ACT. The Texas State Board of Plumbing Examiners is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2019 ~~[2015]~~.

SECTION 4.10. TEXAS DEPARTMENT OF MOTOR VEHICLES. Section 1001.005, Transportation Code, is amended to read as follows:

Sec. 1001.005. SUNSET PROVISION. The department is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the department is abolished September 1, 2019 ~~[2015]~~.

#### ARTICLE 5. ENTITIES GIVEN 2021 SUNSET DATE

SECTION 5.01. TEXAS ANIMAL HEALTH COMMISSION. Section 161.027, Agriculture Code, is amended to read as follows:

Sec. 161.027. SUNSET PROVISION. The Texas Animal Health Commission is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished September 1, 2021 ~~[2019]~~.

SECTION 5.02. PREPAID HIGHER EDUCATION TUITION BOARD. Section 54.603, Education Code, is amended to read as follows:

Sec. 54.603. SUNSET PROVISION. The Prepaid Higher Education Tuition Board is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and the programs established under this subchapter and under Subchapters G and H terminate September 1, 2021 ~~[2019]~~.

SECTION 5.03. TEXAS GUARANTEED STUDENT LOAN CORPORATION. Subsection (a), Section 57.12, Education Code, is amended to read as follows:

(a) The Texas Guaranteed Student Loan Corporation is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the corporation is abolished and this chapter expires September 1, 2021 ~~[2017]~~.

SECTION 5.04. TEXAS ECONOMIC DEVELOPMENT AND TOURISM OFFICE. Section 481.003, Government Code, is amended to read as follows:

Sec. 481.003. SUNSET PROVISION. The Texas Economic Development and Tourism Office is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the office is abolished and this chapter expires September 1, 2021 ~~[2015]~~.

SECTION 5.05. OFFICE OF STATE-FEDERAL RELATIONS. Section 751.003, Government Code, is amended to read as follows:

Sec. 751.003. SUNSET PROVISION. The Office of State-Federal Relations is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the office is abolished and this chapter expires September 1, 2021 ~~[2015]~~.

#### ARTICLE 6. ENTITIES GIVEN 2023 SUNSET DATE

SECTION 6.01. TEXAS INVASIVE SPECIES COORDINATING COMMITTEE. Subsection (a), Section 776.007, Government Code, is amended to read as follows:

(a) The committee is subject to Chapter 325 (Texas Sunset Act). The committee shall be reviewed during the periods in which the State Soil and Water Conservation Board is reviewed. Unless continued in existence as provided by that chapter, the committee is abolished and this chapter expires on the date on which that agency is subject to abolishment [~~September 1, 2013~~].

SECTION 6.02. OFFICE OF PUBLIC UTILITY COUNSEL. Section 13.002, Utilities Code, is amended to read as follows:

Sec. 13.002. APPLICATION OF SUNSET ACT. The Office of Public Utility Counsel is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the office is abolished and this chapter expires September 1, 2023 [~~2011~~].

#### ARTICLE 7. ENTITIES REMOVED FROM SPECIFIC SUNSET REVIEW

SECTION 7.01. BOARD OF DIRECTORS OF THE OFFICIAL CITRUS PRODUCERS' PEST AND DISEASE MANAGEMENT CORPORATION. Section 80.028, Agriculture Code, is amended to read as follows:

Sec. 80.028. DISSOLUTION [~~SUNSET~~] PROVISION. (a) [~~The board of directors of the official citrus producers' pest and disease management corporation is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2021.~~

[(b)] The commissioner may order the dissolution of the corporation at any time the commissioner determines that the purposes of this chapter have been fulfilled or that the corporation is inoperative and abandoned. Dissolution shall be conducted in accordance with Section 80.014.

(b) [(c)] If the corporation [~~is abolished~~] or the suppression program is discontinued for any reason, assessments approved, levied, or otherwise collectible on the date of discontinuance [~~abolishment~~] remain valid as necessary to pay the financial obligations of the corporation.

#### ARTICLE 8. SUNSET ADVISORY COMMISSION

SECTION 8.01. REVIEW OF AGENCIES REVIEWED FOR THE 82nd LEGISLATURE. For a state agency that was reviewed by the Sunset Advisory Commission in preparation for the work of the 82nd Legislature in Regular Session and the abolition date of which was extended to 2013, the commission, unless expressly provided otherwise, shall limit its review of the agency in preparation for the work of the 83rd Legislature in Regular Session to the appropriateness of recommendations made by the commission to the 82nd Legislature. In the commission's report to the 83rd Legislature, the commission may include any recommendations it considers appropriate. This section expires September 1, 2013.

#### ARTICLE 9. EFFECTIVE DATE

SECTION 9.01. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2011.

The Conference Committee Report on **SB 652** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 1010**

Senator Huffman submitted the following Conference Committee Report:

Austin, Texas  
May 27, 2011

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 1010** 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.

HUFFMAN  
HEGAR  
PATRICK  
NELSON  
WHITMIRE

On the part of the Senate

WORKMAN  
CARTER  
GALLEGO  
LUCIO  
MADDEN

On the part of the House

A BILL TO BE ENTITLED  
AN ACT

relating to providing a victim, guardian of a victim, or close relative of a deceased victim with notice of a plea bargain agreement in certain criminal cases.

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

SECTION 1. Article 26.13, Code of Criminal Procedure, is amended by amending Subsections (a) and (e) and adding Subsection (e-1) to read as follows:

(a) Prior to accepting a plea of guilty or a plea of nolo contendere, the court shall admonish the defendant of:

(1) the range of the punishment attached to the offense;

(2) the fact that the recommendation of the prosecuting attorney as to punishment is not binding on the court. Provided that the court shall inquire as to the existence of a ~~[any]~~ plea bargain agreement ~~[bargaining agreements]~~ between the state and the defendant and, if ~~[in the event that such]~~ an agreement exists, the court shall inform the defendant whether it will follow or reject the ~~[such]~~ agreement in open court and before any finding on the plea. Should the court reject the ~~[any such]~~ agreement, the defendant shall be permitted to withdraw the defendant's ~~[his]~~ plea of guilty or nolo contendere;

(3) the fact that if the punishment assessed does not exceed the punishment recommended by the prosecutor and agreed to by the defendant and the defendant's ~~[his]~~ attorney, the trial court must give its permission to the defendant before the defendant ~~[he]~~ may prosecute an appeal on any matter in the case except for those matters raised by written motions filed prior to trial;

(4) the fact that if the defendant is not a citizen of the United States of America, a plea of guilty or nolo contendere for the offense charged may result in deportation, the exclusion from admission to this country, or the denial of naturalization under federal law; and

(5) the fact that the defendant will be required to meet the registration requirements of Chapter 62, if the defendant is convicted of or placed on deferred adjudication for an offense for which a person is subject to registration under that chapter.

(e) Before accepting a plea of guilty or a plea of nolo contendere, the court shall, as applicable in the case:

(1) inquire as to whether a victim impact statement has been returned to the attorney representing the state;

(2) if a victim impact statement has been returned, ~~and~~ ask for a copy of the statement and, on a request by the victim, guardian of a victim, or close relative of a deceased victim, read the statement aloud and in the presence of the defendant; and

(3) inquire as to whether the attorney representing the state has given notice of the existence and terms of any plea bargain agreement to the victim, guardian, or relative ~~[if one has been returned].~~

(e-1) For purposes of Subsection (e), "victim," "guardian of a victim," and "close relative of a deceased victim" have the meanings assigned by Article 56.01.

SECTION 2. Article 56.08, Code of Criminal Procedure, is amended by amending Subsections (b) and (e) and adding Subsection (b-1) to read as follows:

(b) If requested by the victim, the attorney representing the state, as far as reasonably practical, shall give to the victim notice of any scheduled court proceedings, changes in that schedule, and the filing of a request for continuance of a trial setting, ~~and any plea agreements to be presented to the court~~.

(b-1) The attorney representing the state, as far as reasonably practical, shall give to the victim, guardian of a victim, or close relative of a deceased victim notice of the existence and terms of any plea bargain agreement to be presented to the court.

(e) The brief general statement describing the plea bargaining stage in a criminal trial required by Subsection (a)(1) shall include a statement that:

(1) the victim impact statement provided by the victim, guardian of a victim, or close relative of a deceased victim will be considered by the attorney representing the state in entering into the plea bargain agreement; and

(2) the judge before accepting the plea bargain agreement is required under Article ~~[Section]~~ 26.13(e) to ~~[ask]~~:

(A) inquire as to whether a victim impact statement has been returned to the attorney representing the state; ~~and~~

(B) if a victim impact statement has been returned, ask for a copy of the statement and, if requested by the victim, guardian of a victim, or close relative of a deceased victim, read the statement aloud and in the presence of the defendant; and

(C) inquire as to whether the attorney representing the state has given the victim, guardian, or relative notice of the existence and terms of the plea bargain agreement.

SECTION 3. (a) The change in law made by this Act applies only to a victim impact statement or plea bargain agreement that is presented to a court on or after the effective date of this Act.

(b) A victim impact statement or plea bargain agreement that is presented to a court before the effective date of this Act is covered by the law in effect when the statement or agreement was presented, and the former law is continued in effect for that purpose.

SECTION 4. This Act takes effect September 1, 2011.

The Conference Committee Report on **SB 1010** was filed with the Secretary of the Senate.

### CONFERENCE COMMITTEE REPORT ON SENATE BILL 1338

Senator Eltife submitted the following Conference Committee Report:

Austin, Texas  
May 27, 2011

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 1338** 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.

ELTIFE  
HEGAR  
SELIGER  
URESTI  
ZAFFIRINI

On the part of the Senate

GEREN  
HAMILTON  
D. HOWARD  
MARQUEZ  
RITTER

On the part of the House

#### A BILL TO BE ENTITLED AN ACT

relating to the powers and duties of the State Preservation Board.

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

SECTION 1. Subsection (a), Section 443.0071, Government Code, is amended to read as follows:

(a) A proposal to construct a building, monument, or other improvement in the Capitol complex must be submitted to the board for its review and comment at the earliest planning stages of any such project [~~before contracts for the construction are executed~~].

SECTION 2. Subsection (a), Section 443.010, Government Code, is amended to read as follows:

(a) The board and the employees of the board shall develop plans and programs to solicit, and may solicit, gifts, money, and items of value from private persons, foundations, or organizations. Property provided by those entities and money donated to the board become the property of the state and are under the control of the board. The board shall use gifts of money made to the board for the purpose specified by the grantor, if any. To the extent practicable, the board shall use gifts of property made to the board for the purpose specified by the grantor. The board may refuse a gift if in the board's judgment the purpose specified by the grantor conflicts with the goal of preserving the historic character of the buildings under the board's control.

