

# SENATE JOURNAL

EIGHTY-SECOND LEGISLATURE — REGULAR SESSION

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AUSTIN, TEXAS

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PROCEEDINGS

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**SIXTY-SEVENTH DAY**

(Continued)

(Wednesday, May 25, 2011)

**AFTER RECESS**

The Senate met at 10:57 a.m. and was called to order by President Pro Tempore Ogden.

The Reverend Garry Roberts, Mount Sinai Missionary Baptist Church, Austin, offered the invocation as follows:

Gracious God, our Father, we come calling upon You because You hear us when we pray. We call upon You because You are the creator of heaven and Earth. We thank You for all that You do because You do all things well. Lord, we ask that You would forgive us of all our sins and unrighteousness, for Your word declares that if we confess our sins, You are faithful and just to forgive us and cleanse us from all unrighteousness. We thank You now for the State of Texas and the great nation we are a part of and how You continue to bless us. We pray for our Texas government officials. We ask that You would keep them safe from all hurt, harm, and danger. Father, grant them vision and courage to make wise decisions that will benefit all citizens. Lord, empower them to have a mind of Christ and stand strong on Your principles of love, compassion, and justice. We thank You in advance for what You are going to do because we know the best is yet to come. We pray all these things in Your son Jesus' name. Amen.

## **PHYSICIAN OF THE DAY**

Senator Watson was recognized and presented Dr. Elliot Trester of Austin as the Physician of the Day.

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

## **HOUSE CONCURRENT RESOLUTION 153**

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

WHEREAS, Members of the Austin Area Urban League are visiting the State Capitol on May 25, 2011; and

WHEREAS, Founded on August 12, 1977, the Austin Area Urban League is affiliated with the National Urban League, a civil rights organization that has fought discrimination for more than a century; the Urban League has contributed immeasurably to social progress and remains dedicated to the economic empowerment of historically underserved residents in urban communities; and

WHEREAS, The Austin Area Urban League began operations in the basement of Wesley United Methodist Church; from that humble beginning, the organization has grown dramatically to meet the needs of area residents; and

WHEREAS, In addition to job readiness training, the group's Workforce Development program provides GED courses, job search assistance, and office and life skills instruction; the league works with 300 employers to help job candidates find suitable positions, and it conducts after-school computer and technology classes at four different Housing Authority of Austin sites; and

WHEREAS, The organization offers a first-time homebuyer's class and awards those who complete it a \$1,000 grant toward a down payment; moreover, it performs hundreds of emergency and scheduled home repairs annually, free of cost to low-income home owners, and it partners with some 40 other entities, including Dell, Seton, and the Meadows Foundation, to further its important goals; and

WHEREAS, Today, the Austin Area Urban League remains fortunate in the continued leadership of many of its esteemed founders, including the Reverend Freddie Dixon, who was pastor of Wesley United Methodist Church in 1977 when the church became the birthplace of the Urban League in Central Texas, and the Honorable Harriett Murphy, a retired municipal court judge who was a new attorney working to help found the league in the 1970s; also among this number are Linda Moore Smith, the organization's first executive director, who went on to serve the National Urban League in New York before reprising her role in Austin, and Carolyn Holt Goldston, a longtime advocate for racial justice and civil rights and a lifetime member of the organization; continuing the tradition of excellence established by these local legends are Austin native Scotty Holman, a financial executive, who serves as the 2010 chair, and the Honorable Jeffrey K. Richard, who was elected president and chief executive officer in 2005 and also serves as a trustee for the Austin Community College District; other noteworthy founders and longtime members continue to share their wisdom and experience with the organization and inspire the members of its newest program, the AAUL Young Professionals; and

WHEREAS, Unwavering in its determination to improve race relations and foster economic and social equality, the Austin Area Urban League has created an enduring legacy, and its efforts in behalf of education, employment readiness, wellness, and affordable housing are greatly benefiting innumerable people and making a lasting, positive difference in the community; now, therefore, be it

RESOLVED, That the 82nd Legislature of the State of Texas hereby honor the Austin Area Urban League for its outstanding achievements and extend to its members sincere best wishes for continued success; and, be it further

RESOLVED, That an official copy of this resolution be prepared for the organization as an expression of high regard by the Texas House of Representatives and Senate.

WATSON

**HCR 153** was read.

On motion of Senator Watson, 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.

### **GUESTS PRESENTED**

Senator Watson was recognized and introduced to the Senate an Austin Area Urban League delegation: Freddie Dixon, Harriet Murphy, Linda Moore Smith, Carolyn Holt Goldston, Jeffrey Richard, and Scotty Holman.

The Senate welcomed its guests.

### **SENATE RESOLUTION 1172**

Senator Davis offered the following resolution:

**SR 1172**, Recognizing Fred Chase, Sr., who served his country with honor and distinction during World War II and the Korean War.

The resolution was read and was adopted without objection.

### **GUESTS PRESENTED**

Senator Davis was recognized and introduced to the Senate Fred Chase, Sr., Fred Chase, Jr., and Ellen Chase.

The Senate welcomed its guests.

**(Senator Eltife in Chair)**

### **SENATE RESOLUTION 1129**

Senator Lucio offered the following resolution:

**SR 1129**, Commending Colleen McHugh on her service to The University of Texas System Board of Regents.

LUCIO  
HINOJOSA  
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The resolution was read and was adopted without objection.

### **GUEST PRESENTED**

Senator Lucio, joined by Senators Zaffirini, Hinojosa, Watson, and Wentworth, was recognized and introduced to the Senate Colleen McHugh.

The Senate welcomed its guest.

### **SENATE RESOLUTION 1131**

Senator Hinojosa offered the following resolution:

**SR 1131**, Commending Amanda Aguilera on being named Youth of the Year for District 20 by the Rio Grande Valley Sector of the United States Border Patrol.

The resolution was read and was adopted without objection.

**GUEST PRESENTED**

Senator Hinojosa was recognized and introduced to the Senate Amanda Aguilera.

The Senate welcomed its guest.

**SENATE RESOLUTION 1130**

Senator Lucio offered the following resolution:

**SR 1130**, Commending Rodrigo Villarreal on being named Youth of the Year for District 27 by the Rio Grande Valley Sector of the United States Border Patrol.

The resolution was read and was adopted without objection.

**GUEST PRESENTED**

Senator Lucio was recognized and introduced to the Senate Rodrigo Villarreal.

The Senate welcomed its guest.

**SENATE RESOLUTION 1176**

Senator Rodriguez offered the following resolution:

**SR 1176**, In memory of Robert C. Thornell, Sr.

The resolution was read.

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

On motion of Senator Rodriguez, **SR 1176** was adopted by a rising vote of the Senate.

In honor of the memory of Robert C. Thornell, Sr., the text of the resolution is printed at the end of today's *Senate Journal*.

**GUEST PRESENTED**

Senator Rodriguez was recognized and introduced to the Senate Bryce Romero.

The Senate welcomed its guest and extended its sympathy.

**SENATE RESOLUTION 1052**

Senator Shapiro offered the following resolution:

**SR 1052**, In memory of James Wyatt "Jim" Edwards.

The resolution was again read.

The resolution was previously adopted on Friday, May 20, 2011.

In honor of the memory of James Wyatt Edwards, the text of **SR 1052** is printed at the end of today's *Senate Journal*.

**REMARKS ORDERED PRINTED**

On motion of Senator Estes and by unanimous consent, the remarks by Senator Shapiro regarding **SR 1052** were ordered reduced to writing and printed in the *Senate Journal* as follows:

Thank you very much Mr. President and Members. Senate Resolution 1052 recognizes Jim Edwards, a former two-term Mayor of the City of Plano, who died on May 13th at the age of 73. Jim died after a very short but very agonizing battle with cancer. This left a hole in our community that will not soon be filled. Born September the 6th, 1937, in Chicago, he grew up in Henderson, Kentucky, and loved those old Kentuckians. He talked about them all the time. He made his mark in Texas. Jim led a distinguished life, as I mentioned, he was the former Mayor of Plano and a very effective one at that. Jim is rightfully credited with drawing a number of large corporations to our area. In a sleepy little town back in the '70s and '80s, it became a burgeoning community. Jim helped spur development of major roadways, public transportation, retail centers, and educational institutions in Collin County. His background was extraordinary. He entered college when he was 16. After earning his bachelor's degree, he went on to earn a master's in accounting and two, Members, two doctorates, one in accounting and one in finance. And it's no surprise that with this love of learning, later in life, Jim also held leading roles in several colleges and universities. As his beloved son, Randy, has said of his father, education was paramount in his career. He was active in Republican politics. He served as a coordinator for Mike Huckabee's 2008 presidential campaign in Texas. Eight years before that, he worked where George W. Bush campaigned in Palm Beach County, Florida. As a passionate advocate for education, particularly the education of those students at risk, he worked with a nonprofit organization called Heart of a Champion. And true to his nature, his most recent initiative was the Changing Hearts Project, a program dedicated to aiding the children of combat veterans from Iraq and Afghanistan. A devoted husband, father, and grandfather, Jim knew what it meant in life and what was important in life. It was family and friends, and each one of us will miss him dearly. And yet, what we know is that Jim believed, above all else, it was service to others. Much like the legacy of his service that he will leave behind, he will also continue to live on in the hearts and the minds of all of those who knew Jim Edwards and loved him.

### **RECESS**

On motion of Senator Whitmire, the Senate at 11:50 a.m. recessed until 1:00 p.m. today.

### **AFTER RECESS**

The Senate met at 2:15 p.m. and was called to order by President Pro Tempore Ogden.

### **COMMITTEE SUBSTITUTE HOUSE BILL 290 ON SECOND READING**

On motion of Senator Nelson and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 290** at this time on its second reading:

**CSHB 290**, Relating to the punishment for the offense of employment harmful to children.

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

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 290 ON THIRD READING**

Senator Nelson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 290** be placed on its third reading and final passage.

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

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

**SESSION TO CONSIDER EXECUTIVE APPOINTMENTS**

The President Pro Tempore announced the time had arrived to consider executive appointments to agencies, boards, and commissions. Notice of submission of these names for consideration was given yesterday by Senator Deuell.

Senator Deuell moved confirmation of the nominees reported yesterday by the Committee on Nominations.

The President Pro Tempore asked if there were requests to sever nominees.

There were no requests offered.

**NOMINEES CONFIRMED**

The following nominees, as reported by the Committee on Nominations, were confirmed by the following vote: Yeas 31, Nays 0.

Members, Oversight Committee, Cancer Prevention and Research Institute of Texas: Faith Simmons Johnson, Dallas County; Phil Wilson, Travis County.

District Attorney, 109th Judicial District, Crane and Winkler Counties: Dorothy Ann Holguin, Winkler County.

Members, Governing Board, Texas School for the Blind and Visually Impaired: Anne Lesley Corn, Travis County; Caroline Kupstas Daley, Harris County; Cynthia Ann Phillips Finley, Lubbock County.

Member, Gulf States Marine Fisheries Commission: Troy Bello Williamson, San Patricio County.

Member, Board of Directors, Lavaca-Navidad River Authority: Terri Lynn Green Parker, Jackson County.

Members, Board of Directors, Nueces River Authority: Karen Olsen Bonner, Nueces County; Laura Orman Clader, Atascosa County; Judith Hoepfner Creveling, Nueces County; John W. Galloway, Bee County; Gary A. Jones, Bee County;

James Richard Marmion, Dimmit County; Tomas Ramirez, Medina County; Fidel R. Rul, Jim Wells County; Stephen Hamilton Thomas, San Patricio County; Roxana Proctor Tom, Atascosa County.

Members, Product Development and Small Business Incubator Board: Molly Jane Dahm, Jefferson County; Ricardo David Leal, Cameron County; David L. Miller, Lubbock County; Ejike Edward Okpa, Dallas County.

Members, Board of Directors, San Jacinto River Authority: Fredrick Donald Koetting, Montgomery County; Mary Louise Rummell, Montgomery County.

Members, Board of Directors, Sulphur River Basin Authority: Borden E. Bell, Bowie County; Wallace Eugene Kraft, Lamar County; David T. Neeley, Titus County; Michael Edward Russell, Red River County; Patricia A. Wommack, Morris County.

Members, Texas Board of Chiropractic Examiners: Karen Marie Campion, Brazos County; Timothy Clarke McCullough, Galveston County; Kenya Scott Woodruff, Dallas County.

Members, Texas Real Estate Commission: Troy C. Alley, Dallas County; Billy Lawrence Jones, Bell County; Weston Martinez, Bexar County.

Members, Texas State Board of Examiners of Marriage and Family Therapists: Rick Allan Bruhn, Walker County; George Franklin Francis, Williamson County; Sean Benjamin Stokes, Denton County.

Members, Texas State Board of Public Accountancy: John Coalter Baker, Travis County; John Richard Broaddus, El Paso County; Jonathan Ballenger Cluck, Kendall County; Rocky Lynn Duckworth, Harris County; Catherine Rodewald, Dallas County.

Members, Board of Regents, University of North Texas System: Michael R. Bradford, Midland County; Steve Mitchell, Dallas County; George B. Ryan, Dallas County.

Members, Board of Directors, Upper Guadalupe River Authority: Harold James Danford, Kerr County; Lonnie Patricia Holloway, Kerr County.

### **HOUSE BILL 737 ON SECOND READING**

Senator Williams moved to suspend Senate Rule 7.12(a) and the regular order of business to take up for consideration **HB 737** at this time on its second reading:

**HB 737**, Relating to the East Montgomery County Improvement District.

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

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

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

### **HOUSE BILL 737 ON THIRD READING**

Senator Williams moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 737** be placed on its third reading and final passage.

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

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1940 ON SECOND READING**

On motion of Senator Huffman and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 1940** at this time on its second reading:

**CSHB 1940**, Relating to certain matters affecting the supervision of persons released from the Texas Department of Criminal Justice and to certain hearings conducted concerning persons released from the Texas Department of Criminal Justice.

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

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1940 ON THIRD READING**

Senator Huffman moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 1940** be placed on its third reading and final passage.

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

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1206 ON SECOND READING**

On motion of Senator Zaffirini and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 1206** at this time on its second reading:

**CSHB 1206**, Relating to training for members of governing boards of public junior college districts.

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

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1206 ON THIRD READING**

Senator Zaffirini moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 1206** be placed on its third reading and final passage.

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

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 2337 ON SECOND READING**

On motion of Senator Uresti and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 2337** at this time on its second reading:

**CSHB 2337**, Relating to the admissibility of certain statements made by a child in a juvenile justice or criminal proceeding.

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

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 2337 ON THIRD READING**

Senator Uresti moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 2337** be placed on its third reading and final passage.

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

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

**HOUSE BILL 1376 ON SECOND READING**

On motion of Senator Ellis and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 1376** at this time on its second reading:

**HB 1376**, Relating to the definition of a junked vehicle for purposes of abatement of a public nuisance.

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

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

**HOUSE BILL 1376 ON THIRD READING**

Senator Ellis moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1376** be placed on its third reading and final passage.

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

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 2327 ON SECOND READING**

Senator Wentworth moved to suspend the regular order of business to take up for consideration **CSHB 2327** at this time on its second reading:

**CSHB 2327**, Relating to the establishment and operation of a motor-bus-only lane pilot program in certain counties.

The motion prevailed by the following vote: Yeas 21, Nays 10.

Yeas: Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Gallegos, Hinojosa, Lucio, Nelson, Rodriguez, Seliger, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Birdwell, Fraser, Harris, Hegar, Huffman, Jackson, Nichols, Ogden, Patrick, Shapiro.

The bill was read second time.

Senator Estes offered the following amendment to the bill:

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

Amend **CSHB 2327** (Senate Committee printing) as follows:

On page 1, line 25 strike "Denton".

The amendment to **CSHB 2327** was read and was adopted by a viva voce vote.

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

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

**CSHB 2327** as amended was passed to third reading by the following vote: Yeas 21, Nays 10.

Yeas: Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Gallegos, Hinojosa, Lucio, Nelson, Rodriguez, Seliger, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Birdwell, Fraser, Harris, Hegar, Huffman, Jackson, Nichols, Ogden, Patrick, Shapiro.

### **HOUSE BILL 3079 ON SECOND READING**

On motion of Senator Deuell and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 3079** at this time on its second reading:

**HB 3079**, Relating to dealer agreements regarding the purchase and sale of certain equipment or machinery used for agricultural, construction, industrial, mining, outdoor power, forestry, and landscaping purposes.

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

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

### **HOUSE BILL 3079 ON THIRD READING**

Senator Deuell moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3079** be placed on its third reading and final passage.

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

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

### STATEMENT OF LEGISLATIVE INTENT

Senator Deuell submitted the following statement of legislative intent for **HB 3079**:

It is my intent that House Bill 3079 will prohibit suppliers from "substantially changing the competitive circumstances of the dealer agreement" without good cause. The reason this protection is needed is that dealers have no negotiating power to prevent suppliers from inserting contract language that gives the suppliers the legal right to take actions that harm a dealer's business. For example, a dealer agreement may say that a supplier can approve another dealer to operate right next door to the original dealer even if the supplier knows that it would not have convinced the original dealer to invest millions of dollars if the dealer knew this was the supplier's intent. This provision is not intended to be limited to preventing action by a supplier that would violate the terms of the dealer agreement. Dealers already have a breach of contract remedy in that situation and therefore do not need additional legislation to address it. The very reason for this legislation is that dealer agreements represent "take it or leave it" propositions for dealers with little or no chance for dealers to negotiate with suppliers. The result is that dealers often sign contracts based on business expectations even if the dealer agreement permits the supplier to make future changes that impact the business expectation. The purpose of this law is to protect dealers from changes imposed by a supplier if the changes are substantial and negatively impact the dealer's business.

DEUELL

### COMMITTEE SUBSTITUTE HOUSE BILL 51 ON SECOND READING

Senator Hinojosa moved to suspend the regular order of business to take up for consideration **CSHB 51** at this time on its second reading:

**CSHB 51**, Relating to energy efficiency standards for certain buildings and to high-performance design, construction, and renovation standards for certain buildings and facilities of institutions of higher education.

The motion prevailed.

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

The bill was read second time.

Senator Hinojosa offered the following amendment to the bill:

#### Floor Amendment No. 1

Amend **CSHB 51** as follows:

In SECTION 1 of the bill, strike Subsections (c) and (d) of added Section 55.115, Education Code and substitute the following:

(c) Except as provided by this section, a building, structure, or other facility to which this section applies must be designed and constructed or renovated to comply with the applicable energy and water conservation design standards established by the state energy conservation office under Section 447.004, Government Code, unless the institution constructing the building determines that compliance with those standards is impractical and notifies the state energy conservation office of the determination and provides to the office documentation supporting the determination.

The amendment to **CSHB 51** was read and was adopted by a viva voce vote.

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

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

**CSHB 51** as amended was passed to third reading by a viva voce vote.

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

Nays: Birdwell, Nichols, Patrick, Shapiro.

#### **COMMITTEE SUBSTITUTE HOUSE BILL 51 ON THIRD READING**

Senator Hinojosa moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 51** be placed on its third reading and final passage.

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

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

Nays: Birdwell, Nichols, Patrick, Shapiro.

The bill was read third time and was passed by the following vote: Yeas 27, Nays 4. (Same as previous roll call)

#### **HOUSE CONCURRENT RESOLUTION 86 ON SECOND READING**

On motion of Senator Duncan and by unanimous consent, the regular order of business was suspended to take up for consideration **HCR 86** at this time on its second reading:

**HCR 86**, Designating the Texas State Bison Herd at Caprock Canyons State Park as the official State Bison Herd of Texas.

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

**HOUSE BILL 2994 ON SECOND READING**

Senator Estes moved to suspend the regular order of business to take up for consideration **HB 2994** at this time on its second reading:

**HB 2994**, Relating to the creation, operation, and funding of the urban farm microenterprise support program.

The motion prevailed.

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

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

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

Nays: Birdwell, Hegar, Shapiro.

Absent: Williams.

**HOUSE BILL 2994 ON THIRD READING**

Senator Estes moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2994** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 27, Nays 3.

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

Nays: Birdwell, Hegar, Shapiro.

Absent: Williams.

The bill was read third time and was passed by the following vote: Yeas 27, Nays 3. (Same as previous roll call)

**HOUSE BILL 3841 ON SECOND READING**

Senator Lucio moved to suspend the regular order of business to take up for consideration **HB 3841** at this time on its second reading:

**HB 3841**, Relating to the designation of a portion of Farm-to-Market Road 907 in Hidalgo County as Rudy Villarreal Road.

The motion prevailed.

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

The bill was read second time and was passed to third reading by the following vote: Yeas 30, Nays 1.

Nays: Ogden.

### HOUSE BILL 3841 ON THIRD READING

Senator Lucio moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3841** be placed on its third reading and final passage.

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

Nays: Ogden.

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

### COMMITTEE SUBSTITUTE HOUSE BILL 2910 ON SECOND READING

On motion of Senator Zaffirini and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 2910** at this time on its second reading:

**CSHB 2910**, Relating to agreements between the Texas Higher Education Coordinating Board and certain organizations for increasing degree completion rates.

The bill was read second time.

Senator Birdwell offered the following amendment to the bill:

#### Floor Amendment No. 1

Amend **CSHB 2910** (Senate Committee Printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering the SECTIONS of the bill appropriately:

SECTION \_\_\_\_\_. Chapter 61, Education Code, is amended by adding Subchapter GG to read as follows:

#### SUBCHAPTER GG. TEXAS SCIENCE, TECHNOLOGY, ENGINEERING, AND MATHEMATICS (T-STEM) CHALLENGE SCHOLARSHIP PROGRAM

Sec. 61.9791. DEFINITION. In this subchapter, "STEM program" means a Science, Technology, Engineering, and Mathematics program.

Sec. 61.9792. SCHOLARSHIP PROGRAM. The board shall establish and administer, in accordance with this subchapter and board rules, the Texas Science, Technology, Engineering, and Mathematics (T-STEM) Challenge Scholarship program under which the board provides a scholarship to a student who meets the eligibility criteria prescribed by Section 61.9793.

Sec. 61.9793. ELIGIBLE STUDENT. (a) To receive an initial scholarship under this subchapter, a student must:

(1) graduate from high school with a grade point average of at least 3.0 on a four-point scale in mathematics and science courses;

(2) enroll in a STEM program at an eligible institution; and

(3) agree to work no more than 15 hours a week for a business participating in the STEM program.

(b) To continue to qualify for a scholarship under this subchapter, a student must:

(1) remain enrolled in a STEM program at an eligible institution;

(2) maintain an overall grade point average of at least 3.0 on a four-point scale;

(3) complete at least 80 percent of all semester credit hours attempted for each semester;

(4) complete at least 30 semester credit hours per academic year; and

(5) work no more than 15 hours a week for a business participating in the STEM program.

Sec. 61.9794. ELIGIBLE INSTITUTION. (a) To qualify as an eligible institution under this subchapter, an institution must:

(1) be a public junior college or public technical institute;

(2) admit at least 50 students into a STEM program each academic year; and

(3) develop partnerships with business and industry to:

(A) identify local employment needs in Science, Technology, Engineering, and Mathematics (STEM) fields; and

(B) provide part-time employment for students enrolled in a STEM program.

(b) To maintain eligibility, beginning with the second year following implementation of a scholarship program under this subchapter, an institution must demonstrate to the board that at least 70 percent of the institution's T-STEM Challenge Scholarship graduates, within three months after graduation, are:

(1) employed by a business in a Science, Technology, Engineering, and Mathematics (STEM) field; or

(2) enrolled in upper-division courses leading to a baccalaureate degree in a Science, Technology, Engineering, and Mathematics (STEM) field.

Sec. 61.9795. AMOUNT; FUNDING. (a) Subject to available funding, the board shall award scholarships, with at least 50 percent of the amount awarded from private funds.

(b) An eligible student may receive a scholarship awarded under this subchapter for not more than two academic years.

(c) The board may use any available revenue, including legislative appropriations, and may solicit and accept gifts and grants for purposes of this subchapter.

SECTION \_\_\_\_. The Texas Higher Education Coordinating Board shall award scholarships under Subchapter GG, Chapter 61, Education Code, as added by this Act, beginning with the 2011-2012 academic year. The coordinating board shall adopt the rules required by that subchapter as soon as practicable after this Act takes effect.

The amendment to **CSHB 2910** was read and was adopted by a viva voce vote.

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

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

**CSHB 2910** as amended was passed to third reading by a viva voce vote.

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 2910 ON THIRD READING**

Senator Zaffirini moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 2910** be placed on its third reading and final passage.

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

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

**HOUSE BILL 3864 ON SECOND READING**

On motion of Senator Deuell and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 3864** at this time on its second reading:

**HB 3864**, Relating to the creation of the Lazy W District No. 1; providing authority to impose a tax and issue bonds; granting a limited power of eminent domain.

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

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

**HOUSE BILL 3864 ON THIRD READING**

Senator Deuell moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3864** be placed on its third reading and final passage.

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

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 2643 ON SECOND READING**

On motion of Senator Watson and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 2643** at this time on its second reading:

**CSHB 2643**, Relating to safety standards for elevators, escalators, and related equipment.

The bill was read second time.

Senator Carona offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 2643** (senate committee printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS accordingly:

SECTION \_\_\_\_\_. Section 1302.002, Occupations Code, is amended by amending Subdivision (5-b) and adding Subdivision (5-c) to read as follows:

(5-b) "Apprenticeship program" means an air conditioning and refrigeration training program that is:

(A) recognized by the Texas Workforce Commission or the Texas Higher Education Coordinating Board;

(B) registered with the United States Department of Labor; or

(C) a competency-based standardized craft training program that meets the standards of the United States Department of Labor Office of Apprenticeship.

(5-c) "Certified technician" means a registered technician who has completed a certification examination.

SECTION \_\_\_\_\_. Subchapter C, Chapter 1302, Occupations Code, is amended by adding Section 1302.1011 to read as follows:

Sec. 1302.1011. RULES. The commission shall adopt rules:

(1) providing for the licensing and registration of persons under this chapter, including requirements for the issuance and renewal of a contractor license and a technician registration;

(2) establishing fees necessary for the administration of this chapter, including fees for issuance and renewal of a contractor license and a technician registration; and

(3) implementing the requirements of this chapter as applicable to persons, entities, and activities regulated under this chapter.

SECTION \_\_\_\_\_. Subsection (a), Section 1302.102, Occupations Code, is amended to read as follows:

(a) The commission by rule ~~[executive director]~~ shall set insurance requirements for a license holder under this chapter.

SECTION \_\_\_\_\_. Section 1302.105, Occupations Code, is amended to read as follows:

Sec. 1302.105. PERSONNEL ~~[; EXAMINERS]~~. ~~[(a)]~~ The department may employ personnel necessary to administer this chapter.

~~[(b) The department shall employ at least two full-time air conditioning and refrigeration contractors to serve as examiners.]~~

SECTION \_\_\_\_\_. Section 1302.202, Occupations Code, is amended to read as follows:

Sec. 1302.202. APPOINTED MEMBERS. (a) Except for the public member, ~~each~~ ~~[Each]~~ appointed advisory board member must be experienced in the design, installation, construction, maintenance, service, repair, or modification of equipment used for environmental air conditioning, commercial refrigeration, or process cooling or heating. Other than the public member, of ~~[Of]~~ the appointed members:

(1) one must be an official of a municipality with a population of more than 250,000;

(2) one must be an official of a municipality with a population of not more than 250,000; and

(3) four must be full-time licensed air conditioning and refrigeration contractors, as follows:

(A) one member who holds a Class A license and practices in a municipality with a population of more than 250,000;

(B) one member who holds a Class B license and practices in a municipality with a population of more than 250,000;

(C) one member who holds a Class A license and practices in a municipality with a population of more than 25,000 but not more than 250,000; and

(D) one member who holds a Class B license and practices in a municipality with a population of not more than 25,000.

(b) At least one ~~[appointed]~~ advisory board member appointed under Subsection (a)(3) must be an air conditioning and refrigeration contractor who employs organized labor ~~[and at least two appointed members must be air conditioning and refrigeration contractors who are licensed engineers].~~

SECTION \_\_\_\_\_. The heading to Subchapter F, Chapter 1302, Occupations Code, is amended to read as follows:

SUBCHAPTER F. AIR CONDITIONING AND REFRIGERATION  
CONTRACTORS [LICENSE REQUIREMENTS]

SECTION \_\_\_\_\_. Section 1302.251, Occupations Code, is amended to read as follows:

Sec. 1302.251. LICENSE REQUIRED. (a) A person may not engage in air conditioning and refrigeration contracting unless the person holds an air conditioning and refrigeration contractor [a] license under this subchapter or Subchapter G.

(b) An air conditioning and refrigeration contractor [A] license issued under this subchapter is valid throughout the state. A person who holds a license issued under this subchapter is not required to hold a municipal license under Subchapter G to engage in air conditioning and refrigeration contracting in any municipality in this state.

(c) A person holding an air conditioning and refrigeration contractor license may assign that license to only one permanent office of one air conditioning and refrigeration contracting company.

SECTION \_\_\_\_\_. Section 1302.255, Occupations Code, is amended to read as follows:

Sec. 1302.255. ELIGIBILITY REQUIREMENTS. (a) An applicant for a license under this subchapter ~~[chapter]~~ must:

(1) be at least 18 years old; and

(2) have at least 48 ~~[36]~~ months of practical experience in air conditioning and refrigeration-related work under the supervision of a licensed air conditioning and refrigeration contractor [with the tools of the trade] in the preceding 72 months [five years].

(a-1) An applicant who has equivalent experience in another state or who held an equivalent license in another state may receive credit for the experience as determined by the executive director.

(b) Notwithstanding the requirements of [For purposes of determining an applicant's practical experience under] Subsection (a)(2), an applicant may satisfy a portion of the practical experience requirement as provided by Subsection (c).

(c) An applicant who obtains a degree or diploma or completes a certification program from an institution of higher education that holds a certificate of authority issued by the Texas Higher Education Coordinating Board, or an equivalent governing body in another state as approved by the executive director, may satisfy a portion of the practical experience requirement as follows:

(1) completing a four-year degree or diploma in air conditioning engineering or technology, refrigeration engineering or technology, or mechanical engineering is equivalent to 24 months ~~[two years]~~ of practical experience ~~[if:~~

~~[(1) the degree or diploma is from an institution of higher education]; [and]~~

(2) completing a two-year associate's degree, a two-year diploma, or a two-year certification program primarily focused on air conditioning and refrigeration-related work is equivalent to 12 months of practical experience;

(3) completing a one-year certification program, or a program of at least two semesters, in air conditioning and refrigeration-related work is equivalent to six months of practical experience; and

(4) completing a program resulting in another applicable degree, diploma, or certification shall be equivalent to the amount of practical experience determined by the department under commission rule ~~[the institution's program is approved by the Texas Board of Professional Engineers for the purpose of licensing engineers].~~

(d) Every 2,000 hours of on-the-job training in an apprenticeship program is equivalent to 12 months of practical experience under Subsection (a)(2).

(e) Notwithstanding the requirements of Subsection (a)(2), each of the following qualifies as practical experience for purposes of satisfying the 48-month requirement:

(1) verified military service in which the person was trained in or performed air conditioning and refrigeration-related work as part of the person's military occupational specialty; and

(2) experience performing air conditioning and refrigeration-related work as described by Section 1302.055, 1302.056, or 1302.057 or while employed by a governmental entity.

SECTION \_\_\_\_\_. Subsections (a) and (c), Section 1302.256, Occupations Code, are amended to read as follows:

(a) An applicant for an air conditioning and refrigeration contractor ~~[a]~~ license must submit a verified application on a form prescribed by the executive director.

(c) The application must be accompanied by:

(1) a statement containing evidence satisfactory to the executive director of the applicant's practical experience required by Section 1302.255 ~~[1302.255(a)(2)]~~; and

(2) the required fees ~~[examination fee]~~.

SECTION \_\_\_\_\_. Subsection (b), Section 1302.257, Occupations Code, is amended to read as follows:

(b) The executive director shall prescribe the method and content of an examination administered under this subchapter ~~[chapter]~~ and shall set compliance requirements for the examination. To obtain an endorsement, an applicant must pass the examination for the endorsement.

SECTION \_\_\_\_\_. Section 1302.260, Occupations Code, is amended to read as follows:

Sec. 1302.260. ISSUANCE AND TERM OF LICENSE. (a) The department [~~On payment of the license fee, the executive director~~] shall issue an air conditioning and refrigeration contractor license to an applicant who:

- (1) submits a verified application;
- (2) passes the applicable examination;
- (3) meets the requirements of this chapter and rules adopted under this chapter [~~subchapter~~];
- (4) pays the required fees; and
- (5) [~~(2)~~] provides evidence of insurance coverage required by rule [~~the executive director~~] in accordance with this chapter [~~;~~ and [~~(3) passes the applicable examination~~].

(b) A license issued under this chapter expires on the first anniversary of the date of issuance [~~at the end of the license period set by the commission~~].

SECTION \_\_\_\_\_. Section 1302.263, Occupations Code, is amended to read as follows:

Sec. 1302.263. LIMITATION ON LICENSE HOLDER [~~OR REGISTERED TECHNICIAN~~]. A person licensed as a contractor under this subchapter [~~chapter~~] may not:

- (1) perform or offer or attempt to perform an act, service, or function that is:
  - (A) defined as the practice of engineering under Chapter 1001, unless the person holds a license under that chapter;
  - (B) regulated under Chapter 113, Natural Resources Code, unless the person holds a license or is exempt by rule under that chapter; or
  - (C) defined as plumbing under Chapter 1301, unless the person holds a license under that chapter; or
- (2) use the services of a person who is not a registered technician or a licensed air conditioning and refrigeration contractor to assist in the performance of air conditioning and refrigeration maintenance work.

SECTION \_\_\_\_\_. Subsection (a), Section 1302.453, Occupations Code, is amended to read as follows:

- (a) A person commits an offense if the person:
  - (1) knowingly engages in air conditioning and refrigeration contracting without holding a license issued under this chapter; [~~or~~]
  - (2) knowingly engages in air conditioning and refrigeration maintenance work without holding a contractor license or technician registration issued under this chapter; or
  - (3) purchases a refrigerant or equipment containing a refrigerant in this state in violation of Section 1302.353, 1302.355, or 1302.356.

SECTION \_\_\_\_\_. Section 1302.501, Occupations Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) An air conditioning and refrigeration technician [~~A~~] registration is valid throughout the state.

(c) A person is not required to obtain an air conditioning and refrigeration technician registration if the person only assists a licensed contractor in performing:

- (1) the total replacement of a system; or

(2) the installation or repair of a boiler or pressure vessel that must be installed in accordance with rules adopted under Chapter 755, Health and Safety Code.

SECTION \_\_\_\_\_. Subchapter K, Chapter 1302, Occupations Code, is amended by adding Section 1302.5035 to read as follows:

Sec. 1302.5035. ELIGIBILITY REQUIREMENTS. (a) An applicant for a technician registration under this subchapter must be at least 18 years old.

(b) An applicant for a technician registration is not required to have practical experience or to take an examination to obtain the registration.

SECTION \_\_\_\_\_. Section 1302.504, Occupations Code, is amended to read as follows:

Sec. 1302.504. APPLICATION; FEE. (a) An applicant for an air conditioning and refrigeration technician registration must submit a verified [an] application on a form prescribed by the executive director [commission].

(b) The completed application must be accompanied by the required fees [application fee].

SECTION \_\_\_\_\_. Section 1302.505, Occupations Code, is amended to read as follows:

Sec. 1302.505. ISSUANCE AND TERM OF REGISTRATION. (a) The department shall issue an air conditioning and refrigeration technician registration to an applicant who:

(1) submits a verified application;

(2) meets the requirements of this chapter and rules adopted under this chapter; and

(3) pays the required fees [On receipt of a completed application, the department shall register an applicant who meets the requirements of this subchapter].

(b) A registration issued under this subchapter is valid for one year from the date of issuance.

SECTION \_\_\_\_\_. Subchapter K, Chapter 1302, Occupations Code, is amended by adding Section 1302.509 to read as follows:

Sec. 1302.509. LIMITATIONS ON REGISTRANT. A person registered under this subchapter may not:

(1) perform, offer to perform, or attempt to perform an act that is:

(A) defined as the practice of engineering under Chapter 1001, unless the person holds a license under that chapter;

(B) regulated under Chapter 113, Natural Resources Code, unless the person holds a license under that chapter or is exempt by a rule adopted under that chapter; or

(C) defined as plumbing under Chapter 1301, unless the person holds a license under that chapter; or

(2) assist a person who is not a licensed air conditioning and refrigeration contractor in the performance of air conditioning and refrigeration maintenance work.

SECTION \_\_\_\_\_. The following sections of the Occupations Code are repealed:

(1) Section 1302.062;

(2) Section 1302.106;

(3) Section 1302.209;

- (4) Subsections (c) and (d), Section 1302.257;
- (5) Section 1302.502; and
- (6) Section 1302.507.

SECTION \_\_\_\_\_. (a) Not later than March 1, 2012, the Texas Commission of Licensing and Regulation shall adopt rules to implement Chapter 1302, Occupations Code, as amended by this Act.

(b) Section 1302.255, Occupations Code, as amended by this Act, applies only to an application for a license or registration under that section submitted to the Texas Department of Licensing and Regulation on or after November 1, 2012. An application for a license, registration, or certification submitted under that section 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.

The amendment to **CSHB 2643** was read and was adopted by a viva voce vote.

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

Senator Nelson offered the following amendment to the bill:

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

Amend **CSHB 2643** (senate committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 711.008, Health and Safety Code, is amended by amending Subsection (b) and adding Subsection (h) to read as follows:

(b) Subsection (a) does not apply to:

- (1) a cemetery heretofore established and operating;
- (2) the establishment and use of a columbarium by an organized religious society or sect that is exempt from income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed under Section 501(c)(3) of that code, as part of or attached to the principal church building owned by the society or sect;

(3) the establishment and use of a columbarium by an organized religious society or sect that is exempt from income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed under Section 501(c)(3) of that code, on land that:

(A) is owned by the society or sect; and

(B) is part of the campus on which an existing principal church building is located;

(4) the establishment and use of a columbarium on the campus of a private or independent institution of higher education, as defined by Section 61.003, Education Code, that is wholly or substantially controlled, managed, owned, or supported by or otherwise affiliated with an organized religious society or sect that is exempt from income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed under Section 501(c)(3) of that code, if a place of worship is located on the campus; [✗]

(5) the establishment and use of a mausoleum that is:

(A) constructed beneath the principal church building owned by an organized religious society or sect that:

(i) is exempt from income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed under Section 501(c)(3) of that code; and

(ii) has recognized religious traditions and practices of interring the remains of ordained clergy in or below the principal church building; and

(B) used only for the interment of the remains of ordained clergy of that organized religious society or sect; or

(6) the establishment and operation, if authorized in accordance with Subsection (h), of a perpetual care cemetery by an organized religious society or sect that:

(A) is exempt from income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed under Section 501(c)(3) of that code;

(B) has been in existence for at least five years;

(C) has at least \$500,000 in assets; and

(D) establishes and operates the cemetery on land that:

(i) is owned by the society or sect;

(ii) together with any other land owned by the society or sect and adjacent to the land on which the cemetery is located, is not less than 10 acres; and

(iii) is in a municipality with a population of at least one million that is located predominantly in a county that has a total area of less than 1,000 square miles.

(h) The governing body of a municipality described by Subsection (b)(6)(D)(iii) may authorize the establishment and use in accordance with Subsection (b)(6) of a cemetery located inside the boundaries of the municipality if the municipality determines and states in the ordinance that the establishment or use of the cemetery does not adversely affect public health, safety, and welfare.

The amendment to **CSHB 2643** was read and was adopted by a viva voce vote.

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

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

**CSHB 2643** as amended was passed to third reading by a viva voce vote.

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

### **COMMITTEE SUBSTITUTE HOUSE BILL 2643 ON THIRD READING**

Senator Watson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 2643** be placed on its third reading and final passage.

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

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1560 ON SECOND READING**

On motion of Senator Hinojosa and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 1560** at this time on its second reading:

**CSHB 1560**, Relating to the enterprise zone program.

The bill was read second time.

Senator Hinojosa offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 1560** (Senate Committee Printing) as follows:

(1) In SECTION 1, strike the period on page 1, line 22, and insert the following after "business":

"and continues to perform at least 50 percent of the person's service for the business at the qualified business site."

(2) In SECTION 2, strike subdivision (3) on page 1, lines 47 through 52 and insert the following:

(3) the person is engaged in or has provided substantial commitment to initiate the active conduct of a trade or business at a qualified business site, and at least 10 percent of the person's retained jobs at the qualified business site eligible for enterprise zone program benefits are held by:

(A) residents of any enterprise zone in this state; or

(B) economically disadvantaged individuals.

(3) In SECTION 5, on page 2, line 63, strike "or more".

The amendment to **CSHB 1560** was read and was adopted by a viva voce vote.

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

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

**CSHB 1560** as amended was passed to third reading by a viva voce vote.

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1560 ON THIRD READING**

Senator Hinojosa moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 1560** be placed on its third reading and final passage.

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

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1646 ON SECOND READING**

Senator Ellis moved to suspend the regular order of business to take up for consideration **CSHB 1646** at this time on its second reading:

**CSHB 1646**, Relating to representation of certain applicants for writs of habeas corpus in cases involving the death penalty.

The motion prevailed.

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

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

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

Nays: Nelson, Patrick, Shapiro.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1646 ON THIRD READING**

Senator Ellis moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 1646** be placed on its third reading and final passage.

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

Yeas: Birdwell, Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hegar, Hinojosa, Huffman, Jackson, Lucio, Nichols, Ogden, Rodriguez, Seliger, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Nelson, Patrick, Shapiro.

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

**HOUSE BILL 335 ON THIRD READING**

On motion of Senator Birdwell and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 335** at this time on its third reading and final passage:

**HB 335**, Relating to implementation and requirements of certain health care reform laws.

The bill was read third time and was passed by the following vote: Yeas 24, Nays 7.

Yeas: Birdwell, Carona, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hegar, Hinojosa, Huffman, Jackson, Nelson, Nichols, Ogden, Patrick, Seliger, Shapiro, Wentworth, West, Whitmire, Williams.

Nays: Davis, Lucio, Rodriguez, Uresti, Van de Putte, Watson, Zaffirini.

**MESSAGE FROM THE HOUSE**

HOUSE CHAMBER

Austin, Texas

Wednesday, May 25, 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 156** Raymond

Directing the Texas Historical Commission to work with the City of Austin to honor the memory of President John F. Kennedy with an official Texas Historical Marker at or near the site of the Austin Municipal Auditorium.

**HCR 165** Guillen

Honoring the 2011 and 2012 Texas State Artist appointees.

**HCR 166** Guillen

Commemorating the 10th anniversary of the death of John Austin Pena and the naming of the John Austin Pena Memorial Center in Edinburg.

**HCR 167** Otto

Instructing the enrolling clerk of the house to make corrections in H.B. No. 2203.

**SB 40** Zaffirini Sponsor: Callegari

Relating to the composition and functions of the Texas Guaranteed Student Loan Corporation.  
(Committee Substitute/Amended)

**SB 49** Zaffirini Sponsor: Guillen

Relating to school district requirements regarding parental notification in connection with disciplinary alternative education programs.  
(Committee Substitute)

**SB 173** West Sponsor: Dutton

Relating to civil remedy of violations of certain municipal health and safety ordinances.

**SB 197** West Sponsor: Phillips

Relating to the compulsory inspection of motor vehicles; providing penalties.  
(Amended)

**SB 244** Patrick Sponsor: Fletcher

Relating to the continuing education requirements for certain peace officers.

**SB 286** Harris Sponsor: Hartnett

Relating to attorney's fees and other costs in guardianship proceedings.  
(Committee Substitute)

- SB 327** Van de Putte Sponsor: Garza  
Relating to including certain veterans service organizations as small businesses for the purpose of state contracting.
- SB 365** Ogden Sponsor: Strama  
Relating to distributed generation of electric power.
- SB 391** Patrick Sponsor: Eissler  
Relating to the provision of electronic samples of a textbook adopted by the State Board of Education.  
(Committee Substitute)
- SB 462** West Sponsor: Veasey  
Relating to the expunction of records and files relating to a person's arrest.  
(Committee Substitute/Amended)
- SB 475** Patrick Sponsor: Fletcher  
Relating to the creation of the Harris County Municipal Utility District No. 524; providing authority to impose a tax and issue bonds; granting a limited power of eminent domain.
- SB 542** Hegar Sponsor: Fletcher  
Relating to the regulation of law enforcement officers by the Commission on Law Enforcement Officer Standards and Education.  
(Amended)
- SB 801** Hegar Sponsor: Weber  
Relating to the authority of the seawall commission in Matagorda County to build and maintain recreational facilities near the seawall.
- SB 841** Patrick Sponsor: Miller, Sid  
Relating to the prosecution of and punishment for the offense of breach of computer security.  
(Committee Substitute)
- SB 844** Patrick Sponsor: Hunter  
Relating to the offense of escape from custody by a person lawfully detained.  
(Committee Substitute)
- SB 847** Patrick Sponsor: Davis, John  
Relating to the authority of certain hospital districts to contract for the performance of administrative functions and services.
- SB 937** Lucio Sponsor: Naishtat  
Relating to priorities for restoration of electric service following an extended power outage.
- SB 969** Nelson Sponsor: Kolkhorst  
Relating to the establishment of the Public Health Funding and Policy Committee within the Department of State Health Services.
- SB 1003** Fraser Sponsor: Smith, Wayne  
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.  
(Committee Substitute)

- SB 1042** Hegar Sponsor: Jackson, Jim  
Relating to the eligibility of employees convicted of certain offenses to provide services under a contract with a public school.
- SB 1055** Carona Sponsor: Madden  
Relating to reports concerning and the reporting of the use of certain funds by community supervision and corrections departments and to the preparation of commitment reduction plans by those departments.
- SB 1058** Nichols Sponsor: White  
Relating to the transfer of certain state property from the Department of Aging and Disability Services to the Angelina and Neches River Authority.
- SB 1170** Carona Sponsor: Hamilton  
Relating to the regulation of barbers and cosmetologists.  
(Committee Substitute/Amended)
- SB 1200** Patrick Sponsor: Fletcher  
Relating to the venue for prosecution of misdemeanor cases in justice of the peace courts located in certain counties.
- SB 1225** Hegar Sponsor: Isaac  
Relating to the disannexation of land in Caldwell County by the Gonzales County Underground Water Conservation District or the Plum Creek Conservation District.
- SB 1290** Hegar Sponsor: Hunter  
Relating to the creation of the Calhoun County Groundwater Conservation District; providing authority to issue bonds.
- SB 1383** Shapiro Sponsor: Eissler  
Relating to an appraisal and professional development system for public school principals.
- SB 1434** Carona Sponsor: Geren  
Relating to certain low-income weatherization programs.
- SB 1545** Patrick Sponsor: Woolley  
Relating to the liability of a volunteer health care practitioner who conducts a physical examination or medical screening of a student athlete.
- SB 1546** Patrick Sponsor: Murphy  
Relating to the right to a new hearing before an appraisal review board following a failure to attend a hearing.  
(Amended)
- SB 1619** Duncan Sponsor: Aycock  
Relating to participation of public high school students in college credit programs.
- SB 1620** Duncan Sponsor: Aycock  
Relating to substitution of certain career and technology courses for certain mathematics and science courses otherwise required under the recommended high school program.  
(Amended)

**SB 1788** Patrick Sponsor: Huberty  
 Relating to the development of a model individualized education program form by the Texas Education Agency.  
 (Amended)

**SB 1796** Van de Putte Sponsor: Miller, Sid  
 Relating to the creation of the Texas Coordinating Council for Veterans Services.  
 (Amended)

**SB 1877** Hegar Sponsor: Isaac  
 Relating to the creation of the Oatman Hill Municipal Utility District; providing authority to impose a tax and issue bonds; granting a limited power of eminent domain.

**SB 1899** Nichols Sponsor: Pitts  
 Relating to compensation for services and reimbursement for expenses of a member of the board of directors of the Lake View Management and Development District.

**SB 1913** Watson Sponsor: Rodriguez, Eddie  
 Relating to the creation of the Southeast Travis County Municipal Utility District No. 1; providing authority to impose a tax and issue bonds.

**SB 1916** Watson Sponsor: Rodriguez, Eddie  
 Relating to the creation of the Southeast Travis County Municipal Utility District No. 4; providing authority to impose a tax and issue bonds.

**SB 1920** Gallegos Sponsor: Eiland  
 Relating to the powers of the Coastal Water Authority; affecting the authority to issue bonds.  
 (Amended)

**SB 1925** Eltife Sponsor: Cain  
 Relating to the designation of a portion of U.S. Highway 271 as the Sergeant Jay M. Hoskins Memorial Highway.

**SB 1926** Lucio Sponsor: Lucio III  
 Relating to the Colonel H. William "Bill" Card, Jr., Outpatient Clinic.

Respectfully,

/s/Robert Haney, Chief Clerk  
 House of Representatives

### HOUSE BILL 3462 ON SECOND READING

On motion of Senator Rodriguez and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 3462** at this time on its second reading:

**HB 3462**, Relating to the board of hospital managers of the El Paso County Hospital District.

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

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

**HOUSE BILL 3462 ON THIRD READING**

Senator Rodriguez moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3462** be placed on its third reading and final passage.

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

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 3025 ON SECOND READING**

On motion of Senator Zaffirini and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 3025** at this time on its second reading:

**CSHB 3025**, Relating to the filing of a degree plan by undergraduate students at public institutions of higher education.

The bill was read second time.

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

**Floor Amendment No. 1**

Amend **CSHB 3025** (Senate Committee Printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill appropriately:

SECTION \_\_\_\_\_. Section 54.203, Education Code, is amended by adding Subsection (a-3) to read as follows:

(a-3) Notwithstanding Subsection (a)(4), a person who meets the requirements of Subsection (a)(4), other than the requirement that the person must have served on active military duty for more than the stated number of days, is entitled to the exemption provided by Subsection (a)(4) regardless of the length of the member's active military duty if the person was a member of the Texas National Guard or the Texas Air National Guard who was assigned to a theater of combat operation with the armed forces of the United States.

SECTION \_\_\_\_\_. Section 54.203(a-3), Education Code, as added by this Act, applies beginning with tuition and fees at a public institution of higher education for the 2011 fall semester. Tuition and fees for a term or semester before the 2011 fall semester are covered by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

The amendment to **CSHB 3025** was read and was adopted by a viva voce vote.

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

Senator Patrick offered the following amendment to the bill:

**Floor Amendment No. 2**

Amend **CSHB 3025** by adding the following appropriately numbered SECTIONS to the bill and renumbering the remaining SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Subchapter S, Chapter 61, Education Code, is amended by adding Section 61.833 to read as follows:

Sec. 61.833. CREDIT TRANSFER FOR ASSOCIATE DEGREE. (a) In this section, "lower-division institution of higher education" means a public junior college, public state college, or public technical institute.

(b) This section applies to a student enrolled in a general academic teaching institution who:

(1) transferred to the institution from or previously attended a lower-division institution of higher education;

(2) earned at least 30 credit hours for course work successfully completed at the lower-division institution of higher education; and

(3) has earned a cumulative total of at least 90 credit hours for course work successfully completed.

(c) As soon as practicable after a student who is enrolled in a general academic teaching institution has met the criteria established by Subsection (b)(3), the institution by e-mail or other reasonable method shall request authorization from the student for the institution to release the student's transcript to the lower-division institution of higher education that the student previously attended for the purpose of determining whether the student has earned the credits required for an associate degree awarded by the lower-division institution of higher education. On receipt of a student's authorization under this subsection, the general academic teaching institution shall release the student's transcript to the lower-division institution of higher education.

(d) After receiving a student transcript from a general academic teaching institution under Subsection (c), a lower-division institution of higher education shall review the transcript and, if the lower-division institution of higher education determines the student has earned the credits required to receive an associate degree awarded by the lower-division institution of higher education, may award the student the degree.

SECTION \_\_\_\_\_. The change in law made by this Act by adding Section 61.833, Education Code, applies to a student who not earlier than the 2011 fall semester transfers to or otherwise initially enrolls in a general academic teaching institution after attending a lower-division institution of higher education.

The amendment to **CSHB 3025** was read and was adopted by a viva voce vote.

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

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

**CSHB 3025** as amended was passed to third reading by a viva voce vote.

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 3025 ON THIRD READING**

Senator Zaffirini moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 3025** be placed on its third reading and final passage.

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

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 3246 ON SECOND READING**

Senator West moved to suspend the regular order of business to take up for consideration **CSHB 3246** at this time on its second reading:

**CSHB 3246**, Relating to public improvement districts designated by a municipality or county.

The motion prevailed.

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

The bill was read second time.

Senator West offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 3246** (senate committee printing) in SECTION 4 of the bill, in added Section 372.031, Local Government Code, by striking Subsection (d) (page 2, lines 52-54) and substituting the following:

(d) When a municipality or county subject to this section submits bonds or obligations payable from assessments to the attorney general for approval and examination, the municipality or county must demonstrate compliance with this section. The attorney general shall adopt rules in accordance with Chapter 1202, Government Code, that require the municipality or county to demonstrate the municipality's or county's:

- (1) ability to repay the bonds or obligations; and
- (2) compliance with the requirements of this subchapter.

The amendment to **CSHB 3246** was read and was adopted by a viva voce vote.

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

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

**CSHB 3246** as amended was passed to third reading by a viva voce vote.

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

Nays: Harris.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 3246 ON THIRD READING**

Senator West moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 3246** be placed on its third reading and final passage.

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

Nays: Harris.

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 2728 ON SECOND READING**

Senator Van de Putte moved to suspend the regular order of business to take up for consideration **CSHB 2728** at this time on its second reading:

**CSHB 2728**, Relating to the operation and regulation of charitable bingo.

The motion prevailed.

Senators Birdwell, Hegar, Huffman, Nelson, and Nichols asked to be recorded as voting "Nay" on suspension of the regular order of business.

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

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

Nays: Birdwell, Hegar, Huffman, Nelson, Nichols.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 2728 ON THIRD READING**

Senator Van de Putte moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 2728** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 26, Nays 5.

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

Nays: Birdwell, Hegar, Huffman, Nelson, Nichols.

The bill was read third time and was passed by the following vote: Yeas 26, Nays 5. (Same as previous roll call)

**COMMITTEE SUBSTITUTE  
HOUSE BILL 3708 ON SECOND READING**

Senator Zaffirini moved to suspend the regular order of business to take up for consideration **CSHB 3708** at this time on its second reading:

**CSHB 3708**, Relating to the Early High School Graduation Scholarship program and to the funding of certain exemptions from tuition and fees at public institutions of higher education from savings attributable to the program.

The motion prevailed.

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

The bill was read second time.

Senator Hinojosa offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 3708** by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Chapter 29, Education Code, is amended by adding Subchapter K to read as follows:

SUBCHAPTER K. PUBLIC JUNIOR COLLEGE AND SCHOOL DISTRICT  
PARTNERSHIP PROGRAM TO PROVIDE DROPOUT RECOVERY

Sec. 29.401. APPLICABILITY. (a) This subchapter applies only to a public junior college, as defined by Section 61.003, located in a county:

(1) with a population of 750,000 or more; and

(2) with less than 65 percent of the population 25 years and older having graduated from high school, according to the most recent American Community Survey five-year estimates compiled by the United States Census Bureau.

(b) The application of this subchapter to a public junior college is not affected if, after the public junior college enters into a partnership and begins providing a dropout recovery program as provided by this subchapter, the county's demographics under Subsection (a)(2) change and the county no longer meets the requirements under Subsection (a)(2).

(c) This subchapter applies only to a school district with a dropout rate that is higher than 15 percent based on four-year high school completion rates. The application of this subchapter to a district is not affected if, after the district enters into a partnership as provided by this subchapter, the district's dropout rate changes and the district no longer meets the requirements under this subsection.

(d) This section expires September 1, 2013.

Sec. 29.402. PARTNERSHIP. (a) Beginning September 1, 2012, a public junior college may enter into an articulation agreement to partner with one or more school districts located in the public junior college district to provide on the campus of the public junior college a dropout recovery program for students described by Subsection (b) to successfully complete and receive a diploma from a high school of the appropriate partnering school district.

(b) A person who is under 26 years of age is eligible to enroll in a dropout recovery program under this subchapter if the person:

(1) must complete not more than three course credits to complete the curriculum requirements for the minimum, recommended, or advanced high school program, as appropriate, for high school graduation; or

(2) has failed to perform satisfactorily on an end-of-course assessment instrument administered under Section 39.023(c) or an assessment instrument administered under Section 39.023(c) as that section existed before amendment by Chapter 1312 (S.B. 1031), Acts of the 80th Legislature, Regular Session, 2007.

(c) A public junior college under this section shall:

(1) design a dropout recovery curriculum that includes career and technology education courses that lead to industry or career certification;

(2) integrate into the dropout recovery curriculum research-based strategies to assist students in becoming able academically to pursue postsecondary education, including:

(A) high quality, college readiness instruction with strong academic and social supports;

(B) secondary to postsecondary bridging that builds college readiness skills, provides a plan for college completion, and ensures transition counseling; and

(C) information concerning appropriate supports available in the first year of postsecondary enrollment to ensure postsecondary persistence and success, to the extent funds are available for the purpose;

(3) offer advanced academic and transition opportunities, including dual credit courses and college preparatory courses, such as advanced placement courses; and

(4) coordinate with each partnering school district to provide in the articulation agreement that the district retains accountability for student attendance, student completion of high school course requirements, and student performance on assessment instruments as necessary for the student to receive a diploma from a high school of the partnering school district.

(d) A dropout recovery program provided under this subchapter must comply with the requirements of Sections 29.081(e) and (f).

Sec. 29.403. FINANCING. (a) A public junior college district may receive from each partnering school district for each student from that district enrolled in a dropout recovery program under this subchapter an amount negotiated between the junior college district and that partnering district not to exceed the total average per student funding amount in that district during the preceding school year for maintenance and operations, including state and local funding, but excluding money from the available school fund.

(b) A student who is enrolled in a program under this subchapter is included in determining the average daily attendance under Section 42.005 of the partnering school district.

Sec. 29.404. OTHER FUNDING. (a) To the extent consistent with the General Appropriations Act, a public junior college under this subchapter is eligible to receive dropout prevention and intervention program funds appropriated to the agency.

(b) A public junior college under this subchapter may receive gifts, grants, and donations to use for the purposes of this subchapter.

The amendment to **CSHB 3708** was read and was adopted by a viva voce vote.

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

Senator Watson offered the following amendment to the bill:

**Floor Amendment No. 2**

Amend **CSHB 3708** by adding an appropriately numbered SECTION of the bill to read as follows and renumbering the existing SECTIONS of the bill accordingly:

SECTION \_\_\_\_ Chapter 54, Education Code, is amended by adding Subchapter I to read as follows:

SUBCHAPTER I. TEXAS SAVE AND MATCH PROGRAM

Sec. 54.801. DEFINITIONS. In this subchapter:

(1) "Accredited out-of-state institution of higher education," "career school," "general academic teaching institution," "private or independent institution of higher education," and "two-year institution of higher education" have the meanings assigned by Section 54.751.

(2) "Beneficiary" means a beneficiary on whose behalf a purchaser enters into a prepaid tuition contract with the board under Subchapter H or for whom a savings trust account is opened under Subchapter G.

(3) "Board" means the Prepaid Higher Education Tuition Board.

(4) "Fund" means the Texas save and match trust fund established under Section 54.808.

(5) "Program" means the Texas Save and Match Program established under this subchapter.

(6) "Program entity" means the Texas Match the Promise Foundation, a Texas nonprofit corporation, or any other tax-exempt charitable organization established by law to implement the program.

Sec. 54.802. TEXAS SAVE AND MATCH PROGRAM. (a) The board, in cooperation with the program entity, shall administer the Texas Save and Match Program, under which money contributed to a savings trust account by an account owner under a higher education savings plan established under Subchapter G or paid by a purchaser under a prepaid tuition contract under Subchapter H on behalf of an eligible beneficiary may be matched with:

(1) contributions made by any person to the program entity for use in making additional savings trust account contributions under Subchapter G or in purchasing additional tuition units under prepaid tuition contracts under Subchapter H; or

(2) money appropriated by the legislature for the program to be used by the board to make additional savings trust account contributions under Subchapter G or to purchase additional tuition units under Subchapter H.

(b) In addition to the board's powers assigned under Subchapters F, G, and H, the board has the powers necessary or proper to carry out its duties under this subchapter, including the power to:

(1) sue and be sued;

(2) enter into contracts and other necessary instruments;

(3) enter into agreements or other transactions with the United States, state agencies, general academic teaching institutions, two-year institutions of higher education, and local governments;

(4) appear on its own behalf before governmental agencies;

(5) contract for necessary goods and services, including specifying in the contract duties to be performed by the provider of a good or service that are a part of or are in addition to the person's primary duties under the contract;

(6) engage the services of private consultants, actuaries, trustees, records administrators, managers, legal counsel, and auditors for administrative or technical assistance;

(7) solicit and accept gifts, grants, donations, loans, and other aid from any source or participate in any other manner in any government program to carry out this subchapter;

(8) impose administrative fees;

(9) contract with a person to market the program;

(10) purchase liability insurance covering the board and employees and agents of the board; and

(11) establish other policies, procedures, and eligibility criteria to implement this subchapter.

(c) Notwithstanding other law, for purposes of Subchapter I, Chapter 659, Government Code:

(1) the program entity is considered an eligible charitable organization entitled to participate in a state employee charitable campaign under Subchapter I, Chapter 659, Government Code; and

(2) a state employee is entitled to authorize a payroll deduction for contributions to the program entity as a charitable contribution under Section 659.132, Government Code.

Sec. 54.803. INITIAL ELIGIBILITY FOR PARTICIPATION IN PROGRAM.

(a) To be initially eligible to participate in the program, a beneficiary, at the time a prepaid tuition contract is entered into on the beneficiary's behalf under Subchapter H or a savings trust account is opened on the beneficiary's behalf under Subchapter G, as applicable, must be:

(1) a resident of this state; or

(2) a dependent for purposes of Section 152, Internal Revenue Code of 1986, of a resident of this state.

(b) To be initially eligible to receive matching funds described by Section 54.802(a)(2) under the program, a beneficiary, at the time a prepaid tuition contract is entered into on the beneficiary's behalf under Subchapter H, or a savings trust account is opened on the beneficiary's behalf under Subchapter G, as applicable, must be eligible for free meals under the national free or reduced-price breakfast and lunch program.

Sec. 54.804. LIMITATIONS. A matching account established by the board or program entity on behalf of a beneficiary under this subchapter is forfeited and reverts to the board or program entity on the occurrence of any of the following:

(1) the 10th anniversary of the date the beneficiary is projected to graduate from high school, as indicated by the purchaser in the enrollment contract, except that time spent by the beneficiary as an active duty member of the United States armed services tolls the period described by this subdivision;

(2) a change of beneficiary by the account owner or purchaser of the matched account;

(3) a contract cancellation of the matched account and refund request;

(4) the successful completion by the beneficiary of an associate or bachelor's degree program;

(5) transfer of the matched account to another qualified tuition program of any state that meets the requirements of Section 529, Internal Revenue Code of 1986; or

(6) any other event the board or program entity determines would be inconsistent with the program's purposes.

Sec. 54.805. MATCHING ACCOUNT ADMINISTRATION. (a) A matching account established by the board or program entity on behalf of a beneficiary under this subchapter must be accounted for separately from the beneficiary's prepaid tuition contract balance or savings trust account balance.

(b) To the extent possible, money or tuition units in a beneficiary's matching account shall be used or redeemed after money is used from the beneficiary's savings trust account under Subchapter G or tuition units are redeemed from the prepaid tuition contract for the beneficiary under Subchapter H.

(c) To the extent possible, the board shall include information about a matching account in the periodic statement provided to applicable account owners and purchasers under Subchapters G and H.

Sec. 54.806. CONFIDENTIALITY. (a) Records in the custody of the board or program entity relating to the participation of specific purchasers, beneficiaries, applicants, scholarship recipients, or donors under the program are confidential.

(b) Notwithstanding Subsection (a), the board or program entity may release information described by Subsection (a) to the extent required by a general academic teaching institution, two-year institution of higher education, private or independent institution of higher education, career school, or accredited out-of-state institution of higher education at which a beneficiary may enroll or is enrolled. The institution or school receiving information described by Subsection (a) shall keep the information confidential.

(c) Notwithstanding any other provision of this subchapter, the board or program entity may release information to the Internal Revenue Service or to any state tax agency as required by applicable tax law.

(d) Notwithstanding any other provision of this subchapter, the board or program entity may release information relating to donors who authorize release of that information.

Sec. 54.807. PILOT PROJECTS UNDER PROGRAM. To fulfill the intent of the program, the board may use funds described by Section 54.802(a)(2) to establish pilot projects under the program in an effort to incentivize participation in the higher education savings program under Subchapter G and the prepaid tuition unit undergraduate education program under Subchapter H, including projects that incentivize participation by:

(1) awarding additional matching grants based on a beneficiary's achievement of specified academic goals;

(2) providing initial matching grants and paying application fees;

(3) providing incentives for employers to contribute matching funds to the program; and

(4) creating a program information portal designed to increase program awareness and accessibility among school districts, parents, and students.

Sec. 54.808. TEXAS SAVE AND MATCH TRUST FUND; AGREEMENTS BETWEEN BOARD AND PROGRAM ENTITY REGARDING PROGRAM ENTITY FUNDS. (a) The Texas save and match trust fund is established as a trust fund to be held with the comptroller.

(b) Money in the fund may be spent without appropriation and only to establish matching accounts, make deposits, purchase tuition units, and award matching grants and scholarships under the program and to pay the costs of program administration and operations.

(c) The board may invest, reinvest, and direct the investment of any available money in the fund.

(d) Interest and income from the assets of the fund shall be credited to and deposited in the fund.

(e) The board and the program entity may enter into an agreement under which the board may hold and manage funds of the program entity and provide services to the program entity.

Sec. 54.809. RULES. The board shall adopt rules for the administration of this subchapter.

SECTION 2. Subchapter A, Chapter 56, Education Code, is amended by adding Section 56.007 to read as follows:

Sec. 56.007. EXCLUSION OF ASSETS IN PREPAID TUITION PROGRAMS AND HIGHER EDUCATION SAVINGS PLANS. Notwithstanding any other law, the right of a person to assets held in or the right to receive payments or benefits under any fund or plan established under Subchapter G, H, or I, Chapter 54, including an interest in a savings trust account, prepaid tuition account, or related matching account, may not be considered an asset of the person, or otherwise included in the person's household income or other financial resources, for purposes of determining the person's eligibility for a TEXAS grant or any other state-funded student financial assistance.

SECTION 3. Subchapter C, Chapter 62, Health and Safety Code, is amended by adding Section 62.1012 to read as follows:

Sec. 62.1012. EXCLUSION OF ASSETS IN PREPAID TUITION PROGRAMS AND HIGHER EDUCATION SAVINGS PLANS. For purposes of determining whether a child meets family income and resource requirements for eligibility for the child health plan, the commission may not consider as income or resources a right to assets held in or a right to receive payments or benefits under:

(1) any fund or plan established under Subchapter G, H, or I, Chapter 54, Education Code, including an interest in a savings trust account, prepaid tuition contract, or related matching account; or

(2) any qualified tuition program of any state that meets the requirements of Section 529, Internal Revenue Code of 1986.

SECTION 4. Subchapter A, Chapter 31, Human Resources Code, is amended by adding Section 31.0039 to read as follows:

Sec. 31.0039. EXCLUSION OF ASSETS IN PREPAID TUITION PROGRAMS AND HIGHER EDUCATION SAVINGS PLANS. For purposes of determining the amount of financial assistance granted to an individual under this chapter for the support of dependent children or determining whether the family meets household income and resource requirements for financial assistance under this chapter, the department may not consider the right to assets held in or the right to receive payments or benefits under:

(1) any fund or plan established under Subchapter G, H, or I, Chapter 54, Education Code, including an interest in a savings trust account, prepaid tuition contract, or related matching account; or

(2) any qualified tuition program of any state that meets the requirements of Section 529, Internal Revenue Code of 1986.

SECTION 5. Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.02611 to read as follows:

Sec. 32.02611. EXCLUSION OF ASSETS IN PREPAID TUITION PROGRAMS AND HIGHER EDUCATION SAVINGS PLANS. (a) Except as provided by Subsection (b), in determining eligibility and need for medical assistance, the department may not consider as assets or resources a right to assets held in or a right to receive payments or benefits under:

(1) any fund or plan established under Subchapter G, H, or I, Chapter 54, Education Code, including an interest in a savings trust account, prepaid tuition contract, or related matching account; or

(2) any qualified tuition program of any state that meets the requirements of Section 529, Internal Revenue Code of 1986.

(b) In determining eligibility and need for medical assistance for an applicant who may be eligible on the basis of the applicant's eligibility for medical assistance for the aged, blind, or disabled under 42 U.S.C. Section 1396a(a)(10), the department may consider as assets or resources a right to assets held in or a right to receive payments or benefits under any fund, plan, or tuition program described by Subsection (a).

(c) Notwithstanding Subsection (b), the department shall seek a federal waiver authorizing the department to exclude, for purposes of determining the eligibility of an applicant described by that subsection, the right to assets held in or a right to receive payments or benefits under any fund, plan, or tuition program described by Subsection (a) if the fund, plan, or tuition program was established before the 21st birthday of the beneficiary of the fund, plan, or tuition program.

SECTION 6. Section 54.7521, Education Code, is repealed.

SECTION 7. The Prepaid Higher Education Tuition Board shall adopt the initial rules required by Subchapter I, Chapter 54, Education Code, as added by this Act, not later than May 31, 2012.

SECTION 8. The Texas Save and Match Program established by this Act is an expansion of the Texas Save and Match program created under Section 54.7521, Education Code. On and after the effective date of the repeal of Section 54.7521, Education Code, by this Act, the tax-exempt charitable organization created under that

section to provide matching funds under that program may continue to accept tax-deductible donations for the purpose of providing matching funds under the program established by this Act.

SECTION 9. Subchapter I, Chapter 54, Education Code, as added by this Act, applies to a prepaid tuition contract purchased for a beneficiary under Subchapter H, Chapter 54, Education Code, regardless of whether the prepaid tuition contract was purchased before, on, or after the effective date of this Act. Subchapter I, Chapter 54, Education Code, as added by this Act, applies only to a savings trust account opened for a beneficiary under Subchapter G, Chapter 54, Education Code, on or after January 1, 2012.

SECTION 10. 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 11. The changes in law made by this Act apply to a person who receives health benefits coverage under Chapter 62, Health and Safety Code, financial assistance under Chapter 31, Human Resources Code, or medical assistance under Chapter 32, Human Resources Code, on or after the effective date of this Act, regardless of the date on which eligibility for coverage or assistance was initially determined.

SECTION 12. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2011.

(b) Section 6 of this Act takes effect January 1, 2012.

The amendment to **CSHB 3708** was read and was adopted by a viva voce vote.

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

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

**CSHB 3708** as amended was passed to third reading by a viva voce vote.

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

Nays: Ogden.

### **COMMITTEE SUBSTITUTE HOUSE BILL 3708 ON THIRD READING**

Senator Zaffirini moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 3708** be placed on its third reading and final passage.

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

Nays: Ogden.

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 351 ON SECOND READING**

On motion of Senator West and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 351** at this time on its second reading:

**CSHB 351**, Relating to the expunction of records and files relating to a person's arrest.

The bill was read second time.

Senator West offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 351** (senate committee report) in SECTION 1 of the bill as follows:

(1) In amended Article 55.01(a)(2)(A), Code of Criminal Procedure (page 1, lines 40 and 41), 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 1, lines 45-53), 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 amendment to **CSHB 351** was read and was adopted by a viva voce vote.

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

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

**CSHB 351** as amended was passed to third reading by a viva voce vote.

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 351 ON THIRD READING**

Senator West moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 351** be placed on its third reading and final passage.

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

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

**(Senator Eltife in Chair)**

### **HOUSE BILL 2133 ON SECOND READING**

Senator Fraser moved to suspend the regular order of business to take up for consideration **HB 2133** at this time on its second reading:

**HB 2133**, Relating to the Public Utility Commission of Texas' authority to disgorge revenue obtained as a result of certain violations; providing an administrative penalty.

The motion prevailed.

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

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

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

Nays: Birdwell.

### **HOUSE BILL 2133 ON THIRD READING**

Senator Fraser moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2133** be placed on its third reading and final passage.

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

Nays: Birdwell.

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

### **HOUSE BILL 3328 ON SECOND READING**

On motion of Senator Fraser and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 3328** at this time on its second reading:

**HB 3328**, Relating to the disclosure of the composition of hydraulic fracturing fluids used in hydraulic fracturing treatments.

The bill was read second time.

Senator Fraser offered the following amendment to the bill:

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

Amend **HB 3328** (senate committee printing) as follows:

(1) In SECTION 1 of the bill, in proposed Section 91.851, Natural Resources Code, between "FLUIDS," and "The" (page 1, line 16), insert "(a)".

(2) In SECTION 1 of the bill, in proposed Section 91.851(1)(B)(ii), Natural Resources Code, between "1910.1200(g)(2)" and the underlined semicolon (page 1, line 28), insert ", as provided by a service company or chemical supplier or by the operator, if the operator provides its own chemical ingredients".

(3) In SECTION 1 of the bill, in proposed Section 91.851(5)(C), Natural Resources Code (page 2, line 10), strike "state; and" and substitute "state with jurisdiction over a matter to which the claimed trade secret is relevant";.

(4) In SECTION 1 of the bill, in proposed Section 91.851, Natural Resources Code, between Subdivisions (5) and (6) of the section (page 2, between lines 10 and 11), insert the following:

(6) require, in the event of a trade secret challenge, that the commission promptly notify the service company performing the hydraulic fracturing treatment on the relevant well, the supplier of the additive or chemical ingredient for which the trade secret claim is made, or any other owner of the trade secret being challenged and provide the owner an opportunity to substantiate its trade secret claim; and

(5) In SECTION 1 of the bill, in amended Section 91.851(6), Natural Resources Code (page 2, line 11), strike "(6)" and substitute "(7)".

(6) In SECTION 1 of the bill, in proposed Section 91.851(6), Natural Resources Code (page 2, line 11), strike "an efficient process" and substitute "a process, consistent with 29 C.F.R. Section 1910.1200,".

(7) In SECTION 1 of the bill, at the end of proposed Section 91.851, Natural Resources Code (page 2, between lines 16 and 17), insert the following:

(b) The protection and challenge of trade secrets under this section is governed by Chapter 552, Government Code.

(8) In SECTION 3 of the bill (page 2, line 29), strike "January" and substitute "July".

The amendment to **HB 3328** was read and was adopted by a viva voce vote.

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

Senator Hegar offered the following amendment to the bill:

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

Amend **HB 3328** (senate committee printing) by striking SECTION 3 and substituting the following:

SECTION 3. The Railroad Commission of Texas shall adopt rules under Subchapter S, Chapter 91, Natural Resources Code, as added by this Act, not later than September 1, 2012, with the exception of those rules under paragraph (e), which are not to take effect until September 1, 2013.

The amendment to **HB 3328** was read and failed of adoption by the following vote: Yeas 9, Nays 21.

Yeas: Birdwell, Deuell, Estes, Fraser, Hegar, Jackson, Ogden, Seliger, Williams.

Nays: Carona, Davis, Ellis, Eltife, Gallegos, Harris, Hinojosa, Huffman, Lucio, Nelson, Nichols, Patrick, Rodriguez, Shapiro, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Zaffirini.

Absent: Duncan.

Senator Davis offered the following amendment to the bill:

**Floor Amendment No. 3**

Amend **HB 3328** (senate committee report) by adding the following appropriately numbered SECTIONS and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Subchapter B, Chapter 91, Natural Resources Code, is amended by adding Section 91.021 to read as follows:

Sec. 91.021. HYDRAULIC FRACTURING FLUID TRACER. (a) In this section, "hydraulic fracturing treatment" means the stimulation of a well by the application of a base stimulation fluid containing a proppant with force in order to create artificial fractures in a formation for the purpose of improving the well's capacity to produce hydrocarbons.

(b) The commission shall conduct a study on the feasibility of requiring a person who performs a hydraulic fracturing treatment operation on a well to include a tracer substance in the base stimulation fluid used to perform the operation. If the commission determines that the technology necessary to include a tracer substance in base stimulation fluid exists and may feasibly be used in hydraulic fracturing treatment operations in this state, the commission shall adopt rules to require a person who performs a hydraulic fracturing treatment operation on a well to include a tracer substance in the base stimulation fluid used to perform the operation.

(c) Rules adopted under this section may specify the type of tracer substance a person is required to use in performing a hydraulic fracturing treatment operation, such as an isotope tracer or a color tracer, provided that:

(1) the tracer substance is traceable to a specific person after the tracer substance is used in a hydraulic fracturing treatment operation; and

(2) the commission has determined that the use of the tracer substance in a hydraulic fracturing treatment operation will not endanger the public health.

(d) If the commission determines that the technology necessary to include a tracer substance in base stimulation fluid does not exist or may not feasibly be used in hydraulic fracturing treatment operations in this state, the commission may encourage the development of the necessary technology.

(e) The commission may periodically update the study required by this section as necessary.

SECTION \_\_\_\_\_. The Railroad Commission of Texas shall conduct the initial study required by Section 91.021(b), Natural Resources Code, as added by this Act, not later than February 1, 2012.

The amendment to **HB 3328** was read.

On motion of Senator Fraser, Floor Amendment No. 3 was tabled by the following vote: Yeas 20, Nays 10.

Yeas: Birdwell, Carona, Deuell, Duncan, Eltife, Estes, Fraser, Harris, Hegar, Huffman, Jackson, Nelson, Nichols, Ogden, Patrick, Seliger, Shapiro, Uresti, Wentworth, Williams.

Nays: Davis, Ellis, Gallegos, Lucio, Rodriguez, Van de Putte, Watson, West, Whitmire, Zaffirini.

Absent: Hinojosa.

Senator Davis offered the following amendment to the bill:

**Floor Amendment No. 4**

Amend **HB 3328** (senate committee printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Subchapter D, Chapter 91, Natural Resources Code, is amended by adding Section 91.118 to read as follows:

Sec. 91.118. HYDRAULIC FRACTURING ADVISORY COMMITTEE. (a) The commission shall establish an advisory committee to study and evaluate hydraulic fracturing activities performed by or on behalf of operators of oil and gas wells in this state, including:

- (1) the methods and technology used in performing the activities;
- (2) the benefits of the activities;
- (3) the long-term and short-term risks associated with the activities;
- (4) the effect of the activities on the water supply;
- (5) the use of water recycling in the activities;
- (6) methods of minimizing water use in performing the activities; and
- (7) the manner in which the commission may most effectively regulate the

activities.

(b) The committee consists of the following nine members appointed by the commission:

- (1) two representatives of environmental organizations;
- (2) two representatives of the oil and gas industry;
- (3) two representatives of an institution of higher education with experience and knowledge in the area of hydraulic fracturing activities;
- (4) two public members who reside in an area affected by hydraulic fracturing activities; and
- (5) one hydrologist.

(c) The commission shall determine the length of the members' terms and shall appoint a member of the committee to serve as the committee's presiding officer.

(d) Chapter 2110, Government Code, does not apply to the size, composition, or duration of the committee or to the appointment of the committee's presiding officer.

(e) The committee shall meet at least once each year and may meet at other times at the call of the commission or the committee's presiding officer.

(f) The committee shall:

- (1) coordinate with the commission as necessary; and
- (2) submit to the commission an annual report of its findings.

SECTION \_\_\_\_\_. Not later than January 1, 2012, the Railroad Commission of Texas shall appoint the members of the hydraulic fracturing advisory committee established under Section 91.118, Natural Resources Code, as added by this Act.

The amendment to **HB 3328** was read.

On motion of Senator Fraser, Floor Amendment No. 4 was tabled by the following vote: Yeas 19, Nays 11.

Yeas: Birdwell, Carona, Deuell, Duncan, Eltife, Estes, Fraser, Harris, Hegar, Huffman, Jackson, Nelson, Nichols, Ogden, Patrick, Seliger, Shapiro, Wentworth, Williams.

Nays: Davis, Ellis, Gallegos, Lucio, Rodriguez, Uresti, Van de Putte, Watson, West, Whitmire, Zaffirini.

Absent: Hinojosa.

Senator Davis offered the following amendment to the bill:

**Floor Amendment No. 5**

Amend **HB 3328** (senate committee report) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. (a) The Texas Commission on Environmental Quality shall conduct a study evaluating the risks and composition of storm water runoff from natural gas well sites, including an evaluation of whether hydraulic fracturing fluids are contained in the runoff. Not later than January 1, 2013, the Texas Commission on Environmental Quality shall submit to the presiding officer of the standing committee of each house of the legislature with primary jurisdiction over environmental matters a report addressing the matters described by this section and any recommended legislative changes.

(b) This section expires September 1, 2013.

The amendment to **HB 3328** was read.

On motion of Senator Fraser, Floor Amendment No. 5 was tabled by the following vote: Yeas 20, Nays 11.

Yeas: Birdwell, Carona, Deuell, Duncan, Eltife, Estes, Fraser, Harris, Hegar, Huffman, Jackson, Nelson, Nichols, Ogden, Patrick, Seliger, Shapiro, Uresti, Wentworth, Williams.

Nays: Davis, Ellis, Gallegos, Hinojosa, Lucio, Rodriguez, Van de Putte, Watson, West, Whitmire, Zaffirini.

Senator Hegar offered the following amendment to the bill:

**Floor Amendment No. 6**

Amend **HB 3328** by inserting the following appropriately numbered sections and renumbering accordingly:

SECTION 1. The heading to Chapter 81, Natural Resources Code, is amended to read as follows:

CHAPTER 81. TEXAS OIL AND GAS [~~RAILROAD~~] COMMISSION [~~OF TEXAS~~]

SECTION 2. Section 81.001, Natural Resources Code, is amended to read as follows:

Sec. 81.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Oil and Gas [~~Railroad~~] Commission [~~of Texas~~].

(2) "Commissioner" means any member of the Texas Oil and Gas [Railroad] Commission [of Texas].

SECTION 3. Subchapter A, Chapter 81, Natural Resources Code, is amended by adding Section 81.003 to read as follows:

Sec. 81.003. TEXAS OIL AND GAS COMMISSION. (a) The Railroad Commission of Texas is renamed the Texas Oil and Gas Commission.

(b) A reference in law to:

(1) the Railroad Commission of Texas means the Texas Oil and Gas Commission; and

(2) a railroad commissioner or a member of the Railroad Commission of Texas means a member of the Texas Oil and Gas Commission.

SECTION 4. Section 81.01001, Natural Resources Code, is amended to read as follows:

Sec. 81.01001. SUNSET PROVISION. The Texas Oil and Gas [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, 2023 ~~[2011]~~.

SECTION 5. Subchapter B, Chapter 81, Natural Resources Code, is amended by adding Section 81.010015 to read as follows:

Sec. 81.010015. ELECTION AND TERMS OF COMMISSIONERS; CHAIRMAN. (a) The commission is composed of three commissioners elected at the general election for state and county officers.

(b) Commissioners serve terms of four years.

(c) The commissioner elected at the general election in 2014 and every fourth year after that year serves as the chairman of the commission. The other commissioners shall be elected at the general election in 2012 and every fourth year after.

(d) The designation of the office of chairman of the commission under Subsection (c) identifies the office for all purposes, including identification on official ballots for primary and general elections.

SECTION 6. Sections 81.01002 and 81.01004, Natural Resources Code, are amended to read as follows:

Sec. 81.01002. POWERS AND DUTIES OF CHAIRMAN. (a) The [commissioners shall elect one commissioner as the] chairman of the commission:

(1) shall manage the administrative affairs of the commission, subject to the applicable provisions of this code and other law;

(2) may organize the divisions of the commission in any manner so as to maximize the efficiency and effectiveness of the commission;

(3) shall set the agenda for commission meetings and hearings; and

(4) may hire and terminate commission employees.

(b) The chairman of the commission may delegate the chairman's powers and duties to one or more deputies, including the administrative chief.

Sec. 81.01004. PERSONAL FINANCIAL DISCLOSURE, STANDARDS OF CONDUCT, [AND] CONFLICT OF INTEREST, AND DISCLOSURE OF REASON FOR RECUSAL. (a) A commissioner is subject to the provisions of Chapter 572,

Government Code, that apply to elected officers, including the requirements governing personal financial statements, standards of conduct, and conflicts of interest.

(b) A commissioner who voluntarily recuses the commissioner from a commission decision because the commissioner has a material interest in the matter shall disclose the material interest in writing.

SECTION 7. Subchapter B, Chapter 81, Natural Resources Code, is amended by adding Sections 81.010045 and 81.010046 to read as follows:

Sec. 81.010045. CERTAIN POLITICAL CONTRIBUTIONS RESTRICTED.

(a) In this section, "political contribution" has the meaning assigned by Section 251.001, Election Code.

(b) A commissioner may not knowingly accept a political contribution given or offered with the intention that it be used in connection with a campaign for or the holding of a statewide or federal office, other than the office of commissioner.

SECTION 8. Sections 81.01005, 81.01008, and 81.017, Natural Resources Code, are amended to read as follows:

Sec. 81.01005. NAME AND SEAL. (a) The commissioners are known collectively as the "Texas Oil and Gas [Railroad] Commission [of Texas]."

(b) The seal of the commission contains a star of five points with the words "Texas Oil and Gas [Railroad] Commission [of Texas]" engraved on it.

Sec. 81.01008. PUBLIC HEARINGS [SESSIONS]. The commission may hold public hearings [sessions] at any place in this state when considered necessary.

SECTION 9. Section 81.0521(c), Natural Resources Code, is amended to read as follows:

(c) The [Two-thirds of the] proceeds from this fee, excluding [including] any penalties collected in connection with the fee, shall be deposited to the credit of the oil and gas regulation and [oil field] cleanup fund [as provided by Section 91.111].

SECTION 10. Sections 81.0531(c), (d), and (e), Natural Resources Code, are amended to read as follows:

(c) In determining the amount of the penalty, the commission shall consider the [permittee's history of previous violations, the seriousness of the violation, any hazard to the health or safety of the public, and the demonstrated good faith of the person charged. In determining the amount of the penalty for a violation of a provision of this title or a rule, order, license, permit, or certificate that relates to pipeline safety, the commission shall consider the] guidelines adopted under Subsection (d).

(d) The commission by rule shall adopt guidelines to be used in determining the amount of the penalty [for a violation of a provision of this title or a rule, order, license, permit, or certificate that relates to pipeline safety]. The guidelines shall include a penalty calculation worksheet that specifies the typical penalty for certain violations, circumstances justifying enhancement of a penalty and the amount of the enhancement, and circumstances justifying a reduction in a penalty and the amount of the reduction. The guidelines shall take into account:

(1) the permittee's history of previous violations, including the number of previous violations;

(2) the seriousness of the violation and of any pollution resulting from the violation;

- (3) any hazard to the health or safety of the public;
- (4) the degree of culpability;
- (5) the demonstrated good faith of the person charged; ~~and~~
- (6) the economic benefit gained through the violation; and
- (7) any other factor the commission considers relevant.

(e) A penalty collected under this section shall be deposited to the credit of the general revenue ~~[oil field cleanup]~~ fund.

SECTION 11. Section 81.056(g), Natural Resources Code, is amended to read as follows:

(g) The commission may use money in the oil and gas regulation and [oil field] cleanup fund to implement this section. The amount of money in the fund the commission may use for that purpose may not exceed the amount of money in the fund that is derived from fees collected under Section 91.142 from common carriers or owners or operators of pipelines as determined annually by the commission.

SECTION 12. Subchapter C, Chapter 81, Natural Resources Code, is amended by adding Sections 81.065, 81.066, 81.067, 81.068, 81.069, 81.070, and 81.071 to read as follows:

Sec. 81.065. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION POLICY. (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 commission 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 commission's jurisdiction.

(b) The commission'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 commission 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.

(d) The commission's alternative dispute resolution procedures do not apply to the resolution of an informal complaint described by Section 81.059 or filed under Section 85.065.

SECTION 13. Sec. 81.066. ENFORCEMENT POLICY. (a) The commission by rule shall adopt an enforcement policy to guide the employees of the commission in evaluating violations of the provisions of this title that pertain to safety or the prevention or control of pollution or the provisions of a rule, order, license, permit, or certificate that pertains to safety or the prevention or control of pollution and is issued under this title.

(b) The enforcement policy adopted under this section must include:

(1) a specific process for classifying violations based on:

(A) the seriousness of any pollution resulting from the violation; and

(B) any hazard to the health or safety of the public; and

(2) standards to provide guidance to commission employees on which violations may be dismissed once the permittee comes into compliance and which violations must be forwarded for enforcement.

(c) The standards adopted under Subsection (b)(2) must require a commission employee to take into account the permittee's history of previous violations in determining whether to dismiss a violation once the permittee comes into compliance or forward the violation for enforcement.

Sec. 81.067. OIL AND GAS REGULATION AND CLEANUP FUND. (a) The oil and gas regulation and cleanup fund is created as an account in the general revenue fund of the state treasury.

(b) The commission shall certify to the comptroller the date on which the balance in the fund equals or exceeds \$20 million. The oil-field cleanup regulatory fees on oil and gas may not be collected or required to be paid on or after the first day of the second month following the certification, except that the comptroller shall resume collecting the fees on receipt of a commission certification that the fund has fallen below \$10 million. The comptroller shall continue collecting the fees until collections are again suspended in the manner provided by this subsection.

(c) The fund consists of:

(1) proceeds from bonds and other financial security required by this chapter and benefits under well-specific plugging insurance policies described by Section 91.104(c) that are paid to the state as contingent beneficiary of the policies, subject to the refund provisions of Section 91.1091, if applicable;

(2) private contributions, including contributions made under Section 89.084;

(3) expenses collected under Section 89.083;

(4) fees imposed under Section 85.2021;

(5) costs recovered under Section 91.457 or 91.459;

(6) proceeds collected under Sections 89.085 and 91.115;

(7) interest earned on the funds deposited in the fund;

(8) oil and gas waste hauler permit application fees collected under Section 29.015, Water Code;

(9) costs recovered under Section 91.113(f);

(10) hazardous oil and gas waste generation fees collected under Section 91.605;

(11) oil-field cleanup regulatory fees on oil collected under Section 81.116;

(12) oil-field cleanup regulatory fees on gas collected under Section 81.117;

(13) fees for a reissued certificate collected under Section 91.707;

(14) fees collected under Section 91.1013;

(15) fees collected under Section 89.088;

(16) fees collected under Section 91.142;

(17) fees collected under Section 91.654;

(18) costs recovered under Sections 91.656 and 91.657;

(19) fees collected under Section 81.0521;

(20) fees collected under Sections 89.024 and 89.026;

(21) legislative appropriations; and

(22) any surcharges collected under Section 81.071.

(d) All revenues and balances in the oil and gas regulation and cleanup fund created in this section are exempt from Section 403.095(b), Government Code.

Sec. 81.068. PURPOSE OF OIL AND GAS REGULATION AND CLEANUP FUND. Money in the oil and gas regulation and cleanup fund may be used by the commission or its employees or agents for any purpose related to the regulation of oil and gas development, including oil and gas monitoring and inspections, oil and gas remediation, oil and gas well plugging, public information and services related to those activities, and administrative costs and state benefits for personnel involved in those activities.

Sec. 81.069. REPORTING ON PROGRESS IN MEETING PERFORMANCE GOALS FOR THE OIL AND GAS REGULATION AND CLEANUP FUND.

(a) The commission, through the legislative appropriations request process, shall establish specific performance goals for the oil and gas regulation and cleanup fund for the next fiscal biennium, including goals for each quarter of each state fiscal year of the fiscal biennium for the number of:

(1) orphaned wells to be plugged with state-managed funds;

(2) abandoned sites to be investigated, assessed, or cleaned up with state funds; and

(3) surface locations to be remediated.

(b) The commission shall provide quarterly reports to the Legislative Budget Board that include:

(1) the following information with respect to the period since the last report was provided as well as cumulatively:

(A) the amount of money deposited in the oil and gas regulation and cleanup fund;

(B) the amount of money spent from the fund for the purposes described by Subsection (a);

(C) the balance of the fund;

(D) the commission's progress in meeting the quarterly performance goals established under Subsection (a) and, if the number of orphaned wells plugged with state-managed funds, abandoned sites investigated, assessed, or cleaned up with state funds, or surface locations remediated is at least five percent less than the number projected in the applicable goal established under Subsection (a), an explanation of the reason for the variance;

(E) the total number of permits issued by the commission;

(F) the average amount of time taken by the commission to complete the process for issuing a permit; and

(G) the average amount of time taken by the commission to rule on a contested case; and

(2) any additional information requested in writing by the Legislative Budget Board.

(c) The commission shall submit to the legislature and make available to the public annually a report that reviews the extent to which money provided under Section 81.067 has enabled the commission to better protect the environment through oil-field cleanup activities. The report must include:

(1) the performance goals established under Subsection (a) for that state fiscal year, the commission's progress in meeting those performance goals, and, if the number of orphaned wells plugged with state-managed funds, abandoned sites investigated, assessed, or cleaned up with state funds, or surface locations remediated is at least five percent less than the number projected in the applicable goal established under Subsection (a), an explanation of the reason for the variance;

(2) the number of orphaned wells plugged with state-managed funds, by region;

(3) the number of wells orphaned, by region;

(4) the number of inactive wells not currently in compliance with commission rules, by region;

(5) the status of enforcement proceedings for all wells in violation of commission rules and the period during which the wells have been in violation, by region in which the wells are located;

(6) the number of surface locations remediated, by region;

(7) a detailed accounting of expenditures of money in the fund for oil-field cleanup activities, including expenditures for plugging of orphaned wells, investigation, assessment, and cleaning up of abandoned sites, and remediation of surface locations;

(8) the method by which the commission sets priorities by which it determines the order in which orphaned wells are plugged;

(9) a projection of the amount of money needed for the next fiscal biennium for plugging orphaned wells, investigating, assessing, and cleaning up abandoned sites, and remediating surface locations; and

(10) the number of sites successfully remediated under the voluntary cleanup program under Subchapter O, Chapter 91, by region.

Sec. 81.070. IMPOSITION OF SURCHARGES ON FEES. (a) Except as provided by Subsection (b), the commission by rule shall provide for the imposition of reasonable surcharges as necessary on fees imposed by the commission that are required to be deposited to the credit of the oil and gas regulation and cleanup fund in amounts sufficient to enable the commission to recover the costs of performing the functions specified by Section 81.068 from those fees and surcharges.

(b) The commission may not impose a surcharge on an oil-field cleanup regulatory fee on oil collected under Section 81.116 or an oil-field cleanup regulatory fee on gas collected under Section 81.117.

(c) The commission by rule shall establish a methodology for determining the amount of a surcharge that takes into account:

(1) the time required for regulatory work associated with the activity in connection with which the surcharge is imposed;

(2) the number of individuals or entities from which the commission's costs may be recovered;

(3) the effect of the surcharge on operators of all sizes, as measured by the number of oil or gas wells operated;

(4) the balance in the oil and gas regulation and cleanup fund; and

(5) any other factors the commission determines to be important to the fair and equitable imposition of the surcharge.

(d) The commission shall collect a surcharge on a fee at the time the fee is collected.

(e) A surcharge collected under this section shall be deposited to the credit of the oil and gas regulation and cleanup fund.

Sec. 81.071. POWERS AND DUTIES OF STATE OFFICE OF ADMINISTRATIVE HEARINGS. (a) Notwithstanding any other law, the State Office of Administrative Hearings shall conduct each contested case hearing in an enforcement proceeding under a law administered by the commission. A hearing must be conducted in accordance with the rules and procedures adopted by the commission.

(b) The commission may delegate to the State Office of Administrative Hearings the authority to make a final decision and to issue findings of fact, conclusions of law, and other necessary orders in a proceeding in which there is not a contested issue of fact or law.

(c) The commission by rule shall define the procedures by which it delegates final decision-making authority under Subsection (b).

(d) For purposes of judicial review, an administrative law judge's final decision under Subsection (b) has the same effect as a final decision of the commission unless the commission requests formal review of the decision.

Section 81.115, Natural Resources Code, is amended to read as follows:

Sec. 81.115. APPROPRIATIONS [PAYMENTS] TO COMMISSION FOR OIL AND GAS REGULATION AND CLEANUP PURPOSES [OIL AND GAS DIVISION]. Money appropriated to the [oil and gas division of the] commission under the General Appropriations Act for the purposes described by Section 81.068 shall be paid from the oil and gas regulation and cleanup fund [~~General Revenue Fund~~].

Sections 81.116(d) and (e), Natural Resources Code, are amended to read as follows:

(d) The comptroller shall suspend collection of the fee in the manner provided by Section 81.067 [~~91.111~~]. The exemptions and reductions set out in Sections 202.052, 202.054, 202.056, 202.057, 202.059, and 202.060, Tax Code, do not affect the fee imposed by this section.

(e) Proceeds from the fee, excluding [~~including~~] any penalties collected in connection with the fee, shall be deposited to the credit of the oil and gas regulation and [oil field] cleanup fund [~~as provided by Section 91.111 of this code~~].

SECTION 15. Sections 81.117(d) and (e), Natural Resources Code, are amended to read as follows:

(d) The comptroller shall suspend collection of the fee in the manner provided by Section 81.067 [~~91.111~~]. The exemptions and reductions set out in Sections 201.053, 201.057, 201.058, and 202.060, Tax Code, do not affect the fee imposed by this section.

(e) Proceeds from the fee, excluding [~~including~~] any penalties collected in connection with the fee, shall be deposited to the credit of the oil and gas regulation and [oil field] cleanup fund [~~as provided by Section 91.111 of this code~~].

SECTION 16. Section 85.2021(d), Natural Resources Code, is amended to read as follows:

(d) All fees collected under this section shall be deposited in the oil and gas regulation and [state oil field] cleanup fund.

SECTION 17. Section 89.024(d), Natural Resources Code, is amended to read as follows:

(d) An operator who files an abeyance of plugging report must pay an annual fee of \$100 for each well covered by the report. A fee collected under this section shall be deposited in the oil and gas regulation and [oil field] cleanup fund.

SECTION 18. Section 89.026(d), Natural Resources Code, is amended to read as follows:

(d) An operator who files documentation described by Subsection (a) must pay an annual fee of \$50 for each well covered by the documentation. A fee collected under this section shall be deposited in the oil and gas regulation and [oil field] cleanup fund.

SECTION 19. Section 89.048(d), Natural Resources Code, is amended to read as follows:

(d) On successful plugging of the well by the well plugger, the surface estate owner may submit documentation to the commission of the cost of the well-plugging operation. The commission shall reimburse the surface estate owner from money in the oil and gas regulation and [oil field] cleanup fund in an amount not to exceed 50 percent of the lesser of:

(1) the documented well-plugging costs; or

(2) the average cost incurred by the commission in the preceding 24 months in plugging similar wells located in the same general area.

SECTION 20. Section 89.083(j), Natural Resources Code, is amended to read as follows:

(j) Money collected in a suit under this section shall be deposited in the oil and gas regulation and [state oil field] cleanup fund.

SECTION 21. Section 89.085(d), Natural Resources Code, is amended to read as follows:

(d) The commission shall deposit money received from the sale of well-site equipment or hydrocarbons under this section to the credit of the oil and gas regulation and [oil field] cleanup fund. The commission shall separately account for money and credit received for each well.

SECTION 22. The heading to Section 89.086, Natural Resources Code, is amended to read as follows:

Sec. 89.086. CLAIMS AGAINST OIL AND GAS REGULATION AND [THE OIL FIELD] CLEANUP FUND.

SECTION 23. Sections 89.086(a), (h), (i), (j), and (k), Natural Resources Code, are amended to read as follows:

(a) A person with a legal or equitable ownership or security interest in well-site equipment or hydrocarbons disposed of under Section 89.085 ~~[of this code]~~ may make a claim against the oil and gas regulation and [oil field] cleanup fund unless an element of the transaction giving rise to the interest occurs after the commission forecloses its statutory lien under Section 89.083.

(h) The commission shall suspend an amount of money in the oil and gas regulation and [oil field] cleanup fund equal to the amount of the claim until the claim is finally resolved. If the provisions of Subsection (k) [~~of this section~~] prevent suspension of the full amount of the claim, the commission shall treat the claim as two consecutively filed claims, one in the amount of funds available for suspension and the other in the remaining amount of the claim.

(i) A claim made by or on behalf of the operator or a nonoperator of a well or a successor to the rights of the operator or nonoperator is subject to a ratable deduction from the proceeds or credit received for the well-site equipment to cover the costs incurred by the commission in removing the equipment or hydrocarbons from the well or in transporting, storing, or disposing of the equipment or hydrocarbons. A claim made by a person who is not an operator or nonoperator is subject to a ratable deduction for the costs incurred by the commission in removing the equipment from the well. If a claimant is a person who is responsible under law or commission rules for plugging the well or cleaning up pollution originating on the lease or if the claimant owes a penalty assessed by the commission or a court for a violation of a commission rule or order, the commission may recoup from or offset against a valid claim an expense incurred by the oil and gas regulation and [oil field] cleanup fund that is not otherwise reimbursed or any penalties owed. An amount recouped from, deducted from, or offset against a claim under this subsection shall be treated as an invalid portion of the claim and shall remain suspended in the oil and gas regulation and [oil field] cleanup fund in the manner provided by Subsection (j) [~~of this section~~].