SECTION 3. Section 443.0103, Government Code, is amended by adding Subsection (e) to read as follows:

(e) The board may transfer money from the capital renewal trust fund to any account of the Capitol fund, provided that money transferred shall only be used for the purposes outlined in Subsection (b).

SECTION 4. Subsection (a), Section 443.019, Government Code, is amended to read as follows:

(a) The board may require and collect a standardized deposit from a person or entity that uses the Capitol or the grounds of the Capitol for an event, exhibit, or other scheduled activity. The deposit is in an amount set by the board designed to recover the estimated direct and indirect costs to the state of the event, exhibit, or activity. The board shall set the amounts of deposits required under this section in a uniform and nondiscriminatory manner for similar events, exhibits, or other scheduled activities. The board may deduct from the deposit:

- (1) the cost of damage to the Capitol or grounds of the Capitol that directly results from the event, exhibit, or other activity;
- (2) the costs of [~~extra~~] labor, materials, and utilities directly or indirectly attributable to the event, exhibit, or other activity; and
- (3) the costs of [~~extra~~] security requested by the person or entity for the event, exhibit, or other activity.

SECTION 5. Chapter 443, Government Code, is amended by adding Section 443.030 to read as follows:

Sec. 443.030. SUPPORT ORGANIZATIONS. The board may establish, maintain, and participate in the operation of one or more organizations of persons whose purpose is to raise funds for or provide services or other benefits to the board. Such an organization may be incorporated as a Texas nonprofit corporation.

SECTION 6. Subsection (e), Section 443.0101, Government Code, is repealed.

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, 2011.

The Conference Committee Report on **SB 1338** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 1178**

Senator Birdwell submitted the following Conference Committee Report:

Austin, Texas  
May 26, 2011

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 1178** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

BIRDWELL	FLYNN
ESTES	BERMAN
HARRIS	GUILLEN
VAN DE PUTTE	PENA
SELIGER	ZEDLER
On the part of the Senate	On the part of the House

The Conference Committee Report on **HB 1178** was filed with the Secretary of the Senate on Friday, May 27, 2011.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 2734**

Senator Williams submitted the following Conference Committee Report:

Austin, Texas  
May 27, 2011

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 2734** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

WILLIAMS	MADDEN
HINOJOSA	ALLEN
NICHOLS	CAIN
SHAPIRO	HUNTER
WENTWORTH	PARKER
On the part of the Senate	On the part of the House



The Conference Committee Report on **HB 2734** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 773**

Senator Zaffirini submitted the following Conference Committee Report:

Austin, Texas  
May 26, 2011

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 773** 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

DEUELL

ELTIFE

VAN DE PUTTE

On the part of the Senate

GALLEGO

CHISUM

FRULLO

HILDERBRAN

MUNOZ, JR.

On the part of the House

**A BILL TO BE ENTITLED  
AN ACT**

relating to telecommunications service discounts for educational institutions, libraries, hospitals, and telemedicine centers.

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

SECTION 1. Section 58.252, Utilities Code, is amended by adding Subdivision (1-a) to read as follows:

(1-a) "Health center" means a federally qualified health center service delivery site.

SECTION 2. Subsection (a), Section 58.253, Utilities Code, is amended to read as follows:

(a) On customer request, an electing company shall provide private network services to:

- (1) an educational institution;
- (2) a library as defined in Section 57.021;
- (3) a nonprofit telemedicine center;
- (4) a public or not-for-profit hospital; ~~or~~
- (5) a legally constituted consortium or group of entities listed in this subsection; or

(6) a health center.

SECTION 3. Subsection (b), Section 58.255, Utilities Code, is amended to read as follows:

(b) An electing company shall offer private network service contracts under this subchapter at 110 [~~105~~] percent of the long run incremental cost of providing the private network service, including installation.

SECTION 4. Subsection (a), Section 58.258, Utilities Code, is amended to read as follows:

(a) Notwithstanding the pricing flexibility authorized by this subtitle, an electing company's rates for private network services may not be increased before January 1, 2016 [~~2012~~]. However, an electing company may increase a rate in accordance with the provisions of a customer specific contract.

SECTION 5. Subsection (b), Section 58.259, Utilities Code, is amended to read as follows:

(b) The tariff rate may not be:

(1) distance sensitive; or  
(2) higher than 110 [~~105~~] percent of the service's statewide average long run incremental cost, including installation.

SECTION 6. Subsection (c), Section 58.260, Utilities Code, is amended to read as follows:

(c) The rate for the service may not be higher than 110 [~~105~~] percent of the service's long run incremental cost, including installation.

SECTION 7. Subsection (b), Section 58.261, Utilities Code, is amended to read as follows:

(b) The rate for the service may not be higher than 110 [~~105~~] percent of the service's long run incremental cost, including installation.

SECTION 8. Section 58.268, Utilities Code, is amended to read as follows:

Sec. 58.268. CONTINUATION OF OBLIGATION. Notwithstanding any other provision of this title, an electing company shall continue to comply with this subchapter until January 1, 2016 [~~2012~~], regardless of:

- (1) the date the company elected under this chapter; or
- (2) any action taken in relation to that company under Chapter 65.

SECTION 9. Subsection (a), Section 59.077, Utilities Code, is amended to read as follows:

(a) Notwithstanding the pricing flexibility authorized by this subtitle, an electing company's rates for private network services may not be increased before January 1, 2016 [~~2012~~].

SECTION 10. Section 59.083, Utilities Code, is amended to read as follows:

Sec. 59.083. CONTINUATION OF OBLIGATION. Notwithstanding any other provision of this title, an electing company shall continue to comply with this subchapter until January 1, 2016 [~~2012~~], regardless of:

- (1) the date the company elected under this chapter; or
- (2) any action taken in relation to that company under Chapter 65.

SECTION 11. This Act takes effect September 1, 2011.

The Conference Committee Report on **SB 773** was filed with the Secretary of the Senate on Friday, May 27, 2011.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 1664**

Senator Duncan submitted the following Conference Committee Report:

Austin, Texas  
May 27, 2011

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 1664** 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.

DUNCAN  
DEUELL  
ELLIS  
VAN DE PUTTE  
WILLIAMS  
On the part of the Senate

TRUITT  
HUNTER  
RIDDLE  
TURNER  
On the part of the House

A BILL TO BE ENTITLED  
AN ACT

relating to the powers and duties of and contributions to and benefits from the systems and programs administered by the Employees Retirement System of Texas.

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

SECTION 1. Subchapter A, Chapter 609, Government Code, is amended by adding Section 609.015 to read as follows:

Sec. 609.015. BENEFICIARY CAUSING DEATH OF PARTICIPATING EMPLOYEE. (a) Any benefits, funds, or account balances payable on the death of a participating employee may not be paid to a person convicted of or adjudicated as having caused that death but instead are payable as if the convicted person had predeceased the decedent.

(b) The plan is not required to change the recipient of any benefits, funds, or account balances under this section unless it receives actual notice of the conviction or adjudication of a beneficiary. However, the plan may delay payment of any benefits, funds, or account balances payable on the death of a participating employee pending the results of a criminal investigation or civil proceeding and other legal proceedings relating to the cause of death.

(c) For the purposes of this section, a person has been convicted of or adjudicated as having caused the death of a participating employee if the person:

(1) pleads guilty or nolo contendere to, or is found guilty by a court or jury in a criminal proceeding of, causing the death of the participating employee, regardless of whether sentence is imposed or probated, and no appeal of the conviction is pending and the time provided for appeal has expired; or

(2) is found liable by a court or jury in a civil proceeding for causing the death of the participating employee and no appeal of the judgment is pending and the time provided for appeal has expired.

SECTION 2. Subsection (c), Section 659.140, Government Code, is amended to read as follows:

(c) ~~The [Each member of the]~~ state policy committee must:

(1) be composed of employees and retired state employees receiving benefits under Chapter 814; and

(2) [a state employee. The membership must] represent employees at different levels of employee classification.

SECTION 3. Subsection (b), Section 659.143, Government Code, is amended to read as follows:

(b) The presiding officer of a local employee committee shall recruit at least five but not more than 10 additional members. The members must represent different levels of employee classification. One or more members may be retired state employees receiving retirement benefits under Chapter 814.

SECTION 4. Section 811.010, Government Code, as added by Chapter 232 (S.B. 1589), Acts of the 81st Legislature, Regular Session, 2009, is redesignated as Section 811.012, Government Code, and amended to read as follows:

Sec. 811.012 ~~[811.010]~~. PROVISION OF CERTAIN INFORMATION TO COMPTROLLER. (a) Not later than June 1, 2016, and once every five years after that date ~~[of each year]~~, the retirement system shall provide to the comptroller, for the purpose of assisting the comptroller in the identification of persons entitled to unclaimed property reported to the comptroller, the name, address, social security number, and date of birth of each member, retiree, and beneficiary from the retirement system's records.

(b) Information provided to the comptroller under this section is confidential and may not be disclosed to the public.

(c) The retirement system shall provide the information in the format prescribed by rule of the comptroller.

SECTION 5. Section 813.404, Government Code, is amended to read as follows:

Sec. 813.404. CONTRIBUTIONS FOR SERVICE NOT PREVIOUSLY ESTABLISHED. For each month of membership, military, or equivalent membership service not previously credited in the retirement system, a member claiming credit in the elected class shall pay a contribution in an amount equal to the greater of:

(1) eight percent of the monthly salary paid to members of the legislature at the time the credit is established; or

(2) the appropriate member contribution provided by Section 815.402 for ~~[six percent of the monthly state salary paid to]~~ a person who holds, at the time the credit is established, the office for which credit is sought.

SECTION 6. Subsection (a), Section 813.505, Government Code, is amended to read as follows:

(a) A member claiming credit in the employee class for membership service not previously established shall, for each month of the service, pay a contribution in an amount equal to the greater of:

(1) the appropriate member contribution provided by Section 815.402 ~~six percent of the member's monthly state compensation~~ for the service during the time for which credit is sought; or

(2) \$18.

SECTION 7. Subsections (a), (c), (d), and (e), Section 814.007, Government Code, are amended to read as follows:

(a) Any benefits, funds, or account balances ~~A benefit~~ payable on the death of a member or annuitant may not be paid to a person convicted of or adjudicated as having caused ~~causing~~ that death but instead are ~~is~~ payable as if the convicted person had predeceased the decedent.

(c) The retirement system shall reduce any annuity computed in part on the age of the convicted or adjudicated person to a lump sum equal to the present value of the remainder of the annuity. The reduced amount is payable to a person entitled as provided by this section to receive the benefit.

(d) The retirement system is not required to change the recipient of any benefits, funds, or account balances under this section unless it receives actual notice of the conviction or adjudication of a beneficiary. However, the retirement system may delay payment of any benefits, funds, or account balances ~~a benefit~~ payable on the death of a member or annuitant pending the results of a criminal investigation or civil proceeding and other ~~of~~ legal proceedings relating to the cause of death.

(e) For the purposes of this section, a person has been convicted of or adjudicated as having caused ~~causing~~ the death of a member or annuitant if the person:

(1) pleads guilty or nolo contendere to, or is found guilty by a court or jury in a criminal proceeding of, causing the death of the member or annuitant, regardless of whether sentence is imposed or probated,<sup>[;]</sup> and

~~[(2) has]~~ no appeal of the conviction is pending and the time provided for appeal has expired; or

(2) is found liable by a court or jury in a civil proceeding for causing the death of the member or annuitant and no appeal of the judgment is pending and the time provided for appeal has expired.

SECTION 8. The heading to Section 814.009, Government Code, is amended to read as follows:

Sec. 814.009. DEDUCTION FROM ANNUITY FOR STATE EMPLOYEE ORGANIZATION.

SECTION 9. Subchapter A, Chapter 814, Government Code, is amended by adding Sections 814.0095 and 814.0096 to read as follows:

Sec. 814.0095. CHARITABLE DEDUCTION FROM ANNUITY. (a) Except as provided by Section 814.0096(c), a person who receives an annuity under this subchapter may, on a printed or electronic form filed with the retirement system, authorize the retirement system to deduct from the person's monthly annuity payment

the amount of a contribution to the state employee charitable campaign in the manner and for the same purposes for which a state employee may authorize deductions to that campaign under Subchapter I, Chapter 659.

(b) An authorization under this section must direct the board of trustees to deposit the deducted funds with the comptroller for distribution as required by Section 659.132(g) in the same manner in which a state employee's deduction is distributed.

(c) An authorization under this section remains in effect for the period described by Section 659.137 unless the person revokes the authorization by giving notice to the board of trustees.

(d) The board of trustees may adopt rules to administer this section. Any rules adopted must be consistent with the comptroller's rules related to the state employee charitable campaign.

Sec. 814.0096. COORDINATION WITH STATE EMPLOYEE CHARITABLE CAMPAIGN POLICY COMMITTEE. (a) The board of trustees and the state employee charitable campaign policy committee established under Section 659.140 shall coordinate responsibility for the administration of charitable deductions from annuity payments to the state employee charitable campaign under Section 814.0095.

(b) The state employee charitable campaign policy committee is authorized to approve a budget that includes funding for as many of the expenses incurred by the retirement system associated with the implementation and administration of annuitants' participation in the state employee charitable campaign as is practicable, including notification of annuitants.

(c) Except as provided by this subsection, the board of trustees shall charge an administrative fee to cover any costs not paid under Subsection (b) in the implementation of Section 814.0095 to the charitable organizations participating in the state employee charitable campaign conducted under that section in the same proportion that the contributions to that charitable organization bear to the total of contributions in that campaign. The board of trustees shall determine the most efficient and effective method of collecting the administrative fee and shall adopt rules for the implementation of this subsection.

(d) If necessary, the board of trustees and the state employee charitable campaign policy committee may make the annuity deduction authorization under Section 814.0095(a) available in stages to subgroups of the retirement system's annuity recipients as money becomes available to cover the expenses under Subsection (b).

SECTION 10. Subsection (d), Section 814.104, Government Code, is amended to read as follows:

(d) Except as provided by Section 814.102 (d) or by rule adopted under Section 813.304(d) or 803.202(a)(2), a member who was not a member on the date hired, was hired on or after September 1, 2009, and has service credit in the retirement system is eligible to retire and receive a service retirement annuity if the member:

(1) is at least 65 years old and has at least 10 years of service credit in the employee class; or

(2) has at least 10 [~~5~~] years of service credit in the employee class and the sum of the member's age and amount of service credit in the employee class, including months of age and credit, equals or exceeds the number 80.

SECTION 11. Subsection (d), Section 814.1075, Government Code, is amended to read as follows:

(d) The standard combined service retirement annuity that is payable under this section is based on retirement at either the age of 55 or the age at which the sum of the member's age and amount of service credit in the employee class equals or exceeds the number 80. The annuity of a law enforcement or custodial officer who retires before reaching the age of 55 under any eligibility criteria is actuarially reduced by five percent for each year the member retires before the member reaches age 55, with a maximum possible reduction of 25 percent. The actuarial reduction described by this section is in addition to any other actuarial reduction required by law.

SECTION 12. Section 815.303, Government Code, is amended to read as follows:

Sec. 815.303. SECURITIES LENDING. (a) The retirement system may, in the exercise of its constitutional discretion to manage the assets of the retirement system, select one or more commercial banks, depository trust companies, or other entities to serve as custodian or custodians of the system's securities and to lend the securities under rules or policies adopted by the board of trustees and as required by this section.

(b) To be eligible to lend securities under this section, a bank or brokerage firm must:

(1) be experienced in the operation of a fully secured securities loan program;

(2) maintain adequate capital in the prudent judgment of the retirement system to assure the safety of the securities;

(3) execute an indemnification agreement satisfactory in form and content to the retirement system fully indemnifying the retirement system against loss resulting from borrower default in its operation of a securities loan program for the system's securities; and

(4) require any securities broker or dealer to whom it lends securities belonging to the retirement system to deliver to and maintain with the custodian or securities lending agent collateral in the form of cash or ~~United States government~~ securities that are obligations of the United States or agencies or instrumentalities of the United States in an amount equal to but not less than 100 percent of the market value, from time to time, as determined by the retirement system, of the loaned securities.

SECTION 13. (a) Section 815.317, Government Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) The comptroller shall deposit fees collected under Section 133.102(e)(7), Local Government Code, to the credit of the law enforcement and custodial officer supplemental retirement fund.

(b) Subsection (e), Section 133.102, Local Government Code, is amended to read as follows:

(e) The comptroller shall allocate the court costs received under this section to the following accounts and funds so that each receives to the extent practicable, utilizing historical data as applicable, the same amount of money the account or fund

would have received if the court costs for the accounts and funds had been collected and reported separately, except that the account or fund may not receive less than the following percentages:

(1) abused children's counseling	0.0088 percent;
(2) crime stoppers assistance	0.2581 percent;
(3) breath alcohol testing	0.5507 percent;
(4) Bill Blackwood Law Enforcement Management Institute	2.1683 percent;
(5) law enforcement officers standards and education	5.0034 percent;
(6) comprehensive rehabilitation	5.3218 percent;
(7) law enforcement and custodial officer supplemental retirement fund	
<del>operator's and chauffeur's license]</del>	11.1426 percent;
(8) criminal justice planning	12.5537 percent;
(9) an account in the state treasury to be used only for the establishment and operation of the Center for the Study and Prevention of Juvenile Crime and Delinquency at Prairie View A&M University	1.2090 percent;
(10) compensation to victims of crime fund	37.6338 percent;
(11) fugitive apprehension account	12.0904 percent;
(12) judicial and court personnel training fund	4.8362 percent;
(13) an account in the state treasury to be used for the establishment and operation of the Correctional Management Institute of Texas and Criminal Justice Center Account	1.2090 percent; and
(14) fair defense account	6.0143 percent.

(c) Notwithstanding any other provision of this Act, this section takes effect September 1, 2013.

SECTION 14. Section 815.402, Government Code, is amended by adding Subsections (a-1) and (h-1) to read as follows:

(a-1) Notwithstanding Subsection (a)(1), if the state contribution to the retirement system is computed using a percentage less than 6.5 percent for the state fiscal year beginning September 1, 2011, the member's contribution is not required to be computed using a percentage equal to the percentage used to compute the state contribution for that biennium. This subsection expires September 1, 2012.

(h-1) Notwithstanding Subsection (h), if the state contribution to the law enforcement and custodial officer supplemental retirement fund is computed using a percentage less than 0.5 percent for the state fiscal year beginning September 1, 2011, the member's contribution is not required to be computed using a percentage equal to the percentage used to compute the state contribution for that biennium. This subsection expires September 1, 2012.

SECTION 15. Subchapter D, Chapter 834, Government Code, is amended by adding Section 834.305 to read as follows:

Sec. 834.305. BENEFICIARY CAUSING DEATH OF MEMBER OR ANNUITANT. (a) Any benefits, funds, or account balances payable on the death of a member or annuitant may not be paid to a person convicted of or adjudicated as having caused that death but instead are payable as if the convicted person had predeceased the decedent.

(b) A person who becomes eligible under this section to select death or survivor benefits may select benefits as if the person were the designated beneficiary.



(c) The retirement system shall reduce any annuity computed in part on the age of the convicted or adjudicated person to a lump sum equal to the present value of the remainder of the annuity. The reduced amount is payable to a person entitled as provided by this section to receive the benefit.

(d) The retirement system is not required to change the recipient of any benefits, funds, or account balances under this section unless it receives actual notice of the conviction or adjudication of a beneficiary. However, the retirement system may delay payment of any benefits, funds, or account balances payable on the death of a member or annuitant pending the results of a criminal investigation or civil proceeding and other legal proceedings relating to the cause of death.

(e) For the purposes of this section, a person has been convicted of or adjudicated as having caused the death of a member or annuitant if the person:

(1) pleads guilty or nolo contendere to, or is found guilty by a court or jury in a criminal proceeding of, causing the death of the member or annuitant, regardless of whether sentence is imposed or probated, and no appeal of the conviction is pending and the time provided for appeal has expired; or

(2) is found liable by a court or jury in a civil proceeding for causing the death of the member or annuitant and no appeal of the judgment is pending and the time provided for appeal has expired.

SECTION 16. Subchapter D, Chapter 839, Government Code, is amended by adding Section 839.306 to read as follows:

Sec. 839.306. BENEFICIARY CAUSING DEATH OF MEMBER OR ANNUITANT. (a) Any benefits, funds, or account balances payable on the death of a member or annuitant may not be paid to a person convicted of or adjudicated as having caused that death but instead are payable as if the convicted person had predeceased the decedent.