(j) If the commission finds that a claim is valid in whole or in part, the commission shall pay the valid portion of the claim from the suspended amount in the oil and gas regulation and [oil field] cleanup fund not later than the 30th day after the date of the commission's decision. If the commission finds that a claim is invalid in whole or in part, the commission shall continue to suspend in the oil and gas regulation and [oil field] cleanup fund an amount equal to the invalid portion of the claim until the period during which the commission's decision may be appealed has expired or, if appealed, during the period the case is under judicial review. If on appeal the district court finds the claim valid in whole or in part, the commission shall pay the valid portion of the claim from the suspended amount in the oil and gas regulation and [oil field] cleanup fund not later than 30 days after the date the court's judgment becomes unappealable. On the date the commission's decision is not subject to judicial review, the commission shall release from the suspended amount in the oil and gas regulation and [oil field] cleanup fund the amount of the claim held to ~~be~~ invalid.

(k) If the aggregate of claims paid and money suspended that relates to well-site equipment or hydrocarbons from a particular well equals the total of the actual proceeds and credit realized from the disposition of that equipment or those hydrocarbons, the oil and gas regulation and [oil field] cleanup fund is not liable for any subsequently filed claims that relate to the same equipment or hydrocarbons unless and until the commission releases from the suspended amount money derived from the disposition of that equipment or those hydrocarbons. If the commission releases money, then the commission shall suspend money in the amount of subsequently filed claims in the order of filing.

SECTION 24. Section 89.121(b), Natural Resources Code, is amended to read as follows:

(b) Civil penalties collected for violations of this chapter or of rules relating to plugging that are adopted under this code shall be deposited in the general revenue [~~state oil field cleanup~~] fund.

SECTION 25. Section 91.1013(c), Natural Resources Code, is amended to read as follows:

(c) Fees collected under this section shall be deposited in the oil and gas regulation and [~~state oil field~~] cleanup fund.

SECTION 26. Section 91.108, Natural Resources Code, is amended to read as follows:

Sec. 91.108. DEPOSIT AND USE OF FUNDS. Subject to the refund provisions of Section 91.1091, if applicable, proceeds from bonds and other financial security required pursuant to this chapter and benefits under well-specific plugging insurance policies described by Section 91.104(c) that are paid to the state as contingent beneficiary of the policies shall be deposited in the oil and gas regulation and [~~oil field~~] cleanup fund and, notwithstanding Sections 81.068 [~~91.112~~] and 91.113, may be used only for actual well plugging and surface remediation.

SECTION 27. Section 91.109(a), Natural Resources Code, is amended to read as follows:

(a) A person applying for or acting under a commission permit to store, handle, treat, reclaim, or dispose of oil and gas waste may be required by the commission to maintain a performance bond or other form of financial security conditioned that the permittee will operate and close the storage, handling, treatment, reclamation, or disposal site in accordance with state law, commission rules, and the permit to operate the site. However, this section does not authorize the commission to require a bond or other form of financial security for saltwater disposal pits, emergency saltwater storage pits (including blow-down pits), collecting pits, or skimming pits provided that such pits are used in conjunction with the operation of an individual oil or gas lease. Subject to the refund provisions of Section 91.1091 [~~of this code~~], proceeds from any bond or other form of financial security required by this section shall be placed in the oil and gas regulation and [~~oil field~~] cleanup fund. Each bond or other form of financial security shall be renewed and continued in effect until the conditions have been met or release is authorized by the commission.

SECTION 28. Sections 91.113(a) and (f), Natural Resources Code, are amended to read as follows:

(a) If oil and gas wastes or other substances or materials regulated by the commission under Section 91.101 are causing or are likely to cause the pollution of surface or subsurface water, the commission, through its employees or agents, may use money in the oil and gas regulation and [~~oil field~~] cleanup fund to conduct a site investigation or environmental assessment or control or clean up the oil and gas wastes or other substances or materials if:

(1) the responsible person has failed or refused to control or clean up the oil and gas wastes or other substances or materials after notice and opportunity for hearing;

(2) the responsible person is unknown, cannot be found, or has no assets with which to control or clean up the oil and gas wastes or other substances or materials; or

(3) the oil and gas wastes or other substances or materials are causing the pollution of surface or subsurface water.

(f) If the commission conducts a site investigation or environmental assessment or controls or cleans up oil and gas wastes or other substances or materials under this section, the commission may recover all costs incurred by the commission from any person who was required by law, rules adopted by the commission, or a valid order of the commission to control or clean up the oil and gas wastes or other substances or materials. The commission by order may require the person to reimburse the commission for those costs or may request the attorney general to file suit against the person to recover those costs. At the request of the commission, the attorney general may file suit to enforce an order issued by the commission under this subsection. A suit under this subsection may be filed in any court of competent jurisdiction in Travis County. Costs recovered under this subsection shall be deposited to the credit of the oil and gas regulation and [oil field] cleanup fund.

SECTION 29. Section 91.264(c), Natural Resources Code, is amended to read as follows:

(c) A penalty collected under this section shall be deposited to the credit of the general revenue [oil field cleanup] fund ~~[account]~~.

SECTION 30. Section 91.457(b), Natural Resources Code, is amended to read as follows:

(b) If a person ordered to close a saltwater disposal pit under Subsection (a) ~~[of this section]~~ fails or refuses to close the pit in compliance with the commission's order and rules, the commission may close the pit using money from the oil and gas regulation and [oil field] cleanup fund and may direct the attorney general to file suits in any courts of competent jurisdiction in Travis County to recover applicable penalties and the costs incurred by the commission in closing the saltwater disposal pit.

SECTION 31. Section 91.459(c), Natural Resources Code, is amended to read as follows:

(c) Any ~~[penalties or]~~ costs recovered by the attorney general under this subchapter shall be deposited in the oil and gas regulation and [oil field] cleanup fund.

SECTION 32. Section 91.605(e), Natural Resources Code, is amended to read as follows:

(e) The fees collected under this section shall be deposited in the oil and gas regulation and [oil field] cleanup fund.

SECTION 33. Section 91.654(e), Natural Resources Code, is amended to read as follows:

(e) Fees collected under this section shall be deposited to the credit of the oil and gas regulation and [oil field] cleanup fund ~~[under Section 91.111]~~.

SECTION 34. Section 91.707(b), Natural Resources Code, is amended to read as follows:

(b) Fees collected under this section shall be deposited to the credit of the oil and gas regulation and ~~oil field~~ cleanup fund.

SECTION 35. Subchapter B, Chapter 102, Natural Resources Code, is amended by adding Sections 102.0125 and 102.0165 to read as follows:

Sec. 102.0125. WITHDRAWAL AND REFILEING OF APPLICATION. (a) The commission by rule shall:

(1) provide procedures requiring an interested owner who applies to the commission for the pooling of mineral interests to give notice to the commission before withdrawing the application if a hearing on the application has been scheduled; and

(2) require an applicant who refiles an application that was withdrawn without proper notice as required by rules adopted under Subdivision (1) to pay a filing fee that exceeds the amount of any fee required for filing the initial application.

(b) Rules adopted under Subsection (a)(1) must specify the deadline for giving notice of withdrawal of the application before the hearing is held.

Sec. 102.0165. LOCATION OF HEARING. (a) At the request of an interested party, the commission may hold the hearing on the application in person or by telephone at a location in the vicinity of the proposed unit.

(b) The commission may contract with another state agency to hold hearings on applications for pooling of interests into a unit under the provisions of this chapter in person or by telephone at field offices of that agency.

SECTION 36. Section 117.012(a), Natural Resources Code, is amended to read as follows:

(a) The commission shall adopt rules that include:

(1) safety standards for and practices applicable to the intrastate transportation of hazardous liquids or carbon dioxide by pipeline and intrastate hazardous liquid or carbon dioxide pipeline facilities; and

(2) ~~[-including]~~ safety standards related to the prevention of damage to interstate and intrastate hazardous liquid or carbon dioxide pipeline facilities ~~[such a facility]~~ resulting from the movement of earth by a person in the vicinity of ~~such a [the]~~ facility, other than movement by tillage that does not exceed a depth of 16 inches.

SECTION 37. Section 211.033(q), Natural Resources Code, is amended to read as follows:

(q) A penalty collected under this section shall be remitted to the comptroller for ~~the~~ deposit to the credit of the general revenue ~~[oil field cleanup]~~ fund.

SECTION 38. Section 52.092(c), Election Code, is amended to read as follows:

(c) Statewide offices of the state government shall be listed in the following order:

- (1) governor;
- (2) lieutenant governor;
- (3) attorney general;
- (4) comptroller of public accounts;
- (5) commissioner of the General Land Office;
- (6) commissioner of agriculture;
- (7) chairman of the Texas Oil and Gas Commission;

- (8) [railroad] commissioner of the Texas Oil and Gas Commission;  
 (9) ~~(8)~~ chief justice, supreme court;  
 (10) ~~(9)~~ justice, supreme court;  
 (11) ~~(10)~~ presiding judge, court of criminal appeals;  
 (12) ~~(11)~~ judge, court of criminal appeals.

SECTION 39. Section 756.126, Health and Safety Code, is amended to read as follows:

Sec. 756.126. SAFETY STANDARDS AND BEST PRACTICES. The Texas Oil and Gas [Railroad] Commission [of Texas] shall adopt and enforce safety standards and best practices, including those described by 49 U.S.C. Section 6105 et seq., relating to the prevention of damage by a person to a facility, including an interstate or intrastate pipeline facility, under the jurisdiction of the commission.

SECTION Section 102.006, Utilities Code, is amended to read as follows:

Sec. 102.006. POWERS AND DUTIES OF STATE OFFICE OF ADMINISTRATIVE HEARINGS [IN CONTESTED CASES]. (a) The ~~[railroad commission by rule shall provide for administrative hearings in contested cases to be conducted by one or more members of the railroad commission, by railroad commission hearings examiners, or by the utility division of the State Office of Administrative Hearings. The rules must provide for a railroad commission hearings examiner or the utility division of the]~~ State Office of Administrative Hearings shall ~~[to]~~ conduct each hearing in a contested case under this subtitle [that is not conducted by one or more members of the railroad commission]. A hearing must be conducted in accordance with the rules and procedures adopted by the railroad commission.

(b) The railroad commission may delegate to ~~[a railroad commission hearings examiner or to the utility division of]~~ the State Office of Administrative Hearings the authority to make a final decision and to issue findings of fact, conclusions of law, and other necessary orders in a proceeding in which there is not a contested issue of fact or law.

(c) The railroad commission by rule shall define the procedures by which it delegates final decision-making authority under Subsection (b) ~~[to a railroad commission hearings examiner or to the utility division of the State Office of Administrative Hearings]~~.

(d) For purposes of judicial review, an administrative law judge's [the] final decision [of a railroad commission hearings examiner or an administrative law judge of the State Office of Administrative Hearings in a matter delegated] under Subsection (b) has the same effect as a final decision of the railroad commission unless ~~[a member of]~~ the commission requests formal review of the decision.

~~[(e) The State Office of Administrative Hearings shall charge the railroad commission a fixed annual rate for hearings conducted by the office under this section only if the legislature appropriates money for that purpose. If the legislature does not appropriate money for the payment of a fixed annual rate under this section, the State Office of Administrative Hearings shall charge the railroad commission an hourly rate of not more than \$90 per hour for hearings conducted by the office under this section.]~~

SECTION \_\_\_\_\_. Section 121.201(a), Utilities Code, is amended to read as follows:

- (a) The railroad commission may:

(1) by rule prescribe or adopt safety standards for the transportation of gas and for gas pipeline facilities, including safety standards related to the prevention of damage to an interstate or intrastate gas pipeline ~~[such a]~~ facility resulting from the movement of earth by a person in the vicinity of the facility, other than movement by tillage that does not exceed a depth of 16 inches;

(2) by rule require an operator that does not file operator organization information under Section 91.142, Natural Resources Code, to provide the information to the commission in the form of an application;

(3) by rule require record maintenance and reports;

(4) inspect records and facilities to determine compliance with safety standards prescribed or adopted under Subdivision (1);

(5) make certifications and reports from time to time;

(6) seek designation by the United States secretary of transportation as an agent to conduct safety inspections of interstate gas pipeline facilities located in this state; and

(7) by rule take any other requisite action in accordance with 49 U.S.C. Section 60101 et seq., or a succeeding law.

SECTION 41. Section 29.015, Water Code, is amended to read as follows:

Sec. 29.015. APPLICATION FEE. With each application for issuance, renewal, or material amendment of a permit, the applicant shall submit to the railroad commission a nonrefundable fee of \$100. Fees collected under this section shall be deposited in the oil and gas regulation and ~~[oil field]~~ cleanup fund.

SECTION \_\_\_\_\_. The heading to Section 121.211, Utilities Code, is amended to read as follows:

Sec. 121.211. PIPELINE SAFETY AND REGULATORY FEES.

SECTION \_\_\_\_\_. Sections 121.211(a), (b), (c), (d), (e), and (h), Utilities Code, are amended to read as follows:

(a) The railroad commission by rule may adopt a [ ] fee to be assessed annually against operators of natural gas distribution pipelines and their pipeline facilities and natural gas master metered pipelines and their pipeline facilities subject to this title [ ].

(b) The railroad commission by rule shall establish the method by which the fee will be calculated and assessed. In adopting a fee structure, the railroad commission may consider any factors necessary to provide for the equitable allocation among operators of the costs of administering the railroad commission's pipeline safety and regulatory program under this title [ ].

(c) The total amount of fees estimated to be collected under rules adopted by the railroad commission under this section may not exceed the amount estimated by the railroad commission to be necessary to recover the costs of administering the railroad commission's pipeline safety and regulatory program under this title [ ], excluding costs that are fully funded by federal sources.

(d) The commission may assess each operator of a natural gas distribution system subject to this title [ ] an annual [ ] fee not to exceed one dollar for each service line reported by the system on the Distribution Annual Report, Form RSPA F7100.1-1, due on March 15 of each year. The fee is due March 15 of each year.

(e) The railroad commission may assess each operator of a natural gas master metered system subject to this title [ ] an annual [ ] fee not to exceed \$100 for each master metered system. The fee is due June 30 of each year.

(h) A fee collected under this section shall be deposited to the credit of the general revenue fund to be used for the pipeline safety and regulatory program.

SECTION 42. The following provisions of the Natural Resources Code are repealed:

- (1) Section 91.111;
- (2) Section 91.112;
- (3) Section 91.1135; and
- (4) Subchapter I, Chapter 113.

SECTION 54. On the effective date of this Act:

(1) the oil-field cleanup fund and the alternative fuels research and education fund are abolished;

(2) any money remaining in the oil-field cleanup fund is transferred to the oil and gas regulation and cleanup fund;

(3) any money remaining in the alternative fuels research and education fund is transferred to the undedicated portion of the general revenue fund;

(4) any claim against the oil-field cleanup fund is transferred to the oil and gas regulation and cleanup fund;

(5) any claim against the alternative fuels research and education fund is transferred to the undedicated portion of the general revenue fund;

(6) any amount required to be deposited to the credit of the oil-field cleanup fund shall be deposited to the credit of the oil and gas regulation and cleanup fund; and

(7) any amount required to be deposited to the credit of the alternative fuels research and education fund shall be deposited to the credit of the undedicated portion of the general revenue fund.

SECTION 55. (a) As soon as possible after the effective date of this Act, the governor shall appoint the initial commissioners of the Texas Oil and Gas Commission two of whom serve a term that expires January 1, 2013 and the chairman who serves a term that expires January 1, 2015.

(b) The office of commissioner of the Texas Oil and Gas Commission exists for purposes of the primary and general election in 2012. The office of the chairman of the Texas Oil and Gas Commission exists for the purposes of the primary and general election in 2014.

(c) The initial two elected commissioners of the Texas Oil and Gas Commission shall be elected at the general election for state and county officers in 2012 to serve a four-year term. The initial chairman of the Texas Oil and Gas Commission shall be elected at the general election for state and county officers in 2014 to serve a four-year term.

(d) The initial two elected commissioners of the Texas Oil and Gas Commission shall take office January 1, 2013. The initial elected chairman of the Texas Oil and Gas Commission shall take office January 1, 2015.

SECTION 56. (a) On the date the initial appointed commissioners of the Texas Oil and Gas Commission take office:

- (1) the Texas Oil and Gas Commission is created;
- (2) the Railroad Commission of Texas is abolished and the terms of the members of the Railroad Commission of Texas serving on that date expire;
- (3) the powers, duties, functions, programs, and activities of the Railroad Commission of Texas are transferred to the Texas Oil and Gas Commission;
- (4) an employee of the Railroad Commission of Texas becomes an employee of the Texas Oil and Gas Commission;
- (5) all obligations and contracts of the Railroad Commission of Texas are transferred to the Texas Oil and Gas Commission;
- (6) all property and records in the custody of the Railroad Commission of Texas and all funds appropriated by the legislature to the Railroad Commission of Texas shall be transferred to the Texas Oil and Gas Commission;
- (7) all complaints, investigations, or contested cases that are pending before the Railroad Commission of Texas, or the governing body of the Railroad Commission of Texas, are transferred without change in status to the Texas Oil and Gas Commission;
- (8) a rule or form adopted by the Railroad Commission of Texas is a rule or form of the Texas Oil and Gas Commission and remains in effect until altered by that commission;
- (9) a reference in law to the Railroad Commission of Texas means the Texas Oil and Gas Commission;
- (10) a reference in law to a railroad commissioner or a member of the Railroad Commission of Texas means the commissioner of the Texas Oil and Gas Commission; and
- (11) a license, permit, or certification in effect that was issued by the Railroad Commission of Texas is continued in effect as a license, permit, or certification of the Texas Oil and Gas Commission.

(b) The abolition of the Railroad Commission of Texas and the transfer of its powers, duties, functions, programs, activities, obligations, rights, contracts, records, property, funds, and employees as provided by this Act do not affect or impair an act done, any obligation, right, order, permit, certificate, rule, criterion, standard, or requirement existing, or any penalty accrued under former law, and that law remains in effect for any action concerning those matters.

SECTION 57. The Railroad Commission of Texas shall adopt a timetable for phasing in the use of the name of the Texas Oil and Gas Commission so as to minimize the fiscal impact of the change of name of the entity responsible for performing the functions of the Railroad Commission of Texas. Until January 1, 2012, to allow for phasing in the use of the name of the Texas Oil and Gas Commission and in accordance with the timetable established as required by this section, the Texas Oil and Gas Commission may perform any act authorized by law for the Railroad Commission of Texas as the Railroad Commission of Texas or as the Texas Oil and Gas Commission and any act of the Texas Oil and Gas Commission acting as the Railroad Commission of Texas is an act of the Texas Oil and Gas Commission.

SECTION 58. This Act takes effect September 1, 2011.

The amendment to **HB 3328** was read and was adopted by a viva voce vote.

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

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

**HB 3328** as amended was passed to third reading by a viva voce vote.

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

### **HOUSE BILL 3328 ON THIRD READING**

Senator Fraser moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3328** be placed on its third reading and final passage.

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

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

### **MESSAGE FROM THE HOUSE**

HOUSE CHAMBER

Austin, Texas

Wednesday, May 25, 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:

**SB 81** Nelson Sponsor: Kolkhorst  
Relating to food safety.  
(Committee Substitute/Amended)

**SB 158** Williams Sponsor: Fletcher  
Relating to the fraudulent obtaining of a controlled substance from a practitioner;  
providing a penalty.  
(Amended)

**SB 293** Watson Sponsor: Davis, John  
Relating to telemedicine medical services, telehealth services, and home  
telemonitoring services provided to certain Medicaid recipients.  
(Committee Substitute/Amended)

**SB 573** Nichols Sponsor: Creighton  
Relating to certificates of public convenience and necessity for water or sewer  
services.  
(Amended)

- SB 738** Shapiro Sponsor: Villarreal  
Relating to a parental role in determining sanctions applied to a public school campus under certain circumstances.
- SB 776** Zaffirini Sponsor: Guillen  
Relating to customs brokers.  
(Committee Substitute/Amended)
- SB 981** Carona Sponsor: Anchia  
Relating to the regulation of distributed renewable generation of electricity.  
(Committee Substitute/Amended)
- SB 1048** Jackson Sponsor: Davis, John  
Relating to the creation of public and private facilities and infrastructure.  
(Committee Substitute/Amended)
- SB 1073** Jackson Sponsor: King, Tracy O.  
Relating to rainwater harvesting systems that are connected to public water supply systems.
- SB 1120** Seliger Sponsor: Lewis  
Relating to the exemption from taxation of property of a local government corporation.
- SB 1285** Watson Sponsor: Strama  
Relating to contributions to the retirement systems for certain police officers in certain municipalities.  
(Amended)
- SB 1286** Watson Sponsor: Rodriguez, Eddie  
Relating to the funding of retirement systems for firefighters in certain municipalities.  
(Committee Substitute)
- SB 1393** Seliger Sponsor: Keffer  
Relating to the use of contracts by local governments to purchase electricity.
- SB 1551** Rodriguez Sponsor: Raymond  
Relating to missing children; providing a criminal penalty.  
(Amended)
- SB 1588** Ogden Sponsor: Pitts  
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.  
(Amended)
- SB 1605** Seliger Sponsor: Lewis  
Relating to the Texas Low-Level Radioactive Waste Disposal Compact Commission.  
(Committee Substitute/Amended)

**SB 1664**

Duncan

Sponsor: Truitt

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.  
(Committee Substitute/Amended)

Respectfully,

/s/Robert Haney, Chief Clerk  
House of Representatives

**HOUSE BILL 2338 ON SECOND READING**

On motion of Senator Birdwell and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 2338** at this time on its second reading:

**HB 2338**, Relating to the posting on the Internet by the county assessor-collector of information regarding ad valorem tax rates.

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

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

**HOUSE BILL 2338 ON THIRD READING**

Senator Birdwell moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2338** be placed on its third reading and final passage.

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

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

**HOUSE BILL 2996 ON SECOND READING**

Senator Estes moved to suspend the regular order of business to take up for consideration **HB 2996** at this time on its second reading:

**HB 2996**, Relating to the creation of the Texas Urban Agricultural Innovation Authority.

The motion prevailed.

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

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

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

Nays: Birdwell, Hegar, Jackson, Patrick, Shapiro.

Absent: Williams.

**HOUSE BILL 2996 ON THIRD READING**

Senator Estes moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2996** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 25, Nays 5.

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

Nays: Birdwell, Hegar, Jackson, Patrick, Shapiro.

Absent: Williams.

The bill was read third time and was passed by the following vote: Yeas 25, Nays 5. (Same as previous roll call)

**HOUSE BILL 2997 ON SECOND READING**

Senator Estes moved to suspend the regular order of business to take up for consideration **HB 2997** at this time on its second reading:

**HB 2997**, Relating to the creation and funding of the urban farming pilot program and the creation of the Select Committee on Urban Farming.

The motion prevailed.

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

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

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

Nays: Birdwell, Hegar, Jackson, Patrick, Shapiro.

Absent: Williams.

**HOUSE BILL 2997 ON THIRD READING**

Senator Estes moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2997** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 25, Nays 5.

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

Nays: Birdwell, Hegar, Jackson, Patrick, Shapiro.

Absent: Williams.

The bill was read third time and was passed by the following vote: Yeas 25, Nays 5. (Same as previous roll call)

**COMMITTEE SUBSTITUTE  
HOUSE BILL 2327 ON THIRD READING**

Senator Wentworth moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 2327** be placed on its third reading and final passage.

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

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

Nays: Birdwell, Fraser, Harris.

The bill was read third time and was passed by the following vote: Yeas 21, Nays 10.

Yeas: Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Gallegos, Hinojosa, Lucio, Nelson, Rodriguez, Seliger, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Birdwell, Fraser, Harris, Hegar, Huffman, Jackson, Nichols, Ogden, Patrick, Shapiro.

**SENATE BILL 341 WITH HOUSE AMENDMENTS**

Senator Uresti called **SB 341** from the President's table for consideration of the House amendments to the bill.

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

**Amendment**

Amend **SB 341** by substituting in lieu thereof the following:

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, 42, and 43 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) 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.

Sec. 41. From the effective date of the Act enacting this section until the date election results are certified to the Secretary of State, 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. 42. (a) From the effective date of the Act enacting this section until the date election results are certified to the Secretary of State, 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; 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.

(b) 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 (a)(2) of this section.

Sec. 43. From the effective date of the Act enacting this section until the date the election results are certified to the Secretary of State, 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 on the question of dissolving the district and disposing of the district's assets and obligations. The board shall call the election not later than the 90th day before the date the election is to be held.

(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.

SECTION 2.02. (a) Not later than the 20th day after the date on which the election results are officially declared, 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.

#### 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 U.S. 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 on the question of dissolving the district and disposing of the district's assets and obligations. The board shall call the election not later than the 90th day before the date the election is to be held.

(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.

SECTION 2A.03. (a) Not later than the 20th day after the date on which the election results are officially declared, 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) ~~[-] 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.[;]~~

~~(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.[;]~~

~~(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 [a] 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, and 10B 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 in connection with each election in which the 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.

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 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 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 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 1973c or any other provisions of that act), 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. Except as otherwise provided by Article 2 of this Act, this Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2011.

**Floor Amendment No. 1**

Amend **CSSB 341** in ARTICLE 2 of the bill (page 10, after line 27), by inserting the following new SECTION in the ARTICLE:

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.

**Floor Amendment No. 2**

Amend **CSSB 341** (house committee report) as follows:

(1) In the recital to SECTION 1.02 of the bill (page 1, line 14), strike "42, and 43" and substitute "and 42".

(2) In SECTION 1.02 of the bill, in amended Chapter 306, Acts of the 49th Legislature, Regular Session, 1945 (page 7, lines 10-19), strike Section 40.

(3) In SECTION 1.02 of the bill, in amended Chapter 306, Acts of the 49th Legislature, Regular Session, 1945 (page 7, line 20), strike "Sec. 41." and substitute the following:

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)

(4) In SECTION 1.02 of the bill, in added Section 41, Chapter 306, Acts of the 49th Legislature, Regular Session, 1945 (page 7, line 22), between "State" and the comma, insert "under Article 2 or Article 2A of the Act enacting this section".

(5) In SECTION 1.02 of the bill, in added Section 42, Chapter 306, Acts of the 49th Legislature, Regular Session, 1945 (page 8, line 6), strike "Sec. 42. (a)" and substitute the following:

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)

(6) In SECTION 1.02 of the bill, in added Section 42(a), Chapter 306, Acts of the 49th Legislature, Regular Session, 1945 (page 8, line 8), between "State" and the comma, insert "under Article 2 or Article 2A of the Act enacting this section".

(7) In SECTION 1.02 of the bill, in added Section 42(a)(1), Chapter 306, Acts of the 49th Legislature, Regular Session, 1945 (page 8, line 12), between "System" and the semicolon, insert "if the contract or other agreement is assumed by the System".

(8) In SECTION 1.02 of the bill, in added Section 42, Chapter 306, Acts of the 49th Legislature, Regular Session, 1945 (page 8, line 18), strike "(b)" and substitute "(c)".

(9) In SECTION 1.02 of the bill, in added Section 42(b), Chapter 306, Acts of the 49th Legislature, Regular Session, 1945 (page 8, line 20), strike "(a)(2)" and substitute "(b)(2)".

(10) In SECTION 1.02 of the bill, in amended Chapter 306, Acts of the 49th Legislature, Regular Session, 1945 (page 8, line 22), strike "43" and substitute "42".

(11) In SECTION 1.02 of the bill, in added Section 43, Chapter 306, Acts of the 49th Legislature, Regular Session, 1945 (page 8, line 24), between "State" and the comma, insert "under Article 2 or Article 2A of the Act enacting this section".

(12) In SECTION 2.01(b) of the bill (page 9, line 11), between "district" and "on the", insert "solely".

(13) In SECTION 2.01(b) of the bill (page 9, line 12), strike "The board" and substitute "Notwithstanding Section 3.005(b), Election Code, the board".

(14) In SECTION 2.01(b) of the bill (page 9, line 14), between "held" and the period, insert "or as soon as practicable, if the effective date of this Act is after the 90th day".

(15) In SECTION 2.01 of the bill (page 10, between lines 14 and 15), insert the following:

(h) The election directed to be held under this article is not intended to prohibit a regular or special election to elect board members.

(16) In SECTION 2.02(a) of the bill (page 10, lines 15-16), strike "Not later than the 20th day after the date on which the election results are officially declared" and substitute "Not later than the 10th day after the determination under Section 67.005(a), Election Code, of the official results of the election".

(17) In SECTION 2A.02(b) of the bill (page 12, line 3), between "district" and "on the", insert "solely".

(18) In SECTION 2A.02(b) of the bill (page 12, line 4), strike "The board" and substitute "Notwithstanding Section 3.005(b), Election Code, the board".

(19) In SECTION 2A.02(b) of the bill (page 12, line 6), between "held" and the period, insert "or as soon as practicable, if the effective date of this Act is after the 90th day".

(20) In SECTION 2A.02 of the bill (page 13, between lines 12 and 13), insert the following:

(i) The election directed to be held under this article is not intended to prohibit a regular or special election to elect board members.

(21) In SECTION 2A.03(a) of the bill (page 13, lines 13-14), strike "Not later than the 20th day after the date on which the election results are officially declared" and substitute "Not later than the 10th day after the determination under Section 67.005(a), Election Code, of the official results of the election".

(22) In the recital to SECTION 3.03 of the bill (page 17, line 1), strike "and 10B" and substitute "10B, and 43".

(23) In SECTION 3.03 of the bill, in added Section 8A(b), Chapter 306, Acts of the 49th Legislature, Regular Session, 1945 (page 17, line 20), between "\$500" and "in", insert "from each person or organization".

(24) In SECTION 3.03 of the bill, in added Section 8A(b), Chapter 306, Acts of the 49th Legislature, Regular Session, 1945 (page 17, line 21), between "the" and "candidate", insert "Director or".

(25) In SECTION 3.03 of the bill, in amended Chapter 306, Acts of the 49th Legislature, Regular Session, 1945 (page 21, between lines 23 and 24), insert the following:

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.

(26) In SECTION 4.01 of the bill, in added Section 50(a), Chapter 306, Acts of the 49th Legislature, Regular Session, 1945 (page 23, line 1), between "2" and "of", insert "or 2A".

(27) In SECTION 4.01 of the bill, in added Section 50(c), Chapter 306, Acts of the 49th Legislature, Regular Session, 1945 (page 23, line 9), between "assign" and "all", insert "to the System".

(28) In SECTION 4.01 of the bill, in added Section 52, Chapter 306, Acts of the 49th Legislature, Regular Session, 1945 (page 24, line 8), between "2" and "of", insert "or 2A".

(29) In SECTION 5.01 of the bill (page 28, lines 2-3), strike "1973c or any other provisions of that act" and substitute "1973 et seq."

(30) Strike SECTION 5.03 of the bill (page 28, line 23, through page 29, line 1) and substitute the following:

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 take effect September 1, 2011.

(b) Articles 3 and 4 of this Act take effect as provided by Articles 2 and 2A.

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

Amend **CSSB 341** (house committee report) as follows:

(1) In the recital to SECTION 4.01 of the bill (page 22, line 24), between "52," and "53," insert "52B,".

(2) In SECTION 4.01 of the bill, after added Section 52, Chapter 306, Acts of the 49th Legislature, Regular Session, 1945 (page 25, between lines 26 and 27), insert the following:

Sec. 52B. (a) The rural contracts review board consists of three members appointed as follows:

(1) one member appointed by the Commissioners Court of Bexar County;

(2) one member appointed by the Commissioners Court of Medina County;

and

(3) one member appointed by the Commissioners Court of Atascosa County.

(b) The System shall renew a contract with a water supply company, water district, or municipal water utility for emergency water supply or interconnect fees that was transferred or assigned to the System as a result of the dissolution of the District on the same terms as the original contract, unless a change in the terms of the contract is approved by the rural contracts review board. The rural contracts review board may not approve a change in the terms of a renewal contract that is unfair to the water supply company, water district, or municipal water utility.

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

Amend Amendment No. 4 by D. Miller to **CSSB 341** as follows:

(1) In added Section 52B, Chapter 306, Acts of the 49th Legislature, Regular Session, 1945 (page 1, lines 7-14), strike Subsection (a).

(2) In added Section 52B, Chapter 306, Acts of the 49th Legislature, Regular Session, 1945 (page 1, lines 15-23), strike Subsection (b) and substitute the following:

The System shall honor all existing contracts transferred or assigned to the System as a result of the dissolution of the District. The System may not arbitrarily terminate or change the terms of a contract transferred or assigned to the System as a result of the dissolution of the District.

**Floor Amendment No. 6**

Amend **CSSB 341** (house committee report) as follows:

(1) In the recital to SECTION 4.01 of the bill (page 22, line 25), strike "and 55" and substitute "55, and 56".

(2) In SECTION 4.01 of the bill, after added Section 55, Chapter 306, Acts of the 49th Legislature, Regular Session, 1945 (page 27, between lines 25 and 26), insert the following:

Sec. 56. The System shall create a rural infrastructure investment fund with an initial funding equal to 44 percent of the value of District assets as they existed on the effective date of the Act enacting this section, as determined by an entity with no financial ties to the District or a municipality located in the District. The System shall spend the money in the fund in a manner to guarantee continued investment in the areas of the former District not located in the largest municipality in the former District.

**Floor Amendment No. 7**

Amend **CSSB 341** (house committee printing) as follows:

(1) In the recital to SECTION 4.01 of the bill (page 22, line 25), strike "and 55" and substitute "55, and 57".

(2) In ARTICLE 4 of the bill, in Chapter 306, Acts of the 49th Legislature, Regular Session, 1945 (page 27, between lines 25 and 26), insert the following new Section 57:

Sec. 57. (a) Any former ratepayer of the District who resides outside the boundary of the largest municipality served by the former District may petition the commission if the ratepayer does not receive the benefit of adequate infrastructure investment by the System. The commission shall conduct a hearing on the petition and determine if the System has adequately invested in infrastructure improvements in the area affecting the ratepayer.

(b) In a petition under Subsection (a) of this section, each person receiving a separate bill is considered a ratepayer, but one person may not be considered more than one ratepayer regardless of the number of bills the person receives. The petition is considered properly signed if signed by a person, or the spouse of a person, in whose name utility service is received.

(c) If the commission finds that the System has not adequately invested in infrastructure affecting the ratepayer, the commission may impose an administrative penalty against the System under Section 13.4151, Water Code.

(d) Not later than the 30th day after the date of a final decision on a petition under this section, the commission shall provide written notice to each ratepayer eligible to petition. The notice must include the decision on the petition regarding infrastructure and the location where additional information on infrastructure may be obtained.

**Floor Amendment No. 8**

Amend **CSSB 341** (house committee report) as follows:

(1) In SECTION 2.01 of the bill (page 9, line 27, through page 10, line 9), strike Subsections (e) and (f) and substitute the following:

(e) The ballot for an election under this section must be printed to permit voting:  
(1) for or against the proposition: "The dissolution of the Bexar Metropolitan Water District."; and

(2) for one of the following propositions:

(A) "In the event the Bexar Metropolitan Water District is dissolved, the district's assets, obligations, and duties shall be transferred to the water utility owned by the municipality with the largest population in the area served by the district."; or

(B) "In the event the Bexar Metropolitan Water District is dissolved, the district's assets, obligations, and duties shall be transferred to a new water district called the Alamo Water District."

(f) The board shall certify:

(1) that a majority of the voters voting in the district have voted under Subsection (e)(1):

(A) in favor of dissolution; or

(B) not in favor of dissolution; and

(2) whether the proposition under Subsection (e)(2)(A) or (B) received the most votes, or if a tie exists.

(f-1) If a tie exists under Subsection (f)(2), the board shall certify the proposition under Subsection (e)(2)(B) as receiving the most votes.

(2) Strike SECTION 2.02 of the bill (page 10, lines 15-27) and substitute the following:

SECTION 2.02. (a) Not later than the 20th day after the date on which the election results are officially declared, the board shall certify the results to the secretary of state.

(b) If the proposition under Section 2.01(e)(1) is approved by a majority of the voters voting in the election, Article 3 of this Act does not take effect and:

(1) if the board certifies the proposition under Section 2.01(e)(2)(A) as receiving the most votes, Article 4 of this Act takes effect on the date the results are certified; or

(2) if the board certifies the proposition under Section 2.01(e)(2)(B) as receiving the most votes, Article 4A 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 under Section 2.01(e)(1):

(1) Article 3 of this Act takes effect on the date the results are certified; and

(2) Article 4 or 4A of this Act does not take effect.

(3) Strike ARTICLE 2A of the bill (page 11, line 1, through page 13, line 25).

(4) In the heading to ARTICLE 4 of the bill (page 22, line 21), between "LIABILITIES" and "IF", insert "TO AN EXISTING WATER UTILITY".

(5) On page 27, between lines 25 and 26, insert ARTICLE 4A to the bill as follows:

ARTICLE 4A. TRANSFER OF DISTRICT ASSETS AND LIABILITIES TO, AND CREATION OF, THE ALAMO WATER DISTRICT IF VOTERS DISSOLVE THE BEXAR METROPOLITAN WATER DISTRICT UNDER ARTICLE 2

SECTION 4A.01. (a) The Bexar Metropolitan Water District is dissolved. The district shall stay in effect to complete the transfer under Section 4A.05 of this article.

(b) The Texas Commission on Environmental Quality shall enter an order dissolving the Bexar Metropolitan Water District.

SECTION 4A.02. Sections 1 and 8, Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, are amended to read as follows:

Sec. 1. ~~Under [In obedience to the provisions of]~~ Article 16, Section 59 of the Constitution of Texas, there is ~~[hereby]~~ created the Alamo Water District. ~~[Bexar Metropolitan Water District, hereinafter in this Act sometimes called the "District."]~~

Sec. 8. (a) ~~[-]~~ The seven ~~[five (5)]~~ members of the Board of Directors are ~~[shall hereafter be]~~ elected to staggered two-year terms in an election held on the uniform election date in November. Directors 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.[?]

(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.[?]

(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 4A.03. Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, is amended by adding Sections 1A, 8A, 8B, 8C, 10A, and 10B to read as follows:

Sec. 1A. In this Act:

- (1) "Board" means the District's Board of Directors.
- (2) "Commission" means the Texas Commission on Environmental Quality.
- (3) "Director" means a Board member.
- (4) "District" means the Alamo Water District.

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 that in the aggregate exceed \$500 in connection with each election in which the person is involved. For purposes of this subsection, a contribution to a specific-purpose committee for the purpose of supporting a candidate for the office of Director, opposing the candidate's opponent, or assisting the candidate as an officeholder is considered to be a contribution to the candidate.

Sec. 8B. (a) A person who is elected or appointed to and qualifies for office as a Director may not vote, deliberate, or be counted as a member in attendance at a meeting of the Board until the person completes a training program on District management issues. The training program must provide information to the person regarding:

(1) the enabling legislation that created the District;

(2) the operation of the District;

(3) the role and functions of the Board;

(4) the rules of the Board;

(5) the current budget for the Board;

(6) the results of the most recent formal audit of the Board;

(7) the requirements of the:

(A) open meetings law, Chapter 551, Government Code;

(B) open records law, Chapter 552, Government Code; and

(C) administrative procedure law, Chapter 2001, Government Code;

(8) the requirements of the conflict of interest laws and other laws relating to public officials; and

(9) any applicable ethics policies adopted by the Board or the Texas Ethics Commission.

(b) The Texas Commission on Environmental Quality 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 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. 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 \$25 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 voters in the District submit a petition to the Board requesting the recall of a Director, the Board, not later than the 10th day after the date the petition is submitted, shall mail a written notice of the petition and the date of its submission to each registered voter in the District.

(c) Not later than the 30th day after the date a petition requesting the recall of a Director is submitted, the Board shall order an election on the question of recalling the Director.

(d) A recall election under this section may be held on any uniform election date.

(e) If a majority of the District voters voting at an election held under this section favor the recall of the Director, the Director is recalled and ceases to be a 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.

SECTION 4A.04. Sections 7, 27A, 27D, 27F, 27G, and 33A, Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, are repealed.

SECTION 4A.05. Not later than one month after the effective date of this article under Section 2.02 of this Act:

(1) all functions and activities performed immediately before that date by the Bexar Metropolitan Water District are transferred to the Alamo Water District;

(2) a rule, form, policy, procedure, or decision of the Bexar Metropolitan Water District continues in effect as a rule, form, policy, procedure, or decision of the Alamo Water District and remains in effect until amended or replaced by the Alamo Water District;

(3) a reference in law or administrative rule to the Bexar Metropolitan Water District means the Alamo Water District;

(4) all money, contracts, leases, rights, property, records, and bonds and other obligations of the Bexar Metropolitan Water District are transferred to the Alamo Water District;

(5) a court case, administrative proceeding, contract negotiation, or other proceeding involving the Bexar Metropolitan Water District is transferred without change in status to the Alamo Water District, and the Alamo Water District assumes, without a change in status, the position of the Bexar Metropolitan Water District in a negotiation or proceeding relating to an activity transferred by this article to the Alamo Water District to which the Bexar Metropolitan Water District is a party; and

(6) an employee of the Bexar Metropolitan Water District who earns less than \$50,000 per year becomes an employee of the Alamo Water District.

SECTION 4A.06. (a) Not later than the transfer under Section 4A.05 of this article, commissioners courts shall appoint the initial board of the Alamo Water District as follows:

(1) five members appointed by the Commissioners Court of Bexar County;  
(2) one member appointed by the Commissioners Court of Atascosa County; and

(3) one member appointed by the Commissioners Court of Medina County.

(b) The initial board serves until directors are elected as provided by Section 8, Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, as amended by this article, on the first uniform election date in November following the date the district is created that allows compliance with that section.

(c) The initial board may not include a person serving as a director on the day before the effective date of this article.

(d) Sections 8B(a)(1), 8A(a)(3), 8A(a)(4), 8A(b), 8B(a), 8B(c), and 8B(f), Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, as added by this article, do not apply to an initial director.

(e) The initial board shall draw seven single-member voting districts in the district according to Section 8(a), Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, as amended by this article.

SECTION 4A.07. The first members of the board of directors of the Alamo Water District elected under the changes in law made by this article shall agree on, or draw lots to determine, which member's term expires one year from the date the term began, and which member's term expires two years from the date the term began.

SECTION 4A.08. The boundaries of the Alamo Water District are coterminous with the boundaries of the Bexar Metropolitan Water District as they existed immediately before the effective date of this article under Section 2.02 of this Act.

#### **Floor Amendment No. 9**

Amend **CSSB 341** (senate committee report) as follows:

(1) In SECTION 4.01 of the bill in added Section 55, Chapter 306, Acts of the 49th Legislature, Regular Session, 1945 (page 27, line 11) between "System" and "." insert "; after integration described by Section 52 of this Act, the advisory committee shall continue to advise the System on the planning, development and expansion of services and infrastructure in the area outside the corporate boundaries of the largest municipality served by the System."

(2) In SECTION 4.01 of the bill in added Section 55, Chapter 306, Acts of the 49th Legislature, Regular Session, 1945 (page 27, line 16 and 17) strike "Until the integration described by Section 52 of this Act is complete, the" and substitute "The".

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

Amend **CSSB 341** (house committee report) as follows:

(1) In SECTION 2.01(e) of the bill (page 10, line 5), after the quotation mark, insert "The ballot proposition must also include a valuation of District assets and liabilities as determined by an entity with no financial ties to the District or a municipality located in the District."

(2) In SECTION 2A.02(e) of the bill (page 12, line 24), after the quotation mark, insert "The ballot proposition must also include a valuation of District assets and liabilities as determined by an entity with no financial ties to the District or a municipality located in the District."

**Floor Amendment No. 11**

Amend **CSSB 341** (house committee report) as follows:

(1) In the recital to SECTION 4.01 of the bill (page 22, line 24), between "52," and "53," insert "52B,".

(2) In SECTION 4.01 of the bill, after added Section 52, Chapter 306, Acts of the 49th Legislature, Regular Session, 1945 (page 25, between lines 26 and 27), insert the following:

Sec. 52B. (a) The rural contracts review board consists of three members appointed as follows:

(1) one member appointed by the Commissioners Court of Bexar County;

(2) one member appointed by the Commissioners Court of Medina County;

and

(3) one member appointed by the Commissioners Court of Atascosa County.

(b) The System shall renew a contract with a water supply company, water district, or municipal water utility for emergency water supply or interconnect fees that was transferred or assigned to the System as a result of the dissolution of the District on the same terms as the original contract, unless a change in the terms of the contract is approved by the rural contracts review board. The rural contracts review board may not approve a change in the terms of a renewal contract that is unfair to the water supply company, water district, or municipal water utility.

The amendments were read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 341** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Uresti, Chair; Wentworth, Van de Putte, Fraser, and Hegar.

**SENATE BILL 1198 WITH HOUSE AMENDMENT**

Senator Rodriguez called **SB 1198** from the President's table for consideration of the House amendment to the bill.

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

**Committee Amendment No. 1**

Amend **SB 1198** (senate engrossed version) as follows:

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

SECTION 1. \_\_\_\_ . Section 83(a), Texas Probate Code, is amended to read as follows:

(a) Where Original Application Has Not Been Heard. If, after an application for the probate of a will or for the appointment of a general personal representative has been filed, and before such application has been heard, an application for the probate of a will of the decedent, not theretofore presented for probate, is filed, the court shall hear both applications together and determine what instrument, if any, should be admitted to probate, or whether the decedent died intestate. The court may not sever or bifurcate the proceeding on the applications.

(2) In SECTION 1.24 of the bill, strike Subdivisions (5) and (6) in amended Section 149C(a), Texas Probate Code (page 42, line 24, through page 43, line 3), and substitute the following:

(5) the independent executor is proved to have been guilty of gross misconduct or gross mismanagement in the performance of the independent executor's duties; [~~or~~]

(6) the independent executor becomes an incapacitated person, or is sentenced to the penitentiary, or from any other cause becomes legally incapacitated from properly performing the independent executor's fiduciary duties; or

(7) the independent executor becomes incapable of properly performing the independent executor's fiduciary duties due to a material conflict of interest.

(3) In SECTION 1.42 of the bill, between Subsections (d) and (e) of that section (page 61, between lines 4 and 5), insert the following:

(d-1) The changes in law made by this article to Section 83(a), Texas Probate Code, apply only to an application for the probate of a will or administration of the estate of a decedent that is pending or filed on or after the effective date of this Act.

(4) Add the following appropriately numbered SECTION to Article 2 of the bill and renumber subsequent SECTIONS of Article 2 as appropriate:

SECTION 2. \_\_\_\_\_. Section 256.101, Estates Code, as effective January 1, 2014, is amended to read as follows:

Sec. 256.101. PROCEDURE ON FILING OF SECOND APPLICATION WHEN ORIGINAL APPLICATION HAS NOT BEEN HEARD. (a) If, after an application for the probate of a decedent's will or the appointment of a personal representative for the decedent's estate has been filed but before the application is heard, an application is filed for the probate of a will of the same decedent that has not previously been presented for probate, the court shall:

(1) hear both applications together; and

(2) determine:

(A) if both applications are for the probate of a will, which will should be admitted to probate, if either, or whether the decedent died intestate; or

(B) if only one application is for the probate of a will, whether the will should be admitted to probate or whether the decedent died intestate.

(b) The court may not sever or bifurcate the proceeding on the applications described in Subsection (a).

(5) In SECTION 2.52 of the bill, strike added Sections 404.003(a)(5) and (6), Estates Code (page 121, lines 12 through 18), and substitute the following:

(5) the independent executor is proved to have been guilty of gross misconduct or gross mismanagement in the performance of the independent executor's duties;

(6) the independent executor becomes an incapacitated person, or is sentenced to the penitentiary, or from any other cause becomes legally incapacitated from properly performing the independent executor's fiduciary duties; or

(7) the independent executor becomes incapable of properly performing the independent executor's fiduciary duties due to a material conflict of interest.

(6) In SECTION 2.53(b) of the bill, strike Subdivisions (1), (2), and (3) (page 136, lines 18-23) and substitute the following:

(1) Sections 4D, 4H, 48, 49, 59, 64, 67, 83(a), 84, 250, 260, 436, 439, 452, 471, 472, and 473, as amended by Article 1 of this Act; and

(2) Sections 6A, 6B, 6C, 6D, 8A, 8B, 145A, 145B, and 145C, as added by Article 1 of this Act.

The amendment was read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 1198** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Rodriguez, Chair; Harris, Carona, Wentworth, and Uresti.

### **SENATE BILL 89 WITH HOUSE AMENDMENTS**

Senator Lucio called **SB 89** from the President's table for consideration of the House amendments to the bill.

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

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

Amend **SB 89** (house committee printing) as follows:

(1) In SECTION 1 of the bill, in added Section 12.0029(j), Agriculture Code (page 4, line 5), between "legislature" and "a report", insert "by e-mail".

(2) In SECTION 1 of the bill, immediately following added Section 12.0029(j), Agriculture Code (page 4, between lines 18 and 19), insert the following:

(k) The department shall post and maintain on the department's Internet website the most recent report required by Subsection (j).

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

Amend **SB 89** (house committee printing) as follows:

(1) In SECTION 1 of the bill, in added Section 12.0029(f)(1)(A), Agriculture Code (page 2, line 23), strike "department" and substitute "district".

(2) In SECTION 1 of the bill, in added Section 12.0029(f), Agriculture Code (page 2, line 18), strike "may" and substitute "shall".

(3) In SECTION 1 of the bill, in added Section 12.0029(f), Agriculture Code (page 2, line 20), strike "only".

(4) In SECTION 1 of the bill, in added Section 12.0029(f)(1)(A)(ii), Agriculture Code (page 3, line 1), strike "insurmountable".

(5) In SECTION 1 of the bill, in added Section 12.0029(f)(1)(A)(ii), Agriculture Code (page 3, lines 3 and 4), strike "despite consultation by the district with public transit providers".

(6) In SECTION 1 of the bill, in added Section 12.0029(f)(1)(A)(iii), Agriculture Code (page 3, lines 7 and 8), strike "and the unavailability of an appropriate alternate provider or site".

(7) In SECTION 1 of the bill, in added Section 12.0029(f)(2), Agriculture Code (page 3, lines 17-18), strike "the department using the criteria and methodology established under Subsection (g)" and substitute "the district".

(8) In SECTION 1 of the bill, strike added Section 12.0029(g), Agriculture Code (page 3, lines 19-23), and reletter subsequent subsections of added Section 12.0029, Agriculture Code, accordingly.

(9) In SECTION 1 of the bill, in added Section 12.0029(h), Agriculture Code (page 3, line 24), strike "one-year" and substitute "two-year".

(10) In SECTION 1 of the bill, in added Section 12.0029(i), Agriculture Code (page 3, line 27, through page 4, line 1), strike "and has been unable to provide to the department a list of possible providers for the summer nutrition program".