(b) A person who becomes eligible under this section to select death or survivor benefits may select benefits as if the person were the designated beneficiary.

(c) The retirement system shall reduce any annuity computed in part on the age of the convicted or adjudicated person to a lump sum equal to the present value of the remainder of the annuity. The reduced amount is payable to a person entitled as provided by this section to receive the benefit.

(d) The retirement system is not required to change the recipient of any benefits, funds, or account balances under this section unless it receives actual notice of the conviction or adjudication of a beneficiary. However, the retirement system may delay payment of any benefits, funds, or account balances payable on the death of a member or annuitant pending the results of a criminal investigation or civil proceeding and other legal proceedings relating to the cause of death.

(e) For the purposes of this section, a person has been convicted of or adjudicated as having caused the death of a member or annuitant if the person:

(1) pleads guilty or nolo contendere to, or is found guilty by a court or jury in a criminal proceeding of, causing the death of the member or annuitant, regardless of whether sentence is imposed or probated, and no appeal of the conviction is pending and the time provided for appeal has expired; or

(2) is found liable by a court or jury in a civil proceeding for causing the death of the member or annuitant and no appeal of the judgment is pending and the time provided for appeal has expired.

SECTION 17. Subsection (a), Section 1551.004, Insurance Code, is amended to read as follows:

(a) In this chapter, "dependent" with respect to an individual eligible to participate in the group benefits program [~~under Section 1551.101 or 1551.102~~] means the individual's:

- (1) spouse;
- (2) unmarried child younger than 26 [~~25~~] years of age;
- (3) child of any age who the board of trustees determines lives with or has the child's care provided by the individual on a regular basis if:

(A) the child is mentally [~~retarded~~] or physically incapacitated to the extent that the child is dependent on the individual for care or support, as determined by the board of trustees;

(B) the child's coverage under this chapter has not lapsed; and

(C) the child is at least 26 [~~25~~] years old and was enrolled as a participant in the health benefits coverage under the group benefits program on the date of the child's 26th [~~25th~~] birthday;

(4) child of any age who is unmarried, for purposes of health benefit coverage under this chapter, on expiration of the child's continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. No. 99-272) and its subsequent amendments; and

(5) ward, as that term is defined by Section 601, Texas Probate Code, who is 26 years of age or younger.

SECTION 18. Subchapter B, Chapter 1551, Insurance Code, is amended by adding Section 1551.068 to read as follows:

Sec. 1551.068. QUALIFICATION OF GROUP BENEFITS PROGRAM. Notwithstanding any provision of this chapter or any other law, it is intended that the provisions of this chapter be construed and administered in a manner that coverages under the group benefits program will be considered in compliance with applicable federal law. The board of trustees may adopt rules that modify the coverage provided under the program by adding, deleting, or changing a provision of the program, including rules that modify eligibility and enrollment requirements and the benefits available under the program.

SECTION 19. Section 1551.220, Insurance Code, is amended to read as follows:

Sec. 1551.220. BENEFICIARY CAUSING DEATH OF PARTICIPANT OR BENEFICIARY OF PARTICIPANT. (a) Any benefits, funds, or account balances [~~A benefit~~] payable on the death of a participant or the beneficiary of a participant in the group benefits program may not be paid to a person convicted of or adjudicated as having caused [~~causing~~] that death but instead are [~~is~~] payable as if the convicted person had predeceased the decedent.

(b) The Employees Retirement System of Texas is not required to change the recipient of any benefits, funds, or account balances under this section unless it receives actual notice of the conviction or adjudication of a beneficiary. However, the

retirement system may delay payment of any benefits, funds, or account balances [a benefit] payable on the death of a participant or beneficiary of a participant pending the results of a criminal investigation or civil proceeding and other [of] legal proceedings relating to the cause of death.

(c) For the purposes of this section, a person has been convicted of or adjudicated as having caused [causing] the death of a participant or beneficiary of a participant if the person:

(1) pleads guilty or nolo contendere to, or is found guilty by a court or jury in a criminal proceeding of, causing the death of the participant or beneficiary of a participant, regardless of whether sentence is imposed or probated.[;] and

[~~(2) has~~] no appeal of the conviction is pending and the time provided for appeal has expired; or

(2) is found liable by a court or jury in a civil proceeding for causing the death of the member or annuitant and no appeal of the judgment is pending and the time provided for appeal has expired.

SECTION 20. Subchapter E, Chapter 1551, Insurance Code, is amended by adding Section 1551.226 to read as follows:

Sec. 1551.226. TOBACCO CESSATION COVERAGE. (a) The board of trustees shall develop a plan for providing under any health benefit plan provided under the group benefits program tobacco cessation coverage for participants.

(b) The plan developed under Subsection (a) must include coverage for prescription drugs that aid participants in ceasing the use of tobacco products.

SECTION 21. Subchapter G, Chapter 1551, Insurance Code, is amended by adding Section 1551.3075 to read as follows:

Sec. 1551.3075. TOBACCO USER PREMIUM DIFFERENTIAL. (a) The board of trustees shall assess each participant in a health benefit plan provided under the group benefits program who uses one or more tobacco products a tobacco user premium differential, to be paid in monthly installments. Except as provided by Subsection (b), the board of trustees shall determine the amount of the monthly installments of the premium differential.

(b) If the General Appropriations Act for a state fiscal biennium sets the amount of the monthly installments of the tobacco user premium differential for that biennium, the board of trustees shall assess the premium differential during that biennium in the amount prescribed by the General Appropriations Act.

SECTION 22. Subchapter G, Chapter 1551, Insurance Code, is amended by adding Section 1551.3076 to read as follows:

Sec. 1551.3076. EMPLOYER ENROLLMENT FEE. (a) The board of trustees shall assess each employer whose employees participate in the group benefits program an employer enrollment fee in an amount not to exceed a percentage of the employer's total payroll, as determined by the General Appropriations Act.

(b) The board of trustees shall deposit the enrollment fees to the credit of the employees life, accident, and health insurance and benefits fund to be used for the purposes specified by Section 1551.401.

SECTION 23. Section 1551.314, Insurance Code, is amended to read as follows:

Sec. 1551.314. CERTAIN STATE CONTRIBUTIONS PROHIBITED. A state contribution may not be:

(1) made for coverages under this chapter selected by an individual who receives a state contribution [~~other than as a spouse, dependent, or beneficiary,~~] for coverages under a group benefits program provided by another state health plan or by an institution of higher education, as defined by Section 61.003, Education Code; or

(2) made for or used to pay a tobacco user premium differential assessed under Section 1551.3075.

SECTION 24. The change in law made by Sections 609.015, 834.305, and 839.306, Government Code, as added by this Act, and Sections 814.007, Government Code, and 1551.220, Insurance Code, as amended by this Act, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date 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 25. (a) The board of trustees of the Employees Retirement System of Texas, in cooperation with the comptroller of public accounts and the state employee charitable campaign policy committee established under Section 659.140, Government Code, as amended by this Act, may adopt rules to implement Sections 814.0095 and 814.0096, Government Code, as added by this Act.

(b) The board of trustees of the Employees Retirement System of Texas by rule shall designate the start date on which annuity deductions begin under Sections 814.0095 and 814.0096, Government Code, as added by this Act.

SECTION 26. (a) Subsection (d), Section 814.104, Government Code, as amended by this Act, applies only to a member of the Employees Retirement System of Texas who retires on or after the effective date of this Act.

(b) A member of the Employees Retirement System of Texas who retires 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 27. The board of trustees of the Employees Retirement System of Texas shall develop and fully implement the plan for providing tobacco cessation coverage as required by Section 1551.226, Insurance Code, as added by this Act, and implement the tobacco user premium differential required under Section 1551.3075, Insurance Code, as added by this Act, not later than January 1, 2012.

SECTION 28. To the extent of any conflict, this Act prevails over another Act of the 82nd Legislature, Regular Session, 2011, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 29. This Act takes effect September 1, 2011.

The Conference Committee Report on **SB 1664** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 1517**

Senator Hegar submitted the following Conference Committee Report:

Austin, Texas  
May 27, 2011

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 1517** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

HEGAR

WENTWORTH

ZAFFIRINI

ELLIS

HUFFMAN

On the part of the Senate

ISAAC

PHILLIPS

RODRIGUEZ

KLEINSCHMIDT

LOZANO

On the part of the House

The Conference Committee Report on **HB 1517** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 341**

Senator Uresti submitted the following Conference Committee Report:

Austin, Texas  
May 27, 2011

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 341** 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.

URESTI

FRASER

HEGAR

VAN DE PUTTE

WENTWORTH

On the part of the Senate

MENENDEZ

LARSON

FARIAS

MARTINEZ FISCHER

RITTER

On the part of the House

A BILL TO BE ENTITLED  
AN ACT

relating to authorizing the dissolution of the Bexar Metropolitan Water District; providing a penalty.

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

ARTICLE 1. FINANCIAL AND OPERATIONAL AUDITS

SECTION 1.01. Section 1, Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, is amended to read as follows:

Sec. 1. In obedience to the provisions of Article 16, Section 59 of the Constitution of Texas, there is hereby created Bexar Metropolitan Water District. [~~hereinafter in this Act sometimes called the "District."~~]

SECTION 1.02. Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, is amended by adding Sections 1A, 34, 35, 36, 37, 38, 39, 40, 41, and 42 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) "Committee" means the Bexar Metropolitan Water District Oversight Committee.

(4) "Director" means a Board member.

(5) "District" means the Bexar Metropolitan Water District.

(6) "System" means a water utility owned by a municipality with a population of more than one million in the area served by the District.

Sec. 34. (a) Not later than the 30th day after the effective date of the Act enacting this section, the Commission shall begin an on-site evaluation of the District.