(11) In SECTION 1 of the bill, in added Section 12.0029(i), Agriculture Code (page 4, line 3), immediately following "nutrition program.", insert "Each field office shall compile and maintain a list of possible alternate providers."

(12) In SECTION 1 of the bill, in added Section 12.0029(j)(3), Agriculture Code (page 4, lines 17 and 18), between "profit made" and "through", insert "or loss incurred".

(13) Strike SECTION 3 of the bill (page 4, lines 21-25) and renumber SECTION 4 of the bill as SECTION 3.

The amendments were read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 89** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Lucio, Chair; Seliger, Deuell, Van de Putte, and Shapiro.

### SENATE BILL 747 WITH HOUSE AMENDMENTS

Senator Carona called **SB 747** from the President's table for consideration of the House amendments to the bill.

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

**Amendment**

Amend **SB 747** by substituting in lieu thereof the following:

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)~~ conducts 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~~

~~(2) 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. Section 1101.367(c), 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. Section 1101.401(f), 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. Sections 1101.451(e) and (f), 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. Section 1101.452(a), 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. Section 1101.454(a), 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. Section 1101.455(b), 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. Section 1101.502(b), 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. Section 1101.356(c), 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 Sections 1101.356(b-1) and 1101.458, Occupations Code, as added by this Act.

(b) Section 1101.552(e), 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) Section 1101.502(b), 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.

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

Amend **CSSB 747** (house committee report), as follows by adding the following, appropriately numbered sections:

SECTION \_\_\_\_\_. 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 \$450,000 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 aggregate 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. 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 agency 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 agency's transition to independent status as provided by this chapter has no effect on their membership or any benefits under that system.

SECTION \_\_\_\_. 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 \_\_\_\_\_. 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 \_\_\_\_\_. Section 1103.103(b), Occupations Code, is repealed.

SECTION \_\_\_\_\_. (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 \_\_\_\_\_. 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 \_\_\_\_\_. 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 \_\_\_\_\_. 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 \_\_\_\_\_. 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. The Texas Real Estate Commission and the Texas Appraiser Licensing and Certification Board will not be liable for any rent due under any contract with the Texas Facilities Commission for state-owned office space upon revocation of the agency's self-directed, semi-independent status.

The amendments were read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 747** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Carona, Chair; Eltife, Jackson, Lucio, and Watson.

#### **SENATE BILL 144 WITH HOUSE AMENDMENT**

Senator West called **SB 144** from the President's table for consideration of the House amendment to the bill.

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

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

Amend **SB 144** (house committee report) as follows:

(1) In SECTION 1 of the bill, in amended Article 48.01, Code of Criminal Procedure (page 1, line 8), between the period and "In", insert "(a)".

(2) In SECTION 1 of the bill, in amended Article 48.01, Code of Criminal Procedure (page 1, between lines 21 and 22), insert the following:

(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;

(2) is not, at any time after the date of discharge and dismissal, convicted of or charged with a criminal offense, other than an offense under the Transportation Code punishable by fine only; and

(3) 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.

The amendment was read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 144** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators West, Chair; Hegar, Carona, Ellis, and Huffman.

### **SENATE BILL 563 WITH HOUSE AMENDMENT**

Senator Jackson called **SB 563** from the President's table for consideration of the House amendment to the bill.

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

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

Amend **SB 563** by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_ . 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) The commission shall conduct an internal performance audit to assess the effectiveness of the pilot program implemented under this section.

(d) Not later than August 1, 2012, the commission shall submit a written report of the results of the performance audit 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.

(e) The commission shall implement the pilot program from available funds that may be used for that purpose.

(f) 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) conduct the performance audit and submit the written report in the time and manner described by Subsections (c) and (d); and

(2) use available resources to fund the pilot program.

(g) A report required by this section may be submitted electronically.

(h) This section expires September 1, 2013.

The amendment was read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 563** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Jackson, Chair; Eltife, Watson, Fraser, and Harris.

### **SENATE BILL 819 WITH HOUSE AMENDMENT**

Senator Harris called **SB 819** from the President's table for consideration of the House amendment to the bill.

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

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

Amend **SB 819** in SECTION 1 of the bill, in added Section 81.010, Family Code (senate engrossment, page 1, between lines 13 and 14), by inserting the following:

(c) A motion for enforcement of a protective order rendered under this title may be filed in:

(1) any court in the county in which the order was rendered with jurisdiction of proceedings arising under this title;

(2) a county in which the movant or respondent resides; or

(3) a county in which an alleged violation of the order occurs.

The amendment was read.

Senator Harris moved to concur in the House amendment to **SB 819**.

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

### **SENATE BILL 1026 WITH HOUSE AMENDMENT**

Senator Harris called **SB 1026** from the President's table for consideration of the House amendment to the bill.

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

### Amendment

Amend **SB 1026** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to the powers and duties of an attorney ad litem appointed for a parent or an alleged father in certain suits affecting the parent-child relationship.

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

SECTION 1. Part 1, Subchapter B, Chapter 107, Family Code, is amended by adding Sections 107.0131, 107.0132, and 107.0133 to read as follows:

Sec. 107.0131. POWERS AND DUTIES OF ATTORNEY AD LITEM FOR PARENT. (a) An attorney ad litem appointed under Section 107.013 to represent the interests of a parent:

(1) shall:

(A) subject to Rules 4.02, 4.03, and 4.04, Texas Disciplinary Rules of Professional Conduct, and within a reasonable time after the appointment, interview:

(i) the parent, unless the parent's location is unknown;

(ii) each person who has significant knowledge of the case; and

(iii) the parties to the suit;

(B) investigate the facts of the case;

(C) to ensure competent representation at hearings, mediations, pretrial matters, and the trial on the merits:

(i) obtain and review copies of all court files in the suit during the attorney ad litem's course of representation; and

(ii) when necessary, conduct formal discovery under the Texas Rules of Civil Procedure or the discovery control plan;

(D) take any action consistent with the parent's interests that the attorney ad litem considers necessary to expedite the proceedings;

(E) encourage settlement and the use of alternative forms of dispute resolution;

(F) review and sign, or decline to sign, a proposed or agreed order affecting the parent;

(G) meet before each court hearing with the parent, unless the court:

(i) finds at that hearing that the attorney ad litem has shown good cause why the attorney ad litem's compliance is not feasible; or

(ii) on a showing of good cause, authorizes the attorney ad litem to comply by conferring with the parent, as appropriate, by telephone or video conference;

(H) become familiar with the American Bar Association's standards of practice for attorneys who represent parents in abuse and neglect cases;

(I) complete at least three hours of continuing legal education relating to child protection law as described by Subsection (b) as soon as practicable after the attorney ad litem is appointed, unless the court finds that the attorney ad litem has experience equivalent to that education; and

(J) abide by the parent's objectives of representation;

(2) must be trained in child protection law or have experience determined by the court to be equivalent to that training; and

(3) is entitled to:

(A) request clarification from the court if the role of the attorney ad litem is ambiguous;

(B) request a hearing or trial on the merits;

(C) consent or refuse to consent to an interview of the parent by another attorney;

(D) receive a copy of each pleading or other paper filed with the court;

(E) receive notice of each hearing in the suit;

(F) participate in any case staffing conducted by the Department of Family and Protective Services in which the parent is invited to participate, including, as appropriate, a case staffing to develop a family plan of service, a family group conference, a permanency conference, a mediation, a case staffing to plan for the discharge and return of the child to the parent, and any other case staffing that the department determines would be appropriate for the parent to attend, but excluding any internal department staffing or staffing between the department and the department's legal representative; and

(G) attend all legal proceedings in the suit.

(b) The continuing legal education required by Subsection (a)(1)(I) must:

(1) be low-cost and available to persons throughout this state, including on the Internet provided through the State Bar of Texas; and

(2) focus on the duties of an attorney ad litem in, and the procedures of and best practices for, a proceeding under Chapter 262 or 263.

Sec. 107.0132. POWERS AND DUTIES OF ATTORNEY AD LITEM FOR ALLEGED FATHER. (a) An attorney ad litem appointed under Section 107.013 to represent the interests of an alleged father shall:

(1) conduct an investigation regarding the petitioner's due diligence in locating the alleged father, including by verifying that the petitioner has obtained a certificate of the results of a search of the paternity registry under Chapter 160;

(2) interview any party or other person who has significant knowledge of the case who may have information relating to the identity or location of the alleged father; and

(3) conduct an independent investigation to identify or locate the alleged father, as applicable.

(b) If the attorney ad litem identifies and locates the alleged father, the attorney ad litem shall:

(1) provide to each party and the court the alleged father's name and address and any other locating information; and

(2) if appropriate, request the court's approval for the attorney ad litem to assist the alleged father in establishing paternity.

(c) If the alleged father is adjudicated to be a parent of the child and is determined by the court to be indigent, the court may appoint the attorney ad litem to continue to represent the father's interests as a parent under Section 107.013(a)(1) or (c).

(d) If the attorney ad litem is unable to identify or locate the alleged father, the attorney ad litem shall submit to the court a written summary of the attorney ad litem's efforts to identify or locate the alleged father with a statement that the attorney ad litem was unable to identify or locate the alleged father.

Sec. 107.0133. DISCIPLINE OF ATTORNEY AD LITEM FOR PARENT OR ALLEGED FATHER. An attorney ad litem appointed for a parent or an alleged father who fails to perform the duties required by Section 107.0131 or 107.0132, as applicable, is subject to disciplinary action under Subchapter E, Chapter 81, Government Code.

SECTION 2. Sections 107.0131, 107.0132, and 107.0133, Family Code, as added by this Act, apply only to an attorney ad litem in a suit affecting the parent-child relationship appointed on or after the effective date of this Act. An attorney ad litem appointed before that date is governed by the law in effect on the date the attorney ad litem was appointed, and the former law is continued in effect for that purpose.

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

The amendment was read.

Senator Harris moved to concur in the House amendment to **SB 1026**.

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

#### **SENATE BILL 789 WITH HOUSE AMENDMENT**

Senator Harris called **SB 789** from the President's table for consideration of the House amendment to the bill.

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

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

Amend **SB 789** (senate engrossment) in SECTION 2 of the bill, in amended Section 85.025(b), Family Code (page 2, line 15), between "order." and "After", by inserting the following:

A person who is the subject of a protective order under Subsection (a-1) that is effective for a period that exceeds two years may file a subsequent motion requesting that the court review the protective order and determine whether there is a continuing need for the order not earlier than the first anniversary of the date on which the court rendered an order on a previous motion by the person under this subsection.

The amendment was read.

Senator Harris moved to concur in the House amendment to **SB 789**.

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

#### **SENATE BILL 17 WITH HOUSE AMENDMENT**

Senator Carona called **SB 17** from the President's table for consideration of the House amendment to the bill.

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

**Amendment**

Amend **SB 17** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to the regulation of residential mortgage loan servicers; providing an administrative penalty.

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

SECTION 1. Subtitle E, Title 3, Finance Code, is amended by adding Chapter 158 to read as follows:

CHAPTER 158. RESIDENTIAL MORTGAGE LOAN SERVICERS  
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 158.001. SHORT TITLE. This chapter may be cited as the Residential Mortgage Loan Servicer Registration Act.

Sec. 158.002. DEFINITIONS. In this chapter:

(1) "Commissioner" means the savings and mortgage lending commissioner.

(2) "Finance commission" means the Finance Commission of Texas.

(3) "Person" means an individual, corporation, company, limited liability company, partnership, or association.

(4) "Registrant" means a person registered under this chapter.

(5) "Residential mortgage loan" means a loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or on residential real estate.

(6) "Residential mortgage loan servicer" means a person who:

(A) receives scheduled payments from a borrower under the terms of a residential mortgage loan, including amounts for escrow accounts; and

(B) makes the payments of principal and interest to the owner of the loan or other third party and makes any other payments with respect to the amounts received from the borrower as may be required under the terms of the servicing loan document or servicing contract.

(7) "Residential real estate" means real property located in this state on which a dwelling designed for occupancy for one to four families is constructed or intended to be constructed.

Sec. 158.003. PURPOSE; RULES. (a) The purpose of this chapter is to provide regulatory authority to ensure that residential mortgage loan servicers registered under this chapter comply with federal and state laws, rules, and regulations.

(b) The finance commission may adopt and enforce rules necessary for the purposes of or to ensure compliance with this chapter.

(c) The finance commission shall consult with the commissioner when proposing and adopting rules under this chapter.

[Sections 158.004-158.050 reserved for expansion]

SUBCHAPTER B. REGISTRATION OF RESIDENTIAL MORTGAGE LOAN  
SERVICERS

Sec. 158.051. REGISTRATION REQUIRED. A person may not act as a residential mortgage loan servicer, directly or indirectly, for a residential mortgage loan secured by a lien on residential real estate in this state unless the person is registered under this chapter or is exempt under Section 158.052.

Sec. 158.052. EXEMPTIONS; APPLICABILITY. (a) This chapter does not require registration by:

(1) a federal or state depository institution, or a subsidiary or affiliate of a federal or state depository institution;

(2) a person registered under Chapter 157;

(3) a person licensed under Chapter 342 or regulated under Chapter 343, if the person does not act as a residential mortgage loan servicer servicing first-lien secured loans; or

(4) a person making a residential mortgage loan with the person's own funds, or to secure all or a portion of the purchase price of real property sold by that person.

(b) This chapter applies only to a residential mortgage loan servicer that services at least one residential mortgage loan.

(c) Nothing in this chapter permits a person who is not otherwise exempt from this chapter to act as a residential mortgage loan originator, as defined by Section 180.002, without obtaining a license under the applicable provisions of law.

Sec. 158.053. APPLICATION FOR REGISTRATION; FEE. (a) To register under this chapter, a residential mortgage loan servicer shall file with the commissioner an application for registration that must:

(1) be in writing;

(2) be under oath;

(3) be in the form prescribed by the commissioner; and

(4) contain:

(A) the name and the address of the principal place of business of the applicant; and

(B) the name, title, and address of the person authorized by the applicant to respond to complaints.

(b) At the time of making application, the applicant shall pay to the commissioner a registration fee in an amount not to exceed \$500 as determined by the finance commission.

(c) An applicant is not required to pay a registration fee under Subsection (b) if the applicant:

(1) collects delinquent consumer debts owed on residential mortgage loans;

(2) does not own the residential mortgage loans for which the applicant acts as a residential mortgage loan servicer; and

(3) is a third-party debt collector that has filed a bond in compliance with Chapter 392.

Sec. 158.054. UPDATE OF REGISTRATION. A registrant shall notify the commissioner of a change in any of the information provided in the registration application not later than the 30th day after the date the information changes.

Sec. 158.055. BOND. (a) Before approval of the registration, an applicant for registration under this chapter shall file with the commissioner, and shall keep in force while the registration remains in effect, a surety bond meeting the requirements of this section or, if a surety bond is not available to the applicant from a surety company authorized to do business in this state, other collateral of like kind as determined by the commissioner.

(b) The bond must be:

(1) in an amount not to exceed \$200,000, except as provided by Subsection (c); and

(2) payable to the commissioner.

(c) This subsection applies only to an applicant who services only residential mortgage loans secured by unimproved residential real estate or services only residential mortgage loans secured by foreclosed property with a dwelling, or both. If sales of the property described by this subsection do not exceed \$1 million annually, the bond for an applicant described by this section must be in an amount not to exceed \$25,000.

(d) If a registrant fails to comply with a final order of the commissioner, the commissioner may make a claim on the bond to recover and pay a consumer the amount to which the consumer was entitled under the commissioner's order.

(e) When an action is commenced on a registrant's bond, the commissioner may require the filing of a new acceptable bond. Immediately on recovery on any action on the bond, the registrant shall file a new bond.

(f) The bond procedures established by this section are created to specifically exclude the participation of registrants in the recovery fund established under Chapter 156.

(g) The finance commission may adopt rules establishing the terms and conditions of the surety bond and the qualifications of the surety.

(h) A registrant is not required to file a bond under this chapter if the registrant:

(1) collects delinquent consumer debts owed on residential mortgage loans;

(2) does not own the residential mortgage loans for which the registrant acts as a residential mortgage loan servicer; and

(3) is a third-party debt collector that has filed a bond in compliance with Chapter 392.

Sec. 158.056. APPROVAL OF REGISTRATION. The commissioner shall approve an application for registration under this chapter on the applicant's payment of the required fees and the commissioner's approval of the surety bond.

Sec. 158.057. NOTICE OF CHANGE OF REGISTRANT'S CONDITION.

(a) A registrant shall notify the commissioner in writing not later than the 10th day after:

(1) the filing for bankruptcy or reorganization of the registrant;

(2) the filing of a criminal indictment related in any manner to the registrant's activities; or

(3) the receipt of notification of the issuance of a final order to cease and desist, a final order of the suspension or revocation of a license or registration, or another final formal or informal regulatory action taken against the registrant in this or another state.

(b) The notification required by Subsection (a)(3) must include the reasons for a final regulatory action described by that subdivision.

Sec. 158.058. RENEWAL OF REGISTRATION. (a) On or before December 31 of each year, a registrant shall renew its registration for the next calendar year and shall pay to the commissioner a renewal fee in an amount not to exceed \$500 as determined by the finance commission. To renew a registration, a registrant must continue to meet all standards for registration provided by this chapter.

(b) If a registrant fails to file a renewal and pay the renewal fee on or before December 31 of a calendar year, the registrant's registration is considered expired at that time and the registrant:

(1) must reapply for registration as provided by Section 158.053; and

(2) may not conduct business as a residential mortgage loan servicer until the registration is approved.

(c) The commissioner may refuse to renew a registration if the registrant:

(1) has failed to pay any fees or penalties imposed under this chapter;

(2) has failed to provide the surety bond required under this chapter; or

(3) is not in compliance with any final order of the commissioner.

Sec. 158.059. REVOCATION OF REGISTRATION. The commissioner may, after notice and hearing, revoke a registration under this chapter if:

(1) the registrant fails or refuses to comply with the commissioner's written request for a response to a complaint;

(2) the commissioner determines that the registrant has engaged in an intentional course of conduct to violate federal or state law or has engaged in an intentional course of conduct that constitutes fraudulent, deceptive, or dishonest dealings; or

(3) the registrant is not in compliance with any final order of the commissioner.

Sec. 158.060. APPEAL OF CERTAIN COMMISSIONER ACTIONS. The denial, nonrenewal, or revocation by the commissioner of a registration under this chapter and the appeal of that action are governed by Chapter 2001, Government Code.

[Sections 158.061-158.100 reserved for expansion]

### SUBCHAPTER C. INVESTIGATIONS, COMPLAINTS, AND ACTIONS

#### AGAINST REGISTRANT

Sec. 158.101. DISCLOSURE STATEMENT. A registrant shall provide to the borrower of each residential mortgage loan the following notice not later than the 30th day after the registrant commences servicing the loan:

"COMPLAINTS REGARDING THE SERVICING OF YOUR MORTGAGE SHOULD BE SENT TO THE DEPARTMENT OF SAVINGS AND MORTGAGE LENDING, \_\_\_\_\_ (street address of the Department

of Savings and Mortgage Lending). A TOLL-FREE CONSUMER HOTLINE IS AVAILABLE AT \_\_\_\_\_ (telephone number of the Department of Savings and Mortgage Lending's toll-free consumer hotline)."

Sec. 158.102. INVESTIGATION OF COMPLAINTS AGAINST REGISTRANT; SURCHARGE. (a) On receipt of a signed written complaint concerning a registrant by the Department of Savings and Mortgage Lending, the commissioner or the commissioner's designee:

(1) shall notify the representative designated by the registrant in the registration application in writing of the complaint and provide a copy of the complaint to the representative;

(2) may conduct an investigation with authority to access, receive, and use in the investigation any books, accounts, records, files, documents, information, or other evidence; and

(3) may request that the registrant provide documentary and other evidence considered by the commissioner necessary to effectively evaluate the complaint, including correspondence, loan documents, and disclosures.

(b) A registrant shall promptly provide any evidence requested by the commissioner.

(c) Information obtained by the commissioner during an investigation is confidential unless disclosure of the information is permitted or required by other law or court order. The commissioner may share information gathered during an investigation with any state or federal agency.

(d) In addition to the registration fee, the finance commission by rule may impose a complaint investigation fee on a registrant based on the costs incurred by the Department of Savings and Mortgage Lending resulting from the investigation of complaints against the registrant.

Sec. 158.103. ACTION ON COMPLAINT. (a) If, after conducting an investigation, the commissioner determines that the registrant has violated this chapter or another applicable law, the commissioner may do one or more of the following:

(1) issue an order to the registrant to resolve the complaint by paying to the consumer the damages to which the consumer would be entitled under law; or

(2) order the registrant to cease and desist from the actions found to be in violation of law.

(b) A registrant may appeal an order issued under this section. The appeal is a contested case governed by Chapter 2001, Government Code.

Sec. 158.104. MULTI-STATE EXAMINATION AUTHORITY. To ensure that residential mortgage loan servicers to whom this chapter applies operate in this state in compliance with this chapter and with other law in accordance with this chapter, the commissioner or the commissioner's designee may participate in multi-state mortgage examinations as scheduled by the Conference of State Bank Supervisors Multi-State Mortgage Committee in accordance with the Conference of State Bank Supervisors protocol for such examinations.

Sec. 158.105. CEASE AND DESIST ORDER. (a) If the commissioner has reasonable cause to believe that a person who is not registered or exempt under this chapter has engaged, or is about to engage, in an act or practice for which registration

is required under this chapter, the commissioner may issue without notice and hearing an order to cease and desist from continuing a particular action or an order to take affirmative action, or both, to enforce compliance with this chapter.

(b) An order issued under Subsection (a) must contain a reasonably detailed statement of the facts on which the order is issued.

(c) If, not later than the 30th day after the date an order is issued under this section, the person against whom the order is made requests a hearing, the commissioner shall set and give notice of a hearing before the commissioner or a hearings officer. The hearing shall be governed by Chapter 2001, Government Code.

(d) If a hearing is not requested under Subsection (c) not later than the 30th day after the date the order is issued, the order is considered final and not appealable.

(e) The commissioner, after giving notice, may impose against a person who violates a cease and desist order an administrative penalty in an amount not to exceed \$2,500 for each day of the violation. In addition to any other remedy provided by law, the commissioner may institute in district court a suit for injunctive relief and to collect the administrative penalty. A bond is not required of the commissioner with respect to injunctive relief granted under this subsection.

Sec. 158.106. RESTITUTION. The commissioner may order a residential mortgage loan servicer to pay to a complainant any compensation received by the servicer in a violation cited by the commissioner in a final order.

SECTION 2. Subdivision (4), Section 157.002, Finance Code, is amended to read as follows:

(4) "Mortgage banker" means a person who:

(A) accepts an application for a residential mortgage loan, ~~or~~ makes a residential mortgage loan, or services residential mortgage loans; and

(B) is an approved or authorized:

(i) mortgagee with direct endorsement underwriting authority granted by the United States Department of Housing and Urban Development;

(ii) seller or servicer of the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation; or

(iii) issuer for the Government National Mortgage Association.

SECTION 3. Section 157.003, Finance Code, is amended by adding Subsection (f) to read as follows:

(f) A mortgage banker that services residential mortgage loans must indicate in its registration that it acts as a residential mortgage loan servicer.

SECTION 4. Section 157.007, Finance Code, is amended to read as follows:

Sec. 157.007. DISCLOSURE STATEMENT. (a) A mortgage banker shall include the following notice to a residential mortgage loan applicant with an application for a residential mortgage loan:

"COMPLAINTS REGARDING MORTGAGE BANKERS SHOULD BE SENT TO THE DEPARTMENT OF SAVINGS AND MORTGAGE LENDING, \_\_\_\_\_ (street address of the Department of Savings and Mortgage Lending). A TOLL-FREE CONSUMER HOTLINE IS AVAILABLE AT \_\_\_\_\_ (telephone number of the Department of Savings and Mortgage Lending's toll-free consumer hotline)."

(b) A mortgage banker that indicates in its registration that it acts as a residential mortgage loan servicer shall provide to the borrower of each residential mortgage loan it services the following notice not later than the 30th day after the date the mortgage banker commences servicing the loan:

"COMPLAINTS REGARDING THE SERVICING OF YOUR MORTGAGE SHOULD BE SENT TO THE DEPARTMENT OF SAVINGS AND MORTGAGE LENDING, \_\_\_\_\_ (street address of the Department of Savings and Mortgage Lending). A TOLL-FREE CONSUMER HOTLINE IS AVAILABLE AT \_\_\_\_\_ (telephone number of the Department of Savings and Mortgage Lending's toll-free consumer hotline)."

SECTION 5. Chapter 157, Finance Code, is amended by adding Section 157.0211 to read as follows:

Sec. 157.0211. MULTI-STATE EXAMINATION AUTHORITY OF RESIDENTIAL MORTGAGE LOAN SERVICER. To ensure that mortgage bankers that act as residential mortgage loan servicers operate in this state in compliance with this chapter and with other law in accordance with this chapter, the commissioner or the commissioner's designee may participate in multi-state mortgage examinations as scheduled by the Conference of State Bank Supervisors Multi-State Mortgage Committee in accordance with the Conference of State Bank Supervisors protocol for such examinations.

SECTION 6. This Act takes effect September 1, 2011.

The amendment was read.

Senator Carona moved to concur in the House amendment to **SB 17**.

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

### **SENATE BILL 1910 WITH HOUSE AMENDMENT**

Senator Rodriguez called **SB 1910** from the President's table for consideration of the House amendment to the bill.

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

#### **Amendment**

Amend **SB 1910** by substituting in lieu thereof the following:

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

relating to the delay of the transition to competition in the Western Electricity Coordinating Council service area and to net metering and energy efficiency goals and programs for utilities in that area.

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

SECTION 1. Chapter 39, Utilities Code, is amended by adding Subchapter L to read as follows:

#### SUBCHAPTER L. TRANSITION TO COMPETITION AND OTHER PROVISIONS FOR CERTAIN AREAS OUTSIDE OF ERCOT

Sec. 39.551. APPLICABILITY. (a) This subchapter applies only to an investor-owned electric utility:

(1) that is operating solely outside of ERCOT in areas of this state that were included in the Western Electricity Coordinating Council on January 1, 2011;

(2) that was not affiliated with ERCOT on January 1, 2011; and

(3) to which Subchapters I, J, and K do not apply.

(b) The legislature finds that an electric utility subject to this subchapter is unable at this time to offer fair competition and reliable service to all retail customer classes in the area served by the utility. As a result, the introduction of retail competition for such an electric utility is delayed until fair competition and reliable service are available to all retail customer classes as determined under this subchapter.

Sec. 39.552. COST-OF-SERVICE REGULATION. (a) Until the date on which an electric utility subject to this subchapter is authorized by the commission under Section 39.553(f) to implement retail customer choice, the rates of the utility are subject to regulation under Chapter 36.

(b) Until the date on which an electric utility subject to this subchapter implements customer choice, the provisions of this chapter, other than this subchapter and Sections 39.904 and 39.905, do not apply to that utility.

Sec. 39.553. TRANSITION TO COMPETITION. (a) The events prescribed by Subsections (b)-(f) shall be followed to introduce retail competition in the service area of an electric utility subject to this subchapter. The commission shall ensure that the listed items in each stage are completed before the next stage is initiated. Unless stated otherwise, the commission shall conduct each activity with the electric utility and other interested parties. The commission may modify the sequence of events required by Subsections (b)-(e), but not the substance of the requirements, if the commission finds good cause to do so. Full retail competition may not begin in the service area of an electric utility subject to this subchapter until all actions prescribed by those subsections are completed.

(b) The first stage for the transition to competition consists of the following activities:

(1) approval of a regional transmission organization by the Federal Energy Regulatory Commission for the power region that includes the electric utility's service area and commencement of independent operation of the transmission network under the approved regional transmission organization;

(2) development of retail market protocols to facilitate retail competition;  
and

(3) completion of an expedited proceeding to develop nonbypassable delivery rates for the customer choice pilot project to be implemented under Subsection (c)(1).

(c) The second stage for the transition to competition consists of the following activities:

(1) initiation of the customer choice pilot project in accordance with Section 39.104;

(2) development of a balancing energy market, a market for ancillary services, and a market-based congestion management system for the wholesale market in the power region in which the regional transmission organization operates; and

(3) implementation of a seams agreement with adjacent power regions to reduce barriers to entry and facilitate competition.

(d) The third stage for the transition to competition consists of the following activities:

(1) the electric utility filing with the commission:

(A) an application for business separation in accordance with Section 39.051;

(B) an application for unbundled transmission and distribution rates in accordance with Section 39.201;

(C) an application for certification of a qualified power region in accordance with Section 39.152; and

(D) an application for price-to-beat rates in accordance with Section 39.202;

(2) the commission:

(A) approving a business separation plan for the utility;

(B) setting unbundled transmission and distribution rates for the utility;

(C) certifying a qualified power region, which includes conducting a formal evaluation of wholesale market power in the region, in accordance with Section 39.152;

(D) setting price-to-beat rates for the utility; and

(E) determining which competitive energy services must be separated from regulated utility activities in accordance with Section 39.051; and

(3) completion of the testing of retail and wholesale systems, including those systems necessary for switching customers to the retail electric provider of their choice and for settlement of wholesale market transactions, by the regional transmission organization, the registration agent, and market participants.

(e) The fourth stage for the transition to competition consists of the following activities:

(1) commission evaluation of the results of the pilot project;

(2) initiation by the electric utility of a capacity auction in accordance with Section 39.153 at a time to be determined by the commission; and

(3) separation by the utility of competitive energy services from its regulated utility activities, in accordance with the commission order approving the separation of competitive energy services.

(f) The fifth stage for the transition to competition consists of the following activities:

(1) evaluation by the commission of whether the electric utility can offer fair competition and reliable service to all retail customer classes in the area served by the utility, and:

(A) if the commission concludes that the electric utility can offer fair competition and reliable service to all retail customer classes in the area served by the utility, the commission issuing an order initiating retail competition for the utility; and

(B) if the commission determines that the electric utility cannot offer fair competition and reliable service to all retail customer classes in the area served by the utility, the commission issuing an order further delaying retail competition for the utility; and

(2) on the issuance of an order from the commission initiating retail competition for the utility, completion by the utility of the business separation and unbundling in accordance with the commission order approving the unbundling.

Sec. 39.554. INTERCONNECTION OF DISTRIBUTED RENEWABLE GENERATION. (a) In this section:

(1) "Distributed renewable generation" has the meaning assigned by Section 39.916.

(2) "Distributed renewable generation owner" means an owner of distributed renewable generation that is a retail electric customer.

(3) "Interconnection" has the meaning assigned by Section 39.916.

(b) A distributed renewable generation owner in the service area of an electric utility subject to this subchapter may request interconnection by filing an application for interconnection with the utility. An application for interconnection is subject to the utility's safety and reliability requirements. The utility's procedures for the submission and processing of an application for interconnection shall be consistent with rules adopted by the commission regarding interconnection.

(c) An electric utility that approves an application of a distributed renewable generation owner under Subsection (b):

(1) shall install, maintain, and retain ownership of the meter and metering equipment; and

(2) may install load research metering equipment on the premises of the owner, at no expense to the owner.

(d) At the request of an electric utility that approves an application of a distributed renewable generation owner under Subsection (b), the owner shall:

(1) provide and install a meter socket, a metering cabinet, or both a socket and cabinet at a location designated by the utility on the premises of the owner; and

(2) provide, at no expense to the utility, a suitable location for the utility to install meters and equipment associated with billing and load research.

(e) An electric utility that approves an application of a distributed renewable generation owner under Subsection (b) shall provide to the owner the metering options described by Section 39.916(f) and an option to interconnect with the utility through a single meter that runs forward and backward if:

(1) the owner:

(A) intends to interconnect the distributed renewable generation at an apartment house, as defined by Section 184.011, occupied by low-income elderly tenants that qualifies for master metering under Section 184.012(b) and the distributed renewable generation is reasonably expected to generate not less than 50 percent of the apartment house's annual electricity use; or

(B) has a qualifying facility with a design capacity of not more than 50 kilowatts; and

(2) the distributed renewable generation or qualifying facility that is the subject of the application is rated to produce an amount of electricity that is less than or equal to:

(A) the owner's estimated annual kilowatt hour consumption for a new apartment house or qualifying facility; or

(B) the amount of electricity the owner consumed in the year before installation of the distributed renewable generation or qualifying facility.

(f) For a distributed renewable generation owner that chooses interconnection through a single meter under Subsection (e):

(1) the amount of electricity the owner generates through distributed renewable generation or a qualifying facility for a given billing period offsets the owner's consumption for that billing period; and

(2) any electricity the owner generates through distributed renewable generation or a qualifying facility that exceeds the owner's consumption for a given billing period shall be credited to the owner under Subsection (g).

(g) An electric utility that purchases surplus electricity under Subsection (f)(2) shall purchase the electricity from the distributed renewable generation owner at the cost of the utility as determined by commission rule. The utility shall take reasonable steps to inform the owner of the amount of surplus electricity purchased from the owner in kilowatt hours during the owner's most recent billing cycle. A credit balance of not more than \$50 on the owner's monthly bill may be carried forward onto the owner's next monthly bill. The utility shall refund to the owner a credit balance that is not carried forward or the portion of a credit balance that exceeds \$50 if the credit balance is carried forward.

(h) In a base rate proceeding or fuel cost recovery proceeding conducted under Chapter 36, the commission shall ensure that any additional cost associated with the metering and payment options described by Subsections (e), (f), and (g) is allocated only to customer classes that include distributed renewable generation owners who have chosen those metering options.

Sec. 39.555. MARKETING OF ENERGY EFFICIENCY AND RENEWABLE ENERGY PROGRAMS. An electric utility subject to this subchapter may market an energy efficiency or renewable energy program directly to a retail electric customer in its service territory and provide rebate or incentive funds directly to a customer to promote or facilitate the success of programs implemented under Section 39.905.

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 Rodriguez moved to concur in the House amendment to **SB 1910**.

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

#### **SENATE BILL 249 WITH HOUSE AMENDMENT**

Senator Estes called **SB 249** from the President's table for consideration of the House amendment to the bill.

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

### Floor Amendment No. 1 on Third Reading

Amend **SB 249** on third reading as follows:

(1) In the recital to SECTION 2 of the bill, strike "Subsections (b) and (c), Section 11.102, Finance Code, are" and substitute "Subsection (b), Section 11.102, Finance Code, is".

(2) In SECTION 2 of the bill, in amended Section 11.102(b), Finance Code, between "consumer credit executive," and "and one member of", insert "one member of the finance commission must be a motor vehicle seller finance licensee,".

(3) In SECTION 2 of the COMMITTEE SUBSTITUTE 781bill, strike amended Subsection (c), Section 11.102, Finance Code.

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

SECTION \_\_\_\_\_. Subsection (e), Section 11.102, Finance Code, is amended by adding Subdivision (5) to read as follows:

(5) "Motor vehicle seller finance licensee" means a person who:

(A) holds a license issued under Chapter 348;

(B) has had five years' or more experience as a Texas automobile dealer retailing motor vehicles during the seven-year period preceding the person's appointment; and

(C) is a dealer as defined by Section 503.001, Transportation Code.

The amendment was read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 249** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Estes, Chair; Carona, Fraser, Lucio, and Williams.

### SENATE BILL 762 WITH HOUSE AMENDMENTS

Senator Carona called **SB 762** from the President's table for consideration of the House amendments to the bill.

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

### Amendment

Amend **SB 762** by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to the transfer of an ad valorem tax lien; providing for the imposition of an administrative penalty.

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

SECTION 1. Section 32.06, Tax Code, is amended by amending Subsections (a-3), (f-3), and (j) and adding Subsections (e-1) and (e-2) to read as follows:

(a-3) If the property owner has executed an authorization under Subsection (a-2)(2)(B) consenting to a transfer of the tax liens for both the taxes on the property that are not delinquent and taxes on the property that are delinquent, the collector's certification under Subsection (b) may be [collector shall certify] in one document [the transfer of the liens for all the taxes].

(e-1) A transferee of a tax lien may not charge a fee for any expenses arising after closing, including collection costs, except for:

(1) interest expressly authorized under this section;

(2) the fees for filing the release of the tax lien under Subsection (b);

(3) the fee for providing a payoff statement under Subsection (f-3);

(4) the fee for providing information regarding the current balance owed by the property owner under Subsection (g); and

(5) the fees expressly authorized under Section 351.0021, Finance Code.

(e-2) The contract between the property owner and the transferee may provide for interest for default, in addition to the interest permitted under Subsection (e), if any part of the installment remains unpaid after the 10th day after the date the installment is due, including Sundays and holidays. The additional interest may not exceed five cents for each \$1 of a scheduled installment.

(f-3) Notwithstanding any contractual agreement with the property owner, the transferee of a tax lien must provide the payoff information required by this section to the greatest extent permitted by 15 U.S.C. Section 6802 and 12 C.F.R. Part 216. The payoff statement must meet the requirements of a payoff statement defined by Section 12.017, Property Code. A transferee may charge a reasonable fee for a payoff statement that is requested after an initial payoff statement is provided. However, a transferee is not required to release payoff information pursuant to a notice under Subsection (f-1) unless the notice contains the information prescribed by the Finance Commission of Texas.

(j) After one year from the date on which a tax lien transferred as provided by this section is recorded in all counties in which the property is located, the transferee of the lien may foreclose the lien in the manner provided by Subsection (c) unless a contract between the holder of the lien and the owner of the property encumbered by the lien provides otherwise. ~~[If a foreclosure suit results in foreclosure of the lien, the transferee is entitled to recover attorney's fees in an amount not to exceed 10 percent of the judgment.]~~ The proceeds of a sale following a judicial foreclosure as provided by this subsection shall be applied first to the payment of court costs, then to payment of the judgment, including accrued interest, and then to the payment of any attorney's fees fixed in the judgment. Any remaining proceeds shall be paid to other holders of liens on the property in the order of their priority and then to the person whose property was sold at the tax sale.

SECTION 2. Section 33.445(b), Tax Code, is amended to read as follows:

(b) In consideration of the payment by the transferee of those taxes and charges, each joined taxing unit shall transfer its tax lien to the transferee in the form and manner provided by Section 32.06(b) and enter its disclaimer in the suit. The transfer of a tax lien under this subsection does not require authorization by the property owner.

SECTION 3. Subchapter A, Chapter 351, Finance Code, is amended by adding Section 351.0021 to read as follows:

Sec. 351.0021. AUTHORIZED CHARGES. (a) The contract between a property tax lender and a property owner may require the property owner to pay the following costs after closing:

(1) a reasonable fee for filing the release of a tax lien authorized under Section 32.06(b), Tax Code;

(2) a reasonable fee for a payoff statement authorized under Section 32.06(f-3), Tax Code;

(3) a reasonable fee for providing information regarding the current balance owed by the property owner authorized under Section 32.06(g), Tax Code;

(4) reasonable and necessary attorney's fees, recording fees, and court costs for actions that are legally required to perform a foreclosure, including fees required to be paid to an official and fees for an attorney ad litem;

(5) to the extent permitted by the United States Bankruptcy Code, attorney's fees and court costs for services performed after the property owner files a voluntary bankruptcy petition;

(6) a reasonable fee for title examination and preparation of an abstract of title by an attorney, a title company, or a property search company authorized to do business in this state;

(7) a processing fee for insufficient funds, as authorized under Section 3.506, Business & Commerce Code;

(8) a fee for collateral protection insurance, as authorized under Chapter 307;

(9) a prepayment penalty, if the lien transferred is on a property other than one owned and used by the owner for personal, family, or household purposes;

(10) recording expenses incurred in connection with a modification necessary to preserve a borrower's ability to avoid a foreclosure proceeding; and

(11) fees for copies of transaction documents requested by the property owner.

(b) Notwithstanding Subsection (a)(11), a property tax lender shall provide a property owner:

(1) one free copy of the transaction documents at closing; and

(2) an additional free copy of the transaction documents on the property owner's request following closing.

(c) A property tax lender may not charge:

(1) any fee, other than interest, after closing in connection with the transfer of a tax lien against property owned and used by the property owner for personal, family, or household purposes unless the fee is expressly authorized under this section; or

(2) any interest that is not expressly authorized under Section 32.06, Tax Code.

(d) Except for charges authorized under Subsections (a)(1), (2), (3), and (11), any amount charged by a property tax lender after closing must be for services performed by a person that is not an employee of the property tax lender.

(e) The finance commission may adopt rules implementing and interpreting this section.

SECTION 4. Section 351.006, Finance Code, is amended to read as follows:

Sec. 351.006. ENFORCEMENT. (a) In addition to any other applicable enforcement provisions, Subchapters E, F, and G, Chapter 14, apply to a violation of this chapter or Section 32.06 or 32.065, Tax Code, in connection with property tax loans.

(b) Notwithstanding Section 14.251, the commissioner may assess an administrative penalty under Subchapter F, Chapter 14, against a person who violates Section 32.06(b-1), Tax Code, regardless of whether the violation is knowing or wilful.

SECTION 5. Section 351.051(a), Finance Code, is amended to read as follows:

(a) A person must hold a license issued under this chapter to:

(1) engage in the business of making, transacting, or negotiating property tax loans; or

(2) contract for, charge, or receive, directly or indirectly, in connection with a property tax loan subject to this chapter, a charge, including interest, compensation, consideration, or another expense, authorized under this chapter or Chapter 32, Tax Code ~~[that in the aggregate exceeds the charges authorized under other law].~~

SECTION 6. The changes in law made by this Act apply only to the transfer of an ad valorem tax lien that occurs on or after the effective date of this Act. A transfer of an ad valorem tax lien that occurs before the effective date of this Act is governed by the law in effect at the time the transfer occurred, and the former law is continued in effect for that purpose.

SECTION 7. This Act takes effect September 1, 2011.

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

Amend **CSSB 762** (house committee printing) as follows:

(1) In the recital to SECTION 1 of the bill, between "(a-3)," and "(f-3)" (page 1, line 6), insert "(d-1),".

(2) In SECTION 1 of the bill, in amended Section 32.06, Tax Code, between amended Subsection (a-3) and added Subsection (e-1) of the section (page 1, between lines 13 and 14), insert the following:

(d-1) A right of rescission described by 12 C.F.R. Section 226.23 applies to a [tax lien] transfer under this section of a tax lien on residential property owned and used by the property owner for personal, family, or household purposes.

(3) In SECTION 1 of the bill, in added Section 32.06(e-2), Tax Code (page 2, lines 7 through 9), strike the last sentence of the subsection and substitute the following:

If the lien transferred is on residential property owned and used by the property owner for personal, family, or household purposes, the additional interest may not exceed five cents for each \$1 of a scheduled installment.

(4) In SECTION 3 of the bill, in added Section 351.0021(a)(4), Finance Code, between "required to" and "perform" (page 4, line 5), insert "respond to a suit filed under Chapter 33, Tax Code, or to".

(5) In SECTION 3 of the bill (page 4, lines 19 through 21), strike added Section 351.0021(a)(9), Finance Code, and substitute the following:

(9) a prepayment penalty, unless the lien transferred is on residential property owned and used by the property owner for personal, family, or household purposes;

(6) In SECTION 3 of the bill, in added Section 351.0021(c)(1), Finance Code (page 5, lines 8 through 10), strike "against property owned and used by the property owner for personal, family, or household purposes".

(7) In SECTION 3 of the bill, in added Section 351.0021(d), Finance Code, between "(3)," and "and" (page 5, line 15), insert "(9),".

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

Amend **CSSB 762** (house committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering the subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. (a) The Finance Commission of Texas shall conduct a study regarding the fees, costs, interest, and other expenses charged to property owners by property tax lenders in conjunction with the transfer of property tax liens and the payoff of loans secured by property tax liens.

(b) Not later than June 1, 2012, the Finance Commission of Texas shall submit to the legislature a report containing the findings of the study conducted under Subsection (a) of this section and any recommendations for legislative changes.

The amendments were read.

Senator Carona moved to concur in the House amendments to **SB 762**.

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

### **SENATE BILL 781 WITH HOUSE AMENDMENTS**

Senator Carona called **SB 781** from the President's table for consideration of the House amendments to the bill.

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

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

Amend **SB 781** (house committee printing), in SECTION 1 of the bill, as follows:

(1) At the end of Subdivision (2), immediately following the semicolon, insert "and".

(2) At the end of Subdivision (3), strike "; and" and substitute ".".

(3) Strike Subdivision (4), repealing Section 3.01, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993.

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

Amend **SB 781** on third reading, as amended on second reading, in SECTION 1 of the bill as follows:

- (1) At the end of Subdivision (2), strike "and".
- (2) At the end of Subdivision (3), strike the period and substitute "; and".
- (3) Immediately following Subdivision (3), insert the following:
  - (4) Section 2059.060, Government Code.

The amendments were read.

Senator Carona moved to concur in the House amendments to **SB 781**.

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

### **SENATE BILL 1124 WITH HOUSE AMENDMENTS**

Senator Carona called **SB 1124** from the President's table for consideration of the House amendments to the bill.

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

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

Amend **SB 1124** (house committee printing) as follows:

(1) In the recital to SECTION 14 of the bill (page 10, line 9), strike "adding Subsection (a-1)" and substitute "adding Subsections (a-1) and (c)".

(2) In SECTION 14 of the bill, following added Section 156.202(a-1), Finance Code (page 13, between lines 20 and 21), insert the following:

(c) The finance commission may grant an exemption from the residential mortgage loan originator licensing requirements of this chapter to a municipality, county, community development corporation, or public or private grant administrator to the extent the entity is administering the Texas HOME Investment Partnerships program if the commission determines that granting the exemption is not inconsistent with the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (Pub. L. No. 110-289).

(3) In SECTION 61 of the bill, following added Section 180.003(b), Finance Code (page 65, after line 27), insert the following:

(c) The finance commission may grant an exemption from the licensing requirements of this chapter to a municipality, county, community development corporation, or public or private grant administrator to the extent the entity is administering the Texas HOME Investment Partnerships program if the commission determines that granting the exemption is not inconsistent with the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (Pub. L. No. 110-289).

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

Amend **SB 1124** on third reading as follows:

(1) Strike the recital to SECTION 14 of the bill, as amended by Amendment No. 1 by Truitt on second reading, and substitute the following:

SECTION 14. Section 156.202, Finance Code, is amended by amending Subsection (a) and adding Subsections (a-1), (a-2), and (c) to read as follows:

(2) In SECTION 14 of the bill, between added Section 156.202(a-1), Finance Code, and added Section 156.202(c), Finance Code, as added by Amendment No. 1 by Truitt on second reading, insert the following:

(a-2) A person is not required to obtain a license or registration under this chapter to originate a loan subject to Chapter 342 or a loan governed by Section 50(a)(6), Article XVI, Texas Constitution, if the person:

- (1) is enrolled in the Nationwide Mortgage Licensing System and Registry;
- (2) is licensed under Chapter 342; and
- (3) makes consumer loans subject to:
  - (A) Subchapter G, Chapter 342; and
  - (B) Subchapter E or F, Chapter 342.

The amendments were read.

Senator Carona moved to concur in the House amendments to **SB 1124**.

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

### **SENATE BILL 479 WITH HOUSE AMENDMENTS**

Senator Estes called **SB 479** from the President's table for consideration of the House amendments to the bill.

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

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

Amend **SB 479** (house committee printing) as follows:

(1) In SECTION 2 of the bill, in the recital (page 1, line 11), strike "Subdivision (2-a)" and substitute "Subdivisions (2-a) and (6-a)".

(2) In SECTION 2 of the bill, in amended Section 87.001(1), Civil Practice and Remedies Code (page 1, line 13), between "riding, handling, training, driving," and "assisting", insert "loading, unloading, transporting,".

(3) In SECTION 2 of the bill, strike added Section 87.001(2-a)(B), Civil Practice and Remedies Code (page 1, line 22), and substitute the following:

(B) a bovine animal;

(4) In SECTION 2 of the bill, in amended Section 87.001(3)(D), Civil Practice and Remedies Code (page 2, line 16), strike "inspecting, or evaluating" and substitute "inspecting, [~~or~~] evaluating, handling, loading, unloading, or transporting".

(5) In SECTION 2 of the bill, in amended Section 87.001(3)(D), Civil Practice and Remedies Code (page 2, line 20), strike "inspect, or evaluate" and substitute "inspect, [~~or~~] evaluate, handle, load, unload, or transport".

(6) In SECTION 2 of the bill, after amended Section 87.001(6), Civil Practice and Remedies Code (page 3, after line 27), insert the following:

(6-a) "Livestock producer" means a person who owns, breeds, raises, or feeds livestock animals.

(7) In SECTION 3 of the bill, in amended Section 87.003, Civil Practice and Remedies Code (page 4, line 15), between "professional," and "livestock", insert "livestock producer".

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

Amend **SB 479** on third reading as follows:

(1) In SECTION 2 of the bill, in amended Section 87.001(1), Civil Practice and Remedies Code, strike "transporting,".

(2) In SECTION 2 of the bill, in amended Section 87.001(3)(D), Civil Practice and Remedies Code, strike "unloading, or transporting" and substitute "or unloading".

(3) In SECTION 2 of the bill, in amended Section 87.001(3)(D), Civil Practice and Remedies Code, strike "unload, or transport" and substitute "or unload".

The amendments were read.

Senator Estes moved to concur in the House amendments to **SB 479**.

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

### **SENATE BILL 1169 WITH HOUSE AMENDMENT**

Senator Carona called **SB 1169** from the President's table for consideration of the House amendment to the bill.

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

#### **Amendment**

Amend **SB 1169** by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to the regulation of providers, administrators, and sellers of service contracts and identity recovery service contracts; providing penalties.

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

#### ARTICLE 1. SERVICE CONTRACTS

SECTION 1.01. Section 1304.002, Occupations Code, is amended by adding Subdivision (8-a) to read as follows:

(8-a) "Seller" means a person, other than the provider or administrator of a service contract, who markets, sells, offers to sell, negotiates, or issues a service contract to a consumer on behalf of a provider, but who is not contractually obligated to a service contract holder under the terms of a service contract.

SECTION 1.02. Chapter 1304, Occupations Code, is amended by adding Subchapter B to read as follows:

#### SUBCHAPTER B. POWERS AND DUTIES OF DEPARTMENT AND COMMISSION

Sec. 1304.052. RULES. The commission shall adopt rules necessary to implement and administer this chapter.

SECTION 1.03. Section 1304.007, Occupations Code, is transferred to Subchapter B, Chapter 1304, Occupations Code, as added by this Act, redesignated as Section 1304.051, Occupations Code, and amended to read as follows:

Sec. 1304.051 [~~1304.007~~]. GENERAL INVESTIGATIVE POWER OF EXECUTIVE DIRECTOR. (a) The executive director may investigate a provider, administrator, seller, or other person as necessary to enforce this chapter and protect service contract holders in this state.

(b) On request of the executive director, a provider shall make the records required by Section 1304.155 available to the executive director as necessary to enable the executive director to reasonably determine compliance with this chapter.

SECTION 1.04. Section 1304.101, Occupations Code, is amended to read as follows:

Sec. 1304.101. REGISTRATION REQUIRED; EXEMPTION FROM OTHER LICENSING REQUIREMENTS. (a) A person may not operate as a provider or administrator of service contracts sold or issued in this state unless the person is registered with the department.

(b) Except for the registration requirement of this chapter [~~subchapter~~], a provider, [~~service contract~~] seller, administrator, or other person who markets, sells, issues, or offers to sell service contracts is exempt from any licensing requirement of this state that relates to an activity regulated under this chapter.

(c) A provider or administrator may not contract with or use the services of a person to perform an activity that requires registration with the department as a provider or administrator unless that person is appropriately registered.

SECTION 1.05. Section 1304.102(c), Occupations Code, is amended to read as follows:

(c) The department may refuse to issue or renew a registration, suspend or revoke a registration, or take any other disciplinary action under Subchapter E if the applicant or a controlling person of the applicant:

(1) has violated this chapter or a rule adopted or order issued by the commission or executive director under this chapter;

(2) has made a material misrepresentation or false statement in an application or in any document accompanying an application;

(3) has had a license issued under Title 13, Insurance Code, revoked as provided by that code; or

(4) has had a license or registration as a provider, administrator, or seller revoked in this state or another state.

SECTION 1.06. Section 1304.1025(a), Occupations Code, is amended to read as follows:

(a) In addition to the requirements of Section 1304.102, an applicant for issuance or renewal of a provider registration must file with the application:

(1) the reimbursement insurance policy, if the provider is using a reimbursement insurance policy to meet the financial security requirements of Section 1304.151; [and]

(2) the financial security deposit and the documentation required by the department demonstrating adequate funding of the reserve account, if the provider is using a funded reserve account and financial security deposit to meet the financial security requirements of Section 1304.151;

(3) the proof necessary to demonstrate the applicant or its parent company maintains at least \$100 million net worth, if the applicant is using net worth to meet the financial security requirements of Section 1304.151; and

(4) information about each controlling person of the applicant [a biographical affidavit,] in a form prescribed by the executive director[; for each controlling person of the provider].

SECTION 1.07. Sections 1304.103(a) and (b), Occupations Code, are amended to read as follows:

(a) The executive director shall develop a tiered schedule of registration and renewal fees under which a provider's fee is based on the number of service contracts the provider sold or issued in this state during the preceding 12-month period.

(b) The commission shall set ~~[the amounts of]~~ fees to cover the costs of administering this chapter, including registration and renewal fees for administrators.

SECTION 1.08. Section 1304.104, Occupations Code, is amended to read as follows:

Sec. 1304.104. INFORMATION CONCERNING NUMBER OF SERVICE CONTRACTS SOLD OR ISSUED. Information concerning the number of service contracts sold or issued by a provider that is submitted under Section 1304.103~~[-~~

~~[(+)]~~ is a trade secret to which Section 552.110, Government Code, applies~~[-~~ and

~~[(2)] may be used only by the executive director and the department in developing the tiered fee schedule under Section 1304.103].~~

SECTION 1.09. The heading to Subchapter D, Chapter 1304, Occupations Code, is amended to read as follows:

SUBCHAPTER D. PRACTICE BY SERVICE CONTRACT PROVIDERS,  
~~[AND]~~ ADMINISTRATORS, AND SELLERS

SECTION 1.10. The heading to Section 1304.151, Occupations Code, is amended to read as follows:

Sec. 1304.151. FINANCIAL SECURITY REQUIREMENTS; DISTRIBUTION OF FUNDS HELD IN TRUST.

SECTION 1.11. Section 1304.151, Occupations Code, is amended by amending Subsections (a) and (b) and adding Subsection (f) to read as follows:

(a) To ensure the faithful performance of a provider's obligations to its service contract holders, each provider must:

(1) insure the provider's service contracts under a reimbursement insurance policy issued by an insurer authorized to transact insurance in this state or by a surplus lines insurer eligible to place coverage in this state under Chapter 981, Insurance Code;

(2) maintain a funded reserve account covering the provider's obligations under its service contracts that are issued and outstanding in this state and place in trust with the executive director a financial security deposit consisting of:

(A) ~~[a surety bond issued by an authorized surety;~~

~~[(B)] securities of the type eligible for deposit by an authorized insurer in this state;~~

~~[(C)] a statutory deposit of cash [or cash equivalents];~~

~~[(D)] [(+)] a letter of credit issued by a qualified financial institution; or~~

~~[(E)] a certificate of deposit issued by a qualified financial institution~~

~~[(F)] another form of security prescribed by rules adopted by the commission]; or~~

(3) maintain, or have a parent company that maintains, a net worth or stockholders' equity of at least \$100 million.

(b) If the provider ensures its obligations under Subsection (a)(2), the amount maintained in the reserve account may not be less than an amount equal to 40 percent of the gross consideration the provider received from consumers from the sale of all service contracts issued and outstanding in this state, minus any claims paid. The executive director may review and examine the reserve account. The amount of the security deposit may not be less than \$250,000. The provider must submit to the

executive director on request a copy of the provider's financial statements that must be prepared in accordance with generally accepted accounting principles, be without qualification as to the going concern status of the provider, and be audited by an independent certified public accountant. The commission by rule may require the provider to submit additional financial reports [the greater of:

(1) \$25,000; or

(2) an amount equal to five percent of the gross consideration the provider received from consumers from the sale of all service contracts issued and outstanding in this state, minus any claims paid].

(f) In the event of a provider's bankruptcy or a similar event affecting the ability of the provider to faithfully perform its obligations to its service contract holders, the executive director may distribute any funds held in trust as financial security for the provider under this section to eligible service contract holders as payment for claims. The executive director must distribute the funds in an equitable and cost-effective manner as determined by the executive director.

SECTION 1.12. Subchapter D, Chapter 1304, Occupations Code, is amended by adding Sections 1304.1521 and 1304.1531 to read as follows:

Sec. 1304.1521. FINANCIAL SECURITY TRANSITION. (a) In this section, "provider that maintained a funded reserve account" means a provider that, in order to ensure the faithful performance of the provider's obligations to service contract holders, maintained a funded reserve account covering the provider's obligations under service contracts that were issued and outstanding in this state and placed in trust with the executive director a financial security deposit consisting of:

(1) a surety bond issued by an authorized surety;

(2) securities of the type eligible for deposit by an authorized insurer in this state;

(3) a statutory deposit of cash or cash equivalents;

(4) a letter of credit issued by a qualified financial institution; or

(5) another form of security prescribed by commission rules.

(b) This section applies only to a provider that maintained a funded reserve account on August 31, 2011.

(c) Not later than September 1, 2012, a provider that maintained a funded reserve account shall submit to the executive director documentation that the provider is in compliance with the financial security requirements provided by Section 1304.151 for service contracts sold or issued in this state on or after September 1, 2012. A provider that maintained a funded reserve account may not sell or issue a service contract on or after September 1, 2012, unless the provider is in compliance with this subsection.

(d) A provider that maintained a funded reserve account shall:

(1) continue to maintain the funded reserve account and security deposit at appropriate levels for service contracts that were sold or issued in this state before September 1, 2012, until the contracts are no longer in effect; or

(2) provide financial security for service contracts sold or issued before September 1, 2012, by complying with the financial security requirements of Section 1304.151.

(e) If a provider provides financial security for service contracts sold or issued before September 1, 2012, by complying with the financial security requirements of Section 1304.151, the provider shall give to the executive director satisfactory documentation that the reimbursement insurance policy, funded reserve account and security deposit, or net worth covers all outstanding service contracts issued before September 1, 2012.

(f) A service contract that is sold or issued before September 1, 2012, and is covered under a funded reserve account and security deposit may not be extended or renewed at the end of the service contract term unless the provider provides financial security for those service contracts by complying with the financial security requirements of Section 1304.151 before the extension or renewal.

Sec. 1304.1531. SERVICE CONTRACT SELLERS; RESPONSIBILITIES.

(a) A provider may employ or contract with a seller to be responsible for:

(1) all or any part of the sale or marketing of service contracts for the provider; and

(2) compliance with this chapter in connection with the sale or marketing of service contracts.

(b) The hiring of or contracting with a seller under this section does not affect a provider's responsibility to comply with this chapter.

(c) Unless registered as a provider or administrator, a seller is prohibited from engaging in activities that would require registration as a provider or administrator.

(d) A seller shall process a service contract application and a payment from a consumer in accordance with this chapter and with any sales agreement or contract between the provider and the seller.

SECTION 1.13. Sections 1304.156(a), (b), and (d), Occupations Code, are amended to read as follows:

(a) A service contract marketed, sold, offered for sale, issued, made, proposed to be made, or administered in this state must:

(1) be written, printed, or typed in clear, understandable language that is easy to read;

(2) state the name and address of the provider;

(3) state the purchase price of the contract and the terms under which the contract is sold;

(4) state the terms and restrictions governing cancellation of the contract by the provider or the service contract holder before the expiration date of the contract;

(5) identify:

(A) any administrator and any registration number issued to the administrator under this chapter;

(B) the ~~contract~~ seller; and

(C) the service contract holder, if the service contract holder provides the holder's name;

(6) state the amount of any deductible;

(7) specify the products and services to be provided under the contract and any limitation, exception, or exclusion;

(8) specify any restriction governing the transferability of the contract;

(9) state the duties of the service contract holder, including any duty to protect against any further damage and any requirement to follow the instructions in the owner's manual; and

(10) state whether the contract provides for or excludes consequential damages or preexisting conditions, if applicable.

(b) The identity and, if applicable, registration number issued under this chapter of a person described by Subsection (a)(5) is not required to be preprinted on the service contract and may be added to the contract at the time of sale.

(d) A service contract insured under a reimbursement insurance policy under Section 1304.152 ~~[1304.151(a)(1)]~~ must:

(1) state the name and address of the insurer;

(2) state that the service contract holder may apply for reimbursement directly to the insurer if:

(A) a covered service is not provided to the service contract holder by the provider before the 61st ~~[not later than the 60th]~~ day after the date of proof of loss; or

(B) a refund or credit is not paid before the 46th day after the date on which the contract is canceled ~~[returned to the provider]~~ under Section 1304.1581 ~~[1304.158]~~; and

(3) contain a statement substantially similar to the following: "Obligations of the provider under this service contract are insured under a service contract reimbursement insurance policy."

SECTION 1.14. Subchapter D, Chapter 1304, Occupations Code, is amended by adding Section 1304.1581 to read as follows:

Sec. 1304.1581. CANCELLATION BY SERVICE CONTRACT HOLDER; REFUND. (a) A service contract must allow the service contract holder to cancel the service contract at any time.

(b) If a service contract holder cancels a service contract before the 31st day after the date of purchase, the provider:

(1) shall refund to the service contract holder or credit to the account of the service contract holder the full purchase price of the contract, decreased by the amount of any claims paid under the contract; and

(2) may not impose a cancellation fee.

(c) If a service contract holder cancels a service contract on or after the 31st day after the date of purchase, the provider:

(1) shall refund to the service contract holder or credit to the account of the service contract holder the prorated purchase price of the contract reflecting the remaining term of the contract, based on mileage, time, or another reasonably applicable measure of the remaining term that must be disclosed in the contract, decreased by the amount of any claims paid under the contract; and

(2) may impose a reasonable cancellation fee not to exceed \$50.

(d) A provider may allow a service contract holder to cancel a service contract on other terms included in the contract, provided the terms do not conflict with this section.

(e) A provider who does not pay the refund or credit the service contract holder's account before the 46th day after the date notice of cancellation is received by the provider is liable to the service contract holder for a penalty for each month an amount remains outstanding equal to 10 percent of the amount outstanding. The penalty is in addition to the full or prorated purchase price of the contract that is owed to the service contract holder under this section or the terms of the contract.

(f) The right to cancel a service contract is not transferable to a subsequent holder of the contract.

SECTION 1.15. The heading to Section 1304.159, Occupations Code, is amended to read as follows:

Sec. 1304.159. CANCELLATION BY PROVIDER; REFUND [~~CANCELING A SERVICE CONTRACT~~].

SECTION 1.16. Section 1304.159, Occupations Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) The provider is not required to provide prior notice of cancellation if the service contract is canceled because of:

- (1) nonpayment of the consideration for the contract;
- (2) fraud or a material misrepresentation by the service contract holder to the provider or the provider's administrator; or
- (3) a substantial breach of a duty by the service contract holder relating to the covered product or its use.

(c) A service contract holder whose contract is canceled by the provider in accordance with this section is entitled to a prorated refund of the purchase price of the contract reflecting the remaining term of the contract, based on mileage, time, or another reasonably applicable measure of the remaining term that must be disclosed in the contract, decreased by the amount of any claims paid under the contract. A provider who cancels a contract under this section may not impose a cancellation fee.

SECTION 1.17. Section 1304.161, Occupations Code, is amended to read as follows:

Sec. 1304.161. [~~MISLEADING STATEMENTS~~] PROHIBITED ACTS. (a) A provider, administrator, seller, or other ~~[or the provider's]~~ representative of the provider may not, in the provider's service contracts or literature or in any written communication:

- (1) make, permit, or cause to be made any false, deceptive, or misleading statement; or
- (2) deliberately omit a material statement if the omission would be considered misleading.

(b) A person, including a bank, a savings and loan association, a lending institution, or the manufacturer or seller of a product, may not require the purchase of a service contract as a condition of a loan or the sale of property.

(c) A provider, administrator, seller, or other representative of the provider may not make a telemarketing call to a consumer as provided by Sections 304.002 and 304.003, Business & Commerce Code, unless the provider, administrator, seller, or representative has an established business relationship, as defined by Section 304.002, Business & Commerce Code, with the consumer.

SECTION 1.18. Section 1304.201, Occupations Code, is amended to read as follows:

Sec. 1304.201. DISCIPLINARY ACTION. ~~[(a)]~~ On a finding that a ground for disciplinary action exists under this chapter, the commission or executive director may impose an administrative sanction or ~~or, including an~~ administrative penalty or seek a civil penalty or any other remedy as provided by this chapter and [Subchapter F,] Chapter 51.

SECTION 1.19. Subchapter E, Chapter 1304, Occupations Code, is amended by adding Section 1304.205 to read as follows:

Sec. 1304.205. REMEDY FOR SERVICE CONTRACT HOLDERS. (a) If the commission by order, including an agreed order, determines that a person has operated as a provider or administrator in this state without holding the appropriate registration under this chapter, the person shall offer to a service contract holder who holds a service contract sold or issued by the person during the period that the person was not registered under this chapter the right to:

(1) cancel the contract and obtain a refund of the full purchase price of the contract; or

(2) retain the contract.

(b) If a seller fails to process a service contract application or a payment from a consumer in accordance with this chapter and any sales agreement or contract between the provider and the seller, the commission or executive director may, by commission order, including an agreed order, require the seller to refund the full purchase price of the contract to the consumer.

(c) The remedies described in this section are in addition to any administrative penalty, administrative sanction, civil penalty, or other disciplinary or enforcement action sought under this chapter or Chapter 51.

SECTION 1.20. (a) On the effective date of this Act, the following provisions of the Occupations Code are repealed:

(1) Section 1304.006; and

(2) Section 1304.102(d).

(b) On January 1, 2012, the following provisions of the Occupations Code are repealed:

(1) Section 1304.157; and

(2) Section 1304.158.

SECTION 1.21. (a) Not later than April 1, 2012, the Texas Commission of Licensing and Regulation shall adopt rules necessary to implement Chapter 1304, Occupations Code, as amended by this Act.

(b) Sections 1304.102 and 1304.1025, Occupations Code, as amended by this Act, apply only to an application for a registration or renewal of a registration filed with the Texas Department of Licensing and Regulation on or after the effective date of this Act. An application filed before that date is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

(c) Sections 1304.156 and 1304.159, Occupations Code, as amended by this Act, and Section 1304.1581, Occupations Code, as added by this Act, apply only to a service contract sold or issued on or after January 1, 2012. A service contract sold or issued before that date is governed by the law in effect on the date the contract was sold or issued, and the former law is continued in effect for that purpose.

(d) Notwithstanding Subsection (c) of this section, a service contract sold or issued before January 1, 2012, may not be extended or renewed at the end of the service contract term unless the contract complies with Sections 1304.156 and 1304.159, Occupations Code, as amended by this Act, and Section 1304.1581, Occupations Code, as added by this Act.

(e) Section 1304.201, Occupations Code, as amended by this Act, applies only to a disciplinary action initiated by the Texas Department of Licensing and Regulation on or after the effective date of this Act. An action initiated before the effective date of this Act is governed by the law in effect on the date the action was initiated, and the former law is continued in effect for that purpose.

(f) Section 1304.205, Occupations Code, as added by this Act, applies only to an act or omission of a person operating as a provider, administrator, or seller of a service contract that occurs on or after the effective date of this Act. An act or omission that occurs before that date is governed by the law in effect on the date the act or omission occurred, and the former law is continued in effect for that purpose.

## ARTICLE 2. IDENTITY RECOVERY SERVICE CONTRACTS

SECTION 2.01. Section 1306.002, Occupations Code, is amended by adding Subdivision (11) to read as follows:

(11) "Seller" means a person, other than the provider or administrator of an identity recovery service contract, who markets, sells, offers to sell, negotiates, or issues an identity recovery service contract to a consumer on behalf of a provider, but who is not contractually obligated to a service contract holder under the terms of an identity recovery service contract.

SECTION 2.02. Chapter 1306, Occupations Code, is amended by adding Subchapter A-1 to read as follows:

### SUBCHAPTER A-1. POWERS AND DUTIES OF DEPARTMENT AND COMMISSION

Sec. 1306.022. RULES. The commission shall adopt rules necessary to implement and administer this chapter.

SECTION 2.03. Section 1306.008, Occupations Code, is transferred to Subchapter A-1, Chapter 1306, Occupations Code, as added by this Act, redesignated as Section 1306.021, Occupations Code, and amended to read as follows:

Sec. 1306.021 [~~1306.008~~]. GENERAL INVESTIGATIVE POWER OF EXECUTIVE DIRECTOR. (a) The executive director may investigate a provider, administrator, seller, or other person as necessary to enforce this chapter and protect identity recovery service contract holders in this state.

(b) On request of the executive director, a provider shall make the records required by Section 1306.105 available to the executive director as necessary to enable the executive director to reasonably determine compliance with this chapter.

SECTION 2.04. Section 1306.051, Occupations Code, is amended by amending Subsections (a) and (b) and adding Subsection (d) to read as follows:

(a) A person may not operate as a provider or administrator of identity recovery service contracts sold or issued in this state unless the person is registered with the department.

(b) Except for the registration requirement of this chapter [~~subchapter~~], a provider, [~~identity recovery service contract~~] seller, administrator, or other person who markets, sells, issues, or offers to sell identity recovery service contracts is exempt from any licensing requirement of this state that relates to an activity regulated under this chapter.

(d) A provider or administrator may not contract with or use the services of a person to perform an activity that requires registration with the department as a provider or administrator unless that person is appropriately registered.

SECTION 2.05. Section 1306.052(c), Occupations Code, is amended to read as follows:

(c) The department may refuse to issue or renew a registration, suspend or revoke a registration, or take any other disciplinary action under Subchapter D if the applicant or a controlling person of the applicant:

(1) has violated this chapter or a rule adopted or order issued by the commission or executive director under this chapter;

(2) has made a material misrepresentation or false statement in an application or in any document accompanying an application;

(3) has had a license issued under Title 13, Insurance Code, revoked as provided by that code; or

(4) has had a license or registration as a provider, administrator, or seller revoked in this state or another state.

SECTION 2.06. Section 1306.053(a), Occupations Code, is amended to read as follows:

(a) In addition to the requirements of Section 1306.052, an applicant for issuance or renewal of a provider registration must file with the application:

(1) the reimbursement insurance policy required by Section 1306.102, if the provider is using a reimbursement insurance policy to meet the financial security requirements of Section 1306.101; ~~and~~

(2) the financial security deposit and the documentation required by the department demonstrating adequate funding of the reserve account, if the provider is using a funded reserve account and financial security deposit to meet the financial security requirements of Section 1306.101;

(3) the proof necessary to demonstrate the applicant or its parent company maintains at least \$100 million net worth, if the applicant is using net worth to meet the financial security requirements of Section 1306.101; and

(4) information about each controlling person of the applicant [~~a biographical affidavit,~~] in a form prescribed by the executive director[~~, for each controlling person of the provider~~].

SECTION 2.07. Sections 1306.054(b) and (d), Occupations Code, are amended to read as follows:

(b) To register or renew a registration, a provider or administrator must pay the appropriate fee. The commission shall set by rule the [~~amounts of the registration and renewal~~] fees required to cover the costs of administering this chapter.

(d) The information concerning the number of identity recovery service contracts sold or issued by a provider that is submitted under Subsection (c) [~~(+)~~] is a trade secret to which Section 552.110, Government Code, applies [~~;~~ and

~~(2) may be used only by the executive director and the department for the purposes of this section].~~

SECTION 2.08. The heading to Subchapter C, Chapter 1306, Occupations Code, is amended to read as follows:

SUBCHAPTER C. PRACTICE BY IDENTITY RECOVERY SERVICE  
CONTRACT

PROVIDERS, ~~[AND]~~ ADMINISTRATORS, AND SELLERS

SECTION 2.09. The heading to Section 1306.101, Occupations Code, is amended to read as follows:

Sec. 1306.101. FINANCIAL SECURITY REQUIREMENTS;  
DISTRIBUTION OF FUNDS HELD IN TRUST.

SECTION 2.10. Section 1306.101, Occupations Code, is amended by amending Subsections (a) and (b) and adding Subsection (f) to read as follows:

(a) To ensure the faithful performance of a provider's obligations to its identity recovery service contract holders, each provider must:

(1) insure the provider's identity recovery service contracts under a reimbursement insurance policy issued by an insurer authorized to transact insurance in this state or by a surplus lines insurer eligible to place coverage in this state under Chapter 981, Insurance Code;

(2) maintain a funded reserve account covering the provider's obligations under its identity recovery service contracts that are issued and outstanding in this state and place in trust with the executive director a financial security deposit consisting of:

(A) ~~[a surety bond issued by an authorized surety;~~  
~~(B) securities of the type eligible for deposit by an authorized insurer in this state;~~

~~[(C)] a statutory deposit of cash [or cash equivalents];~~  
~~(B) [(D)] a letter of credit issued by a qualified financial institution; or~~  
~~(C) a certificate of deposit issued by a qualified financial institution~~  
~~[(E)] another form of security prescribed by rules adopted by the commission]; or~~

(3) maintain, or have a parent company that maintains, a net worth or stockholders' equity of at least \$100 million.

(b) If the provider ensures its obligations under Subsection (a)(2), the amount maintained in the reserve account may not be less than an amount equal to 40 percent of the gross consideration the provider received from consumers from the sale of all identity recovery service contracts issued and outstanding in this state, minus any claims paid. The executive director may review and examine the reserve account. The amount of the security deposit may not be less than \$250,000. The provider must submit to the executive director on request a copy of the provider's financial statements that must be prepared in accordance with generally accepted accounting

principles, be without qualification as to the going concern status of the provider, and be audited by an independent certified public accountant. The commission by rule may require the provider to submit additional financial reports [the greater of:

[(1) \$25,000; or

[(2) an amount equal to five percent of the gross consideration the provider received from consumers from the sale of all identity recovery service contracts issued and outstanding in this state, minus any claims paid].

(f) In the event of a provider's bankruptcy or a similar event affecting the ability of the provider to faithfully perform its obligations to its identity recovery service contract holders, the executive director may distribute any funds held in trust as financial security for the provider under this section to eligible identity recovery service contract holders as payment for claims. The executive director must distribute the funds in an equitable and cost-effective manner as determined by the executive director.

SECTION 2.11. Subchapter C, Chapter 1306, Occupations Code, is amended by adding Sections 1306.1021 and 1306.1031 to read as follows:

Sec. 1306.1021. FINANCIAL SECURITY TRANSITION. (a) In this section, "provider that maintained a funded reserve account" means a provider that, in order to ensure the faithful performance of the provider's obligations to identity recovery service contract holders, maintained a funded reserve account covering the provider's obligations under identity recovery service contracts that were issued and outstanding in this state and placed in trust with the executive director a financial security deposit consisting of:

(1) a surety bond issued by an authorized surety;

(2) securities of the type eligible for deposit by an authorized insurer in this

state;

(3) a statutory deposit of cash or cash equivalents;

(4) a letter of credit issued by a qualified financial institution; or

(5) another form of security prescribed by commission rules.

(b) This section applies only to a provider that maintained a funded reserve account on August 31, 2011.

(c) Not later than September 1, 2012, a provider that maintained a funded reserve account shall submit to the executive director documentation that the provider is in compliance with the financial security requirements provided by Section 1306.101 for identity recovery service contracts sold or issued in this state on or after September 1, 2012. A provider that maintained a funded reserve account may not sell or issue an identity recovery service contract on or after September 1, 2012, unless the provider is in compliance with this subsection.

(d) A provider that maintained a funded reserve account shall:

(1) continue to maintain the funded reserve account and security deposit at appropriate levels for identity recovery service contracts that were sold or issued in this state before September 1, 2012, until the contracts are no longer in effect; or

(2) provide financial security for identity recovery service contracts sold or issued before September 1, 2012, by complying with the financial security requirements of Section 1306.101.

(e) If a provider provides financial security for identity recovery service contracts sold or issued before September 1, 2012, by complying with the financial security requirements of Section 1306.101, the provider shall give to the executive director satisfactory documentation that the reimbursement insurance policy, funded reserve account and security deposit, or net worth covers all outstanding identity recovery service contracts issued before September 1, 2012.

(f) An identity recovery service contract that is sold or issued before September 1, 2012, and is covered under a funded reserve account and security deposit may not be extended or renewed at the end of the identity recovery service contract term unless the provider provides financial security for those service contracts by complying with the financial security requirements of Section 1306.101 before the extension or renewal.

Sec. 1306.1031. IDENTITY RECOVERY SERVICE CONTRACT SELLERS; RESPONSIBILITIES. (a) A provider may employ or contract with a seller to be responsible for:

(1) all or any part of the sale or marketing of identity recovery service contracts for the provider; and

(2) compliance with this chapter in connection with the sale or marketing of identity recovery service contracts.

(b) The hiring of or contracting with a seller under this section does not affect a provider's responsibility to comply with this chapter.

(c) Unless registered as a provider or administrator, a seller is prohibited from engaging in activities that would require registration as a provider or administrator.

(d) A seller shall process an identity recovery service contract application and a payment from a consumer in accordance with this chapter and with any sales agreement or contract between the provider and the seller.

SECTION 2.12. Sections 1306.106(a), (b), and (d), Occupations Code, are amended to read as follows:

(a) An identity recovery service contract marketed, sold, offered for sale, issued, made, proposed to be made, or administered in this state must:

(1) be written, printed, or typed in clear, understandable language that is easy to read;

(2) state the name and address of the provider;

(3) state the purchase price of the contract and the terms under which the contract is sold;

(4) state the terms and restrictions governing cancellation of the contract by the provider or the identity recovery service contract holder before the expiration date of the contract;

(5) identify:

(A) any administrator and any registration number issued to the administrator under this chapter;

(B) the ~~contract~~ seller; and

(C) the identity recovery service contract holder, if the identity recovery service contract holder provides the holder's name;

(6) state the amount of any deductible;

(7) specify the services to be provided under the contract and any limitation, exception, or exclusion;

(8) specify any restriction governing the transferability of the contract; and

(9) state the duties of the identity recovery service contract holder, including any duty to protect against any further damage and any requirement to follow the instructions in the identity recovery service contract.

(b) The identity and, if applicable, registration number issued under this chapter of a person described by Subsection (a)(5) is not required to be preprinted on the identity recovery service contract and may be added to the contract at the time of sale.

(d) An identity recovery service contract insured under a reimbursement insurance policy under Section 1306.102 must:

(1) state the name and address of the insurer;

(2) state that the identity recovery service contract holder may apply for reimbursement directly to the insurer if:

(A) a covered service is not provided to the identity recovery service contract holder by the provider before the 61st day after the date of proof of loss; or

(B) a refund or credit is not paid before the 46th day after the date on which the contract is canceled [~~returned to the provider~~] under Section 1306.1081 [~~1306.107~~]; and

(3) contain a statement substantially similar to the following: "Obligations of the provider under this identity recovery service contract are insured under an identity recovery service contract reimbursement insurance policy."

SECTION 2.13. Subchapter C, Chapter 1306, Occupations Code, is amended by adding Section 1306.1081 to read as follows:

Sec. 1306.1081. CANCELLATION BY IDENTITY RECOVERY SERVICE CONTRACT HOLDER; REFUND. (a) An identity recovery service contract must allow the identity recovery service contract holder to cancel the identity recovery service contract at any time.

(b) If an identity recovery service contract holder cancels an identity recovery service contract before the 31st day after the date of purchase, the provider:

(1) shall refund to the identity recovery service contract holder or credit to the account of the identity recovery service contract holder the full purchase price of the contract, decreased by the amount of any claims paid under the contract; and

(2) may not impose a cancellation fee.

(c) If an identity recovery service contract holder cancels an identity recovery service contract on or after the 31st day after the date of purchase, the provider:

(1) shall refund to the identity recovery service contract holder or credit to the account of the identity recovery service contract holder the prorated purchase price of the contract reflecting the remaining term of the contract, based on mileage, time, or another reasonably applicable measure of the remaining term that must be disclosed in the contract, decreased by the amount of any claims paid under the contract; and

(2) may impose a reasonable cancellation fee not to exceed \$50.

(d) A provider may allow an identity recovery service contract holder to cancel an identity recovery service contract on other terms included in the contract, provided the terms do not conflict with this section.

(e) A provider who does not pay the refund or credit the identity recovery service contract holder's account before the 46th day after the date notice of cancellation is received by the provider is liable to the identity recovery service contract holder for a penalty for each month an amount remains outstanding equal to 10 percent of the amount outstanding. The penalty is in addition to the full or prorated purchase price of the contract that is owed to the identity recovery service contract holder under this section or the terms of the contract.

(f) The right to cancel an identity recovery service contract is not transferable to a subsequent holder of the contract.

SECTION 2.14. The heading to Section 1306.109, Occupations Code, is amended to read as follows:

Sec. 1306.109. CANCELLATION BY A PROVIDER; REFUND [CANCELING AN IDENTITY RECOVERY SERVICE CONTRACT].

SECTION 2.15. Section 1306.109, Occupations Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) The provider is not required to provide prior notice of cancellation if the identity recovery service contract is canceled because of:

- (1) nonpayment of the consideration for the contract;
- (2) fraud or a material misrepresentation by the identity recovery service contract holder to the provider or the provider's administrator; or
- (3) a substantial breach of a duty by the identity recovery service contract holder.

(c) An identity recovery service contract holder whose contract is canceled by the provider in accordance with this section is entitled to a prorated refund of the purchase price of the contract reflecting the remaining term of the contract, based on mileage, time, or another reasonably applicable measure of the remaining term that must be disclosed in the contract, decreased by the amount of any claims paid under the contract. A provider who cancels a contract under this section may not impose a cancellation fee.

SECTION 2.16. Section 1306.111, Occupations Code, is amended to read as follows:

Sec. 1306.111. [MISLEADING STATEMENTS] PROHIBITED ACTS. (a) A provider, administrator, seller, or other [or the provider's] representative of the provider may not, in the provider's identity recovery service contracts or literature or in any written communication:

- (1) make, permit, or cause to be made any false, deceptive, or misleading statement; or
- (2) deliberately omit a material statement if the omission would be considered misleading.

(b) A person regulated by Chapter 2301 may not require the purchase of an identity recovery service contract as a condition of a loan or the sale of a vehicle.

(c) A provider, administrator, seller, or other representative of the provider may not make a telemarketing call to a consumer as provided by Sections 304.002 and 304.003, Business & Commerce Code, unless the provider, administrator, seller, or representative has an established business relationship, as defined by Section 304.002, Business & Commerce Code, with the consumer.

SECTION 2.17. Section 1306.151, Occupations Code, is amended to read as follows:

Sec. 1306.151. DISCIPLINARY ACTION. On a finding that a ground for disciplinary action exists under this chapter, the commission or executive director may impose an administrative sanction or executive director may impose an administrative sanction or ~~[, including an]~~ administrative penalty or seek a civil penalty or any other remedy as provided by this chapter and [Subchapter F,] Chapter 51.

SECTION 2.18. Subchapter D, Chapter 1306, Occupations Code, is amended by adding Section 1306.155 to read as follows:

Sec. 1306.155. REMEDY FOR IDENTITY RECOVERY SERVICE CONTRACT HOLDERS. (a) If the commission by order, including an agreed order, determines that a person has operated as a provider or administrator in this state without holding the appropriate registration under this chapter, the person shall offer to an identity recovery service contract holder who holds an identity recovery service contract sold or issued by the person during the period that the person was not registered under this chapter the right to:

(1) cancel the contract and obtain a refund of the full purchase price of the contract; or

(2) retain the contract.

(b) If a seller fails to process an identity recovery service contract application or a payment from a consumer in accordance with this chapter and any sales agreement or contract between the provider and the seller, the commission or executive director may, by commission order, including an agreed order, require the seller to refund the full purchase price of the contract to the consumer.

(c) The remedies described in this section are in addition to any administrative penalty, administrative sanction, civil penalty, or other disciplinary or enforcement action sought under this chapter or Chapter 51.

SECTION 2.19. (a) On the effective date of this Act, the following provisions of the Occupations Code are repealed:

(1) Section 1306.007; and

(2) Section 1306.052(d).

(b) On January 1, 2012, the following provisions of the Occupations Code are repealed:

(1) Section 1306.107; and

(2) Section 1306.108.

SECTION 2.20. (a) Not later than April 1, 2012, the Texas Commission of Licensing and Regulation shall adopt rules necessary to implement Chapter 1306, Occupations Code, as amended by this Act.

(b) Sections 1306.052 and 1306.053, Occupations Code, as amended by this Act, apply only to an application for a registration or renewal of a registration filed with the Texas Department of Licensing and Regulation on or after the effective date of this Act. An application filed before that date is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

(c) Sections 1306.106 and 1306.109, Occupations Code, as amended by this Act, and Section 1306.1081, Occupations Code, as added by this Act, apply only to an identity recovery service contract sold or issued on or after January 1, 2012. An identity recovery service contract sold or issued before that date is governed by the law in effect on the date the contract was sold or issued, and the former law is continued in effect for that purpose.

(d) Notwithstanding Subsection (c) of this section, an identity recovery service contract sold or issued before January 1, 2012, may not be extended or renewed at the end of the contract term unless the contract complies with Sections 1306.106 and 1306.109, Occupations Code, as amended by this Act, and Section 1306.1081, Occupations Code, as added by this Act.

(e) Section 1306.151, Occupations Code, as amended by this Act, applies only to a disciplinary action initiated by the Texas Department of Licensing and Regulation on or after the effective date of this Act. An action initiated before the effective date of this Act is governed by the law in effect on the date the action was initiated, and the former law is continued in effect for that purpose.

(f) Section 1306.155, Occupations Code, as added by this Act, applies only to an act or omission of a person operating as a provider, administrator, or seller of an identity recovery service contract that occurs on or after the effective date of this Act. An act or omission that occurs before that date is governed by the law in effect on the date the act or omission occurred, and the former law is continued in effect for that purpose.

#### ARTICLE 3. EFFECTIVE DATE

SECTION 3.01. This Act takes effect September 1, 2011.

The amendment was read.

Senator Carona moved to concur in the House amendment to **SB 1169**.

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

#### **SENATE BILL 773 WITH HOUSE AMENDMENTS**

Senator Zaffirini called **SB 773** from the President's table for consideration of the House amendments to the bill.

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

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

Amend **SB 773** (house committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Subchapter C, Chapter 2054, Government Code, is amended by adding Section 2054.064 to read as follows:

Sec. 2054.064. ADVERTISING ON STATE ELECTRONIC INTERNET PORTALS. (a) In this section:

(1) "Department" means the Department of Information Resources or a successor agency.

(2) "State agency" means any department, board, commission, or other agency in the executive branch of state government, including the office of the governor. The term does not include an institution of higher education, as defined by Section 61.003, Education Code.

(b) In accordance with rules adopted by the department and to the extent allowed under federal law:

(1) a state agency shall contract with a private entity to lease advertising space on the agency's official electronic Internet portal; and

(2) the department shall contract with a private entity by awarding a 10-year license to the entity to lease advertising space on the official electronic Internet portal for the State of Texas.

(c) The department shall develop a standard contract for the lease of advertising space on an electronic Internet portal under this section. The standard contract developed by the department must include terms that:

(1) provide for the payment of a fee by the person leasing the advertising space in an amount set by department rule; and

(2) require the advertisements to comply with the rules adopted by the department relating to content and composition.

(d) The department shall adopt rules to implement this section. The rules must establish:

(1) guidelines relating to the content and composition of advertisements that may be placed on an electronic Internet portal;

(2) procedures for procuring advertisements that relate, to the greatest extent practicable, to the stated purpose of the state agency;

(3) policies that require:

(A) each advertisement to be clearly labeled on the electronic Internet portal as an advertisement; and

(B) a disclaimer on each electronic Internet portal that clearly states that the State of Texas does not endorse the products or services advertised on the state agency electronic Internet portal;

(4) a schedule of fees to be charged for the lease of advertising space under this section; and

(5) the amount of the lease payment that a private entity may retain for administering the lease contract.

(e) A private entity administering a lease under this section shall collect the fees due from the leasing entity. After deduction of the private entity's fees, the remainder of the fees collected under this section shall be forwarded to the comptroller to be deposited to the credit of the general revenue fund.

(f) Before entering into a contract under this section, a state agency or the department must evaluate:

(1) the effect of the contract on the bandwidth that the agency or the department requires to perform its official duties; and

(2) whether the contract increases vulnerability to malware or other potential threats to the security of the electronic Internet portal or computer network.

(g) Except as provided by Subsection (h), using the results of the evaluation required under Subsection (f), a state agency or the department shall develop and implement a plan to ensure that state electronic Internet portals and computer networks are secure and that sufficient bandwidth is available to host the advertising required under the contract and to allow for performance of official duties. The plan must include provisions to:

(1) prevent inappropriate content on electronic Internet portals and computer networks associated with this state;

(2) efficiently route data used by the agency or the department to perform its official duties;

(3) manage and reduce the quantity of bandwidth used by the agency or the department; and

(4) ensure the continued security and integrity of electronic Internet portals, computer networks, and confidential and sensitive data associated with this state.

(h) A state agency or the department may accept free or discounted services to assist in performing the evaluation and planning requirements under Subsections (f) and (g) from a provider designated as qualified by the department. The department shall maintain a list of qualified providers on the department's electronic Internet portal.

(i) A state agency or the department is not required to implement a plan developed under Subsection (g) if:

(1) money appropriated to the agency or the department may not be lawfully spent for the purposes of this section; or

(2) the agency or the department determines that the cost of implementing the plan will exceed the income received from a contract under this section.

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

Amend Amendment No. 1 by Brown to **SB 773** (house committee printing) on page 3 of the amendment, line 28, by striking "deposited" and substituting "allocated as follows:

(1) 50 percent to the credit of the foundation school fund; and

(2) the remainder".

The amendments were read.

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

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 773** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Zaffirini, Chair; Carona, Eltife, Van de Putte, and Deuell.

**HOUSE CONCURRENT RESOLUTION 84  
ON SECOND READING**

On motion of Senator Estes and by unanimous consent, the regular order of business was suspended to take up for consideration **HCR 84** at this time on its second reading:

**HCR 84**, Designating 42 as the official State Domino Game of Texas.

The resolution was read second time.

Senator Uresti offered the following amendment to the resolution:

**Floor Amendment No. 1**

Amend **HCR 84** (Senate Committee Printing page 1, line 40) by striking "Table" and substituting "Domino".

The amendment to **HCR 84** was read and was adopted by a viva voce vote.

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

**HCR 84** as amended was adopted by the following vote: Yeas 31, Nays 0.

**RECESS**

On motion of Senator Whitmire, the Senate at 6:27 p.m. recessed until 7:15 p.m. today.

**AFTER RECESS**

The Senate met at 7:28 p.m. and was called to order by Senator Eltife.

**MESSAGE FROM THE HOUSE**

HOUSE CHAMBER

Austin, Texas

Wednesday, May 25, 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:**

**SB 76** Nelson Sponsor: Morrison  
Relating to certain providers of subsidized child care.  
(Committee Substitute/Amended)

**SB 100** Van de Putte Sponsor: Taylor, Van  
Relating to the adoption of voting procedures necessary to implement the federal Military and Overseas Voter Empowerment Act.  
(Amended)

- SB 364** Ogden Sponsor: Brown  
Relating to statistical information on the prosecution of certain offenses relating to the operating of a motor vehicle while intoxicated.
- SB 407** Watson Sponsor: Craddick  
Relating to the creation of the offense of electronic transmission of certain visual material depicting a minor and to certain educational programs concerning the prevention and awareness of that offense.  
(Amended)
- SB 460** Seliger Sponsor: Hunter  
Relating to regulation of the import, export, and management of mule deer; providing penalties.
- SB 472** West Sponsor: Giddings  
Relating to voting practices and elections of property owners' associations.  
(Amended)
- SB 498** Jackson Sponsor: Phillips  
Relating to the trapping and transport of surplus white-tailed deer.  
(Amended)
- SB 516** Patrick Sponsor: Fletcher  
Relating to the exemption from ad valorem taxation of all or part of the appraised value of the residence homestead of the surviving spouse of a 100 percent or totally disabled veteran.  
(Amended)
- SB 717** Harris Sponsor: Truitt  
Relating to the purpose and duties of the Council on Children and Families.
- SB 766** Estes Sponsor: Isaac  
Relating to the liability of a sport shooting range and the regulation of firearms, ammunition, firearm supplies, and sport shooting ranges.
- SB 809** Seliger Sponsor: Giddings  
Relating to judicial review in district court of certain workers' compensation disputes.  
(Amended)
- SB 875** Fraser Sponsor: Hancock  
Relating to compliance with state and federal environmental permits as a defense to certain actions for nuisance or trespass.  
(Amended)
- SB 975** Hinojosa Sponsor: Munoz, Jr.  
Relating to the operation of dropout recovery programs by certain public junior colleges in partnership with school districts.
- SB 978** Hinojosa Sponsor: Gonzales, Veronica  
Relating to procedures for the dissolution of the Hidalgo County Water Improvement District No. 3.  
(Committee Substitute)

**SB 1009** Huffman Sponsor: Sheffield  
Relating to requiring public institutions of higher education to notify the federal Student and Exchange Visitor Information System (SEVIS) regarding the withdrawal or nonattendance of certain foreign students.

**SB 1130** Hegar Sponsor: Kleinschmidt  
Relating to the exception from required public disclosure of certain records of an appraisal district.  
(Amended)

**SB 1360** Harris Sponsor: Hunter  
Relating to continuing education for physicians and nurses regarding the treatment of tick-borne diseases.

**SB 1560** Ellis Sponsor: Taylor, Larry  
Relating to liability of certain local emergency management or homeland security organizations.

**SB 1617** Harris Sponsor: Aliseda  
Relating to the discretionary transfer from a juvenile court to a criminal court of certain alleged offenses arising out of a single criminal transaction.

**SB 1810** Carona Sponsor: Truitt  
Relating to the exemption of certain retirement accounts from access by creditors.  
(Committee Substitute)

**SCR 2** Uresti Sponsor: Gallego  
Urging Congress to reauthorize the Water Resources Development Act of 2007, Section 5056, and to appropriate sufficient funds so that efforts to solve the salt problem in the Amistad International Reservoir can continue.

Respectfully,

/s/Robert Haney, Chief Clerk  
House of Representatives

### MESSAGE FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

Wednesday, May 25, 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 PASSED THE FOLLOWING MEASURES:

**SB 8** Nelson Sponsor: Kolkhorst  
Relating to improving the quality and efficiency of health care.  
(Amended)

**SB 635**

Nichols

Sponsor: Larson

Relating to the authority of the Texas Commission on Environmental Quality.  
(Amended)

THE HOUSE HAS ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

**HB 275** (123 Yeas, 21 Nays, 2 Present, not voting)

Respectfully,

/s/Robert Haney, Chief Clerk  
House of Representatives

**SENATE RULE 7.12(a) SUSPENDED  
(Printing of Bills)**

On motion of Senator Ogden and by unanimous consent, Senate Rule 7.12(a) was suspended and the conference committee report for **HB 275** was ordered not printed.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 275 ADOPTED**

Senator Ogden called from the President's table the Conference Committee Report on **HB 275**. The Conference Committee Report was filed with the Senate on Monday, May 23, 2011.

On motion of Senator Ogden, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 4 ON SECOND READING**

On motion of Senator Ogden and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 4** at this time on its second reading:

**CSHB 4**, Relating to making supplemental appropriations and giving direction and adjustment authority regarding appropriations.

The bill was read second time.

Senator Ogden offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 4** (senate committee printing) as follows:

(1) In SECTION 1(a) of the bill (page 1, line 21), strike "\$1,059,070,326" and substitute "\$1,065,962,443".

(2) In SECTION 1(a)(5) of the bill (page 1, line 34), strike "\$1,291,970" and substitute "\$2,791,970".

(3) In SECTION 1(a)(29) of the bill (page 2, line 19), strike "\$7,979,094" and substitute "\$12,979,094".

(4) In SECTION 1(a)(74) of the bill (page 3, line 41), strike "\$19,408,079" and substitute "\$20,408,079".

(5) In SECTION 1(a)(117) of the bill (page 4, line 57), strike "\$65,874,494" and substitute "\$67,874,494".

(6) In SECTION 1(a)(121) of the bill (page 4, line 65), strike "\$6,045,065" and substitute "\$2,245,065".

(7) In SECTION 1(a)(129) of the bill (page 5, line 12), strike "\$1,690,749" and substitute "\$2,790,749".

(8) In SECTION 1(a)(136) of the bill (page 5, line 26), strike "\$20,000,000" and substitute "\$20,092,117".

(9) In SECTION 1(d) of the bill (page 7, line 41), strike "\$137,092,585" and substitute "\$160,092,585".

(10) In SECTION 1(d) of the bill, between Subdivisions (20) and (21) (page 8, between lines 36 and 37), insert the following:

(20-a) Higher Education Coordinating Board: \$23,000,000 from general revenue dedicated account number 5103, Texas B-On-Time Student Loan Account;

(11) Strike SECTION 7 of the bill (page 11, line 58, through page 12, line 2) and substitute the following appropriately numbered SECTION:

SECTION \_\_\_\_\_. OFFICE OF THE ATTORNEY GENERAL: CONTINGENCY FEE PAYMENT. In addition to amounts previously appropriated for the state fiscal biennium ending August 31, 2011, the amount of \$17,311,326 is appropriated out of the suspense account established by the comptroller of public accounts and the attorney general in General Revenue Fund 0001 for the payment of itemized claims and judgments, plus interest, if any, against the state of Texas, to the Office of the Attorney General, for the fiscal year ending August 31, 2011, for a contingency fee payment payable under the outside counsel contract OCC No. 2007-302-0012 to Wright and Greenhill, P.C., for work performed in reaching the final judgments in State of Texas ex rel. Ven-a-Care of Florida v. Mylan Pharmaceuticals USA et al., Cause No. D-1-GV-07-001259, District Court of Travis County, 201st Judicial District, and State of Texas ex rel. Ven-A-Care of the Florida Keys, Inc. v. TEVA, et al., Cause No. D-1-GV-07-001259, District Court of Travis County, 201st Judicial District.

(12) In SECTION 8 of the bill (page 12, line 6), strike "\$600,000,000" and substitute "\$550,000,000".

(13) In SECTION 11 of the bill, between "APPROPRIATIONS." and "\$184,000,000", insert "(a)".

(14) Between the end of SECTION 11 of the bill and SECTION 12 of the bill (page 12, between lines 36 and 37), insert the following:

(b) Notwithstanding Subsection (a) of this section and contingent on H.B. 6, Acts of the 82nd Legislature, Regular Session, 2011, or a similar Act of that legislative session relating to the establishment of an instructional materials allotment, being enacted by the vote necessary for the Act to take effect immediately and the Act immediately becoming law, Subsection (a) of this section has no effect and the \$184,000,000 described by that subsection is allocated to fund the instructional materials allotment in accordance with the provisions of H.B. 6 or the similar Act, as applicable.

(15) In SECTION 15 of the bill (page 12, line 65), strike "\$39,800,000" and substitute "\$81,000,000".

(16) In SECTION 15 of the bill (page 12, lines 66 through 67), strike "two-year period beginning on the effective date of this Act" and substitute "state fiscal biennium ending August 31, 2013,".

(17) Strike SECTION 16 of the bill (page 12, line 69, through page 13, line 7).

(18) Strike SECTION 19 of the bill (page 13, lines 30 through 43).

(19) Strike SECTION 21 of the bill (page 13, lines 57 through 65).

(20) Add the following appropriately numbered SECTIONS to the bill:

SECTION \_\_\_\_\_. FACILITIES COMMISSION: UTILITY COSTS. (a) In addition to amounts previously appropriated for the state fiscal biennium ending August 31, 2011, the amount of \$1,500,000 is appropriated out of General Revenue Fund 0001 to the Facilities Commission under Strategy B.2.1., Facilities Operation, for the two-year period beginning on the effective date of this Act for the purpose of providing for payment of increased utility costs as a result of an increase in utility rates.

(b) Notwithstanding Section 14.01, Part 14, Article IX, Appropriation Transfers, or similar provisions of Chapter 1424 (S.B. 1), Acts of the 81st Legislature, Regular Session, 2009 (the General Appropriations Act), money appropriated by this section may not be transferred by the Facilities Commission to another appropriation item or be used by the commission for a purpose other than payment of utility expenses without the prior written approval of the Legislative Budget Board.

SECTION \_\_\_\_\_. SUPREME COURT OF TEXAS: CERTAIN EXPENDITURES. In addition to amounts previously appropriated for the state fiscal biennium ending August 31, 2011, the Supreme Court of Texas is appropriated \$71,535 from Judicial Fund 0573 for personnel costs, security expenses, unemployment reimbursements, and travel expenses.

SECTION \_\_\_\_\_. DEPARTMENT OF AGRICULTURE: RURAL LAND EVALUATION. The Department of Agriculture may use appropriations made to the department from General Revenue Fund 0001 for the state fiscal year ending August 31, 2011, by Chapter 1424 (S.B. 1), Acts of the 81st Legislature, Regular Session, 2009 (the General Appropriations Act), for the state fiscal year ending August 31, 2011, for the additional purposes of funding an assessment of the impact of illegal activity along the Texas-Mexico border on rural landowners and the agriculture industry and working in conjunction with other appropriate entities to develop recommendations to enhance border security.