The evaluation must include:

(1) a complete inventory and evaluation of each distinct water system in the District to determine:

(A) the District's basis in, or the intrinsic value of, the infrastructure associated with that water system;

(B) the District's bonded debt and commercial paper reasonably associated with or allocable to the infrastructure in that water system; and

(C) the adequacy of the water supply sources, water storage facilities, and distribution systems located in that water system's service area to supply current and projected demands in that service area;

(2) a list of any District assets whose transfer to another appropriate public water utility would be likely to improve:

(A) service to the former customers of the District who would be served by that utility; or

(B) the District's overall efficiency;

(3) a list and copies of existing contracts to which the District is a party, including for each contract:

(A) effective and termination dates;

(B) the general scope of the property and services involved;

(C) obligations of the District, including financial obligations;

(D) how the District benefits from the contract; and

- (E) whether the District has waived governmental immunity;
- (4) a list of the following in regard to the District:
- (A) property;
- (B) rights, including certificates of convenience and necessity, pumping rights, and any other rights;
- (C) staff; and
- (D) internal policies, including employment rules, benefits, and an evaluation of the usefulness and efficacy of each policy;
- (5) a comprehensive rehabilitation plan for the District that:
- (A) identifies strategies for restoring the District's financial integrity and developing a system of sound financial management;
- (B) describes a standard of ethics, professionalism, and openness expected of each Director and employee of the District;
- (C) provides a mechanism to enforce compliance with District policies, including procurement policies;
- (D) identifies ways to enhance the District's operational efficiency and improve the District's provision of redundancy in water services; and
- (E) provides for educating the Board and management personnel on improving management practices and complying with District policy and state and federal laws and regulations;
- (6) an assessment of the District's ability to provide reliable, cost-effective, quality service to customers, including an assessment of operations compared to the best management practices of modern utilities;
- (7) a study of the District's current infrastructure improvements, including:
- (A) personnel for the improvements, including staffing levels of engineers, capital improvement program personnel, and mains and services personnel; and
- (B) contracts related to any capital improvements; and
- (8) a financial audit of the District.
- (b) On commencement of the evaluation, the Commission shall notify the District in writing that the Commission has begun the evaluation and shall specify a time period for completion of the evaluation. The Commission may extend the specified time period for good cause. The District shall cooperate and provide assistance and access to all necessary records, confidential or not, to the Commission.
- (c) The Commission may contract with utility management consultants, accountants, and other persons as necessary to conduct the evaluation.
- (d) The Commission may require the District to reimburse the Commission for the reasonable cost of conducting the evaluation.
- (e) The Commission shall file copies of the completed evaluation with:
- (1) the committee;
- (2) the Board; and
- (3) the lieutenant governor, the speaker of the house of representatives, and the chairs of the house and senate committees with primary oversight over the District.

Sec. 35. At the Commission's request, the state auditor's office may audit the District under Chapter 321, Government Code. The District shall reimburse the state auditor's office for the cost of the audit.

Sec. 36. The Commission may employ or contract with a person to carry out the duties described by Section 34 of this Act who, at the time of the person's hire:

- (1) has demonstrated a high level of expertise in utility management;
- (2) is not a Director; and
- (3) 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.

Sec. 37. (a) The Commission may employ or contract with additional persons who will report to and assist the Commission if:

- (1) assistance from District staff is not provided; or
- (2) the Commission needs special expertise from one or more of the

persons.

(b) A person employed or contracted with under Section 36 of this Act and any additional persons employed or contracted with under this section are entitled to receive a salary determined by the executive director of the Commission for performing those duties.

(c) The District shall pay the compensation of any persons employed or contracted with under this section or Section 36 of this Act.

(d) The executive director of the Commission shall set the compensation of the person employed or contracted with under this section or Section 36 of this Act after considering the person's:

- (1) level of expertise in utility management; and
- (2) certifications and education.

Sec. 38. (a) A person employed or contracted with under Section 36 or 37 of this Act is entitled to reimbursement of the reasonable and necessary expenses incurred by that person in the course of performing duties under this Act.

(b) The District shall pay the expenses incurred by the persons employed or contracted with under Section 36 or 37 of this Act. The executive director of the Commission shall determine if an expense is reasonable and necessary after considering whether the expense is:

- (1) necessary to complete the duties assigned by this Act;
- (2) at or below the cost of a similar expense incurred by other utilities;
- (3) documented by an invoice, bill, or work order that includes details

relating to the:

- (A) time spent on services; or
- (B) cost of supplies; and

(4) in accordance with procedures used to minimize expenses, including comparing vendor rates or competitive bidding.

Sec. 39. The executive director of the Commission may employ or contract with a person to carry out any purpose described by this Act. The District shall reimburse the Commission for all related expenses.

Sec. 40. (a) This section does not apply to bonds related to a water supply contract existing on or after the effective date of the Act enacting this section entered into by the District and a governmental entity, including the Canyon Regional Water



Authority and the Bexar-Medina-Atascosa Counties Water Improvement District No. 1, if revenue from the contract is to be pledged wholly or partly to pay debt service on revenue bonds approved by the attorney general.

(b) From the effective date of the Act enacting this section until the date election results are certified to the Secretary of State under Article 2 or 2A of the Act enacting this section, the attorney general may not approve any public security, as defined by Chapter 1201, Government Code, of the District unless:

(1) the Commission consents in writing before approval; or

(2) the District provides written evidence that issuing the public security represents a refunding of outstanding debt for the purpose of realizing debt service savings in each year that outstanding obligations are refunded and that results in a cumulative net present value savings of at least three percent compared to refunded debt service.

Sec. 41. (a) This section does not apply to a water supply contract existing on or after the effective date of the Act enacting this section entered into by the District and a governmental entity, including the Canyon Regional Water Authority and the Bexar-Medina-Atascosa Counties Water Improvement District No. 1, if revenue from the contract is to be pledged wholly or partly to pay debt service on revenue bonds approved by the attorney general.

(b) From the effective date of the Act enacting this section until the date election results are certified to the Secretary of State under Article 2 or 2A of the Act enacting this section, a contract or other agreement entered into, amended, or renewed during that period to which the District is a party must include a provision that the contract or other agreement is subject to:

(1) review by the System if the contract or other agreement is assumed by the System; and

(2) termination by the System at the System's sole discretion, including the termination of all rights, duties, obligations, and liabilities of the District or the System under the contract or other agreement, if the contract or other agreement is assumed by the System.

(c) A person or entity is not entitled to compensation for loss or other damages resulting from the termination of the contract or other agreement under Subsection (b)(2) of this section.

Sec. 42. From the effective date of the Act enacting this section until the date the election results are certified to the Secretary of State under Article 2 or 2A of the Act enacting this section, the District may not dispose of, sell, transfer, assign, impair, or restrict any of the District's rights or assets outside the normal and customary course of business.

## ARTICLE 2. ELECTION; EFFECTIVE DATE OF ARTICLES 3 AND 4

SECTION 2.01. (a) In this article:

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

(2) "Commission" means the Texas Commission on Environmental Quality.

(3) "District" means the Bexar Metropolitan Water District.

(b) On the next uniform election date the board, after consultation with the secretary of state, shall hold an election in the district solely on the question of dissolving the district and disposing of the district's assets and obligations.

Notwithstanding Subsection (b), Section 3.005, Election Code, the board shall call the election not later than the 90th day before the date the election is to be held or as soon as practicable, if the effective date of this Act is after the 90th day.

(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 board 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 beginning of early voting for 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 and the transfer of all the district's assets, obligations, and duties to the water utility owned by the municipality with the largest population in the area served by the district."

(f) The board shall certify that a majority of the voters voting in the district have voted:

(1) in favor of dissolution; or

(2) not in favor of dissolution.

(g) If the board fails to call an election on or before the 90th day before the date the election is to be held, the commission or its executive director shall file a writ of mandamus and pursue all other legal and equitable remedies available to compel the board to call the election.

(h) The election directed to be held under this article is not intended to prohibit a regular or special election to elect board members.

SECTION 2.02. (a) Not later than the 10th day after the determination under Subsection (a), Section 67.005, Election Code, of the official results of the election, the board shall certify that result to the secretary of state.

(b) If the proposition is approved by a majority of the voters voting in the election:

(1) Article 3 of this Act does not take effect; and

(2) Article 4 of this Act takes effect on the date the results are certified.

(c) If a majority of the voters voting in the election do not approve the proposition:

(1) Article 3 of this Act takes effect on the date the results are certified; and

(2) Article 4 of this Act does not take effect.

SECTION 2.03. (a) The purpose of this article is to provide all of the eligible voters of the district an opportunity to determine by election whether to continue with the current managing authority of the district or to transition to another managing authority which owns, operates, and manages the system, as defined by Section 1A, Chapter 306, Acts of the 49th Legislature, Regular Session, 1945.

(b) In order to provide all of the district's eligible voters an equal opportunity to vote on the determination in Subsection (a) of this section, the preferred method of election is a district-wide vote with all votes weighted equally. The reasons for this preference include:

(1) the election is a referendum on a single issue, involving different considerations in its structure than the considerations for an election to select members of a multi-member governing body;

(2) neither the vote dilution principles addressed under Section 2 of the Voting Rights Act of 1965 (42 U.S.C. Section 1973 et seq.) nor the three-part analytical framework used to measure vote dilution under Thornburg v. Gingles, 478 U.S. 30 (1986), are applicable to such a single-issue referendum;

(3) the explanation in Butts v. City of New York, 779 F.2d 141 (2d Cir. 1985), cert. denied, 478 U.S. 1021 (1986), that, if "the winner of an election for a single-member office is chosen directly by all the eligible voters" for that office, electoral arrangements are unlikely to deny a class of voters equal opportunity for representation, is equally applicable to the preferred method of election for the single-issue referendum established in this article; and

(4) the preferred method of election established in this article adheres strictly to the constitutional principle of "one person, one vote," a principle which a federal court has stated specifically applies to the district in an order dated September 21, 2006, in Civil Action No. SA-96-CA-335, Rios v. Bexar Metropolitan Water District et al., in the United States District Court, Western District of Texas, and which the district has never challenged by appeal or otherwise.

#### ARTICLE 2A. ALTERNATE ELECTION PROCEDURES IF ARTICLE 2 ELECTION IS IN VIOLATION

SECTION 2A.01. It is the intent of the legislature that the preferred method of election be the method described by Section 2.01 of this Act. This article provides an alternate means of conducting the election on the question of dissolving the Bexar Metropolitan Water District if the method described in Section 2.01 of this Act cannot be used due to a final, unappealable administrative or judicial decision. It is the intent of the legislature to comply fully with the requirements of the federal Voting Rights Act of 1965 (42 U.S.C. Section 1973 et seq.). It is not the intent of the legislature to influence any preclearance decision made by the United States Department of Justice relating to the Act creating this section.

SECTION 2A.02. (a) In this article:

- (1) "Board" means the board of directors of the district.
- (2) "Commission" means the Texas Commission on Environmental Quality.
- (3) "District" means the Bexar Metropolitan Water District.
- (4) "Voting district" means a subdivision of the district created to elect the district's board of directors.

(b) On the next uniform election date following the date of a final, unappealable administrative or judicial decision that any portion of this Act is in violation of the federal Voting Rights Act of 1965 (42 U.S.C. Section 1973 et seq.) or United States Constitution, the board, after consultation with the secretary of state, shall hold an election as provided by this section in the district solely on the question of dissolving the district and disposing of the district's assets and obligations. Notwithstanding

Subsection (b), Section 3.005, Election Code, the board shall call the election not later than the 90th day before the date the election is to be held or as soon as practicable, if the effective date of this Act is after the 90th day.

(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 board 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 beginning of early voting for 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 and the transfer of all the district's assets, obligations, and duties to the water utility owned by the municipality with the largest population in the area served by the district."

(f) The election shall be held in numbered voting districts established by the board. The board shall draw each voting district to reflect population changes from the latest decennial census and to conform with state law, the federal Voting Rights Act of 1965 (42 U.S.C. Section 1973 et seq.), and any applicable court order.

(g) The board shall certify the election results for each voting district. The board shall then certify that a majority of the voting districts have voted:

(1) in favor of dissolution; or

(2) not in favor of dissolution.

(h) If the board fails to call an election on or before the 90th day before the date the election is to be held, the commission or its executive director shall file a writ of mandamus and pursue all other legal and equitable remedies available to compel the board to call the election.

(i) The election directed to be held under this article is not intended to prohibit a regular or special election to elect board members.

SECTION 2A.03. (a) Not later than the 10th day after the determination under Subsection (a), Section 67.005, Election Code, of the official results of the election, the board shall certify that result to the secretary of state.

(b) If the proposition is approved by a majority of the voting districts in the election:

(1) Article 3 of this Act does not take effect; and

(2) Article 4 of this Act takes effect on the date the results are certified.

(c) If a majority of the voting districts in the election do not approve the proposition:

(1) Article 3 of this Act takes effect on the date the results are certified; and

(2) Article 4 of this Act does not take effect.

ARTICLE 3. CHANGES TO THE BEXAR METROPOLITAN WATER DISTRICT  
IF VOTERS DO NOT DISSOLVE THE DISTRICT UNDER ARTICLE 2

SECTION 3.01. Section 8, Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, is amended to read as follows:

Sec. 8. (a) ~~[7]~~ 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 are elected from numbered single-member districts established by the Board. The Board shall revise each single-member district after each decennial census to reflect population changes and to conform with state law, the federal Voting Rights Act of 1965 (42 U.S.C. Section 1973 et seq.), and any applicable court order ~~[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 is ~~[shall be declared]~~ elected to represent that single-member district. Each Director shall hold office until his successor is ~~[shall have been]~~ elected or appointed and has [shall have] qualified.

(a-1) A person is not eligible to serve as a Director for more than three terms or for more than a total of seven years of service.[7]

(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 until a successor elected at the next scheduled election date has qualified. [for the unexpired term for which they were appointed;]

(d) Any four [any three] members of the Board are [shall constitute] a quorum for the adoption or [of] passage of any resolution or order or the transaction of any business of the District.[7]

(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].

(f) A payment to a Director for fees of office under Section 49.060, Water Code, may not be made for a meeting that occurs in a different fiscal year from the one in which the payment is made.

SECTION 3.02. Section 33A, Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, is amended by amending Subsection (c) and adding Subsection (g) to read as follows:

(c) The oversight committee is comprised of seven [5] members appointed as follows [to represent the following members]:

(1) two Senators who represent Senate districts that include territory within the Bexar Metropolitan Water District, [the Senator sponsor of this Act, or, in the event this Senator cannot serve, a Senator] appointed by the Lieutenant Governor, who shall also designate one of the Senators as co-chair;

(2) two Representatives who represent [the] House districts that include territory within the District, [author of this Act, or, in the event this Representative cannot serve, a Representative] appointed by the Speaker of the Texas House of Representatives, who shall also designate one of the Representatives as co-chair;

(3) one member with special expertise in the operation of public water utilities appointed by the Governor;

(4) one member appointed by the Governor to represent the public; and

(5) one [\*] member of the Bexar County Commissioners Court who represents a precinct in which customers of the District reside.

(g) On or before December 31, 2012, the oversight committee shall provide a report under Subsection (e) of this section to the legislature. The committee is abolished and this section expires January 1, 2013.

SECTION 3.03. Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, is amended by adding Sections 8A, 8B, 8C, 10A, 10B, and 43 to read as follows:

Sec. 8A. (a) To be eligible to be a candidate for or to be elected or appointed 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;

(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;

(3) obtained 200 signatures from individuals living in the District; and

(4) paid a filing fee of \$250 or filed a petition in lieu of the filing fee that satisfies the requirements prescribed by Section 141.062, Election Code.

(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 or organization that in the aggregate exceed \$500 from each person or organization in connection with each election in which the Director or candidate 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) public information 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 is 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, the value of which exceeds \$50 per 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. The District shall keep a copy of a financial statement filed under this section in the main office of the District.

Sec. 8C. (a) A Director may be recalled for:

(1) incompetency or official misconduct as defined 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 registered voters in a single-member voting district of the District submit a petition to the Board requesting the recall of the Director who serves that single-member voting district, 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 single-member voting 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 voters of a single-member voting district voting at an election held under this section favor the recall of the Director who serves that single-member voting district, the Director is recalled and ceases to be a Director.

Sec. 10A. All Board reimbursements and expenditures must be approved by the Board in a regularly scheduled meeting.

Sec. 10B. The Board may not select the same auditor to conduct an audit required by Section 49.191, Water Code, for more than three consecutive annual audits.

Sec. 43. (a) The Commission shall evaluate the condition of the District and determine whether the District has been sufficiently rehabilitated to enable the District to provide reliable, cost-effective, quality service to its customers.

(b) If the Commission finds that the District has not been rehabilitated, the Commission may order the District to implement any part of the rehabilitation plan developed under Section 34.

(c) If the District fails to comply with a Commission order, the Commission may assess a penalty against the District in the manner provided by Section 13.4151, Water Code.



SECTION 3.04. (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.

(c) For two of the numbered single-member district director's positions that expire in 2012, the Bexar Metropolitan Water District shall call and hold an election on a uniform election date in that year to elect the directors for those positions for terms that expire on the uniform election date in November 2013. For the other two director's positions that expire in 2012, the district shall call and hold an election on the same uniform election date in that year to elect the directors for those positions for terms that expire on the uniform election date in November 2014. The district shall determine by lot which single-member districts shall elect directors to serve one-year terms and which shall elect directors to serve two-year terms.

#### ARTICLE 4. TRANSFER OF DISTRICT ASSETS AND LIABILITIES IF VOTERS DISSOLVE THE BEXAR METROPOLITAN WATER DISTRICT UNDER ARTICLE 2

SECTION 4.01. Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, is amended by adding Sections 50, 51, 52, 53, 54, and 55 to read as follows:

Sec. 50. (a) The term of each person who is serving as a Director of the District on the date the election results are certified to the Secretary of State as authorized by Article 2 or 2A of the Act enacting this section expires on that date.

(b) On the date the election results are certified to the Secretary of State, the System assumes control of the operation and management of the District, subject to Sections 52 and 53 of this Act and other law applicable to the System.

(c) Not later than the 90th day after the date the election results are certified to the Secretary of State, the Commission, in consultation with the committee, shall transfer or assign to the System all:

(1) rights and duties of the District, including existing contracts, duties, assets, and obligations of the District;

(2) files, records, and accounts of the District, including those that pertain to the control, finances, management, and operation of the District; and

(3) permits, approvals, and certificates necessary to provide water services.

(d) To the extent that the transfer of an item listed in Subsection (c) of this section requires the approval of a state agency, the state agency shall grant approval without additional notice or hearing.

(e) After the Commission has transferred the property, assets, and liabilities as prescribed by this section, the Commission shall enter an order dissolving the District.

Sec. 51. (a) This Act does not enhance or harm the position of a contracting party.

(b) No law or charter provision may be construed to limit the System's performance of an obligation under a contract transferred or assigned to the System as a result of the dissolution of the District, if revenue from the contract was pledged wholly or partly to pay debt service on revenue bonds approved by the attorney general.

Sec. 52. (a) Not later than five years after the date the election results were certified in favor of dissolution under Article 2 or 2A of the Act enacting this section, the System shall integrate the services and infrastructure of the District into the System in a reasonable and orderly manner. The Commission for good cause may grant an extension to complete integration of not more than three additional years. The System shall base the integration on the consideration of relevant information, including:

(1) the location and condition of the infrastructure;

(2) debt obligations;

(3) prudent utility practices and fiscal policies;

(4) costs and revenue; and

(5) potential impacts on the customers of the District and the System.

(b) During the integration period described by Subsection (a) of this section, the System shall provide an annual report on the progress of integration to the Commission, including the status of any relevant contract provision.

(c) Until the date specified in Subsection (a) of this section, the System may operate the former District as a special project under the System's existing senior lien revenue bond ordinances.

(d) Once the Commission has transferred the assets, obligations, and duties to the System, the System shall provide affordable and reliable water services to all of the former ratepayers of the District under the System's certificate of convenience and necessity.

(e) After the integration described by Subsection (a) of this section is complete, the System shall provide water service to former ratepayers of the District in the same manner the System provides water service to other ratepayers of the System. The integration is considered complete if:

(1) the areas of service located in the former District are no longer operated as a special project within the System;

(2) the ratepayers of the former District pay the same rates for services provided by the System as other similarly situated ratepayers of the System; and

(3) the ratepayers of the former District receive water service that meets the requirements of the Commission.

(f) If the System fails to integrate the services and infrastructure of the District into the System in accordance with Subsection (a) of this section, the Commission may find the System in violation of the obligation under the System's certificate of convenience and necessity to provide continuous and adequate service. The Commission may bring an enforcement action against the System, including the imposition of an administrative penalty under Section 13.4151, Water Code.

Sec. 53. (a) For a 24-month period following the transfer of the employment of any employee of the former District, the System may not terminate that employee, except for cause, as defined by the System's standards of conduct for all employees, if the employee:

(1) is vested in the retirement program of the District on the effective date of this Act; and

(2) earns an annual base salary of less than \$50,000 on the effective date of the Act enacting this section.

(b) For a five-year period following the transfer of the employment of any employee of the former District, the System may not terminate that employee, except for cause, as defined by the System's standards of conduct for all employees, if:

(1) the employee meets the requirements of Subsections (a)(1) and (2) of this section; and

(2) the sum of the years of service of the employee and the employee's age is equal to or greater than 80.