SECTION \_\_\_\_\_. TEXAS AGRILIFE RESEARCH: VEGETABLE AND FRUIT RESEARCH. Contingent on the comptroller of public accounts certifying at least \$1,000,000 in general revenue receipts in excess of the estimated general revenue receipts for that state fiscal biennium stated in the comptroller's Biennial Revenue Estimate for 2012-2013, as revised on March 13, 2011, and as further revised by any subsequent revision occurring before the effective date of this Act, the following amounts are appropriated to Texas AgriLife Research from General Revenue Fund 0001 for the Vegetable and Fruit Improvement Center:

- (1) \$500,000 for the state fiscal year ending August 31, 2012; and
- (2) \$500,000 for the state fiscal year ending August 31, 2013.

SECTION \_\_\_\_\_. TRUSTEED PROGRAMS WITHIN THE OFFICE OF THE GOVERNOR. The following appropriations are made to the Trusteed Programs within the Office of the Governor from general revenue dedicated account number 5003, Hotel Occupancy Tax for Economic Development Account, for purposes of economic development and tourism:

- (1) \$15,262,735 for the state fiscal year ending August 31, 2012; and
- (2) \$15,262,735 for the state fiscal year ending August 31, 2013.

SECTION \_\_\_\_\_. UNIVERSITY OF TEXAS MEDICAL BRANCH AT GALVESTON: UNEXPENDED BALANCE AUTHORITY. The unexpended and unencumbered balances of the amounts appropriated by Section 55, Chapter 1409 (H.B. 4586), Acts of the 81st Legislature, Regular Session, 2009, are appropriated for the two-year period beginning on the effective date of this Act to The University of Texas Medical Branch at Galveston for the same purposes as and with the same limitations as prescribed by that Act.

SECTION \_\_\_\_\_. TEXAS EDUCATION AGENCY: CERTAIN POSITIONS. The amount of \$18,000,000 is appropriated from Permanent School Fund 0044 to the Texas Education Agency for each fiscal year of the state fiscal biennium ending August 31, 2013, for agency operations related to the management and administration of the Permanent School Fund. The agency's cap on full-time equivalent positions is increased by 31.0 in each of those fiscal years.

SECTION \_\_\_\_\_. TEXAS EDUCATION AGENCY: SUPPLEMENTAL EDUCATION AND ACADEMIC READINESS SERVICES. (a) The amount of \$8,750,000 is appropriated from General Revenue Fund 0001 to the Texas Education Agency for each fiscal year of the state fiscal biennium ending August 31, 2013, for the purposes of:

- (1) providing supplemental education services to students who failed to perform satisfactorily on reading or mathematics assessment instruments administered under Section 39.023, Education Code; and
- (2) funding programs targeting the prevention of academic failure, including algebra readiness programs, literacy academies, mathematics academies, professional development programs, middle grades initiatives, and other assistance initiatives and programs that focus on improving student performance on state assessment instruments.

(b) It is the intent of the legislature that the commissioner of education establish a list of qualified providers to provide remedial and tutorial services for students described by Subsection (a)(1) of this section.

SECTION \_\_\_\_\_. THE UNIVERSITY OF TEXAS AT ARLINGTON: REGIONAL NURSING EDUCATION CENTER. The amount of \$5,000,000 is appropriated from General Revenue Fund 0001 to The University of Texas at Arlington for the state fiscal biennium ending August 31, 2013, for the Regional Nursing Education Center.

SECTION \_\_\_\_\_. THE UNIVERSITY OF TEXAS AT DALLAS: MIDDLE SCHOOL BRAIN YEARS. The amount of \$3,000,000 is appropriated from General Revenue Fund 0001 to The University of Texas at Dallas for the state fiscal biennium ending August 31, 2013, for the Middle School Brain Years program.

SECTION \_\_\_\_\_. THE UNIVERSITY OF TEXAS OF THE PERMIAN BASIN: COLLEGE OF ENGINEERING. The amount of \$1,700,000 is appropriated from General Revenue Fund 0001 to The University of Texas of the Permian Basin for the state fiscal biennium ending August 31, 2013, for the College of Engineering.

SECTION \_\_\_\_\_. TEXAS A&M UNIVERSITY - CORPUS CHRISTI: ENGINEERING PROGRAM. The amount of \$500,000 is appropriated from General Revenue Fund 0001 to Texas A&M University - Corpus Christi for the state fiscal biennium ending August 31, 2013, for the engineering program.

SECTION \_\_\_\_\_. TEXAS ENGINEERING EXPERIMENT STATION: NUCLEAR POWER INSTITUTE. The amount of \$2,000,000 is appropriated from General Revenue Fund 0001 to the Texas Engineering Experiment Station for the state fiscal biennium ending August 31, 2013, for the Nuclear Power Institute.

SECTION \_\_\_\_\_. THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT SAN ANTONIO: UMBILICAL CORD BLOOD BANK. The amount of \$2,000,000 is appropriated from General Revenue Fund 0001 to The University of Texas Health Science Center at San Antonio for the state fiscal biennium ending August 31, 2013, for the umbilical cord blood bank.

SECTION \_\_\_\_\_. SUL ROSS STATE UNIVERSITY: CAMPUS UTILITY INFRASTRUCTURE. The amount of \$7,000,000 is appropriated from General Revenue Fund 0001 to Sul Ross State University for the state fiscal biennium ending August 31, 2013, for the purpose of providing for campus utility infrastructure. The legislature finds there is a demonstrated need for funding this infrastructure.

SECTION \_\_\_\_\_. LAMAR INSTITUTE OF TECHNOLOGY: TECHNICAL ARTS BUILDING. The amount of \$5,000,000 is appropriated from General Revenue Fund 0001 to the Lamar Institute of Technology for the state fiscal biennium ending August 31, 2013, for the purpose of making repairs to the Technical Arts buildings. The legislature finds there is a demonstrated need for funding this infrastructure.

SECTION \_\_\_\_\_. UNIVERSITY OF NORTH TEXAS SYSTEM: COLLEGE OF PHARMACY. From amounts appropriated for the state fiscal biennium ending August 31, 2013, to the University of North Texas, the University of North Texas at Dallas, and the University of North Texas Health Science Center at Fort Worth by H.B. 1, Acts of the 82nd Legislature, Regular Session, 2011 (the General Appropriations Act), an amount not to exceed \$300,000 may be spent to establish the College of Pharmacy offering the standard pharmacy curriculum leading to a doctor of Pharmacy (Pharm. D) degree on the campuses of the University of North Texas, the University of North Texas at Dallas, and the University of North Texas Health Science Center at Fort Worth. The appropriated funds may not be spent on costs associated with constructing or maintaining the pharmacy school buildings.

SECTION \_\_\_\_\_. SAM HOUSTON STATE UNIVERSITY: UNEXPENDED BALANCE AUTHORITY. The unexpended and unencumbered balances of the amounts appropriated by Chapter 1424 (S.B. 1), Acts of the 81st Legislature, Regular Session, 2009 (the General Appropriations Act), in Riders 3 and 4 to the bill pattern for Sam Houston State University (page III-147) are appropriated to Sam Houston State University for the same purposes for the state fiscal biennium ending August 31, 2013.

SECTION \_\_\_\_\_. WATER DEVELOPMENT BOARD: LAKE COLUMBIA WATER SUPPLY PROJECT. (a) It is the intent of the legislature that the Water Development Board allocate an amount of general revenue, not to exceed \$1,400,000, out of funds appropriated to the board by H.B. 1, Acts of the 82nd Legislature, Regular Session, 2011 (the General Appropriations Act), for purposes of developing a draft environmental impact statement for the Lake Columbia water supply project.

(b) In the event that the amount of \$1,400,000 of general revenue funds is not available from funds appropriated to the Water Development Board by H.B. 1, Acts of the 82nd Legislature, Regular Session, 2011 (the General Appropriations Act), it is the intent of the legislature that the board, to the extent permissible under that chapter, provide for a loan in accordance with Chapter 15, Water Code, for purposes of developing a draft environmental impact statement for the Lake Columbia water supply project.

SECTION \_\_\_\_\_. THE UNIVERSITY OF TEXAS M.D. ANDERSON CANCER CENTER: INSTITUTIONAL OPERATIONS. The amount of \$17,383,894 is appropriated from General Revenue Fund 0001 to The University of Texas M.D. Anderson Cancer Center for the state fiscal biennium ending August 31, 2013, for institutional operations.

SECTION \_\_\_\_\_. THE UNIVERSITY OF TEXAS SOUTHWESTERN MEDICAL CENTER AT DALLAS: INSTITUTIONAL OPERATIONS. The amount of \$12,587,647 is appropriated from General Revenue Fund 0001 to The University of Texas Southwestern Medical Center at Dallas for the state fiscal biennium ending August 31, 2013, for institutional operations.

SECTION \_\_\_\_\_. THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT HOUSTON: INSTITUTIONAL OPERATIONS. (a) The amount of \$24,145,091 is appropriated from General Revenue Fund 0001 to The University of Texas Health Science Center at Houston for the state fiscal biennium ending August 31, 2013, for institutional operations.

(b) Out of the funds appropriated in Subsection (a) of this section, the University of Texas Health Science Center at Houston shall allocate:

- (1) \$2,000,000 to the Texas Heart Institute; and
- (2) \$1,000,000 to provide trauma care.

SECTION \_\_\_\_\_. THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT SAN ANTONIO: INSTITUTIONAL OPERATIONS. (a) The amount of \$16,818,235 is appropriated from General Revenue Fund 0001 to The University of Texas Health Science Center at San Antonio for the state fiscal biennium ending August 31, 2013, for institutional operations.

(b) Money appropriated by this section may be spent only with the prior written approval of the Legislative Budget Board.

SECTION \_\_\_\_\_. THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT TYLER: INSTITUTIONAL OPERATIONS. The amount of \$8,752,408 is appropriated from General Revenue Fund 0001 to The University of Texas Health Science Center at Tyler for the state fiscal biennium ending August 31, 2013, for institutional operations.

SECTION \_\_\_\_\_. THE UNIVERSITY OF TEXAS MEDICAL BRANCH AT GALVESTON: TUITION REVENUE BOND DEBT SERVICE AND INSTITUTIONAL OPERATIONS. The amount of \$19,863,510 is appropriated from General Revenue Fund 0001 to The University of Texas Medical Branch at Galveston for the state fiscal biennium ending August 31, 2013, for tuition revenue bond debt service and institutional operations.

SECTION \_\_\_\_\_. TEXAS A&M UNIVERSITY SYSTEM HEALTH SCIENCE CENTER: INSTITUTIONAL OPERATIONS. The amount of \$13,040,271 is appropriated from General Revenue Fund 0001 to the Texas A&M University System Health Science Center for the state fiscal biennium ending August 31, 2013, for institutional operations.

SECTION \_\_\_\_\_. UNIVERSITY OF NORTH TEXAS HEALTH SCIENCE CENTER AT FORT WORTH: INSTITUTIONAL OPERATIONS. The amount of \$5,273,298 is appropriated from General Revenue Fund 0001 to the University of North Texas Health Science Center at Fort Worth for the state fiscal biennium ending August 31, 2013, for institutional operations.

SECTION \_\_\_\_\_. TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER: INSTITUTIONAL OPERATIONS. The amount of \$20,078,384 is appropriated from General Revenue Fund 0001 to the Texas Tech University Health Sciences Center for the state fiscal biennium ending August 31, 2013, for institutional operations.

SECTION \_\_\_\_\_. THE UNIVERSITY OF TEXAS SOUTHWESTERN MEDICAL CENTER AT DALLAS: INSTITUTIONAL OPERATIONS. The amount of \$8,000,000 is appropriated from General Revenue Fund 0001 to the University of Texas Southwestern Medical Center at Dallas for the two-year period beginning on the effective date of this Act for institutional operations.

SECTION \_\_\_\_\_. THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT SAN ANTONIO: INSTITUTIONAL OPERATIONS. The amount of \$8,000,000 is appropriated from General Revenue Fund 0001 to The University of Texas Health Science Center at San Antonio for the two-year period beginning on the effective date of this Act for institutional operations.

SECTION \_\_\_\_\_. THE UNIVERSITY OF TEXAS M.D. ANDERSON CANCER CENTER: INSTITUTIONAL OPERATIONS. The amount of \$8,000,000 is appropriated from General Revenue Fund 0001 to The University of Texas M.D. Anderson Cancer Center for the two-year period beginning on the effective date of this Act for institutional operations.

SECTION \_\_\_\_\_. TEXAS A&M UNIVERSITY SYSTEM HEALTH SCIENCE CENTER: INSTITUTIONAL OPERATIONS. The amount of \$8,000,000 is appropriated from General Revenue Fund 0001 to the Texas A&M University System Health Science Center for the two-year period beginning on the effective date of this Act for institutional operations.

SECTION \_\_\_\_\_. UNIVERSITY OF NORTH TEXAS HEALTH SCIENCE CENTER AT FORT WORTH: INSTITUTIONAL OPERATIONS. The amount of \$5,000,000 is appropriated from General Revenue Fund 0001 to the University of North Texas Health Science Center at Fort Worth for the two-year period beginning on the effective date of this Act for institutional operations.

SECTION \_\_\_\_\_. TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER: INSTITUTIONAL OPERATIONS. The amount \$8,000,000 is appropriated from General Revenue Fund 0001 to Texas Tech University Health Sciences Center for the two-year period beginning on the effective date of this Act for institutional operations.

SECTION \_\_\_\_\_. DEPARTMENT OF PUBLIC SAFETY: CERTAIN UNEXPENDED BALANCE AUTHORITY. The unexpended and unencumbered balances of the amounts of general revenue appropriated by Chapter 1424 (S.B. 1), Acts of the 81st Legislature, Regular Session, 2009 (the General Appropriations Act), are appropriated to the Department of Public Safety for the state fiscal biennium ending August 31, 2013, in a total amount not to exceed \$3,800,000, for the same purposes as prescribed by that Act.

SECTION \_\_\_\_\_. This Act takes effect immediately.

(21) Renumber the SECTIONS of the bill appropriately.

The amendment to **CSHB 4** was read.

Senator Ogden offered the following amendment to Floor Amendment No. 1:

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

Amend Floor Amendment No. 1 to **CSHB 4** as follows:

Add a new Section \_\_\_\_\_. Office of Court Administration, Texas Judicial Council: Court Collection Improvement Program. The amount of \$337,500 is appropriated from General Revenue Fund 0001 to the Office of Court Administration for each fiscal year of the state fiscal biennium ending August 31, 2013, for the purposes of auditing the Court Collection Improvement Program. The agency's cap on full-time equivalent positions is increased by 8.0 in each of those fiscal years.

The amendment to Floor Amendment No. 1 to **CSHB 4** was read and was adopted by a viva voce vote.

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

Senator Ogden offered the following amendment to Floor Amendment No. 1:

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

Amend Floor Amendment No. 1 to **CSHB 4** as follows:

1) On page 12, line 18 add the following appropriately numbered SECTION to the bill:

SECTION \_\_\_\_\_. HIGHER EDUCATION COORDINATING BOARD: Baylor College of Medicine. The amount of \$4,100,000 is appropriated from General Revenue Fund 0001 to the Higher Education Coordinating Board for the state fiscal biennium ending August 31, 2013, for Baylor College of Medicine.

The amendment to Floor Amendment No. 1 to **CSHB 4** was read and was adopted by a viva voce vote.

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

Question recurring on the adoption of Floor Amendment No. 1 to **CSHB 4**, the amendment as amended was adopted by a viva voce vote.

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

Senator Estes offered the following amendment to the bill:

**Floor Amendment No. 4**

Amend **CSHB 4** as follows:

(1) On page 13, between line 56 and line 57 insert:

SECTION 21. Texas Department of Agriculture: Rural Land Evaluation. Out of the appropriations previously made to the Texas Department of Agriculture for the fiscal year ending on August 31, 2011, the department may fund an assessment of the impact of illegal activity along the Texas-Mexico border on rural landowners and the agriculture industry. The department may work in conjunction with other appropriate entities to develop recommendations to enhance border security.

(2) Renumber the subsequent sections appropriately.

ESTES  
LUCIO

The amendment to **CSHB 4** was read.

Senator Estes withdrew Floor Amendment No. 4.

Senator West offered the following amendment to the bill:

**Floor Amendment No. 5**

Amend **CSHB 4** (senate committee printing) by adding the following appropriately numbered SECTION and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. TEXAS EDUCATION AGENCY: INCREASED BASIC ALLOTMENT UNDER FOUNDATION SCHOOL PROGRAM. Contingent on this Act being approved by a vote of two-thirds of the members present in each house of the legislature, as provided by Section 49-g(m), Article III, Texas Constitution, in addition to amounts previously appropriated for the state fiscal biennium ending August 31, 2011, the amount of \$1,100,000,000 is appropriated from Economic Stabilization Fund 0599 to the Texas Education Agency, Strategy A.1.1, FSP - Equalized Operations, for the two-year period beginning on the effective date of this Act to increase the basic allotment under Section 42.101, Education Code, to \$4,905 for the fiscal years beginning September 1, 2011, and September 1, 2012.

The amendment to **CSHB 4** was read.

On motion of Senator Ogden, Floor Amendment No. 5 was tabled by the following vote: Yeas 17, Nays 14.

Yeas: Birdwell, Carona, Deuell, Duncan, Eltife, Estes, Fraser, Harris, Hegar, Huffman, Jackson, Nelson, Nichols, Ogden, Patrick, Shapiro, Williams.

Nays: Davis, Ellis, Gallegos, Hinojosa, Lucio, Rodriguez, Seliger, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Zaffirini.

Senator Patrick offered the following amendment to the bill:

**Floor Amendment No. 6**

Amend **CSHB 4** (senate committee printing) as follows:

1. Strike SECTION 12 of the bill on page 12, lines 37-49, and substitute the following:

SECTION 12. The unobligated and unexpended balance of the Major Events Trust Fund 0869, not to exceed \$10,000,000 is hereby transferred to General Revenue Fund 0001, notwithstanding the provisions of Section 5A, Chapter 1507 (S.B. 456), Acts of the 76th Legislature, Regular Session, 1999 (Article 5190.14, Vernon's Texas Civil Statutes).

2. Insert the following appropriately numbered SECTION and renumber the subsequent SECTIONS appropriately:

    . The appropriations to the Fiscal Programs - Comptroller of Public Accounts for the state fiscal year ending August 31, 2011, made by Rider 17.58, page IX-81, Chapter 1424 (S.B. 1), Acts of the 81st Legislature, Regular Session, 2009 (the General Appropriations Act), for deposit into Major Events Trust Fund 0869, are reduced by \$25,000,000.

The amendment to **CSHB 4** was read.

On motion of Senator Ogden, Floor Amendment No. 6 was tabled by the following vote: Yeas 17, Nays 13.

Yeas: Carona, Duncan, Ellis, Estes, Fraser, Gallegos, Harris, Hinojosa, Nelson, Ogden, Rodriguez, Uresti, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Birdwell, Davis, Eltife, Hegar, Huffman, Jackson, Lucio, Nichols, Patrick, Seliger, Shapiro, Van de Putte, Watson.

Absent: Deuell.

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

**CSHB 4** as amended was passed to third reading by a viva voce vote.

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 4 ON THIRD READING**

Senator Ogden moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 4** be placed on its third reading and final passage.

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

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

**REMARKS ORDERED PRINTED**

On motion of Senator Lucio and by unanimous consent, the exchange between Senators Ogden and Lucio regarding **CSHB 4** was ordered reduced to writing and printed in the *Senate Journal* as follows:

**Senator Lucio:** Senator Ogden, on page 4 of your floor amendment, there is a new section calling for a rural land evaluation by the Texas Department of Agriculture for "an assessment of the impact of illegal activity along the Texas-Mexico border on rural landowners and the agriculture industry . . . to develop recommendations to enhance border security." My question is to the term "impact" in order to establish legislative intent. Is it your intent that the term "impact" include the economic consequences and detrimental financial effect and results of illegal activities on rural landowners and the agriculture industry?

**Senator Ogden:** Yes.

**Senator Lucio:** Thank you.

**HOUSE BILL 2853 ON SECOND READING**

Senator Jackson moved to suspend the regular order of business to take up for consideration **HB 2853** at this time on its second reading:

**HB 2853**, Relating to tax increment financing.

The motion prevailed.

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

The bill was read second time.

Senator Jackson offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 2853** (senate committee printing) as follows:

(1) In SECTION 1 of the bill, in amended Section 311.002(1), Tax Code (page 1, lines 58 and 59), strike Paragraph (K).

(2) In SECTION 1 of the bill, in amended Section 311.002(1), Tax Code (page 1, line 60), strike "(L)" and substitute "(K)".

(3) In SECTION 1 of the bill, in amended Section 311.002(1), Tax Code (page 1, line 64), strike "(M)" and substitute "(L)".

(4) In SECTION 3 of the bill, in amended Section 311.005(a), Tax Code (page 2, lines 40 and 41), strike "open, undeveloped, or underdeveloped" and substitute "open or undeveloped".

(5) In SECTION 10 of the bill, in amended Section 311.010(h), Tax Code (page 5, lines 23-25), strike "[~~from the tax increment fund of the zone in an aggregate amount not to exceed the amount of the tax increment produced by the municipality and paid into the tax increment fund for the zone~~]" and substitute "from the tax increment fund of the zone in an aggregate amount not to exceed the amount of the tax increment produced by the municipality and paid into the tax increment fund for the zone".

(6) In SECTION 11 of the bill, in amended Section 311.011, Tax Code (page 5, lines 45-55), strike Subsection (b) and substitute the following:

(b) The project plan must include:

(1) a description and map showing existing uses and conditions of real property in the zone and ~~[a map showing]~~ proposed ~~[improvements to and proposed]~~ uses of that property;

(2) proposed changes of zoning ordinances, the master plan of the municipality, building codes, other municipal ordinances, and subdivision rules and regulations, if any, of the county, if applicable;

(3) a list of estimated nonproject costs; and

(4) a statement of a method of relocating persons to be displaced, if any, as a result of implementing the plan.

(7) In SECTION 11 of the bill, in amended Section 311.011(c)(3), Tax Code (page 5, line 63), strike "~~[an economic feasibility study]~~;" and substitute "and an economic feasibility study;"

(8) In SECTION 11 of the bill, in added Section 311.011(h), Tax Code (page 6, line 37), between "items" and the period, insert ", but the amounts contained in the project plan or reinvestment zone financing plan may not vary materially from the estimates".

(9) Strike SECTION 14 of the bill, amending Section 311.014(b), Tax Code (page 7, lines 29-36).

(10) In SECTION 15 of the bill, in amended Section 311.015(a), Tax Code (page 7, lines 42 and 43), strike "311.010(b), to make payments pursuant to programs under Section 311.010(h)" and substitute "311.010(b)".

(11) In SECTION 19 of the bill, in proposed Section 311.021(a)(1), Tax Code (page 8, line 33), strike "second" and substitute "third".

(12) Renumber the SECTIONS of the bill accordingly.

The amendment to **HB 2853** was read and was adopted by a viva voce vote.

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

Senator Jackson offered the following amendment to the bill:

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

Amend **HB 2853** (senate committee printing) by striking SECTION 17 of the bill (page 8, lines 3-10) and substituting the following:

SECTION 17. Section 311.016(b), Tax Code, as amended by Chapters 977 (H.B. 1820) and 1094 (H.B. 2120), Acts of the 79th Legislature, Regular Session, 2005, is reenacted and amended to read as follows:

(b) The municipality or county shall send a copy of a report made under this section to[:

~~[(1) the attorney general; and~~

~~[(2) the comptroller.~~

The amendment to **HB 2853** was read and was adopted by a viva voce vote.

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

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

**HB 2853** as amended was passed to third reading by a viva voce vote.

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

Nays: Ogden.

### **HOUSE BILL 2853 ON THIRD READING**

Senator Jackson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2853** be placed on its third reading and final passage.

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

Nays: Ogden.

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

### **MESSAGE FROM THE HOUSE**

HOUSE CHAMBER

Austin, Texas

Wednesday, May 25, 2011 - 5

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 169** Phillips

Instructing the enrolling clerk of the house to make corrections in H.B. No. 3833.

**SCR 58** Watson

Instructing the enrolling clerk of the senate to make corrections in S.B. No. 768.

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

**HB 174** (144 Yeas, 0 Nays, 2 Present, not voting)

**HB 274** (130 Yeas, 13 Nays, 2 Present, not voting)

**HB 308** (145 Yeas, 0 Nays, 2 Present, not voting)

**HB 326** (102 Yeas, 44 Nays, 2 Present, not voting)

**HB 336** (140 Yeas, 2 Nays, 2 Present, not voting)

**HB 359** (80 Yeas, 64 Nays, 3 Present, not voting)

**HB 360** (141 Yeas, 0 Nays, 2 Present, not voting)  
**HB 590** (142 Yeas, 0 Nays, 2 Present, not voting)  
**HB 630** (139 Yeas, 0 Nays, 3 Present, not voting)  
**HB 788** (143 Yeas, 0 Nays, 2 Present, not voting)  
**HB 805** (146 Yeas, 0 Nays, 2 Present, not voting)  
**HB 1040** (140 Yeas, 0 Nays, 2 Present, not voting)  
**HB 1090** (143 Yeas, 0 Nays, 2 Present, not voting)  
**HB 1301** (145 Yeas, 0 Nays, 2 Present, not voting)  
**HB 1334** (143 Yeas, 0 Nays, 2 Present, not voting)  
**HB 1371** (82 Yeas, 64 Nays, 2 Present, not voting)  
**HB 1451** (103 Yeas, 40 Nays, 2 Present, not voting)  
**HB 1495** (143 Yeas, 0 Nays, 2 Present, not voting)  
**HB 1504** (142 Yeas, 0 Nays, 2 Present, not voting)  
**HB 1568** (143 Yeas, 1 Nays, 2 Present, not voting)  
**HB 1658** (143 Yeas, 0 Nays, 2 Present, not voting)  
**HB 1756** (142 Yeas, 0 Nays, 2 Present, not voting)  
**HB 1757** (137 Yeas, 4 Nays, 2 Present, not voting)  
**HB 1758** (133 Yeas, 7 Nays, 2 Present, not voting)  
**HB 1797** (146 Yeas, 0 Nays, 2 Present, not voting)  
**HB 1821** (139 Yeas, 4 Nays, 2 Present, not voting)  
**HB 1887** (92 Yeas, 52 Nays, 2 Present, not voting)  
**HB 1904** (144 Yeas, 0 Nays, 3 Present, not voting)  
**HB 1907** (143 Yeas, 0 Nays, 2 Present, not voting)  
**HB 1969** (143 Yeas, 0 Nays, 2 Present, not voting)  
**HB 1981** (145 Yeas, 0 Nays, 2 Present, not voting)  
**HB 2015** (143 Yeas, 0 Nays, 2 Present, not voting)  
**HB 2017** (138 Yeas, 1 Nays, 2 Present, not voting)  
**HB 2136** (139 Yeas, 0 Nays, 3 Present, not voting)  
**HB 2169** (142 Yeas, 0 Nays, 2 Present, not voting)  
**HB 2172** (143 Yeas, 2 Nays, 2 Present, not voting)  
**HB 2284** (143 Yeas, 0 Nays, 2 Present, not voting)  
**HB 2313** (145 Yeas, 0 Nays, 2 Present, not voting)  
**HB 2330** (141 Yeas, 0 Nays, 2 Present, not voting)  
**HB 2396** (97 Yeas, 45 Nays, 2 Present, not voting)

**HB 2408** (143 Yeas, 0 Nays, 3 Present, not voting)

**HB 2469** (144 Yeas, 0 Nays, 2 Present, not voting)

**HB 2477** (144 Yeas, 0 Nays, 2 Present, not voting)

**HB 2636** (143 Yeas, 0 Nays, 2 Present, not voting)

**HB 2717** (145 Yeas, 1 Nays, 2 Present, not voting)

**HB 2784** (144 Yeas, 0 Nays, 2 Present, not voting)

**HB 2869** (145 Yeas, 0 Nays, 3 Present, not voting)

**HB 2903** (145 Yeas, 0 Nays, 2 Present, not voting)

**HB 2999** (139 Yeas, 0 Nays, 2 Present, not voting)

**HB 3002** (144 Yeas, 0 Nays, 2 Present, not voting)

**HB 3033** (130 Yeas, 15 Nays, 2 Present, not voting)

**HB 3109** (140 Yeas, 2 Nays, 2 Present, not voting)

**HB 3111** (140 Yeas, 3 Nays, 2 Present, not voting)

**HB 3133** (107 Yeas, 38 Nays, 2 Present, not voting)

**HB 3161** (142 Yeas, 0 Nays, 2 Present, not voting)

**HB 3278** (143 Yeas, 0 Nays, 2 Present, not voting)

**HB 3324** (144 Yeas, 0 Nays, 2 Present, not voting)

**HB 3333** (142 Yeas, 3 Nays, 2 Present, not voting)

**HB 3831** (146 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 90** (non-record vote)

House Conferees: Cook - Chair/Hartnett/Lavender/Miller, Sid/Phillips

**HB 725** (non-record vote)

House Conferees: Callegari - Chair/Hardcastle/Hopson/King, Tracy O./Ritter

**HB 753** (non-record vote)

House Conferees: Raymond - Chair/Gonzalez, Naomi/Hopson/Hunter/Morrison

**HB 1178** (non-record vote)

House Conferees: Flynn - Chair/Berman/Guillen/Pena/Zedler

**HB 1335** (non-record vote)

House Conferees: Allen - Chair/Mallory Caraway/Nash/Reynolds/Thompson

**HB 1732** (non-record vote)

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

**HB 2048** (non-record vote)

House Conferees: Lyne - Chair/Flynn/Gonzalez, Naomi/Murphy/Thompson

**HB 2173** (non-record vote)

House Conferees: Torres - Chair/Burkett/Hernandez Luna/King, Phil/Taylor, Larry

**HB 2226** (non-record vote)

House Conferees: Truitt - Chair/Anderson, Charles "Doc"/Hernandez Luna/Legler/Veasey

**HB 2490** (non-record vote)

House Conferees: Solomons - Chair/Aliseda/Chisum/Legler/Smith, Wayne

**HB 2560** (non-record vote)

House Conferees: Sheffield - Chair/Fletcher/Lavender/Legler/Lozano

**HB 2605** (non-record vote)

House Conferees: Taylor, Larry - Chair/Cook/Harper-Brown/Menendez/Solomons

**HB 2608** (non-record vote)

House Conferees: Harper-Brown - Chair/Davis, John/King, Phil/Taylor, Larry/Turner

**HB 2729** (non-record vote)

House Conferees: Callegari - Chair/Cain/Hunter/Lozano/Parker

**HB 2734** (non-record vote)

House Conferees: Madden - Chair/Allen/Cain/Hunter/Parker

**HB 2900** (non-record vote)

House Conferees: Hartnett - Chair/Lewis/Madden/Raymond/Thompson

**HB 3275** (non-record vote)

House Conferees: Coleman - Chair/Davis, John/Davis, Yvonne/Huberty/Murphy

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

**SB 652** (non-record vote)

House Conferees: Bonnen - Chair/Anchia/Cook/Harper-Brown/Taylor, Larry

**SB 655** (non-record vote)

House Conferees: Keffer - Chair/Carter/Crownover/Lewis/Oliveira

**SB 1338** (non-record vote)

House Conferees: Geren - Chair/Hamilton/Howard, Donna/Marquez/Ritter

**SB 1489** (non-record vote)

House Conferees: Madden - Chair/Allen/Hunter/Perry/Workman

**SB 1534** (non-record vote)

House Conferees: Davis, John - Chair/Anderson, Rodney/Murphy/Reynolds/Vo

**SB 1816** (non-record vote)

House Conferees: Raymond - Chair/Guillen/Hilderbran/Margo/Pena

Respectfully,

/s/Robert Haney, Chief Clerk  
House of Representatives**HOUSE BILL 550 ON SECOND READING**

Senator Jackson moved to suspend the regular order of business to take up for consideration **HB 550** at this time on its second reading:

**HB 550**, Relating to an exemption to the requirement for a fishing license for residents of a certain age.

The motion prevailed.

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

The bill was read second time.

Senator Estes offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 550** (Senate Committee Printing page 1, lines 15-16) by striking Subdivision (1) and substituting the following:

(1) who is a resident and whose birth date is before January 1, 1931 [~~September 1, 1930~~];

The amendment to **HB 550** was read and was adopted by a viva voce vote.

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

Absent: Williams.

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

**HB 550** as amended was passed to third reading by a viva voce vote.

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

Nays: Hegar.

Absent: Williams.

**HOUSE BILL 550 ON THIRD READING**

Senator Jackson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 550** be placed on its third reading and final passage.

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

Absent: Williams.

The bill was read third time and was passed by the following vote: Yeas 29, Nays 1.

Nays: Hegar.

Absent: Williams.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1199 ON SECOND READING**

On motion of Senator Davis and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 1199** at this time on its second reading:

**CSHB 1199**, Relating to the penalty for certain intoxication offenses.

The bill was read second time.

Senator Davis offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 1199** (Senate Committee Printing) by adding the following SECTION to the bill and renumbering subsequent SECTIONS of the bill appropriately:

SECTION 1. This Act shall be known as the Abdallah Khader Act.

The amendment to **CSHB 1199** was read and was adopted by a viva voce vote.

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

Nays: Birdwell, Fraser, Huffman, Nelson.

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

**CSHB 1199** as amended was passed to third reading by a viva voce vote.

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

Nays: Hegar.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1199 ON THIRD READING**

Senator Davis moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 1199** be placed on its third reading and final passage.

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

The bill was read third time and was passed by the following vote: Yeas 30, Nays 1.

Nays: Hegar.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 2857 ON SECOND READING**

Senator Uresti moved to suspend the regular order of business to take up for consideration **CSHB 2857** at this time on its second reading:

**CSHB 2857**, Relating to regulation of outdoor lighting in certain areas; providing a criminal penalty and for injunctive relief.

The motion prevailed.

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

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

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

Nays: Birdwell, Fraser, Harris, Nichols, Patrick, Shapiro.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 2857 ON THIRD READING**

Senator Uresti moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 2857** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 25, Nays 6.

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

Nays: Birdwell, Fraser, Harris, Nichols, Patrick, Shapiro.

The bill was read third time and was passed by the following vote: Yeas 25, Nays 6. (Same as previous roll call)

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

**HOUSE BILL 1960 ON SECOND READING**

Senator Jackson moved to suspend the regular order of business to take up for consideration **HB 1960** at this time on its second reading:

**HB 1960**, Relating to the regulation of boat manufacturers, distributors, and dealers; providing a civil penalty.

The motion prevailed.

Senators Birdwell, Eltife, Fraser, Nelson, Nichols, Patrick, Rodriguez, Seliger, Shapiro, and Williams asked to be recorded as voting "Nay" on suspension of the regular order of business.

The bill was read second time and was passed to third reading by the following vote: Yeas 20, Nays 11.

Yeas: Carona, Davis, Deuell, Duncan, Ellis, Estes, Gallegos, Harris, Hegar, Hinojosa, Jackson, Lucio, Ogden, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Zaffirini.

Nays: Birdwell, Eltife, Fraser, Huffman, Nelson, Nichols, Patrick, Rodriguez, Seliger, Shapiro, Williams.

**VOTES RECONSIDERED ON  
HOUSE BILL 242**

On motion of Senator Hegar and by unanimous consent, the vote by which **HB 242** was finally passed was reconsidered:

**HB 242**, Relating to the authority of certain retired peace officers to carry certain firearms.

Question — Shall **HB 242** be finally passed?

On motion of Senator Hegar and by unanimous consent, the vote by which **HB 242** was passed to third reading was reconsidered.

Question — Shall **HB 242** be passed to third reading?

Senator Williams offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 242** (senate committee printing) by adding the following new SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly.

SECTION \_\_\_\_\_. Section 411.023, Government Code, is amended by amending Subsection (b) and adding Subsection (g) to read as follows:

(b) A special ranger is subject to the orders of the commission and the governor for special duty to the same extent as other law enforcement officers provided for by this chapter, except that a special ranger may not enforce a law [~~except one designed to protect life and property and may not enforce a law~~] regulating the use of a state highway by a motor vehicle. A special ranger is not connected with a ranger company or uniformed unit of the department.

(g) The commission may call special rangers into service to:

- (1) preserve the peace and protect life and property;
- (2) conduct background investigations;
- (3) monitor sex offenders;
- (4) serve as part of two-officer units on patrol in high threat areas; and
- (5) provide assistance to the department during disasters.

SECTION \_\_\_\_\_. Section 411.024, Government Code, is amended by amending Subsection (b) and adding Subsection (g) to read as follows:

(b) A special Texas Ranger is subject to the orders of the commission and the governor for special duty to the same extent as other law enforcement officers provided for by this chapter, except that a special Texas Ranger may not enforce a law [~~except one designed to protect life and property and may not enforce a law~~] regulating the use of a state highway by a motor vehicle. A special Texas Ranger is not connected with a ranger company or uniformed unit of the department.

(g) The commission may call special Texas Rangers into service to:

- (1) preserve the peace and protect life and property;
- (2) conduct background investigations;

- (3) monitor sex offenders;
- (4) serve as part of two-officer units on patrol in high threat areas; and
- (5) provide assistance to the department during disasters.

The amendment to **HB 242** was read.

Senator Wentworth offered the following amendment to Floor Amendment No. 1:

**Floor Amendment No. 2**

Amend Amendment No. 1 by Williams to **HB 242** (senate committee printing) as follows:

(1) In added Section 411.023(g), Government Code (page 1, lines 20-23), strike Subdivisions (4) and (5), and substitute the following:

- (4) serve as part of two-officer units on patrol in high threat areas;
- (5) provide assistance to the department during disasters; and
- (6) investigate instances of reckless driving.

(2) In added Section 411.024(g), Government Code (page 2, lines 11-14), strike Subdivisions (4) and (5), and substitute the following:

- (4) serve as part of two-officer units on patrol in high threat areas;
- (5) provide assistance to the department during disasters; and
- (6) investigate instances of reckless driving.

(3) Add the following SECTIONS to the amendment (page 2, after line 14):

SECTION \_\_\_\_\_. Section 545.401, Transportation Code, is amended by amending Subsection (b) and adding Subsections (e), (f), (g), and (h) to read as follows:

(b) Except as provided by Subsection (e), an [An] offense under this section is a misdemeanor punishable by:

- (1) a fine not to exceed \$200;
- (2) confinement in county jail for not more than 30 days; or
- (3) both the fine and the confinement.

(e) If an offense under this section results in the serious bodily injury or death of an operator or passenger of another motor vehicle, the offense is a Class B misdemeanor.

(f) The court may:

(1) order that the driver's license of a person convicted of an offense under Subsection (e) be suspended for not less than 30 days beginning on the date of conviction; and

(2) require the person to attend and present proof that the person successfully completed a driving safety course approved under Chapter 1001, Education Code, before the person's driver's license may be reinstated.

(g) A judge, acting under Article 42.12, Code of Criminal Procedure, who elects to place a defendant charged with an offense under this section on community supervision under that article may require the defendant to attend and present proof that the defendant successfully completed a driving safety course approved under Chapter 1001, Education Code.

(h) A person who is subject to prosecution under both this section and another section of this or any other code may be prosecuted under either or both sections.

SECTION \_\_\_\_\_. The change in law made by this Act to Section 545.401, Transportation 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 was committed before that date.

The amendment to Floor Amendment No. 1 to **HB 242** was read and was adopted by a viva voce vote.

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

Question recurring on the adoption of Floor Amendment No. 1 to **HB 242**, the amendment as amended was adopted by a viva voce vote.

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

Senator Zaffirini offered the following amendment to the bill:

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

Amend **HB 242** by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_. Section 545.425(a), Transportation Code, is amended by adding Subdivision (1-a) to read as follows:

(1-a) "Text-based communication" means a communication that is designed or intended to be transmitted between wireless communication devices for the purpose of manually communicating in a nonspoken manner with another person in a written medium. The term includes:

- (A) a text message;
- (B) an instant message; and
- (C) e-mail.

SECTION \_\_. Section 545.425, Transportation Code, is amended by amending Subsection (b-1) and adding Subsections (c-1) and (c-2) to read as follows:

(b-1) A municipality, county, or other political subdivision that enforces Subsection (b) [this section] shall post a sign that complies with the standards described by this subsection at the entrance to each school crossing zone in the municipality, county, or other political subdivision. The department shall adopt standards that:

- (1) allow for a sign required to be posted under this subsection to be attached to an existing sign at a minimal cost; and
- (2) require that a sign required to be posted under this subsection inform an operator that:

(A) the use of a wireless communication device is prohibited in the school crossing zone; and

(B) the operator is subject to a fine if the operator uses a wireless communication device in the school crossing zone.

(c-1) An operator may not use a hand-held wireless communication device to read, write, or send a text-based communication while operating a motor vehicle unless the vehicle is stopped.

(c-2) An operator is not subject to prosecution under Subsection (c-1) if:

(1) the operator uses a hand-held wireless communication device:

(A) to read, select, or enter a telephone number or name for the purpose of making a telephone call;

(B) in conjunction with voice-operated technology or a hands-free device; or

(C) to navigate using a global positioning system; or

(2) the hand-held wireless communication device:

(A) is used by the operator to relay information between the operator and a dispatcher in the course of the operator's occupational duties; and

(B) is affixed to the vehicle.

The amendment to **HB 242** was read.

Senator Hegar moved to table Floor Amendment No. 3.

The motion to table was lost by the following vote: Yeas 10, Nays 19.

Yeas: Birdwell, Fraser, Harris, Hegar, Huffman, Nelson, Nichols, Patrick, Shapiro, Whitmire.

Nays: Carona, Davis, Ellis, Eltife, Estes, Gallegos, Hinojosa, Jackson, Lucio, Ogden, Rodriguez, Seliger, Uresti, Van de Putte, Watson, Wentworth, West, Williams, Zaffirini.

Absent: Deuell, Duncan.

Question recurring on the adoption of Floor Amendment No. 3 to **HB 242**, the amendment was adopted by the following vote: Yeas 19, Nays 10.

Yeas: Carona, Davis, Ellis, Eltife, Estes, Gallegos, Hinojosa, Jackson, Lucio, Ogden, Rodriguez, Seliger, Uresti, Van de Putte, Watson, Wentworth, West, Williams, Zaffirini.

Nays: Birdwell, Fraser, Harris, Hegar, Huffman, Nelson, Nichols, Patrick, Shapiro, Whitmire.

Absent: Deuell, Duncan.

**(Senator Eltife in Chair)**

Senator Ogden offered the following amendment to the bill:

**Floor Amendment No. 4**

Amend **HB 242** (senate committee report) as follows:

(1) Strike SECTION 1 of the bill, amending Section 1701.357(b), Occupations Code (page 1, lines 11 through 31), and substitute the following:

SECTION 1. Section 1701.357, Occupations Code, is amended by amending Subsections (a), (b), (c), and (d) and adding Subsections (b-1), (c-1), and (j) to read as follows:

(a) This section applies only to:

(1) a peace officer;

(2) a federal criminal investigator designated as a special investigator under Article 2.122, Code of Criminal Procedure; ~~and~~

(3) a qualified retired law enforcement officer who is entitled to carry a concealed firearm under 18 U.S.C. Section 926C and is not otherwise described by Subdivision (1) or (2); and

(4) a former reserve law enforcement officer who served in that capacity not less than a total of 15 years with a state or local law enforcement agency.

(b) The head of a state or local law enforcement agency may allow an honorably retired peace officer an opportunity to demonstrate weapons proficiency if the retired officer provides to the agency a sworn affidavit stating that:

(1) the officer:

(A) honorably retired after not less than a total of 15 years of service as a commissioned officer with one or more state or local law enforcement agencies; or

(B) before completing 15 years of service as a commissioned officer with one or more state or local law enforcement agencies, separated from employment with the agency or agencies and is a qualified retired law enforcement officer, as defined by 18 U.S.C. Section 926C;

(2) the officer's license as a commissioned officer was not revoked or suspended for any period during the officer's term of service as a commissioned officer; and

(3) the officer has no psychological or physical disability that would interfere with the officer's proper handling of a handgun.

(b-1) The head of a state or local law enforcement agency may allow a person who served as a reserve law enforcement officer as described by Subsection (a)(4) an opportunity to demonstrate weapons proficiency if the person provides to the agency a sworn affidavit stating that:

(1) the person served not less than a total of 15 years as a reserve law enforcement officer with a state or local law enforcement agency;

(2) the person's appointment as a reserve law enforcement officer was not revoked or suspended for any period during the person's term of service; and

(3) the person has no psychological or physical disability that would interfere with the person's proper handling of a handgun.

(c) The agency shall establish written procedures for the issuance or denial of a certificate of proficiency under this section. The agency shall issue the certificate to a retired officer who satisfactorily demonstrates weapons proficiency under Subsection (b), provides proof that the officer is entitled to receive a pension or annuity for service with a state or local law enforcement agency or is not entitled to receive a pension or annuity only because the law enforcement agency that employed the retired officer does not offer a pension or annuity to its retired employees, and satisfies the written procedures established by the agency. The agency shall issue the certificate

to a person described by Subsection (a)(4) who satisfactorily demonstrates weapons proficiency under Subsection (b-1). The agency shall maintain records of any person ~~[retired officer]~~ who holds a certificate issued under this section.

(c-1) For purposes of Subsection (c) ~~[this subsection]~~, proof that a retired officer is entitled to receive a pension or annuity or is not entitled to receive a pension or annuity only because the agency that last employed the retired officer does not offer a pension or annuity may include a retired peace officer identification card issued under Subchapter H, Chapter 614, Government Code.

(d) A certificate issued under this section expires on the second anniversary of the date the certificate was issued. A person ~~[retired officer]~~ to whom this section applies may request an annual evaluation of weapons proficiency and issuance of a certificate of proficiency as needed to comply with applicable federal or other laws.

(j) On request of a person described by Subsection (a)(4) who holds a certificate of proficiency under this section, the head of the state or local law enforcement agency at which the person last served as a reserve law enforcement officer shall issue to the person identification that indicates the person's status. An identification under this subsection must include a photograph of the person.

(2) In SECTION 2 of the bill, strike amended Section 46.15(a)(5), Penal Code (page 1, line 63, through page 2, line 12), and substitute the following:

(5) an honorably retired peace officer, qualified retired law enforcement officer, ~~or~~ federal criminal investigator, or former reserve law enforcement officer who holds a certificate of proficiency issued under Section 1701.357, Occupations Code, and is carrying a photo identification that is issued by a federal, state, or local law enforcement agency, as applicable, and that~~+~~

~~[(A)]~~ verifies that the officer is:

(A) an honorably retired peace officer;

(B) a qualified retired law enforcement officer;

(C) a federal criminal investigator; or

(D) a former reserve law enforcement officer who has served in that capacity not less than a total of 15 years with a state or local law enforcement agency ~~[after not less than 15 years of service as a commissioned officer; and~~

~~[(B) is issued by a state or local law enforcement agency];~~

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

SECTION \_\_\_\_\_. Subchapter H, Chapter 411, Government Code, is amended by adding Section 411.1992 to read as follows:

Sec. 411.1992. FORMER RESERVE LAW ENFORCEMENT OFFICERS. (a) A person who served as a reserve law enforcement officer, as defined by Section 1701.001, Occupations Code, not less than a total of 15 years with a state or local law enforcement agency may apply for a license under this subchapter at any time.

(b) The applicant shall submit to the department two complete sets of legible and classifiable fingerprints and a sworn statement from the head of the law enforcement agency at which the applicant last served as a reserve law enforcement officer. A head of a law enforcement agency may not refuse to issue a statement under this subsection. If the applicant alleges that the statement is untrue, the department shall investigate the validity of the statement. The statement must include:

- (1) the name and rank of the applicant;
- (2) the status of the applicant;
- (3) whether the applicant was accused of misconduct at any time during the applicant's term of service and the disposition of that accusation;
- (4) a description of the physical and mental condition of the applicant;
- (5) a list of the types of weapons the applicant demonstrated proficiency with during the applicant's term of service; and
- (6) a recommendation from the agency head regarding the issuance of a license under this subchapter.

(c) The department may issue a license under this subchapter to an applicant under this section if the applicant was a reserve law enforcement officer for not less than a total of 15 years with a state or local law enforcement agency and is physically and emotionally fit to possess a handgun.

(d) An applicant under this section must pay a fee of \$25 for a license issued under this subchapter.

(e) A former reserve law enforcement officer who obtains a license as provided by this section must maintain, for the category of weapon licensed, the proficiency required for the person under Section 1701.357, Occupations Code. The department or the local law enforcement agency at which the person last served as a reserve law enforcement officer shall allow the person an opportunity to annually demonstrate the required proficiency. The proficiency shall be reported to the department on application and renewal.

(f) A license issued under this section expires as provided by Section 411.183.

SECTION \_\_\_\_\_. The heading to Section 1701.357, Occupations Code, is amended to read as follows:

Sec. 1701.357. WEAPONS PROFICIENCY FOR CERTAIN RETIRED PEACE OFFICERS AND FEDERAL LAW ENFORCEMENT OFFICERS AND FOR FORMER RESERVE LAW ENFORCEMENT OFFICERS.

The amendment to **HB 242** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 4.

### **(President Pro Tempore Ogden in Chair)**

Senator Hegar temporarily postponed further consideration of **HB 242**.

Question — Shall **HB 242** as amended be passed to third reading?

### **HOUSE BILL 1960 ON THIRD READING**

Senator Jackson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1960** be placed on its third reading and final passage:

**HB 1960**, Relating to the regulation of boat manufacturers, distributors, and dealers; providing a civil penalty.

The motion prevailed by the following vote: Yeas 26, Nays 5.

Yeas: Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Harris, Hegar, Hinojosa, Huffman, Jackson, Lucio, Ogden, Patrick, Rodriguez, Seliger, Shapiro, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Birdwell, Fraser, Gallegos, Nelson, Nichols.

The bill was read third time and was passed by the following vote: Yeas 19, Nays 12.

Yeas: Carona, Davis, Deuell, Duncan, Ellis, Estes, Harris, Hegar, Hinojosa, Jackson, Lucio, Ogden, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Zaffirini.

Nays: Birdwell, Eltife, Fraser, Gallegos, Huffman, Nelson, Nichols, Patrick, Rodriguez, Seliger, Shapiro, Williams.

### **HOUSE BILL 242 ON SECOND READING**

The President Pro Tempore laid before the Senate **HB 242** sponsored by Senator Hegar on its second reading. The bill had been reconsidered, amended, and further consideration postponed:

**HB 242**, Relating to the authority of certain retired peace officers to carry certain firearms.

Question — Shall **HB 242** as amended be passed to third reading?

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

**HB 242** as amended was again passed to third reading by a viva voce vote.

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

Nays: Birdwell, Nichols, Patrick.

### **HOUSE BILL 242 ON THIRD READING**

Senator Hegar again moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 242** be placed on its third reading and final passage.

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

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

Nays: Birdwell, Nichols, Patrick.

**HB 242** was again passed by the following vote: Yeas 28, Nays 3. (Same as previous roll call)

### **SENATE BILL 1331 WITH HOUSE AMENDMENT**

Senator Watson called **SB 1331** 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 1331** (engrossed) to read as follows:

Page 1, line 8, after "It is an" and before "to the application" strike "exception" and replace it with "does not apply to".

The amendment was read.

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

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **SB 1331** 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; Whitmire, Ellis, Huffman, and Carona.

### **SENATE BILL 1543 WITH HOUSE AMENDMENTS**

Senator Wentworth called **SB 1543** 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. 2**

Amend **SB 1543** (house committee printing) in SECTION 1 of the bill as follows:

(1) In added Section 2256.0204(a), Government Code (page 1, line 9), strike "senior secured".

(2) In added Section 2256.0204(a)(1), Government Code (page 1, line 15), after the semicolon, add "or".

(3) In added Section 2256.0204(a), Government Code, strike Subdivisions (2) and (3) (page 1, lines 16-20).

(4) In added Section 2256.0204(a), Government Code (page 1, line 21), strike "(4)" and substitute "(2)".

(5) In added Section 2256.0204, Government Code, strike Subsection (c) (page 2, lines 1-11) and substitute the following:

(c) In addition to authorized investments permitted by this subchapter, an independent school district subject to this section may purchase, sell, and invest its funds and funds under its control in corporate bonds that, at the time of purchase, are rated by a nationally recognized investment rating firm "AA-" or the equivalent and have a stated final maturity that is not later than the third anniversary of the date the corporate bonds were purchased.

(6) In added Section 2256.0204(d)(1), Government Code (page 2, line 17), after the semicolon, add "or".

(7) In added Section 2256.0204(d)(2), Government Code (page 2, line 20), strike "; or" and substitute ".".

(8) In added Section 2256.0204(d), Government Code, strike Subdivision (3) (page 2, lines 21-22).

(9) In added Section 2256.0204(e)(1), Government Code (page 2, line 27), after the semicolon, add "and".

(10) In added Section 2256.0204(e)(2), Government Code (page 3, line 5), strike "; and" and substitute ".".

(11) In added Section 2256.0204(e), Government Code, strike Subdivision (3) (page 3, lines 6-8).

(12) In added Section 2256.0204(f)(1), Government Code (page 3, line 17), strike "AA" and substitute "AA-".

(13) In added Section 2256.0204, Government Code, strike Subsection (g) (page 3, lines 20-21).

### Floor Amendment No. 3

Amend **SB 1543** (house committee printing) as follows:

On page 2, line 14, between "than" and "percent" strike "20" and insert "15".

The amendments were read.

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

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **SB 1543** 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 Wentworth, Chair; Davis, Carona, Seliger, and Shapiro.

### CONFERENCE COMMITTEE ON HOUSE BILL 414

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 414** 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 414** 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; Estes, Seliger, Jackson, and Hinojosa.

**SENATE BILL 220 WITH HOUSE AMENDMENT**

Senator Nelson called **SB 220** 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 220** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to guardianships, including the assessment of prospective wards for, and the provision of, guardianship services by the Department of Aging and Disability Services.

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

SECTION 1. Subsection (a), Section 111.042, Government Code, is amended to read as follows:

(a) To provide guardianship services in this state, the following individuals must hold a certificate issued under this section:

- (1) an individual who is a private professional guardian;
- (2) an individual who will provide those services to a ward of a private professional guardian ~~[or the Department of Aging and Disability Services]~~ on the guardian's ~~[or department's]~~ behalf; and
- (3) an individual, other than a volunteer, who will provide those services or other services under Section 161.114, Human Resources Code, to a ward of a guardianship program or the Department of Aging and Disability Services on the program's or department's behalf.

SECTION 2. Section 32.02451, Human Resources Code, is amended to read as follows:

Sec. 32.02451. ADDITIONAL PERSONAL NEEDS ALLOWANCE [REIMBURSEMENT] FOR GUARDIANSHIP EXPENSES OF CERTAIN RECIPIENTS. (a) In this section, "applied income" has the meaning assigned by Section 670, Texas Probate Code.

(b) To the extent allowed by federal law, the department, in computing the applied income of a recipient of medical assistance, shall deduct in the manner provided by this section an additional personal needs allowance from the earned and unearned income of the recipient or, if applicable, the recipient and the recipient's spouse, [provide medical assistance reimbursement] for compensation and costs ordered to be deducted under Section 670, Texas Probate Code. Subject to Subsection (f), a deduction ordered by the court under Section 670, Texas Probate Code, is effective beginning on the later of:

- (1) the month in which the order is signed; or
- (2) the first month of medical assistance eligibility for which the recipient is subject to a copayment[, in a guardianship established for a medical assistance recipient].

(c) The department shall compute the applied income of a recipient of medical assistance as follows:

(1) the department shall deduct from the earned and unearned income the personal needs allowance authorized by Section 32.024(w) before making any other deduction;

(2) if after the deduction under Subdivision (1) the recipient has remaining income, the department shall deduct the lesser of the following:

(A) the amount of the remaining income; or

(B) the amount of the additional personal needs allowance for compensation and costs ordered to be deducted under Section 670, Texas Probate Code; and

(3) if after the deductions under Subdivisions (1) and (2) the recipient has remaining income, the department shall deduct any other authorized allowances.

(d) The amount of income remaining, if any, after the department makes the deductions as provided by Subsection (c) is the amount of the applied income of the recipient of medical assistance.

(e) The executive commissioner of the Health and Human Services Commission shall adopt rules providing a procedure by which a recipient of medical assistance for ~~[person to]~~ whom amounts are ordered deducted ~~[paid]~~ under Section 670, Texas Probate Code, ~~[that section]~~ may submit to the department a copy of the court order issued under that section to receive a deduction of those amounts from the recipient's income as provided by this section ~~[a claim to and receive reimbursement from the medical assistance program].~~

(f) The department may not allow a deduction for the additional personal needs allowance for compensation and costs ordered to be deducted under Section 670, Texas Probate Code, if the order is issued after the recipient of medical assistance dies.

SECTION 3. Subsections (a) and (b), Section 161.109, Human Resources Code, are amended to read as follows:

(a) The department shall have access to all of the records and documents concerning an individual who is referred for guardianship services or to whom guardianship services are provided under this subchapter that are necessary to the performance of the department's duties under this subchapter, including:

(1) client-identifying information; and

(2) medical, psychological, educational, financial, and ~~[or]~~ residential information.

(b) The department is exempt from the payment of a fee otherwise required or authorized by law to obtain a financial or medical record, including a mental health record, from any source ~~[a hospital or health care provider]~~ if the request for a record is related to ~~[made in the course of]~~ an assessment for guardianship services conducted by the department or the provision of guardianship services by the department.

SECTION 4. Section 161.111, Human Resources Code, is amended by adding Subsections (e) and (f) to read as follows:

(e) To the extent consistent with department policies and procedures, the department on request may release confidential information in the record of an individual who is assessed by the department or is a former ward of the department to:

- (1) the individual;
- (2) the individual's guardian; or
- (3) an executor or administrator of the individual's estate.

(f) Before releasing confidential information under Subsection (e), the department shall edit the information to protect the identity of the reporter to the Department of Family and Protective Services and to protect any other individual whose life or safety may be endangered by the release. A release of information under Subsection (e) does not constitute a release for purposes of waiving the confidentiality of the information released.

SECTION 5. Subchapter E, Chapter 161, Human Resources Code, is amended by adding Section 161.114 to read as follows:

Sec. 161.114. USE OF VOLUNTEERS. (a) In this section, "volunteer" has the meaning assigned by Section 161.113.

(b) The department shall encourage the involvement of volunteers in guardianships in which the department serves as guardian of the person or estate, or both. To encourage that involvement, the department shall identify issues and tasks with which a volunteer could assist the department in a guardianship, subject to Subsection (c).

(c) A volunteer may provide life enrichment activities, companionship, transportation services, and other services to or for the ward in a guardianship, except the volunteer may not provide services that would require the volunteer to be certified under Section 111.042, Government Code.

SECTION 6. Section 633, Texas Probate Code, is amended by amending Subsections (b) and (d) and adding Subsection (c-1) to read as follows:

(b) The court clerk shall issue a citation stating that the application for guardianship was filed, the name of the proposed ward, the name of the applicant, and the name of the person to be appointed guardian as provided in the application, if that person is not the applicant. The citation must cite all persons interested in the welfare of the proposed ward to appear at the time and place stated in the notice if they wish to contest the application and must contain a clear and conspicuous statement informing those interested persons of the right provided under Section 632(j) of this code to be notified of any or all motions, applications, or pleadings relating to the application for the guardianship or any subsequent guardianship proceeding involving the ward after the guardianship is created, if any. The citation shall be posted.

(c-1) The citation served as provided by Subsection (c) of this section must contain the statement regarding the right provided under Section 632(j) of this code that is required in the citation issued under Subsection (b) of this section.

(d) The applicant shall mail a copy of the application for guardianship and a notice containing the information required in the citation issued under Subsection (b) of this section by registered or certified mail, return receipt requested, or by any other form of mail that provides proof of delivery, to the following persons, if their whereabouts are known or can be reasonably ascertained:

- (1) all adult children of a proposed ward;

- (2) all adult siblings of a proposed ward;
- (3) the administrator of a nursing home facility or similar facility in which the proposed ward resides;
- (4) the operator of a residential facility in which the proposed ward resides;
- (5) a person whom the applicant knows to hold a power of attorney signed by the proposed ward;
- (6) a person designated to serve as guardian of the proposed ward by a written declaration under Section 679 of this code, if the applicant knows of the existence of the declaration;
- (7) a person designated to serve as guardian of the proposed ward in the probated will of the last surviving parent of the ward;
- (8) a person designated to serve as guardian of the proposed ward by a written declaration of the proposed ward's last surviving parent, if the declarant is deceased and the applicant knows of the existence of the declaration; and
- (9) each person named as another relative within the third degree by consanguinity ~~[next of kin]~~ in the application for guardianship as required by Section 682(10) or (12) of this code if the proposed ward's spouse and each of the proposed ward's parents, adult siblings, and adult children are deceased or there is no spouse, parent, adult sibling, or adult child.

SECTION 7. Subpart E, Part 2, Chapter XIII, Texas Probate Code, is amended by adding Section 646A to read as follows:

Sec. 646A. REPRESENTATION OF WARD OR PROPOSED WARD BY ATTORNEY. (a) The following persons may at any time retain an attorney who holds a certificate required by Section 647A of this code to represent the person's interests in a guardianship matter instead of having those interests represented by an attorney ad litem appointed under Section 646 of this code or another provision of this chapter:

(1) a ward who retains the power to enter into a contract under the terms of the guardianship, subject to Section 694K of this code; and

(2) a proposed ward for purposes of a proceeding for the appointment of a guardian as long as the proposed ward has capacity to contract.

(b) If the court finds that the ward or the proposed ward has capacity to contract, the court may remove an attorney ad litem appointed under Section 646 of this code or any other provision of this chapter that requires the court to appoint an attorney ad litem to represent the interests of a ward or proposed ward and appoint a ward or a proposed ward's retained counsel.

SECTION 8. Section 670, Texas Probate Code, is amended to read as follows:

Sec. 670. COMPENSATION OF CERTAIN GUARDIANS; CERTAIN OTHER GUARDIANSHIP COSTS. (a) In this section:

(1) "Applied income" means the portion of the earned and unearned income of a recipient of medical assistance or, if applicable, the recipient and the recipient's spouse, that is paid under the medical assistance program to an institution or long-term care facility [a nursing home] in which the recipient resides.

(2) "Medical assistance" has the meaning assigned by Section 32.003, Human Resources Code.

(b) Notwithstanding any other provision of this chapter and to the extent permitted by federal law, a court that appoints a guardian for a recipient of medical assistance who has applied income may order the following to be deducted as an additional personal needs allowance in the computation of the recipient's applied income in accordance with Section 32.02451, Human Resources Code ~~[paid under the medical assistance program]~~:

(1) compensation to the guardian in an amount not to exceed \$175 per month;

(2) costs directly related to establishing or terminating the guardianship, not to exceed \$1,000 except as provided by Subsection (c) of this section; and

(3) other administrative costs related to the guardianship, not to exceed \$1,000 during any three-year period.

(c) Costs ordered to be deducted ~~[paid]~~ under Subsection (b)(2) of this section may include compensation and expenses for an attorney ad litem or guardian ad litem and reasonable attorney's fees for an attorney representing the guardian. The costs ordered to be paid may exceed \$1,000 if the costs in excess of that amount are supported by documentation acceptable to the court and the costs are approved by the court.

(d) A court may not order:

(1) that the deduction for compensation and costs under Subsection (b) of this section take effect before the later of:

(A) the month in which the court order issued under that subsection is signed; or

(B) the first month of medical assistance eligibility for which the recipient is subject to a copayment; or

(2) a deduction for services provided before the effective date of the deduction as provided by Subdivision (1) of this subsection.

SECTION 9. Section 682, Texas Probate Code, is amended to read as follows:

Sec. 682. APPLICATION; CONTENTS. Any person may commence a proceeding for the appointment of a guardian by filing a written application in a court having jurisdiction and venue. The application must be sworn to by the applicant and state:

(1) the name, sex, date of birth, and address of the proposed ward;

(2) the name, relationship, and address of the person the applicant desires to have appointed as guardian;

(3) whether guardianship of the person or estate, or both, is sought;

(4) the nature and degree of the alleged incapacity, the specific areas of protection and assistance requested, and the limitation or termination of rights requested to be included in the court's order of appointment, including a termination of:

(A) the right of a proposed ward who is 18 years of age or older to vote in a public election; and

(B) the proposed ward's eligibility to hold or obtain a license to operate a motor vehicle under Chapter 521, Transportation Code;

(5) the facts requiring that a guardian be appointed and the interest of the applicant in the appointment;

(6) the nature and description of any guardianship of any kind existing for the proposed ward in any other state;

(7) the name and address of any person or institution having the care and custody of the proposed ward;

(8) the approximate value and description of the proposed ward's property, including any compensation, pension, insurance, or allowance to which the proposed ward may be entitled;

(9) the name and address of any person whom the applicant knows to hold a power of attorney signed by the proposed ward and a description of the type of power of attorney;

(10) if the proposed ward is a minor and if known by the applicant:

(A) the name of each parent of the proposed ward and state the parent's address or that the parent is deceased;

(B) the name and age of each sibling, if any, of the proposed ward and state the sibling's address or that the sibling is deceased; and

(C) if each of the proposed ward's parents and adult siblings are deceased, the names and addresses of the proposed ward's other living relatives who are related to the proposed ward within the third degree by consanguinity and [next of kin] who are adults;

(11) if the proposed ward is a minor, whether the minor was the subject of a legal or conservatorship proceeding within the preceding two-year period and, if so, the court involved, the nature of the proceeding, and the final disposition, if any, of the proceeding;

(12) if the proposed ward is an adult and if known by the applicant:

(A) the name of the proposed ward's spouse, if any, and state the spouse's address or that the spouse is deceased;

(B) the name of each of the proposed ward's parents and state the parent's address or that the parent is deceased;

(C) the name and age of each of the proposed ward's siblings, if any, and state the sibling's address or that the sibling is deceased;

(D) the name and age of each of the proposed ward's children, if any, and state the child's address or that the child is deceased; and

(E) if the proposed ward's spouse and each of the proposed ward's parents, adult siblings, and adult children are deceased, or, if there is no spouse, parent, adult sibling, or adult child, the names and addresses of the proposed ward's other living relatives who are related to the proposed ward within the third degree by consanguinity and [next of kin] who are adults;

(13) facts showing that the court has venue over the proceeding; and

(14) if applicable, that the person whom the applicant desires to have appointed as a guardian is a private professional guardian who is certified under Subchapter C, Chapter 111, Government Code, and has complied with the requirements of Section 697 of this code.

SECTION 10. Subsection (d), Section 697B, Texas Probate Code, is amended to read as follows:

(d) An individual volunteering with a guardianship program or with the Department of Aging and Disability Services is not required to be certified as provided by this section to provide guardianship services or other services under Section 161.114, Human Resources Code, on the program's or the department's behalf.

SECTION 11. Section 761, Texas Probate Code, is amended by amending Subsections (a), (c), and (f) and adding Subsections (a-1), (h), and (i) to read as follows:

(a) The court, on its own motion or on motion of any interested person, including the ward, and without notice, may remove any guardian~~[7]~~ appointed under this chapter~~[7]~~ who:

- (1) neglects to qualify in the manner and time required by law;
- (2) fails to return within 30 days after qualification, unless the time is extended by order of the court, an inventory of the property of the guardianship estate and list of claims that have come to the guardian's knowledge;
- (3) having been required to give a new bond, fails to do so within the time prescribed;
- (4) absents himself or herself from the state for a period of three months at one time without permission of the court, or removes from the state;
- (5) cannot be served with notices or other processes because of the fact that:
  - (A) the guardian's whereabouts are unknown;
  - (B) the guardian is eluding service; or
  - (C) the guardian is a nonresident of this state who does not have a resident agent to accept service of process in any guardianship proceeding or other matter relating to the guardianship;
- (6) has misapplied, embezzled, or removed from the state, or is about to misapply, embezzle, or remove from the state, all or any part of the property committed to the guardian's care;
- (7) has engaged in conduct with respect to the ward that would be considered to be abuse, neglect, or exploitation, as those terms are defined by Section 48.002, Human Resources Code, if engaged in with respect to an elderly or disabled person, as defined by that section ~~[neglected or cruelly treated a ward]~~; or
- (8) has neglected to educate or maintain the ward as liberally as the means of the ward and the condition of the ward's estate permit.

(a-1) In a proceeding to remove a guardian under Subsection (a)(6), (7), or (8) of this section, the court shall appoint a guardian ad litem as provided by Section 645 of this code and an attorney ad litem. The attorney ad litem has the duties prescribed by Section 647 of this code. In the interest of judicial economy, the court may appoint the same person as guardian ad litem and attorney ad litem unless a conflict exists between the interests to be represented by the guardian ad litem and attorney ad litem.

(c) The court may remove a guardian on its own motion, or on the complaint of an interested person, after the guardian has been cited by personal service to answer at a time and place set in the notice, when:

(1) sufficient grounds appear to support belief that the guardian has misapplied, embezzled, or removed from the state, or that the guardian is about to misapply, embezzle, or remove from the state, all or any part of the property committed to the care of the guardian;

(2) the guardian fails to return any account or report that is required by law to be made;

(3) the guardian fails to obey any proper order of the court having jurisdiction with respect to the performance of the guardian's duties;

(4) the guardian is proved to have been guilty of gross misconduct or mismanagement in the performance of the duties of the guardian;

(5) the guardian becomes incapacitated, or is sentenced to the penitentiary, or from any other cause becomes incapable of properly performing the duties of the guardian's trust;

(6) the guardian has engaged in conduct with respect to the ward that would be considered to be abuse, neglect, or exploitation, as those terms are defined by Section 48.002, Human Resources Code, if engaged in with respect to an elderly or disabled person, as defined by that section ~~[neglects or cruelly treats the ward]~~;

(6-a) the guardian neglects to educate or maintain the ward as liberally as the means of the ward's estate and the ward's ability or condition permit;

(7) the guardian interferes with the ward's progress or participation in programs in the community;

(8) the guardian fails to comply with the requirements of Section 697 of this code;

(9) the court determines that, because of the dissolution of the joint guardians' marriage, the termination of the guardians' joint appointment and the continuation of only one of the joint guardians as the sole guardian is in the best interest of the ward; or

(10) the guardian would be ineligible for appointment as a guardian under Section 681 of this code.

(f) If the necessity exists, the court may immediately appoint a successor guardian without citation or notice but may not discharge the person removed as guardian of the estate or release the person or the sureties on the person's bond until final order or judgment is rendered on the final account of the guardian. Subject to an order of the court, a successor guardian has the rights and powers of the removed guardian.

(h) The appointment of a successor guardian under Subsection (f) of this section does not preclude an interested person from filing an application to be appointed guardian of the ward for whom the successor guardian was appointed. The court shall hold a hearing on an application filed under the circumstances described by this subsection. At the conclusion of the hearing, the court may set aside the appointment of the successor guardian and appoint the applicant as the ward's guardian if the applicant is not disqualified and after considering the requirements of Section 676 or 677 of this code, as applicable.

(i) If the court sets aside the appointment of the successor guardian under this section, the court may require the successor guardian to prepare and file, under oath, an accounting of the estate and to detail the disposition the successor has made of the estate property.

SECTION 12. The Department of Aging and Disability Services and the adult protective services division of the Department of Family and Protective Services shall identify and implement modifications to investigations of abuse, neglect, and exploitation conducted under Chapter 48, Human Resources Code, and the provision of protective and guardianship services under Chapters 48 and 161, Human Resources Code, to ensure that the agencies prevent any unnecessary duplication of efforts in performing their respective responsibilities under those chapters.

SECTION 13. (a) Except as otherwise provided by this section, the changes in law made by this Act apply to a guardianship created before, on, or after the effective date of this Act.

(b) Section 32.02451, Human Resources Code, as amended by this Act, and Section 670, Texas Probate Code, as amended by this Act, apply to a recipient of medical assistance under Chapter 32, Human Resources Code, regardless of whether the recipient was determined eligible for medical assistance before, on, or after the effective date of this Act, and regardless of whether a guardianship was created for the recipient before, on, or after the effective date of this Act.

(c) Sections 633 and 682, Texas Probate Code, as amended by this Act, apply only to an application for a guardianship filed on or after the effective date of this Act. An application for a guardianship 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.

(d) Section 761, Texas Probate Code, as amended by this Act, applies only to a proceeding to remove a guardian commenced on or after the effective date of this Act. A proceeding to remove a guardian 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 14. 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 15. This Act takes effect September 1, 2011.

The amendment was read.

Senator Nelson moved to concur in the House amendment to **SB 220**.

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

#### **SENATE BILL 229 WITH HOUSE AMENDMENT**

Senator Nelson called **SB 229** 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 229** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to newborn hearing screenings and hearing services for certain children.

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

SECTION 1. Subdivision (2), Section 47.001, Health and Safety Code, is amended to read as follows:

(2) "Birthing facility" means:

(A) a hospital licensed under Chapter 241 that offers obstetrical services ~~[and is located in a county with a population of more than 50,000]; [or]~~

(B) a birthing center licensed under Chapter 244;

(C) a children's hospital; or

(D) a facility, maintained or operated by this state or an agency of this state, that provides obstetrical services [that is located in a county with a population of more than 50,000 and that has 100 or more births per year].

SECTION 2. Chapter 47, Health and Safety Code, is amended by adding Section 47.0035 to read as follows:

Sec. 47.0035. REFERRAL TO PROGRAM BY MIDWIFE. (a) In this section, "midwife" has the meaning assigned by Section 203.002, Occupations Code.

(b) A midwife who attends the birth of a newborn:

(1) is not required to offer the parents of a newborn a hearing screening for the newborn for the identification of hearing loss; and

(2) shall refer the parents of the newborn to a birthing facility or a provider that participates in the program.

SECTION 3. Section 47.007, Health and Safety Code, is amended by amending Subsections (a) and (c) and adding Subsections (d) through (g) to read as follows:

(a) The department shall provide each birthing facility that provides newborn hearing screening under the state's medical assistance program provided under Chapter 32, Human Resources Code, with access to the appropriate information management, reporting, and tracking system [software] for the program. The information management, reporting, and tracking system must be capable of providing the department with information and data necessary to plan, monitor, and evaluate the program, including the program's screening, follow-up, diagnostic, and intervention components.

(c) A birthing facility described by Subsection (a) shall report the resulting information in the format and within the time frame specified by the department.

(d) A qualified hearing screening provider, audiologist, intervention specialist, educator, or other person who receives a referral from a program under this chapter shall:

(1) provide the services needed by the child or refer the child to a person who provides the services needed by the child; and

(2) provide, with the consent of the child's parent, the following information to the department or the department's designee:

(A) results of follow-up care;

(B) results of audiologic testing of infants identified with hearing loss;  
and

(C) reports on the initiation of intervention services.

(e) A qualified hearing screening provider, audiologist, intervention specialist, educator, or other person who provides services to infants who are diagnosed with hearing loss shall provide, with the consent of the infant's parent, the following information to the department or the department's designee:

(1) results of follow-up services;

(2) results of audiologic testing of infants identified with hearing loss; and

(3) reports on the initiation of intervention services.

(f) A hospital that provides services under this chapter shall use the information management, reporting, and tracking system, which the department has provided the hospital with access to, to report, with the consent of the infant's parent, the following information to the department or the department's designee:

(1) results of all follow-up services for infants who do not pass the birth admission screening if the hospital provides the follow-up services; or

(2) the name of the provider or facility where the hospital refers an infant who does not pass the birth admission screening for follow-up services.

(g) The department shall ensure that the written consent of a parent is obtained before any information individually identifying the newborn or infant is released through the information management, reporting, and tracking system.

SECTION 4. Section 47.002, Health and Safety Code, is repealed.

SECTION 5. Notwithstanding Subdivision (2), Section 47.001, Health and Safety Code, as amended by this Act, the change in law made by this Act applies only to a birth admission at a birthing facility on or after September 1, 2012.

SECTION 6. This Act takes effect September 1, 2011.

The amendment was read.

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

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

### **SENATE BILL 218 WITH HOUSE AMENDMENTS**

Senator Nelson called **SB 218** 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 218** by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to procedures in certain suits affecting the parent-child relationship and the operation of the child protective services and foster care systems.

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

SECTION 1. Subchapter D, Chapter 261, Family Code, is amended by adding Section 261.3013 to read as follows:

Sec. 261.3013. CASE CLOSURE AGREEMENTS PROHIBITED. (a) Except as provided by Subsection (b), on closing a case, the department may not enter into a written agreement with a child's parent or another adult with whom the child resides that requires the parent or other adult to take certain actions after the case is closed to ensure the child's safety.

(b) This section does not apply to an agreement that is entered into by a parent or other adult:

(1) following the removal of a child and that is subject to the approval of a court with continuing jurisdiction over the child;

(2) as a result of the person's participation in family group conferencing; or

(3) as part of a formal case closure plan agreed to by the person who will continue to care for a child as a result of a parental child safety placement.

(c) The department shall develop policies to guide caseworkers in the development of case closure agreements authorized under Subsections (b)(2) and (3).

SECTION 2. Subchapter A, Chapter 262, Family Code, is amended by adding Section 262.010 to read as follows:

Sec. 262.010. CHILD WITH SEXUALLY TRANSMITTED DISEASE. (a) If during an investigation by the Department of Family and Protective Services the department discovers that a child younger than 11 years of age has a sexually transmitted disease, the department shall:

(1) appoint a special investigator to assist in the investigation of the case;  
and

(2) file an original suit requesting an emergency order under this chapter for possession of the child unless the department determines, after taking the following actions, that removing the child from the child's home is not necessary for the protection of the child:

(A) reviewing the medical evidence to determine whether the medical evidence supports a finding that abuse likely occurred;

(B) interviewing the child and other persons residing in the child's home;

(C) conferring with law enforcement;

(D) determining whether any other child in the home has a sexually transmitted disease and, if so, referring the child for a sexual abuse examination;

(E) if the department determines a forensic interview is appropriate based on the child's age and development, ensuring that each child alleged to have been abused undergoes a forensic interview by a children's advocacy center established under Section 264.402 or another professional with specialized training in conducting forensic interviews if a children's advocacy center is not available in the county in which the child resides;

(F) consulting with a department staff nurse or other medical expert to obtain additional information regarding the nature of the sexually transmitted disease and the ways the disease is transmitted and an opinion as to whether abuse occurred based on the facts of the case;

(G) contacting any additional witness who may have information relevant to the investigation, including other individuals who had access to the child;  
and

(H) if the department determines after taking the actions described by Paragraphs (A)-(G) that a finding of sexual abuse is not supported, obtaining an opinion from the Forensic Assessment Center Network as to whether the evidence in the case supports a finding that abuse likely occurred.

(b) If the department determines that abuse likely occurred, the department shall work with law enforcement to obtain a search warrant to require an individual the department reasonably believes may have sexually abused the child to undergo medically appropriate diagnostic testing for sexually transmitted diseases.

SECTION 3. Section 262.1015, Family Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) Notwithstanding Subsection (a), if the Department of Family and Protective Services determines that a protective order issued under Title 4 provides a reasonable alternative to obtaining an order under that subsection, the department may:

(1) file an application for a protective order on behalf of the child instead of or in addition to obtaining a temporary restraining order under this section; or

(2) assist a parent or other adult with whom a child resides in obtaining a protective order.

SECTION 4. Section 263.103, Family Code, is amended to read as follows:

Sec. 263.103. ORIGINAL SERVICE PLAN: SIGNING AND TAKING EFFECT. (a) The original service plan shall be developed jointly by the child's parents and a representative of the department or other authorized agency, including informing the parents of their rights in connection with the service plan process. If a parent is not able or willing to participate in the development of the service plan, it should be so noted in the plan.

(a-1) Before the original service plan is signed, the child's parents and the representative of the department or other authorized agency shall discuss each term and condition of the plan.

(b) The child's parents and the person preparing the original service plan shall sign the plan, and the department shall give each parent a copy of the service plan.

(c) If the department or other authorized agency determines that the child's parents are unable or unwilling to participate in the development of the original service plan or sign the [service] plan, the department may file the plan without the parents' signatures.

(d) The original service plan takes effect when:

(1) the child's parents and the appropriate representative of the department or other authorized agency sign the plan; or

(2) the court issues an order giving effect to the plan [department or other authorized agency files the plan] without the parents' signatures.

(e) The original service plan is in effect until amended by the court or as provided under Section 263.104.

SECTION 5. Section 263.104, Family Code, is amended to read as follows:

Sec. 263.104. AMENDED SERVICE PLAN. (a) The service plan may be amended at any time. The department shall work with the parents to jointly develop any amendment to the service plan, including informing the parents of their rights in connection with the amended service plan process.

(b) The amended service plan supersedes the previously filed service plan and takes effect when:

(1) the child's parents and the appropriate representative of the department or other authorized agency sign the plan; or

(2) the department or other authorized agency determines that the child's parents are unable or unwilling to sign the amended plan and files it without the parents' signatures.

(c) A parent may file a motion with the court at any time to request a review and modification of the amended service plan ~~[The amended service plan remains in effect until amended by the court].~~

(d) An amended service plan remains in effect until:

(1) superseded by a later-amended service plan that goes into effect as provided by Subsection (b); or

(2) modified by the court.

SECTION 6. Section 263.106, Family Code, is amended to read as follows:

Sec. 263.106. COURT IMPLEMENTATION OF SERVICE PLAN. After reviewing the original or any amended service plan and making any changes or modifications it deems necessary, the [The] court shall incorporate the original and any amended service plan into the orders of the court and may render additional appropriate orders to implement or require compliance with an original or amended service plan.

SECTION 7. Subsection (a), Section 264.118, Family Code, is amended to read as follows:

(a) The department shall collect and report service and outcome information for certain current and former foster care youth for use in the National Youth in Transition Database as required by 42 U.S.C. Section 677(f) and 45 C.F.R. Section 1356.80 et seq ~~[conduct an annual random survey of a sample of children from each region of the state who are at least 14 years of age and who receive substitute care services. The survey must include questions regarding:~~

~~[(1) the quality of the substitute care services provided to the child;~~

~~[(2) any improvements that could be made to better support the child; and~~

~~[(3) any other factor that the department considers relevant to enable the department to identify potential program enhancements].~~

SECTION 8. Subdivision (3), Subsection (a), Section 411.114, Government Code, is amended to read as follows:

(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 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;

(Q) an employee of or volunteer at, or an applicant for employment with or to be a volunteer at, an entity that provides supervised independent living services to a young adult receiving extended foster care services from the Department of Family and Protective Services; or

(R) a person 14 years of age or older who will be regularly or frequently working or staying in a host home that is providing supervised independent living services to a young adult receiving extended foster care services from the Department of Family and Protective Services.

SECTION 9. Section 40.036, Human Resources Code, is amended to read as follows:

Sec. 40.036. ENHANCED TRAINING OF CHILD PROTECTIVE SERVICES CASEWORKERS. To improve the quality and consistency of training provided to child protective services caseworkers, the department shall:

(1) augment classroom-based training with a blended learning environment using computer-based modules, structured field experience, and simulation for skills development;

(2) use a core curriculum for all new department caseworkers and specialized training for specific jobs;

(3) require that department caseworkers transferring from one specialty to another must complete the core curriculum and advanced training for the new specialty before assuming their new responsibilities; ~~and~~

(4) centralize accountability and oversight of all department training in order to ensure statewide consistency; and

(5) require department caseworkers to receive training relating to the benefits of using a protective order under Title 4, Family Code, to protect a child as an alternative to removing the child from the child's home.

SECTION 10. Subchapter I, Chapter 521, Transportation Code, is amended by adding Section 521.1811 to read as follows:

Sec. 521.1811. WAIVER OF FEES FOR FOSTER CARE YOUTH. A person is exempt from the payment of any fee for the issuance of a driver's license, as provided under this chapter, if that person is:

(1) younger than 18 years of age and in the managing conservatorship of the Department of Family and Protective Services; or

(2) at least 18 years of age, but younger than 21 years of age, and resides in a foster care placement, the cost of which is paid by the Department of Family and Protective Services.

SECTION 11. (a) The Department of Family and Protective Services shall implement a redesign of the foster care system in accordance with the recommendations contained in the department's December 2010 Foster Care Redesign report submitted to the legislature.

(b) The redesign of the foster care system shall be implemented with the understanding that the individual needs of a child are paramount and that not all indicators are appropriate for every child and shall include as goals for the redesign a system that ensures:

(1) children are safe in their placements;

(2) children are placed in their home communities;

(3) children are appropriately served in the least restrictive environment that supports minimal moves for the child;

(4) connections to family and other persons important to the child are maintained;

- (5) children are placed with siblings;
- (6) services respect the child's culture;
- (7) children and youth are fully prepared for successful adulthood through being provided opportunities, experiences, and activities similar to those experienced by children and youth who are not in foster care; and
- (8) children and youth are provided opportunities to participate in decisions that impact their lives.

(c) The Health and Human Services Commission may use payment rates for foster care under the redesigned system that are different from those used on the effective date of this Act for 24-hour residential child care. Payment rates for foster care under the redesigned system may include incentive payments for superior performance, as well as funding for additional services provided to families historically included in 24-hour residential child-care rates. Final implementation of the foster care redesign must include a payment system based on performance targets. Payment rates under foster care redesign may not result in total expenditures for any fiscal year during the 2012-2013 fiscal biennium that exceed the amounts appropriated by the 82nd Legislature for foster care and other purchased services, except to the extent that any increase in total foster care expenditures is the direct result of caseload growth.

SECTION 12. This Act takes effect September 1, 2011.

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

Amend **CSSB 218** (house committee printing) as follows:

(1) In SECTION 2 of the bill, strike amended Section 262.010(a)(2), Family Code (page 2, lines 12 through 16), and substitute the following:

(2) file an original suit requesting an emergency order under this chapter for possession of the child unless the department determines, after taking the following actions, that emergency removal is not necessary for the protection of the child:

The amendments were read.

Senator Nelson moved to concur in the House amendments to **SB 218**.

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

#### **SENATE BILL 438 WITH HOUSE AMENDMENT**

Senator Nelson called **SB 438** 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 438** by substituting in lieu thereof the following:

#### **A BILL TO BE ENTITLED**

relating to the number of days a winery may sell wine under a winery festival permit.

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

SECTION 1. Section 17.01(b), Alcoholic Beverage Code, is amended to read as follows:

(b) The holder of a winery festival permit may not offer wine for sale under this chapter[±

~~[(1) for more than five days within any 30-day period; or~~

~~[(2)]~~ on more than four ~~[three]~~ consecutive days at the same location.

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 Nelson moved to concur in the House amendment to **SB 438**.

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

### **SENATE BILL 1504 WITH HOUSE AMENDMENTS**

Senator Seliger called **SB 1504** 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 1504** by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to the disposal of waste at the Texas Low-Level Radioactive Waste Disposal Compact waste disposal facility.

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

SECTION 1. Section 401.2005, Health and Safety Code, is amended by amending Subdivision (1) and adding Subdivisions (1-a), (1-b), (6-a), (8), and (9) to read as follows:

(1) "Compact" means the Texas Low-Level Radioactive Waste Disposal Compact established under Section 403.006.

(1-a) "Compact waste" means low-level radioactive waste that:

(A) is originally generated onsite in a host state or a party state; or

(B) is not generated in a host state or a party state but has been approved for importation to this state by the compact commission under Section 3.05 of the compact [established under Section 403.006].

(1-b) "Curie capacity" means the amount of the radioactivity of the waste that may be accepted by the compact waste disposal facility as determined by the commission in the compact waste disposal facility license.

(6-a) "Nonparty compact waste" means low-level radioactive waste imported from a state other than a party state as authorized under Section 3.05(6) of the compact.

(8) "Party state compact waste" means low-level radioactive waste generated in a party state.

(9) "Waste of international origin" means low-level radioactive waste that originates outside of the United States or a territory of the United States, including waste subsequently stored or processed in the United States.

SECTION 2. Section 401.207, Health and Safety Code, is amended to read as follows:

Sec. 401.207. OUT-OF-STATE WASTE; NONPARTY COMPACT WASTE.

(a) The compact waste disposal facility license holder may not accept low-level radioactive waste generated in another state for disposal under a license issued by the commission unless the waste is:

(1) accepted under a compact to which the state is a contracting party;

(2) federal facility waste that the license holder is licensed to dispose of under Section 401.216; or

(3) generated from manufactured sources or devices originating in this state.

(b) The compact waste disposal facility license holder may accept for disposal at the compact waste disposal facility approved nonparty compact waste that is classified as Class A, Class B, or Class C low-level radioactive waste in accordance with the compact waste disposal facility license to the extent the acceptance does not diminish the disposal volume or curie capacity available to party states.

(c) The compact waste disposal facility license holder may not accept waste of international origin for disposal at the facility.

(d) The compact waste disposal facility license holder may not accept for disposal at the compact waste disposal facility nonparty compact waste that does not meet the waste characteristics and waste forms for disposal applicable to compact waste as set forth by the commission in the compact waste disposal facility license. Before the license holder may accept nonparty compact waste for disposal, the commission must certify through a written evaluation that the waste is authorized for disposal under the license. If the disposal is not authorized under the license, the commission must inform the license holder of the license amendments necessary to authorize the disposal.

(e) The compact waste disposal facility license holder may not accept more than 50,000 total cubic feet of nonparty compact waste annually. The compact waste disposal facility license holder may not accept an average of more than 120,000 curies of nonparty compact waste annually over the first 10 years of disposal operations, with an annual limit of not more than 220,000 curies. The legislature by general law may establish revised limits after considering the results of the study under Section 401.208.

(e-1) The commission's executive director, on completion of the study under Section 401.208, may prohibit the license holder from accepting any additional nonparty compact waste if the commission determines from the study that the capacity of the facility will be limited, regardless of whether the limit under Subsection (f) has been reached.

(f) The compact waste disposal facility license holder may not accept a volume of nonparty compact waste that would exceed 30 percent of the total volume and radioactivity established for the facility by the commission in the compact waste disposal facility license. Of the remaining amount of total capacity, the host state is entitled to 80 percent of that capacity and Vermont is entitled to 20 percent.

(g) The commission shall assess a surcharge for the disposal of nonparty compact waste at the compact waste disposal facility. The surcharge must be assessed in addition to the total contracted rate under Section 401.2457 and is:

(1) 10 percent of that rate before the fifth anniversary of the date disposal operations begin; and

(2) 20 percent of that rate on or after the fifth anniversary of the date disposal operations begin.

(h) A surcharge collected under Subsection (g) shall be deposited to the credit of the low-level radioactive waste fund.

(i) The Texas Low-Level Radioactive Waste Disposal Compact Commission by rule shall adopt procedures and forms for the approval of the importation of nonparty compact waste.

(j) An application for the approval of the importation of nonparty compact waste may be submitted to the Texas Low-Level Radioactive Waste Disposal Compact Commission only by:

(1) the generator of the waste;

(2) the compact waste disposal facility license holder; or

(3) a party contracted by the generator to dispose of the waste.

(k) The compact waste disposal facility license holder may accept for disposal at the compact waste disposal facility nonparty compact waste that is incidentally commingled, as defined by commission rule or policy, with party state compact waste at a commercial processing facility.

SECTION 3. Subchapter F, Chapter 401, Health and Safety Code, is amended by adding Sections 401.208 and 401.2085 to read as follows:

Sec. 401.208. STUDY OF CAPACITY. (a) The commission shall conduct a study on the available volume and curie capacity of the compact waste disposal facility for the disposal of party state compact waste and nonparty compact waste.

(b) The commission shall consider and make recommendations regarding:

(1) the future volume and curie capacity needs of party state and nonparty state generators and any additional reserved capacity necessary to meet those needs;

(2) the result of using decay factors in revising curie capacity limits;

(3) the necessity of containerization of the waste; and

(4) the effects of the projected volume and radioactivity of the waste on the health and safety of the public.

(c) Not later than December 1, 2012, the commission shall submit a final report of the results of the study to the standing committees of the senate and the house of representatives with jurisdiction over the disposal of low-level radioactive waste.

(d) The Texas Low-Level Radioactive Waste Disposal Compact Commission shall use the study to anticipate the future capacity needs of the compact waste disposal facility.

(e) This section expires August 31, 2013.

Sec. 401.2085. REVIEW OF FINANCIAL ASSURANCE. (a) The commission shall conduct a review of the adequacy of the financial assurance mechanisms of the compact waste disposal facility license holder that were approved by the commission before January 1, 2011, against projected post-closure costs, including a review of the adequacy of funds for unplanned events. The review shall consider:

- (1) the segregation of financial assurance funds from other funds;
- (2) the degree of risk that the financial instruments are subject to financial

reversal;

(3) potential post-closure risks associated with the compact waste disposal facility; and

- (4) the adequacy of the financial instruments to cover the state's liabilities.

(b) Not later than December 1, 2012, the commission shall submit a final report of the results of the review to the standing committees of the senate and the house of representatives with jurisdiction over the disposal of low-level radioactive waste.

(c) This section expires August 31, 2013.

SECTION 4. Section 401.218, Health and Safety Code, is amended by adding Subsection (d) to read as follows:

(d) The compact waste disposal facility license holder may not accept for disposal at the compact waste disposal facility elemental mercury the disposal of which is regulated under Chapter 361.

SECTION 5. The heading to Section 401.245, Health and Safety Code, is amended to read as follows:

Sec. 401.245. PARTY STATE COMPACT WASTE DISPOSAL FEES.

SECTION 6. Section 401.245, Health and Safety Code, is amended by amending Subsections (a) and (b) and adding Subsections (g) and (h) to read as follows:

(a) A compact waste disposal facility license holder who receives party state compact [low-level radioactive] waste for disposal pursuant to the compact [Texas Low-Level Radioactive Waste Disposal Compact established under Chapter 403] shall have collected a waste disposal fee to be paid by each person who delivers party state compact [low-level radioactive] waste to the compact waste disposal facility for disposal.

(b) The commission by rule shall adopt and periodically revise party state compact waste disposal fees under this section according to a schedule that is based on the projected annual volume of low-level radioactive waste received, the relative hazard presented by each type of low-level radioactive waste that is generated by the users of radioactive materials, and the costs identified in Section 401.246.

(g) For the purposes of a contested case involving the adoption of fees under this section, only a party state generator of low-level radioactive waste may be considered a person affected.

(h) The administrative law judge assigned to the contested case involving the adoption of fees under this section shall issue a proposal for decision on fees proposed by the commission not later than the first anniversary of the date the case is referred by the commission.

SECTION 7. Subchapter F, Chapter 401, Health and Safety Code, is amended by adding Sections 401.2455, 401.2456, 401.2457, 401.2458, and 401.2459 to read as follows:

Sec. 401.2455. MAXIMUM DISPOSAL RATES. (a) The commission by rule shall set maximum disposal rates.

(b) Maximum disposal rates do not apply to generators of nonparty compact waste.

(c) In establishing the maximum disposal rates for generators in the host state and party states, the commission:

(1) shall assume that nonparty compact waste will be accepted for disposal at the compact waste disposal facility at the maximum disposal rate; and

(2) may not consider the historical operating losses incurred by the compact waste disposal facility license holder before beginning operations.

Sec. 401.2456. RECOVERY OF HISTORICAL OPERATING LOSSES. (a) Historical operating losses incurred by the compact waste disposal facility license holder before beginning operations may be recovered by the license holder solely through revenues from the disposal of nonparty compact waste.

(b) The commission shall determine the amount of historical operating losses by the compact waste disposal facility license holder that have been incurred before the license holder begins operations at the compact waste disposal facility. In determining the amount of historical operating losses, the commission:

(1) may only consider the costs, expenses, and expenditures established as true and accurate by the license holder;

(2) shall include:

(A) any cost, expense, or expenditure incurred or paid by the license holder before September 1, 2003, except for costs, expenses, or expenditures associated with real property used for the compact waste disposal facility site;

(B) losses relating to the development and operation of any facility other than the compact waste disposal facility;

(C) any other losses or factors that the commission determines are appropriate; and

(D) a reasonable rate of return on the items described by Paragraphs (A), (B), and (C); and

(3) may not include reasonable and necessary expenditures by the license holder for the compact waste disposal facility incurred on or after September 1, 2003, for:

(A) any asset related to plant, property, equipment, or working capital;

or  
(B) permitting or licensing.

(c) In determining the amount of historical operating losses under Subsection (b), the commission shall request and the compact waste disposal facility license holder shall file in response to the request a proposed amount of historical operating losses based on verifiable financial statements, supporting information, and analysis. The commission shall solicit and consider comments from party state compact waste generators regarding the license holder's proposed historical operating losses, and shall determine the amount of historical operating losses not later than the 90th day after the date the commission receives the proposed amount of the historical operating losses from the license holder.

Sec. 401.2457. CONTRACTS FOR WASTE DISPOSAL. (a) At any time before the adoption by the commission of party state compact waste disposal fees or maximum disposal rates, the compact waste disposal facility license holder may contract with a generator for the disposal of low-level radioactive waste at the

compact waste disposal facility at fees and rates established under the contract and may dispose of waste under the contract. A contract under this subsection is subject to authorization by the compact commission under Section 3.05(6) of the compact.

(b) Party state compact waste generators located in the compact states of Texas and Vermont are not required to enter into any contract with the compact waste disposal facility license holder before the adoption by the commission of party state compact waste disposal fees or maximum disposal rates.

(c) Regardless of whether the commission approves or disapproves a contract authorized under this section, after the adoption of final party state compact waste disposal fees under Section 401.245 or final maximum disposal rates under Section 401.2455, the parties to the contract are not entitled to any refund or surcharge not contained in the contract.

(d) A contract under this section must:

(1) be negotiated in good faith;

(2) conform to applicable antitrust statutes and regulations; and

(3) be nondiscriminatory.

Sec. 401.2458. INTERIM FEES AND RATES. (a) Before the commission adopts final disposal fees under Section 401.245 and final maximum disposal rates under Section 401.2455, the commission's executive director may set interim disposal fees and interim maximum disposal rates according to commission rules.

(b) The compact waste disposal facility license holder shall charge generators in the host state and party states fees and rates consistent with the interim fees and rates while the interim fees or rates are in effect. A generator is not entitled to a refund, and may not be charged a surcharge, for the disposal of waste under interim fees or rates once the final fees or rates have been adopted.

Sec. 401.2459. CONSIDERATIONS IN CONTRACT APPROVAL. After the commission adopts party state compact waste disposal fees under Section 401.245 and maximum disposal rates under Section 401.2455, in approving contracts between the compact waste disposal facility license holder and a party state compact waste generator, the commission may consider, subject to reasonable rules of confidentiality, the net revenues recovered by the compact waste disposal facility license holder from the disposal of nonparty compact waste.

SECTION 8. Section 401.246(a), Health and Safety Code, is amended to read as follows:

(a) Party state compact [~~Compact~~] waste disposal fees adopted by the commission under Section 401.245 must be sufficient to:

(1) allow the compact waste facility license holder to recover costs of operating and maintaining the compact waste disposal facility and a reasonable profit on the operation of that facility;

(2) provide an amount necessary to meet future costs of decommissioning, closing, and postclosure maintenance and surveillance of the compact waste disposal facility and the compact waste disposal facility portion of the disposal facility site;

(3) provide an amount to fund local public projects under Section 401.244;

(4) provide a reasonable rate of return on capital investment in the facilities used for management or disposal of compact waste at the compact waste disposal facility; and

(5) provide an amount necessary to pay compact waste disposal facility licensing fees, to pay compact waste disposal facility fees set by rule or statute, and to provide security for the compact waste disposal facility as required by the commission under law and commission rules.

SECTION 9. Section 401.248(b), Health and Safety Code, is amended to read as follows:

(b) The state may enter into compacts with another state or several states for the disposal in this state of low-level radioactive waste only if the compact:

(1) limits the total volume of all low-level radioactive waste to be disposed of in this state from the other party state or party states to 20 percent of the annual average of low-level radioactive waste projected to be disposed of ~~[that the governor projects will be produced]~~ in this state from [the years] 1995 through 2045;

(2) gives this state full administrative control over management and operation of the compact waste disposal facility;

(3) requires the other state or states to join this state in any legal action necessary to prevent states that are not members of the compact from disposing of low-level radioactive waste at the compact waste disposal facility;

(4) allows this state to charge a fee for the disposal of low-level radioactive waste at the compact waste disposal facility;

(5) requires the other state or states to join in any legal action involving liability from the compact waste disposal facility;

(6) requires the other state or states to share the full cost of constructing the compact waste disposal facility;

(7) allows this state to regulate, in accordance with federal law, the means and routes of transportation of the low-level radioactive waste in this state;

(8) requires the other state or states to pay for community assistance projects selected by the host county in an amount not less than \$1 million or 10 percent of the amount contributed by the other state or states;

(9) is agreed to by the Texas Legislature, the legislature of the other state or states, and the United States Congress; and

(10) complies with all applicable federal law.

SECTION 10. Section 401.250, Health and Safety Code, is amended to read as follows:

Sec. 401.250. PAYMENTS BY PARTY STATES. (a) Notwithstanding any other provision of law, Act of the legislature or the executive branch, or any other agreement, the initial payment of \$12.5 million due from each nonhost party state under Section 5.01 of the compact established under Section 403.006 is due not later than November 1, 2003. In accordance with Section 7.01 of the compact, the host state establishes the following terms and conditions for a state to become a party state to the compact after January 1, 2011:

(1) the state must make an initial payment of half of the total amount due to the host state under Subsection (b) on the later of September 1, 2011, or the date the state becomes a party state; and

(2) the state must pay the remainder of the amount owed under Subsection (b) on the later of the date of the opening of the compact waste disposal facility or the date the facility first accepts waste from the state.