(c) An employee who qualifies under Subsection (a) or (b) of this section and who is terminated by the System has the same opportunity for appeal as a person employed by the System who is not an employee of the former District.

(d) The System is not required to employ an employee of the District if that person was formerly terminated from, or resigned in lieu of termination from, the System.

Sec. 54. A state agency at which an administrative or enforcement action is pending against the District shall grant the System special consideration and reasonable extensions to identify and resolve the action in a manner satisfactory to the agency.

Sec. 55. (a) In this section, "advisory committee" means a committee appointed under Subsection (b) of this section.

(b) Not later than the 60th day after the date the District is dissolved under Section 50 of this Act, the System shall work cooperatively with the commissioners court of each county in which the former District was wholly or partly located to establish an advisory committee to advise the System regarding the integration of the services and infrastructure of the former District, including service integration issues and the delivery of water services by the System, in specific areas or water systems located in the area outside the corporate boundaries of the largest municipality served by the System.

(c) The advisory committee shall include at least one representative from each county served by the System who resides in the boundaries of the former District or the owner or operator of a business located in the boundaries of the former District.

(d) Until the integration described by Section 52 of this Act is complete, the board of directors of the System shall:

(1) consult with the advisory committee about the matters described by Subsection (b) of this section at least quarterly, during a regularly scheduled or specially called board meeting of the System; and

(2) on request by the advisory committee chair, provide members of the advisory committee an opportunity to address the System's board of trustees on matters relating to the duties of the advisory committee.

## ARTICLE 5. DEADLINES; NOTICE; EFFECTIVE DATE OF ACT

SECTION 5.01. If a deadline established in Articles 1 through 4 of this Act cannot be met because of a requirement imposed by the federal Voting Rights Act of 1965 (42 U.S.C. Section 1973 et seq.), the deadline is the next available date after the requirement is met.

SECTION 5.02. (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 5.03. (a) Articles 1, 2, 2A, and 5 of this Act take effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, Articles 1, 2, 2A, and 5 of this Act take effect September 1, 2011.

(b) Articles 3 and 4 of this Act take effect as provided by Articles 2 and 2A of this Act.

The Conference Committee Report on **SB 341** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 1588**

Senator Ogden submitted the following Conference Committee Report:

Austin, Texas  
May 27, 2011

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 1588** 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.

OGDEN  
ESTES

PITTS  
FRULLO

HINOJOSA  
LUCIO  
SELIGER  
On the part of the Senate

CHISUM  
GUILLEN  
ZERWAS  
On the part of the House

A BILL TO BE ENTITLED  
AN ACT

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

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

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

SECTION 2. ABOLITION OF FUNDS, ACCOUNTS, AND DEDICATIONS. Except as otherwise specifically provided by this Act, all funds and accounts created or re-created by an Act of the 82nd Legislature, Regular Session, 2011, that becomes law and all dedications or rededications of revenue or otherwise collected by a state agency for a particular purpose by an Act of the 82nd Legislature, Regular Session, 2011, that becomes law are abolished on the later of August 31, 2011, or the date the Act creating or re-creating the fund or account or dedicating or rededicating revenue takes effect.

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

(1) statutory dedications, funds, and accounts that were enacted before the 82nd Legislature convened to comply with requirements of state constitutional or federal law;

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

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

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

SECTION 4. FEDERAL FUNDS. Section 2 of this Act does not apply to funds created pursuant to an Act of the 82nd Legislature, Regular Session, 2011, for which separate accounting is required by federal law, except that the funds shall be deposited in accounts in the general revenue fund unless otherwise required by federal law.

SECTION 5. TRUST FUNDS. Section 2 of this Act does not apply to trust funds or dedicated revenue deposited to trust funds created under an Act of the 82nd Legislature, Regular Session, 2011, except that the trust funds shall be held in the state treasury, with the comptroller of public accounts in trust, or outside the state treasury with the comptroller's approval.

SECTION 6. BOND FUNDS. Section 2 of this Act does not apply to bond funds and pledged funds created or affected by an Act of the 82nd Legislature, Regular Session, 2011, except that the funds shall be held in the state treasury, with the comptroller of public accounts in trust, or outside the state treasury with the comptroller's approval.

SECTION 7. CONSTITUTIONAL FUNDS. Section 2 of this Act does not apply to funds or accounts that would be created or re-created by the Texas Constitution or revenue that would be dedicated or rededicated by the Texas Constitution under a constitutional amendment proposed by the 82nd Legislature, Regular Session, 2011, or to dedicated revenue deposited to funds or accounts that would be so created or re-created, if the constitutional amendment is approved by the voters.

SECTION 8. CREATION OF NEW ACCOUNTS FOR LICENSE PLATE FEES. Section 2 of this Act does not apply to a new account created in the general revenue fund for receipt of fees for special license plates or for receipt of related revenue, gifts, or grants as provided by an Act of the 82nd Legislature, Regular Session, 2011, or to the dedication of revenue to or contained in the new account.

SECTION 9. ADDITIONAL USES FOR DEDICATED FUNDS, ACCOUNTS, OR REVENUES. Section 2 of this Act does not apply to a newly authorized dedication of or use of a dedicated fund, a dedicated account, or dedicated revenues as provided by an Act of the 82nd Legislature, Regular Session, 2011, to the extent that Act affects a fund, an account, or revenues that were exempted from funds consolidation before January 1, 2011. A dedicated fund, a dedicated account, or dedicated revenues that were exempted from funds consolidation before January 1, 2011, may be used as an Act of the 82nd Legislature, Regular Session, 2011, provides, and a change in the name or authorized use of a previously exempted dedicated fund or account does not affect the fund's or account's dedicated nature.

SECTION 10. ACCOUNTS IN GENERAL REVENUE FUND. Effective on the later of the effective date of the Act creating or re-creating the account or August 31, 2011, the following accounts and the revenue deposited to the credit of the accounts are exempt from Section 2 of this Act and are created in the general revenue fund, if created or re-created by an Act of the 82nd Legislature, Regular Session, 2011, that becomes law:

(1) the driver's license system improvement account created as a dedicated account in the general revenue fund by Senate Bill No. 9, Senate Bill No. 1583, or similar legislation;

(2) the judicial and court personnel training fund created as a dedicated account in the general revenue fund by Senate Bill No. 1582, Senate Bill No. 1811, House Bill No. 3648, or similar legislation;

(3) the oil and gas regulation and cleanup fund created by Senate Bill No. 655, Senate Bill No. 1584, House Bill No. 3106, or similar legislation, except that, regardless of any provision of that legislation, the oil and gas regulation and cleanup fund is created as a dedicated account in the general revenue fund;

(4) the fund for veterans' assistance re-created as a special fund in the state treasury outside the general revenue fund by Senate Bill No. 1635, Senate Bill No. 1739, House Bill No. 1172, House Bill No. 3179, or similar legislation;

(5) the judicial access and improvement account created as a dedicated account in the general revenue fund by Senate Bill No. 1811, House Bill No. 2174, or similar legislation;

(6) the low-level radioactive waste disposal compact commission account created as an account in the general revenue fund by House Bill No. 2694 or similar legislation;

(7) the Alamo complex account created as a separate account in the general revenue fund by House Bill No. 3726, Senate Bill No. 1841, or similar legislation; and

(8) the emergency radio infrastructure account created by House Bill No. 442 or similar legislation.

SECTION 11. REVENUE DEDICATION. Effective on the later of the effective date of the Act dedicating or rededicating the revenue or August 31, 2011, the following dedications or rededications of revenue collected by a state agency for a particular purpose are exempt from Section 2 of this Act, if dedicated or rededicated by an Act of the 82nd Legislature, Regular Session, 2011, that becomes law:

(1) the dedication of all fees to be deposited to the credit of the driver's license system improvement account as provided by Senate Bill No. 9, Senate Bill No. 1583, or similar legislation;

(2) the dedication of amounts to be deposited to the credit of the charter district bond guarantee reserve fund as provided by Senate Bill No. 597, House Bill No. 1437, or similar legislation;

(3) the dedication of charges collected under Subsection (g), Section 151.158, Tax Code, as provided by Senate Bill No. 776, Senate Bill No. 1811, or similar legislation;

(4) the dedication of the additional annual fee to be deposited to the credit of the scholarship trust fund for fifth-year accounting students as provided by Senate Bill No. 777, House Bill No. 1521, or similar legislation;

(5) the dedication of fees imposed under Subsection (a), Section 2054.380, Government Code, as provided by Senate Bill No. 1579, House Bill No. 3665, or similar legislation;

(6) the dedication of fees to be charged for process server certification and renewal of certification as provided by Senate Bill No. 1582, Senate Bill No. 1811, House Bill No. 1614, House Bill No. 3648, or similar legislation;

(7) all dedications of revenue for deposit to the credit of the oil and gas regulation and cleanup fund as provided by Senate Bill No. 655, Senate Bill No. 1584, House Bill No. 3106, or similar legislation;

(8) the dedication of the enrollment fees to be deposited to the credit of the employees life, accident, and health insurance and benefits fund under Section 1551.3076, Insurance Code, as provided by Senate Bill No. 1664, Senate Bill No. 1811, or similar legislation;

(9) the dedication of contributions made under Section 502.1746, Transportation Code, as provided by Senate Bill No. 1635, House Bill No. 3179, or similar legislation;

(10) the dedication of contributions, gifts, grants, and promotional campaign proceeds received by the Parks and Wildlife Department under Subchapter J-1, Chapter 11, Parks and Wildlife Code, as provided by Senate Bill No. 1584, House Bill No. 1300, House Bill No. 3418, or similar legislation;

(11) the dedication of licensing fees received under Section 13.0155, Parks and Wildlife Code, as provided by Senate Bill No. 1584, House Bill No. 1300, House Bill No. 3418, or similar legislation;

(12) the dedication of contributions received under Section 502.1747, Transportation Code, as provided by Senate Bill No. 1584, House Bill No. 1301, House Bill No. 3418, or similar legislation;

(13) the dedication of all fees to be deposited to the credit of the sexual assault program fund as provided by Senate Bill No. 23 or similar legislation;

(14) the dedication of fees imposed under Subsection (b), Section 1104.052, Occupations Code, as provided by House Bill No. 1146, or similar legislation;

(15) the dedication of the revenue generated under House Bill No. 442, or similar legislation, for the purpose of creating an interoperable statewide emergency radio infrastructure;

(16) all dedications or rededications of revenue to an account of a Self-Directed, Semi-Independent Agency with the Texas Treasury Safekeeping Trust Company by any Act of the 82nd Legislature, Regular Session, 2011;

(17) all dedications or rededications of revenue to the Texas Department of Insurance Operating Account by any Act of the 82nd Legislature, Regular Session, 2011;

(18) all dedications or rededications of revenue to the State Highway Fund by any Act of the 82nd Legislature, Regular Session, 2011; and

(19) all dedications or rededications of revenue to the Game, Fish, and Water Safety Account by any Act of the 82nd Legislature, Regular Session, 2011.

SECTION 12. SEPARATE FUNDS IN THE TREASURY. Effective September 1, 2011, the following funds in the state treasury and the revenue deposited to the credit of the funds, if created by an Act of the 82nd Legislature, Regular Session, 2011, are exempt from Section 2 of this Act and the funds are created as separate funds in the state treasury:

(1) the charter district bond guarantee reserve fund, created as a special fund in the state treasury outside the general revenue fund by Senate Bill No. 597, House Bill No. 1437, or similar legislation; and

(2) the Internet crimes against children account created as a special fund by Senate Bill No. 1843, House Bill No. 3746, or similar legislation.

SECTION 13. CERTAIN OTHER FUNDS HELD OUTSIDE THE TREASURY. Each of the following funds, if created as a fund held outside the treasury by an Act of the 82nd Legislature, Regular Session, 2011, that becomes law, and revenue deposited to the credit of the funds are exempt from this Act:

The Department of Insurance examination local account created in the Texas Treasury Safekeeping Trust Company by Senate Bill No. 1291 or similar legislation.

SECTION 14. TRANSFER OF CERTAIN FUNDS. (a) The comptroller of public accounts shall hold the revenue that under Subdivision (11), Subsection (e), Section 133.102, Local Government Code, would be deposited to the credit of the



fugitive apprehension account until the effective date of House Bill No. 442, Acts of the 82nd Legislature, Regular Session, 2011, or similar legislation creating the emergency radio infrastructure account, and deposit that revenue into the emergency radio infrastructure account on that date.

(b) If House Bill No. 442, Acts of the 82nd Legislature, Regular Session, 2011, or similar legislation creating the emergency radio infrastructure account is not enacted, this section has no effect.

SECTION 15. SCHOLARSHIP TRUST FUND FOR FIFTH-YEAR ACCOUNTING STUDENTS. (a) Section 2 of this Act does not apply to the scholarship trust fund for fifth-year accounting students re-created as a trust fund outside the state treasury by Senate Bill No. 777, House Bill No. 1521, or similar legislation.

(b) The scholarship trust fund for fifth-year accounting students described by Subsection (a) of this section is subject to Section 5 of this Act.

SECTION 16. CIVIL JUSTICE DATA REPOSITORY FUND. Effective on the later of August 31, 2011, or the date the Act creating or re-creating the fund takes effect, the Civil Justice Data Repository fund and the revenue deposited to the credit of the fund are exempt from Section 2 of this Act and that fund is created as an account in the general revenue fund, if created or re-created by an Act of the 82nd Legislature, Regular Session, 2011, that becomes law.

SECTION 17. AMENDMENT OF SECTION 403.095, GOVERNMENT CODE. Effective September 1, 2011, Subsections (b), (d), and (e), Section 403.095, Government Code, are amended to read as follows:

(b) Notwithstanding any law dedicating or setting aside revenue for a particular purpose or entity, dedicated revenues that, on August 31, 2013 [~~2011~~], are estimated to exceed the amount appropriated by the General Appropriations Act or other laws enacted by the 82nd [~~81st~~] Legislature are available for general governmental purposes and are considered available for the purpose of certification under Section 403.121.

(d) Following certification of the General Appropriations Act and other appropriations measures enacted by the 82nd [~~81st~~] Legislature, the comptroller shall reduce each dedicated account as directed by the legislature by an amount that may not exceed the amount by which estimated revenues and unobligated balances exceed appropriations. The reductions may be made in the amounts and at the times necessary for cash flow considerations to allow all the dedicated accounts to maintain adequate cash balances to transact routine business. The legislature may authorize, in the General Appropriations Act, the temporary delay of the excess balance reduction required under this subsection. This subsection does not apply to revenues or balances in:

- (1) funds outside the treasury;
- (2) trust funds, which for purposes of this section include funds that may or are required to be used in whole or in part for the acquisition, development, construction, or maintenance of state and local government infrastructures, recreational facilities, or natural resource conservation facilities;
- (3) funds created by the constitution or a court; or
- (4) funds for which separate accounting is required by federal law.

(e) This section expires on September 1, 2013 [~~2014~~].

SECTION 18. EFFECT OF ACT. (a) This Act prevails over any other Act of the 82nd Legislature, Regular Session, 2011, regardless of the relative dates of enactment, that purports to create or re-create a special fund or account or to dedicate or rededicate revenue to a particular purpose, including any fund, account, or revenue dedication abolished under former Section 403.094, Government Code.

(b) An exemption from the application of Section 403.095, Government Code, contained in another Act of the 82nd Legislature, Regular Session, 2011, that is exempted from the application of Section 2 of this Act has no effect.

(c) Revenues that, under the terms of another Act of the 82nd Legislature, Regular Session, 2011, would be deposited to the credit of a special account or fund shall be deposited to the credit of the undedicated portion of the general revenue fund unless the fund, account, or dedication is exempted under this Act.

SECTION 19. EFFECTIVE DATE. Except as otherwise provided by this Act:

(1) this Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution; and

(2) if this Act does not receive the vote necessary for immediate effect, this Act takes effect on the 91st day after the last day of the legislative session.

The Conference Committee Report on **SB 1588** was filed with the Secretary of the Senate.

## **RESOLUTIONS OF RECOGNITION**

The following resolutions were adopted by the Senate:

### **Memorial Resolutions**

**SR 1220** by Ellis, In memory of Abdias do Nascimento.

**SR 1230** by Seliger, In memory of Richard McDonald.

**SR 1232** by Nelson, In memory of Bobby Ray Miller.

### **Congratulatory Resolutions**

**SR 1222** by Lucio, Recognizing Sigma Psi Delta Sorority on the occasion of its 15th anniversary.

**SR 1223** by Seliger, Recognizing Candido Mejia of Roberts County on the occasion of his graduation from Miami High School.

**SR 1224** by Seliger, Recognizing Valeria Mejia on the occasion of her graduation from Miami High School.

**SR 1225** by Ellis and Huffman, Recognizing Leon Hale on the occasion of his 90th birthday.

**SR 1226** by Lucio, Recognizing Rudy Villarreal for his service to the City of Alamo.

**SR 1228** by Hinojosa, Recognizing Omar Ochoa on the occasion of his graduation from The University of Texas School of Law.

**SR 1229** by Harris, Recognizing the Denton County Transportation Authority on its public launch of the first phase of its passenger rail.

**SR 1233** by Davis, Recognizing John "Jason" Bonds on the occasion of his graduation from the United States Military Academy at West Point.

**SR 1234** by Davis, Recognizing Tiné Valencic for winning the 2011 National Geographic Bee.

**SR 1235** by Davis, Recognizing Gregory S. Smith for his service to his community.

**SR 1236** by Davis, Recognizing Fort Worth Commercial Real Estate Women, Incorporated.

**SR 1237** by Davis, Recognizing Fred M. Willoughby and Terri Elizabeth Watson Willoughby for their service to their community.

**SR 1238** by Van de Putte, Recognizing the men and women who have served our country in the armed forces.

**SR 1239** by Davis, Recognizing Melody Johnson on the occasion of her retirement as superintendent of the Fort Worth Independent School District.

**HCR 115** (Gallegos), Honoring the Battleship Texas Foundation for its work to preserve the historic battleship.

### RECESS

On motion of Senator Jackson, the Senate at 6:38 p.m. recessed until 11:00 a.m. tomorrow for the Joint Session.

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## APPENDIX

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### BILLS AND RESOLUTIONS ENROLLED

May 26, 2011

**SB 17, SB 20, SB 167, SB 173, SB 181, SB 244, SB 327, SB 365, SB 475, SB 683, SB 717, SB 738, SB 761, SB 768, SB 781, SB 789, SB 801, SB 810, SB 819, SB 847, SB 937, SB 969, SB 1026, SB 1042, SB 1055, SB 1058, SB 1073, SB 1120, SB 1124, SB 1169, SB 1200, SB 1225, SB 1290, SB 1383, SB 1393, SB 1434, SB 1545, SB 1619, SB 1686, SB 1714, SB 1877, SB 1899, SB 1910, SB 1913, SB 1916, SB 1925, SB 1926, SCR 56, SR 1183, SR 1184, SR 1185, SR 1186, SR 1202, SR 1203, SR 1205, SR 1207, SR 1208, SR 1209, SR 1210, SR 1211, SR 1214, SR 1215, SR 1216, SR 1217**

### SENT TO SECRETARY OF STATE

May 27, 2011

**SJR 9, SJR 14, SJR 26, SJR 37, SJR 50**

**SENT TO GOVERNOR**May 27, 2011

**SB 17, SB 20, SB 167, SB 173, SB 176, SB 181, SB 201, SB 218, SB 220, SB 229, SB 244, SB 271, SB 327, SB 329, SB 349, SB 364, SB 365, SB 370, SB 438, SB 460, SB 475, SB 479, SB 548, SB 683, SB 701, SB 717, SB 738, SB 761, SB 762, SB 766, SB 768, SB 781, SB 789, SB 801, SB 802, SB 804, SB 810, SB 812, SB 819, SB 847, SB 917, SB 937, SB 969, SB 975, SB 1009, SB 1026, SB 1042, SB 1055, SB 1058, SB 1073, SB 1120, SB 1124, SB 1169, SB 1200, SB 1225, SB 1290, SB 1360, SB 1383, SB 1386, SB 1393, SB 1434, SB 1477, SB 1504, SB 1545, SB 1560, SB 1617, SB 1619, SB 1686, SB 1714, SB 1726, SB 1799, SB 1877, SB 1899, SB 1910, SB 1913, SB 1916, SB 1925, SB 1926, SCR 2, SCR 56, SCR 58**

**SIGNED BY GOVERNOR**May 27, 2011

**SB 14, SB 198, SB 250, SB 279, SB 529, SB 551, SB 748, SB 758, SB 1024, SB 1107, SB 1478, SB 1505, SCR 45, SCR 46, SCR 52**