(b) Each state that becomes a party state:

(1) after January 1, 2011, and before September 1, 2018, shall contribute a total of \$30 million to the host state, including the initial payment under Subsection (a)(1); and

(2) on or after September 1, 2018, and before September 1, 2023, shall contribute \$50 million to the host state, including the initial payment under Subsection (a)(1).

(c) The requirements of this section apply to a state that becomes a party state after January 1, 2011, regardless of whether the state had previously been a party to the compact. A state that has withdrawn as a party state shall pay the previously committed fee of \$25 million in addition to the fees set in Subsection (b).

(d) A payment made under this section may not be refunded, even if a party state withdraws from the compact.

(e) The host county, as defined by Section 2.01 of the compact, is entitled to receive 10 percent of a payment under Subsection (b).

(f) This section prevails over any other law or agreement in conflict or inconsistent with this section.

SECTION 11. Section 401.248(d), Health and Safety Code, is repealed.

SECTION 12. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2011.

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

Amend **CSSB 1504** (house committee printing) as follows:

(1) In SECTION 2 of the bill, in added Section 401.207(e), Health and Safety Code (page 3, line 17), strike "an average of".

(2) In SECTION 2 of the bill, in added Section 401.207(e), Health and Safety Code (page 3, lines 18-19), strike "annually over the first 10 years of disposal operations, with an annual limit of not more than 220,000 curies" and substitute "annually, except that in the first year the license holder may accept 220,000 curies".

(3) In SECTION 2 of the bill, strike added Sections 401.207(f) and (g), Health and Safety Code (page 4, lines 1-15), and substitute:

(f) Of the total initial licensed capacity of the compact waste disposal facility:

(1) not more than 30 percent of the volume and curie capacity shall be for nonparty compact waste; and

(2) of the remaining capacity, not less than 80 percent of the volume and curie capacity shall be for compact waste generated in the host state and 20 percent of the volume and curie capacity shall be for compact waste generated in Vermont.

(g) The commission shall assess a surcharge for the disposal of nonparty compact waste at the compact waste disposal facility. The surcharge is 20 percent of the total contracted rate under Section 401.2456 and must be assessed in addition to the total contracted rate under that section.

(4) In SECTION 2 of the bill, in amended Section 401.207, Health and Safety Code, between Subsections (h) and (i) of the section (page 4, between lines 17 and 18), insert:

(h-1) The commission shall conduct a study of the surcharge described by Subsection (g) and, not later than December 1, 2016, shall issue the results of the review to the legislature. The commission shall review the operations and expenses of the compact waste disposal facility license holder and shall require the compact waste disposal facility license holder to provide justification of disposal expenses and historical costs associated with the facility through appropriate evidentiary and empirical records, studies, and other applicable methodologies. The commission shall consider the impact of the surcharge on the overall revenue generated for the state and may request the assistance of the comptroller in conducting the analysis of the impact of the surcharge.

(5) In SECTION 2 of the bill, strike added Sections 401.207(j) and (k), Health and Safety Code (page 4, line 21, through page 5, line 6), and substitute:

(j) An application for the approval of the importation of nonparty compact waste may be submitted to the Texas Low-Level Radioactive Waste Disposal Compact Commission only by the generator of the waste.

(k) The commission, in coordination with the Texas Low-Level Radioactive Waste Disposal Compact Commission, shall adopt rules establishing criteria and thresholds by which incidental commingling of party state compact waste and waste from other sources at a commercial processing facility is considered and reasonably limited. The criteria and thresholds for commingling under this subsection established by commission rule are binding on any criteria and thresholds that may be established by the Texas Low-Level Radioactive Waste Disposal Compact Commission.

(6) In SECTION 3 of the bill, in added Section 401.208(b)(2), Health and Safety Code (page 5, lines 19-20), strike "the result of using decay factors in revising curie capacity limits" and substitute "the calculation of radioactive decay related to the compact waste disposal facility and radiation dose assessments based on the curie capacity".

(7) In SECTION 3 of the bill, in added Section 401.208(b)(3), Health and Safety Code (page 5, line 22), strike "and".

(8) In SECTION 3 of the bill, in added Section 401.208(b)(4), Health and Safety Code (page 5, line 24), between "public" and the underlined period, insert: ; and

(5) the costs and benefits of volume reduction and stabilized waste forms

(9) In SECTION 3 of the bill, strike added Section 401.208(e), Health and Safety Code (page 6, line 5), and substitute:

(e) The commission may conduct a study described by Subsection (a) at any time after December 1, 2012, if the commission determines that a study is necessary.

(10) In SECTION 3 of the bill, strike added Section 401.2085(c), Health and Safety Code (page 6, line 24).

(11) Strike SECTION 4 of the bill (page 6, line 25 through page 7, line 3).

(12) In SECTION 6 of the bill, in added Section 401.245(h), Health and Safety Code (page 8, lines 3-4), strike "case is referred by the commission" and substitute "State Office of Administrative Hearings assumes jurisdiction of the case".

(13) Strike SECTION 7 of the bill (page 8, line 5, through page 11, line 27) and substitute:

SECTION 7. Subchapter F, Chapter 401, Health and Safety Code, is amended by adding Sections 401.2455 and 401.2456 to read as follows:

Sec. 401.2455. INTERIM PARTY STATE COMPACT WASTE DISPOSAL FEES. (a) The commission's executive director may establish interim party state compact waste disposal fees effective only for the period beginning on the date the compact waste disposal facility license holder is approved to accept waste at the disposal facility and ending on the effective date of the rules establishing the fees under Section 401.245.

(b) An extension of the period during which interim rates apply may not be granted. If the State Office of Administrative Hearings has not issued a proposal for decision before the expiration of the period under Section 401.245(h), all disposal at the compact waste disposal facility must cease until the fees are adopted.

Sec. 401.2456. CONTRACTS FOR NONPARTY COMPACT WASTE DISPOSAL. (a) At any time after the commission has granted approval to begin operating the compact waste disposal facility, the compact waste disposal facility license holder may contract rates with nonparty compact waste generators for the disposal of nonparty compact waste at the facility in accordance with the compact waste disposal facility license.

(b) Rates and contract terms negotiated under this section are subject to review and approval by the commission's executive director to ensure they meet all of the requirements of this section.

(c) Rates negotiated under this section must be set both by a price per curie and a price per cubic foot. Fees resulting from the negotiated rates must be greater than, as applicable:

(1) the compact waste disposal fees under Section 401.245 as set by the commission that are in effect at the time the rates are negotiated; or

(2) the interim compact waste disposal fees under Section 401.2455 as set by the commission's executive director that are in effect at the time the rates are negotiated.

(d) A contract under this section must:

(1) be negotiated in good faith;

(2) conform to applicable antitrust statutes and regulations; and

(3) be nondiscriminatory.

(e) Rates set under this section must generate fees sufficient to meet the criteria for party state compact waste under Sections 401.246(a) and (c).

(14) In the recital to SECTION 8 of the bill (page 12, lines 1-2), strike "401.246(a), Health and Safety Code, is amended" and substitute "401.246, Health and Safety Code, is amended by amending Subsection (a) and adding Subsection (c)".

(15) In SECTION 8 of the bill, following amended Section 401.246(a), Health and Safety Code (page 12, between lines 23 and 24), insert:

(c) In determining compact waste disposal fees, the commission shall only consider capital investment in property by the compact waste disposal facility license holder that is used and useful to the compact waste disposal facility as authorized under this chapter. The commission may not consider the capital investment costs or related costs incurred before September 1, 2003, in determining disposal fees.

(16) In SECTION 10 of the bill, strike added Section 401.250(e), Health and Safety Code (page 15, lines 12-14), and substitute:

(e) For the purposes of calculating the amount of a payment required under Section 4.05(5) of the compact, the amount of a payment under this section is considered to be a payment under Article V of the compact.

(17) Add the following appropriately numbered SECTION to the bill:

SECTION \_\_\_\_. Section 401.271, Health and Safety Code, is amended by adding Subsection (c) to read as follows:

(c) A holder of a license or permit issued by the commission under this chapter or Chapter 361 that authorizes the storage, other than disposal, of a radioactive waste or elemental mercury from other persons shall remit each quarter to the commission for deposit into the general revenue fund an amount equal to 20 percent of the license or permit holder's gross receipts received from the storage of the substance for any period after the first anniversary of the date the waste or mercury was initially stored. This subsection applies only to the storage of radioactive waste or elemental mercury at or adjacent to the compact waste disposal facility.

(18) Renumber the SECTIONS of the bill appropriately.

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

Amend Amendment No. 1 by Lewis to **CSSB 1504** as follows:

(1) On page 1 of the amendment, between lines 2 and 3, insert the following subdivision and renumber subsequent subdivisions accordingly:

In SECTION 2 of the bill, at the end of added Section 401.207(b), Health and Safety Code (page 2, line 26), add "The license holder may not accept any nonparty compact waste for disposal at the facility until the license has been modified by the commission to specifically authorize the disposal of nonparty compact waste."

(2) On page 4, line 7 of the amendment, after the period insert the following: "A generator is not entitled to a refund, and may not be charged a surcharge, for the disposal of waste under interim fees once the final fees have been adopted."

(3) On page 4, line 12 of the amendment, strike "fees" and substitute "rates".

(4) On page 6, lines 11-12, strike "after the first anniversary of the date the waste or mercury was initially stored" and substitute "exceeding one year. This subsection applies only to the storage of the substance for any period exceeding one year".

The amendments were read.

Senator Seliger moved to concur in the House amendments to **SB 1504**.

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

### **SENATE BILL 1386 WITH HOUSE AMENDMENT**

Senator Lucio called **SB 1386** 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 1386** (house committee printing) as follows:

(1) On page 1, line 6, strike "(a), (b)," and substitute "(a)".

(2) On page 1, lines 13-14, strike "complaint or citation relating to a county fine, fee, or tax" and substitute "complaint, citation, information, or indictment in a court in the county in which a criminal proceeding is pending against the owner".

(3) Strike page 1, lines 15-18.

(4) On page 1, lines 19-20, strike "shall [may]" and substitute "may".

(5) Strike page 2, line 1 and substitute "complaint, citation, information, or indictment in a court in the county in which a criminal proceeding is pending against the owner".

(6) On page 2, line 4, between "contract" and the period, insert ", or another county department for expenses related to services under the contract".

(7) On page 2, lines 8-9, strike "the assessor-collector for the [a]" and substitute "a".

(8) On page 2, lines 25, strike "shall" and substitute "may".

(9) On page 3, line 3, between "contract" and the period, insert ", or another county department for expenses related to services under the contract".

(10) On page 3, lines 7 and 9, strike "complaint or citation" and substitute "complaint, citation, information, or indictment".

The amendment was read.

Senator Lucio moved to concur in the House amendment to **SB 1386**.

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

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

Nays: Hegar, Jackson, Nelson.

### **SENATE BILL 802 WITH HOUSE AMENDMENT**

Senator Hegar called **SB 802** 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 802** in SECTION 2 of the bill by striking added Section 253.008(d), Transportation Code (page 1, lines 16-17, house committee printing), and substituting the following:

(d) Beginning on the second anniversary of the date of an assessment, the Commissioners Court of Aransas County by order may require the payment of interest on the assessment at the rate determined under Section 304.003, Finance Code.

The amendment was read.

Senator Hegar moved to concur in the House amendment to **SB 802**.

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

**SENATE BILL 804 WITH HOUSE AMENDMENT**

Senator Hegar called **SB 804** 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 804** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to the use of revenue from the hotel occupancy tax by certain counties.

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

SECTION 1. Section 352.1033, Tax Code, is amended by amending Subsection (a) and adding Subsections (c) and (d) to read as follows:

(a) Subject to Subsection (c), the ~~The~~ revenue from a tax imposed under this chapter by a county that borders the Gulf of Mexico authorized to impose the tax by Section 352.002(a)(6) may be used only to:

- (1) clean public beaches;
- (2) acquire, furnish, or maintain facilities, including parks, that enhance public access to beaches;
- (3) provide and maintain public restrooms on or adjacent to beaches or beach access facilities;
- (4) provide and maintain litter containers on or adjacent to beaches or beach access facilities;
- (5) create, renovate, promote, and maintain parks adjacent to bays, rivers, and other navigable waterways if the county does not operate a public beach on the Gulf of Mexico; and

(6) advertise and conduct solicitations and promotional programs to attract tourists and convention delegates or registrants to the county or its vicinity, any of which may be conducted by the county or through contracts with persons or organizations selected by the county.

(c) In addition to the uses allowed by Subsection (a), a county authorized to impose a tax under this chapter by Section 352.002(a)(6) that has a population of 50,000 or less and in which there is located at least one state park and one national wildlife refuge may use the revenue from the tax to:

- (1) acquire, construct, furnish, or maintain facilities, such as aquariums, birding centers and viewing sites, history and art centers, and nature centers and trails;
- (2) advertise and conduct solicitations and promotional programs to attract conventions and visitors; and
- (3) provide and maintain public restrooms and litter containers on public land in an area that is a tourism venue.

(d) The limitation prescribed by Subsection (b) does not apply to the use of revenue from a tax imposed under this chapter by a county to which Subsection (c) applies.

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 804**.

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

### SENATE BILL 1477 WITH HOUSE AMENDMENT

Senator Hegar called **SB 1477** 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 1477** by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to differential pay and benefits for certain employees of emergency services districts who are members of the armed forces.

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

SECTION 1. Subchapter C, Chapter 775, Health and Safety Code, is amended by adding Section 775.039 to read as follows:

Sec. 775.039. DIFFERENTIAL PAY AND BENEFITS FOR EMPLOYEES OF EMERGENCY SERVICES DISTRICTS. (a) A board may provide differential pay to a district employee who is a member of the state military forces or a reserve component of the United States armed forces who is called to active duty if:

(1) the board adopts a policy providing for differential pay for all similarly situated employees; and

(2) the employee's military pay is less than the employee's gross pay from the district.

(b) The combination of differential pay and military pay may not exceed the employee's actual gross pay from the district.

(c) For purposes of this section, military pay does not include money the employee receives:

(1) for service in a combat zone;

(2) as hardship pay; or

(3) for being separated from the employee's family.

(d) The differential pay provided by Subsection (a) begins when the benefits allowed under Section 431.005, Government Code, are exhausted and continues until the employee's active military duty terminates.

(e) The board may extend the insurance benefits provided by the district to a district employee who is a member of the state military forces or a reserve component of the United States armed forces who is called to active duty and to the employee's

dependents. The extension period begins when the benefits allowed under Section 431.005, Government Code, are exhausted and continues until the employee's active military duty terminates.

SECTION 2. This Act takes effect September 1, 2011.

The amendment was read.

Senator Hegar moved to concur in the House amendment to **SB 1477**.

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

### **SENATE BILL 917 WITH HOUSE AMENDMENT**

Senator Wentworth called **SB 917** 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 917** by substituting in lieu thereof the following:

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

relating to emergency service districts.

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

SECTION 1. Section 775.018, Health and Safety Code, is amended by adding Subsections (f) and (g) to read as follows:

(f) If the territory of a district proposed under this chapter overlaps with the boundaries of another district created under this chapter, the commissioners court of each county in which the proposed district is located shall send to the board of the existing district a copy of the petition for creation of the proposed district. This subsection does not apply to a proposed district located wholly in a county with a population of more than three million.

(g) The board of the existing district shall adopt a statement before the date of the election required by this section that specifies the types of emergency services the existing district will provide or continue to provide in the overlapping territory if the proposed district is created. This subsection does not apply to a proposed district located wholly in a county with a population of more than three million.

SECTION 2. Section 775.0205, Health and Safety Code, is amended by amending Subsection (a) and adding Subsections (d-1), (d-2), and (d-3) to read as follows:

(a) If the territory in a district created under this chapter overlaps with the boundaries of another district created under this chapter [~~or a district created under Chapter 776~~], the most recently created district may not provide services in the overlapping territory that duplicate the services described in the statement required by Section 775.018(g) [~~provided by the other district at the time the overlapping district was created~~].

(d-1) The legislature finds that the performance of non-duplicative emergency services in the overlapping territory of emergency service districts is complementary to and not in conflict with the powers and duties of the respective districts.

(d-2) A person may serve as an emergency services commissioner of a district created under this chapter at the same time that the person serves as an emergency services commissioner of another district with overlapping territory created under this chapter.

(d-3) A person serving as a commissioner of more than one district under this section:

(1) may receive compensation for serving on only one board; and

(2) is entitled to reimbursement for reasonable and necessary expenses incurred in performing official duties for both boards.

SECTION 3. Section 775.024, Health and Safety Code, is amended to read as follows:

Sec. 775.024. CONSOLIDATION [~~MERGER~~] OF EMERGENCY SERVICES DISTRICTS. (a) Two or more emergency services districts may consolidate [~~merge~~] into a single emergency services district as provided by this section. Before consolidating, [~~if~~

[~~(+)~~] the board of each district must:

(1) determine that consolidation would allow the districts to provide services more economically and efficiently [~~of the districts votes in favor of the merger~~]; and

(2) adopt a joint order of consolidation that includes:

(A) the name and proposed territory of the consolidated district;

(B) the proposed date on which the existing districts dissolve and the consolidated district is created and will start offering services;

(C) if the maximum ad valorem tax rates in the districts are different, a statement that the districts will consolidate only if voters approve an equalized ad valorem tax rate at the election required by Section 775.0241; and

(D) a statement that the district will be consolidated only if the residents of the district and the residents of at least one other district approve the consolidation [~~the residents of each district approve the merger~~] in an election held for that purpose.

(b) The boards shall agree on a name for the proposed consolidated [~~merged~~] district and choose five commissioners from among the membership of the boards to serve on the initial board for the proposed district. The boards shall agree to stagger the terms appropriately.

(c) If the boards do not make the appointments before the 31st day after the date the boards adopted the joint order:

(1) for a consolidated district to which Section 775.0345 or 775.035 does not apply, the commissioners court shall appoint five commissioners to the board of the consolidated district; or

(2) for a consolidated district to which Section 775.0345 or 775.035 does apply, the board of the consolidated district is initially composed of the two commissioners from each existing board who have served the longest terms.

(c-1) The number of initial emergency services commissioners on a board described by Subsection (c)(2) is not required to be five.

(d) The ballot for the election to approve a consolidation [~~merger~~] shall be printed to permit voting for or against the proposition: "The consolidation [~~merger~~] of the \_\_\_\_\_ (insert district names) to create the \_\_\_\_\_ (insert name of

proposed district), which assumes all outstanding debts of the existing ~~[merged]~~ districts." The ballot shall include a proposition for an election required under Section 775.0241, if applicable.

(e) ~~(d)~~ If a majority of the voters voting in at least two of the districts proposed to be consolidated ~~[each district]~~ favor the consolidation ~~[merger]~~, the consolidated ~~[merged]~~ district is created and is composed of the districts that favored the consolidation. If less than a majority of the voters voting in any of the districts are in favor of the consolidation ~~[merger]~~, that district is not part of any consolidated district ~~[the vote fails and the districts are not merged]~~.

(f) The consolidated district is created on the latest of:

(1) the date stated in the joint order;

(2) the date the consolidation is approved in an election described by

Subsection (d); or

(3) the date the maximum ad valorem tax rate the consolidated district may impose under Section 775.0241 is established, if necessary.

~~(g) ~~(e)~~ The maximum tax rate that may be imposed by the merged district may not exceed the maximum tax rate authorized for any of the previous districts.~~

~~(f)~~ The consolidated ~~[merged]~~ district assumes all powers, rights, duties, assets, and liabilities of the former districts without a change in status. The consolidation ~~[merger]~~ does not diminish or impair the rights of the holders of any outstanding and unpaid bonds, warrants, or obligations of the district.

(h) For a consolidated district to which Section 775.0345 or 775.035 applies, the initial commissioners of the consolidated district serve until the next available uniform election date after the date the joint order is adopted and that allows sufficient time to comply with other requirements of law. After an election is held under Section 775.0345 or 775.035:

(1) the two commissioners who receive the fewest votes of the elected commissioners serve terms ending on December 31 of the second year following the year in which the election is held; and

(2) the remaining elected commissioners serve terms ending on December 31 of the fourth year following the year in which the election is held.

SECTION 4. Subchapter B, Chapter 775, Health and Safety Code, is amended by adding Section 775.0241 to read as follows:

Sec. 775.0241. TAXES FOR CONSOLIDATED DISTRICT. (a) If two districts that want to consolidate under Section 775.024 have different maximum ad valorem tax rates, the board of the district with the lower maximum ad valorem tax rate shall order an election in its district under Section 775.0745 to authorize the imposition of taxes in the territory of that district at a maximum rate that equals the maximum rate authorized in the district with the higher maximum rate.

(b) If a majority of the voters do not favor the increase in the maximum ad valorem tax rate under Subsection (a), the districts may not proceed with the consolidation.

(c) If the districts have different sales and use tax rates, the board of the consolidated district shall:

(1) designate the territory of the former districts as subdistricts;

(2) continue to impose the sales and use tax in each subdistrict at the rate the tax was imposed by the former district; and

(3) send to the comptroller by registered or certified mail:

(A) a copy of the joint order described by Section 775.024(a)(2); and

(B) a map of the consolidated district that clearly shows the territory of each subdistrict.

(d) Subsection (c) does not limit the authority of the board of the consolidated district to order an election under Section 775.0752 in a subdistrict or in the entire district.

SECTION 5. Subchapter C, Chapter 775, Health and Safety Code, is amended by adding Sections 775.0362 and 775.0363 to read as follows:

Sec. 775.0362. LIMIT ON REGULATION OF FIREWORKS. Except as provided by Section 775.0363, the district may not regulate the sale, use, or transportation of fireworks.

Sec. 775.0363. REGULATION OF FIREWORKS. The district may adopt a rule relating to fireworks that is the same as or less stringent than a rule adopted or enforced by the commissioner of insurance and the state fire marshal under Chapter 2154, Occupations Code, relating to retail fireworks stands, fireworks bulk manufacturing and storage facilities, fireworks sales buildings, or any other structure used in public pyrotechnic displays to which the rules adopted under Chapter 2154, Occupations Code, apply.

SECTION 6. Subchapter C, Chapter 775, Health and Safety Code, is amended by adding Sections 775.0365 and 775.0366 to read as follows:

Sec. 775.0365. BOARD TRAINING. (a) An emergency services commissioner shall complete at least six hours of continuing education relating to the performance of the duties of an emergency services commissioner at least once in a two-year period.

(b) Continuing education instruction required by Subsection (a) must be certified by an institution of higher education as defined by Section 61.003, Education Code.

(c) For purposes of Subsection (a), an emergency services commissioner may carry forward from one two-year period to the next two-year period not more than three continuing education hours that the commissioner completes in excess of the required six hours.

(d) For purposes of removal under Section 775.0422 or 775.0423, "incompetency" includes the failure of an emergency services commissioner to comply with Subsection (a).

Sec. 775.0366. SERVICE CONTRACTS. (a) In this section, "local government" has the meaning assigned by Section 791.003, Government Code.

(b) The board may contract with a local government, including another district, to provide staff, facilities, equipment, programs, or services the board considers necessary to provide or obtain emergency services that the district or the local government is authorized to provide.

(c) A person acting under a contract under this section, including an emergency services commissioner, does not, because of that action, hold more than one civil office of emolument or more than one office of honor, trust, or profit.

(d) Except as provided by Subsection (e), if a district contracts with a local government under this section to provide or obtain emergency services, the district is responsible for any civil liability that arises from furnishing those services if the district would have been responsible for furnishing the services in the absence of the contract.

(e) The parties to a contract between governmental entities under this section may agree to assign responsibility for civil liability that arises from services provided under the contract in any manner agreed to by the parties. The parties must assign that responsibility in a written provision of the contract that specifically refers to this subsection and states that the assignment of liability is intended to be different from liability otherwise assigned under Subsection (d).

(f) This section does not change the liability limits and immunities for a governmental unit under Chapter 101, Civil Practice and Remedies Code, or other law.

(g) A contract under this section is not a joint enterprise for liability purposes.

SECTION 7. The heading to Section 775.0422, Health and Safety Code, is amended to read as follows:

Sec. 775.0422. REMOVAL OF APPOINTED BOARD MEMBER BY COMMISSIONERS COURT [~~FOR FAILURE TO GIVE REPORT~~].

SECTION 8. Section 775.0422, Health and Safety Code, is amended by amending Subsections (a), (b), and (c) and adding Subsections (a-1) and (b-1) to read as follows:

(a) This section does not apply to a district unless the commissioners court of the county in which the district is located adopts this section by resolution.

(a-1) This section applies only to an appointed board member. This section does not apply to a board member who:

(1) is elected; or

(2) is appointed to fill a vacancy in an elected board member position.

(b) The commissioners court of the county in which a district is located, by an order adopted by a majority vote after a hearing, may remove a ~~one or more~~ board member for:

(1) incompetency, as defined by Section 87.011, Local Government Code;

(2) official misconduct, as defined by Section 87.011, Local Government Code; or

(3) misconduct, as defined by Section 178.001, Local Government Code [~~members if the board failed to give the report required by Section 775.036(a)(4) to the commissioners court before the 91st day after the date on which the report was due under that section~~].

(b-1) Section 551.0745, Government Code, applies to a deliberation regarding a removal of a board member in the same manner as that section applies to a deliberation regarding a dismissal of a member of an advisory body.

(c) Not later than ~~Before~~ the 30th ~~60th~~ day before ~~after~~ the date on which the hearing is held, a ~~report was due, each~~ commissioners court seeking removal under this section must:

(1) notify the board members that it is considering that action; and

(2) provide the board member with an opportunity to show cause why the board member should not be removed.

SECTION 9. Subchapter C, Chapter 775, Health and Safety Code, is amended by adding Section 775.0423 to read as follows:

Sec. 775.0423. REMOVAL OF ELECTED BOARD MEMBER. (a) This section applies only to a board member who:

(1) is elected; or

(2) is appointed to fill a vacancy in an elected board member position.

(b) A board member may be removed using the procedures provided by Chapter 87, Local Government Code, for:

(1) incompetency, as defined by Section 87.011, Local Government Code;

(2) official misconduct, as defined by Section 87.011, Local Government

Code;

(3) intoxication, as described by Section 87.013, Local Government Code;

or

(4) misconduct, as defined by Section 178.001, Local Government Code.

(c) The validity of a board action is not affected because it is taken when a ground for removal of a board member exists.

SECTION 10. Section 775.056(a), Health and Safety Code, is amended to read as follows:

(a) After a hearing, a district may make mutually agreeable changes in boundaries with another district, ~~[or a district created under Chapter 776.]~~ provided that the maximum tax rate authorized for such a district does not exceed the maximum tax rate previously authorized for any territory added to that district. The districts shall agree on an effective date for the changes in boundaries.

SECTION 11. Section 775.074, Health and Safety Code, is amended by adding Subsection (d-1) to read as follows:

(d-1) The board may not set the tax rate for a fiscal year before the date the board adopts a budget for that fiscal year.

SECTION 12. Section 775.082, Health and Safety Code, is amended by adding Subsection (e-1) to read as follows:

(e-1) When a district located wholly in one county fails to complete and file the audit report by September 1 of each year and a county auditor is not ordered to prepare the report, the president and treasurer of the board are removed from the board and the commissioners court shall fill the vacancies as provided by Section 775.034.

SECTION 13. Section 775.085, Health and Safety Code, is amended by adding Subsection (d) to read as follows:

(d) Section 775.077 does not apply to a loan secured under this section, including a loan made before the effective date of this subsection.

SECTION 14. Section 344.051(c), Local Government Code, is amended to read as follows:

(c) Except as provided by Subsection (f), a district may be created inside the boundaries of an emergency services district operating under Chapter 775 ~~[or 776]~~, Health and Safety Code, only if the governing body of the emergency services district gives its written consent by order or resolution not later than the 60th day after the date the governing body receives a request for its consent.

SECTION 15. Section 323.101(f), Tax Code, is amended to read as follows:

(f) The provisions of this chapter govern the application, collection, and administration of a sales and use tax imposed under Chapter 285 or [§] 775, [~~or 776,~~] Health and Safety Code, to the extent not inconsistent with the provisions of those chapters. Provided, however, that Subsection (b) shall not apply to a tax authorized under those chapters.

SECTION 16. Chapter 776, Health and Safety Code, is repealed.

SECTION 17. (a) On the effective date of this Act, a district created under Chapter 776, Health and Safety Code, is converted into a district operated under Chapter 775, Health and Safety Code. A district converted under this section continues in existence and is subject to Chapter 775, Health and Safety Code.

(b) An emergency commissioner of a district created under Chapter 776, Health and Safety Code, is an emergency services commissioner of the converted district under Chapter 775, Health and Safety Code, and shall serve on the board of the converted district as an emergency services commissioner until the term for which the commissioner was appointed or elected expires.

SECTION 18. 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 Wentworth moved to concur in the House amendment to **SB 917**.

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

### SENATE BILL 548 WITH HOUSE AMENDMENT

Senator Nichols called **SB 548** 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 548** (house committee printing) as follows:

(1) In SECTION 2 of the bill, following added Section 201.752(d), Transportation Code (page 4, between lines 7 and 8), insert:

(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).

(2) In SECTION 2(c) of the bill (page 10, line 20), strike "the effective date of this Act" and substitute "September 1, 2011".

(3) In SECTION 2(c) of the bill (page 10, line 22), strike "the effective date of this Act" and substitute "September 1, 2011,".

(4) In SECTION 5 of the bill (page 12, lines 18-19), strike "the effective date of this Act" and substitute "September 1, 2011".

(5) Strike SECTION 6 of the bill (page 12, line 24) and substitute:

SECTION 6. (a) Section 222.005, Transportation Code, as added by this Act, takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, Section 222.005 takes effect September 1, 2011.

(b) Except as provided by Subsection (a) of this section, this Act takes effect September 1, 2011.

The amendment was read.

Senator Nichols moved to concur in the House amendment to **SB 548**.

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

#### **SENATE BILL 349 WITH HOUSE AMENDMENT**

Senator Eltife called **SB 349** 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 349** by substituting in lieu thereof the following:

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

relating to the hotel occupancy tax rate in certain municipalities.

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

SECTION 1. Section 351.003, Tax Code, is amended by adding Subsections (e) and (f) to read as follows:

(e) The rate in a municipality that has a population of more than 95,000 and is in a county that borders Lake Palestine and has a population of more than 200,000 may not exceed nine percent of the price paid for a room. The municipality shall allocate for the construction, expansion, maintenance, or operation of convention center facilities all revenue received by the municipality that is derived from the application of the tax at a rate of more than seven percent of the price paid for a room in a hotel.

(f) The rate in a municipality that has a population of at least 80,000 and is partly located in a county that borders the State of Louisiana and has a population of at least 60,000 may not exceed nine percent of the price paid for a room. The municipality shall allocate for the construction, expansion, maintenance, or operation of convention center facilities all revenue received by the municipality that is derived from the application of the tax at a rate of more than seven percent of the price paid for a room in a hotel.

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 Eltife moved to concur in the House amendment to **SB 349**.

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

### SENATE BILL 701 WITH HOUSE AMENDMENT

Senator Watson called **SB 701** 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 701** by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to high-value data sets of state agencies posted on the Internet.

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

SECTION 1. Subchapter F, Chapter 2054, Government Code, is amended by adding Section 2054.1265 to read as follows:

Sec. 2054.1265. POSTING HIGH-VALUE DATA SETS ON INTERNET.

(a) In this section:

(1) "High-value data set" means information that can be used to increase state agency accountability and responsiveness, improve public knowledge of the agency and its operations, further the core mission of the agency, create economic opportunity, or respond to need and demand as identified through public consultation. The term does not include information that is confidential or protected from disclosure under state or federal law.

(2) "State agency" means a board, commission, office, department, or other agency in the executive, judicial, or legislative branch of state government. The term includes an institution of higher education as defined by Section 61.003, Education Code.

(b) Each state agency shall post on a generally accessible Internet website maintained by or for the agency each high-value data set created or maintained by the agency, if the agency:

(1) determines that, using existing resources, the agency can post the data set on the Internet website at no additional cost to the state;

(2) enters into a contract advantageous to the state under which the contractor posts the data set on the Internet website at no additional cost to the state;  
or

(3) receives a gift or grant specifically for the purpose of posting one or more of the agency's high-value data sets on the Internet website.

(c) A high-value data set posted by a state agency under this section must be raw data in open standard format that allows the public to search, extract, organize, and analyze the information.

(d) The web page on which a state agency's high-value data set is posted must:

(1) use the agency's Internet website home page address and include the uniform resource locator suffix "data"; and

(2) have a conspicuously displayed link on either the agency's Internet website home page or another intuitive location accessible from the agency's Internet website home page.

(e) A state agency may accept a gift or grant for the purpose of posting one or more of the agency's high-value data sets on an Internet website.

SECTION 2. This Act takes effect September 1, 2011.

The amendment was read.

Senator Watson moved to concur in the House amendment to **SB 701**.

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

### CONFERENCE COMMITTEE ON HOUSE BILL 871

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 871** 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 871** 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; Deuell, Rodriguez, Carona, and Eltife.

### 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:

**SB 19, SB 29, SB 43, SB 166, SB 233, SB 234, SB 266, SB 267, SB 304, SB 350, SB 367, SB 422, SB 449, SB 461, SB 471, SB 481, SB 489, SB 554, SB 577, SB 578, SB 609, SB 627, SB 650, SB 682, SB 735, SB 791, SB 792, SB 799, SB 864, SB 889, SB 898, SB 900, SB 901, SB 959, SB 966, SB 987, SB 1020, SB 1030, SB 1044, SB 1046, SB 1106, SB 1133, SB 1167, SB 1176, SB 1220, SB 1231, SB 1273, SB 1308, SB 1322, SB 1330, SB 1342, SB 1368, SB 1438, SB 1441, SB 1480, SB 1484, SB 1493, SB 1521, SB 1522, SB 1557, SB 1596, SB 1681, SB 1737, SB 1787, SB 1789, SB 1807, SB 1812, SB 1857, SB 1875, SB 1880, SB 1915, SB 1928, SCR 35, SCR 51, HB 33, HB 92, HB 109, HB 257, HB 260, HB 268, HB 378, HB 397, HB 530, HB 592, HB 826, HB 970, HB 1010, HB 1168, HB 1179, HB 1201, HB 1241, HB 1278, HB 1341, HB 1353, HB 1456, HB 1523, HB 1555, HB 1593, HB 1608, HB 1812, HB 1818, HB 1839, HB 1932, HB 1959, HB 2006, HB 2077, HB 2103, HB 2109, HB 2127, HB 2132, HB 2135,**

**HB 2139, HB 2382, HB 2387, HB 2422, HB 2471, HB 2510, HB 2579, HB 2603, HB 2610, HB 2649, HB 2703, HB 2707, HB 2735, HB 2758, HB 2826, HB 2889, HB 2904, HB 2911, HB 2940, HB 2971, HB 3017, HB 3199, HB 3309, HB 3314, HB 3329, HB 3337, HB 3352, HB 3391, HB 3579, HB 3616, HB 3722, HB 3808, HB 3815, HB 3821, HB 3852, HCR 42, HCR 163, HJR 63, HJR 130.**

**(President in Chair)**

**SENATE BILL 176 WITH HOUSE AMENDMENT**

Senator Huffman called **SB 176** from the President's table for consideration of the House amendment to the bill.

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

**Amendment**

Amend **SB 176** by substituting in lieu thereof the following:

**A BILL TO BE ENTITLED  
AN ACT**

relating to student eligibility for tuition rebates offered by general academic teaching institutions.

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

**SECTION 1.** Section 54.0065(a), Education Code, is amended to read as follows:

(a) A qualified student is eligible for a rebate of a portion of the undergraduate tuition the student has paid if the student:

(1) is awarded a baccalaureate degree from a general academic teaching institution within the period prescribed by Section 56.462(1)(A) or (B), as applicable, to qualify for forgiveness of a Texas B-On-time loan; and

(2) has attempted no more than three hours in excess of the minimum number of semester credit hours required to complete the degree program:

(A) including:

(i) transfer credits; and

(ii) course credit earned exclusively by examination, except that, for purposes of this subsection, only the number of semester credit hours earned exclusively by examination in excess of nine semester credit hours is treated as hours attempted; and

(B) excluding:

(i) course credit that is earned to satisfy requirements for a Reserve Officers' Training Corps (ROTC) program but that is not required to complete the degree program; and

(ii) course credit, other than course credit earned exclusively by examination, that is earned before graduating from high school.

**SECTION 2.** The change in law made by this Act applies only to a student who is awarded a baccalaureate degree from a general academic teaching institution 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 Huffman moved to concur in the House amendment to **SB 176**.

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

### **SENATE BILL 812 WITH HOUSE AMENDMENT**

Senator Zaffirini called **SB 812** from the President's table for consideration of the House amendment to the bill.

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

#### **Amendment**

Amend **SB 812** by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to the resumption of employment by certain retirees within the Texas Municipal Retirement System.

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

SECTION 1. Section 852.108, Government Code, is amended by amending Subsections (c), (e), and (f) and adding Subsection (j) to read as follows:

(c) The retirement system shall discontinue and suspend payments of each service retirement annuity that is allowed because of the person's previous service with the reemploying municipality beginning with the month the retirement system determines that the person has again become an employee of the reemploying municipality. After the suspension and except as provided by Subsection (j), the retirement system may not make payments of the annuity for any month during which the person remains an employee of the reemploying municipality. The suspension of a benefit under this section does not suspend payment of a benefit to an alternate payee under a qualified domestic relations order.

(e) After termination of employment with the reemploying municipality and after filing of an application for resumption of retirement with the board of trustees, a person described by Subsection (b) is entitled to receive future payments of the suspended annuity, as provided by Subsection (f), and to the additional benefits as provided by Subsections (g), (h), ~~and~~ (i), and (j).

(f) Monthly payments of a suspended annuity shall be resumed in the month following the month in which employment is terminated with the reemploying municipality, without change in the amount except for any increase allowed under Section 854.203 or the duration of or another condition pertaining to the suspended benefit. Except as provided by Subsection (j), payment ~~Payment~~ of the resumed benefit may not be made for any month during which the payment was suspended under this section.

(j) A person to whom this section applies shall receive a lump-sum payment in an amount equal to the sum of the service retirement annuity payments the person would have received had the person's annuity payments not been discontinued and suspended under this section if the person:

- (1) initially retired based on a bona fide termination of employment; and
- (2) resumed employment with the person's reemploying municipality at least eight years after the effective date of the person's retirement.

SECTION 2. The change in law made by this Act applies only to a member of the Texas Municipal Retirement System who terminates employment with the person's reemploying municipality and files an application for resumption of retirement with the board of trustees of the Texas Municipal Retirement System under Section 852.108(e), Government Code, as amended by this Act, on or after the effective date of this Act. A member who terminates employment with the person's reemploying municipality and files an application for resumption of retirement with the board under Section 852.108(e), Government Code, before the effective date of this Act is governed by the law as it existed immediately before that date, and the former law is continued in effect for that purpose.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2011.

The amendment was read.

Senator Zaffirini moved to concur in the House amendment to **SB 812**.

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

Nays: Nelson.

### **SENATE BILL 377 WITH HOUSE AMENDMENT**

Senator Huffman called **SB 377** from the President's table for consideration of the House amendment to the bill.

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

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

Amend **SB 377** (house committee printing) in SECTION 1 of the bill, in amended Subsection (a), Section 19.03, Penal Code, as follows:

- (1) On page 2, line 15, strike "or" and substitute "[~~or~~]".
- (2) On page 2, line 21, between "court" and the period, insert the following:

; or

(10) the person murders a disabled person, as defined by Section 29.03(c), who is under 18 years of age

The amendment was read.

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

The motion prevailed without objection.

The President asked if there were any motions to instruct the conference committee on **SB 377** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate: Senators Huffman, Chair; Whitmire, Eltife, Patrick, and Nelson.

### SENATE BILL 1010 WITH HOUSE AMENDMENTS

Senator Huffman called **SB 1010** from the President's table for consideration of the House amendments to the bill.

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

#### Floor Amendment No. 1

Amend **SB 1010** (house committee report) as follows:

(1) In SECTION 1 of the bill, strike the recital (page 1, lines 6-7) and substitute "Article 26.13, Code of Criminal Procedure, is amended by amending Subsections (a) and (e) and adding Subsection (e-1) to read as follows:"

(2) In SECTION 1 of the bill, strike amended Article 26.13(e), Code of Criminal Procedure (page 2, lines 14 through 23), and substitute the following:

(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.

(3) In SECTION 2 of the bill, strike amended Article 56.08(e)(2), Code of Criminal Procedure (page 3, lines 17 through 26), and substitute the following:

(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.

(4) Strike SECTION 3 of the bill (page 3, line 27, through page 4, line 6) and substitute the following:

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.

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

Amend **SB 1010** (house committee printing) as follows:

(1) In SECTION 3(a) of the bill (page 3, line 27), strike "this Act" and substitute "Articles 26.13 and 56.08, Code of Criminal Procedure, as amended by this Act,".

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

SECTION \_\_\_\_\_. Chapter 26, Code of Criminal Procedure, is amended by adding Article 26.131 to read as follows:

Art. 26.131. ORAL STATEMENT REGARDING TERMS OF PLEA BARGAIN AGREEMENT. (a) One immediate family member of a peace officer who dies as the result of alleged criminal conduct for which a defendant has been indicted or for which an information has been returned is entitled to make an oral statement to the court regarding the terms of any plea bargain agreement in the case and regarding whether the peace officer's family supports or opposes the terms of that agreement. The family member who makes the statement must be designated by the peace officer's immediate family.

(b) In a case in which a peace officer dies as a result of the alleged criminal conduct of the defendant, the attorney representing the state shall notify the immediate family members of the deceased peace officer of the existence and terms of any plea bargain agreement and the right of one immediate family member to make an oral statement to the court as described by Subsection (a).

(c) The court shall:

(1) consider an oral statement under Subsection (a) before sentencing the defendant; and

(2) permit the defendant or the defendant's counsel an opportunity to:

(A) cross-examine the person making the oral statement;

(B) comment on the oral statement; and

(C) with the approval of the court, introduce testimony or other information alleging a factual inaccuracy in the oral statement.

(d) Before the immediate family member makes an oral statement under Subsection (a), the court shall inform the family member of the defendant's rights under Subsection (c)(2).

(e) The presentation and consideration of an oral statement under this article is in addition to the consideration of a written victim impact statement under Article 56.03 and does not preclude the presentation of a statement after sentence is pronounced under Article 42.03.

(f) In this article:

(1) "Immediate family member of a peace officer" means an individual who is related to a peace officer within the second degree by affinity or consanguinity.

(2) "Peace officer" has the meaning assigned by Section 1.07, Penal Code.

SECTION \_\_\_\_\_. The change in law made by Article 26.131, Code of Criminal Procedure, as added by this Act, applies only 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.

The amendments were read.

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

The motion prevailed without objection.

The President asked if there were any motions to instruct the conference committee on **SB 1010** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate: Senators Huffman, Chair; Hegar, Nelson, Patrick, and Whitmire.

#### **CONFERENCE COMMITTEE ON HOUSE BILL 1619**

Senator Patrick called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 1619** and moved that the request be granted.

The motion prevailed without objection.

The President asked if there were any motions to instruct the conference committee on **HB 1619** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate: Senators Patrick, Chair; Nichols, Hegar, Huffman, and Eltife.

#### **CONFERENCE COMMITTEE ON HOUSE BILL 200**

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 200** and moved that the request be granted.

The motion prevailed without objection.

The President asked if there were any motions to instruct the conference committee on **HB 200** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate: Senators Whitmire, Chair; Hegar, Huffman, Ellis, and Patrick.

**SENATE BILL 1600 WITH HOUSE AMENDMENT**

Senator Whitmire called **SB 1600** from the President's table for consideration of the House amendment to the bill.

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

**Amendment**

Amend **SB 1600** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to the registration of peace officers as private security officers.

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

SECTION 1. Section 1702.322, Occupations Code, is amended to read as follows:

Sec. 1702.322. LAW ENFORCEMENT PERSONNEL. This chapter does not apply to:

(1) a person who is a chief of police, sheriff, constable, or other chief administrator of a law enforcement agency in this state or is appointed or employed by the chief administrator of a law enforcement agency [has full time employment] as a peace officer, as defined by Section 1701.001, in accordance with the licensing requirements provided for by the rules of the Commission on Law Enforcement Officer Standards and Education and who receives compensation for private employment on an individual or an independent contractor basis as a patrolman, guard, extra job coordinator, or watchman if [the officer]:

(A) the peace officer is employed by the private employer in an employee-employer relationship or [employed] on an individual contractual basis:

- (i) directly by the recipient of the services; or
- (ii) by a company licensed under this chapter;

(B) the private employment does not require the peace officer to be [is not] in the employ of another peace officer;

(C) the peace officer is not a reserve peace officer; and

(D) the peace officer works for the law enforcement agency that appointed or employs the [as a] peace officer on the average of at least 32 hours a week, is compensated by the state or a political subdivision of the state at least at the minimum wage, and is entitled to all employee benefits offered to a peace officer by the state or political subdivision;

(2) a reserve peace officer while the reserve officer is performing guard, patrolman, or watchman duties for a county and is being compensated solely by that county;

(3) a peace officer acting in an official capacity in responding to a burglar alarm or detection device; or

(4) a person engaged in the business of electronic monitoring of an individual as a condition of that individual's community supervision, parole, mandatory supervision, or release on bail, if the person does not perform any other service that requires a license 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 Whitmire moved that the Senate do not concur in the House amendment, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed without objection.

The President asked if there were any motions to instruct the conference committee on **SB 1600** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate: Senators Whitmire, Chair; Hinojosa, Huffman, Gallegos, and Nelson.

#### **HOUSE BILL 1844 ON SECOND READING**

The President laid before the Senate **HB 1844** by Senator Watson at this time on its second reading:

**HB 1844**, Relating to storage of local government records by the Texas State Library and Archives Commission.

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

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

#### **HOUSE BILL 1844 ON THIRD READING**

Senator Watson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1844** be placed on its third reading and final passage.

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

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

#### **CONFERENCE COMMITTEE REPORT ON HOUSE BILL 3726**

Senator Van de Putte submitted the following Conference Committee Report:

Austin, Texas  
May 25, 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 3726** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

VAN DE PUTTE  
 WENTWORTH  
 ZAFFIRINI  
 URESTI  
 ELTIFE  
 On the part of the Senate

GUILLEN  
 LARSON  
 PRICE  
 DESHOTEL  
 KUEMPEL  
 On the part of the House

The Conference Committee Report on **HB 3726** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
 SENATE BILL 602**

Senator Rodriguez submitted the following Conference Committee Report:

Austin, Texas  
 May 23, 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 602** 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.

RODRIGUEZ  
 ELTIFE  
 GALLEGOS  
 URESTI  
 WENTWORTH  
 On the part of the Senate

MARQUEZ  
 BROWN  
 S. DAVIS  
 GALLEGO  
 SOLOMONS  
 On the part of the House

**A BILL TO BE ENTITLED  
 AN ACT**

relating to confidential information under the public information law and to procedures and deadlines under the public information law in relation to the redaction of certain confidential information by a governmental body.

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

SECTION 1. Section 51.217, Education Code, is amended by adding Subsection (g) to read as follows:

(g) The personal information of an individual maintained in an institution's emergency notification system is confidential and is not subject to disclosure under Chapter 552, Government Code. In this subsection, "personal information" includes an e-mail address or telephone number maintained in order to notify an individual of an emergency.

SECTION 2. Section 552.022, Government Code, is amended to read as follows:

Sec. 552.022. CATEGORIES OF PUBLIC INFORMATION; EXAMPLES. (a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or ~~unless they are expressly confidential under~~ other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108;

(2) the name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of a governmental body;

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body;

(4) the name of each official and the final record of voting on all proceedings in a governmental body;

(5) all working papers, research material, and information used to estimate the need for or expenditure of public funds or taxes by a governmental body, on completion of the estimate;

(6) the name, place of business, and the name of the municipality to which local sales and use taxes are credited, if any, for the named person, of a person reporting or paying sales and use taxes under Chapter 151, Tax Code;

(7) a description of an agency's central and field organizations, including:

(A) the established places at which the public may obtain information, submit information or requests, or obtain decisions;

(B) the employees from whom the public may obtain information, submit information or requests, or obtain decisions;

(C) in the case of a uniformed service, the members from whom the public may obtain information, submit information or requests, or obtain decisions; and

(D) the methods by which the public may obtain information, submit information or requests, or obtain decisions;

(8) a statement of the general course and method by which an agency's functions are channeled and determined, including the nature and requirements of all formal and informal policies and procedures;

(9) a rule of procedure, a description of forms available or the places at which forms may be obtained, and instructions relating to the scope and content of all papers, reports, or examinations;

(10) a substantive rule of general applicability adopted or issued by an agency as authorized by law, and a statement of general policy or interpretation of general applicability formulated and adopted by an agency;

(11) each amendment, revision, or repeal of information described by Subdivisions (7)-(10);

(12) final opinions, including concurring and dissenting opinions, and orders issued in the adjudication of cases;

(13) a policy statement or interpretation that has been adopted or issued by an agency;

(14) administrative staff manuals and instructions to staff that affect a member of the public;

- (15) information regarded as open to the public under an agency's policies;
- (16) information that is in a bill for attorney's fees and that is not privileged under the attorney-client privilege;
- (17) information that is also contained in a public court record; and
- (18) a settlement agreement to which a governmental body is a party.

(b) A court in this state may not order a governmental body or an officer for public information to withhold from public inspection any category of public information described by Subsection (a) or to not produce the category of public information for inspection or duplication, unless the category of information is [~~expressly made~~] confidential under this chapter or other law.

SECTION 3. The heading to Section 552.102, Government Code, is amended to read as follows:

Sec. 552.102. EXCEPTION: CONFIDENTIALITY OF CERTAIN PERSONNEL INFORMATION.

SECTION 4. The heading to Section 552.109, Government Code, is amended to read as follows:

Sec. 552.109. EXCEPTION: CONFIDENTIALITY OF CERTAIN PRIVATE COMMUNICATIONS OF AN ELECTED OFFICE HOLDER.

SECTION 5. The heading to Section 552.110, Government Code, is amended to read as follows:

Sec. 552.110. EXCEPTION: CONFIDENTIALITY OF TRADE SECRETS; CONFIDENTIALITY OF CERTAIN COMMERCIAL OR FINANCIAL INFORMATION.

SECTION 6. The heading to Section 552.113, Government Code, is amended to read as follows:

Sec. 552.113. EXCEPTION: CONFIDENTIALITY OF GEOLOGICAL OR GEOPHYSICAL INFORMATION.

SECTION 7. The heading to Section 552.114, Government Code, is amended to read as follows:

Sec. 552.114. EXCEPTION: CONFIDENTIALITY OF STUDENT RECORDS.

SECTION 8. The heading to Section 552.115, Government Code, is amended to read as follows:

Sec. 552.115. EXCEPTION: CONFIDENTIALITY OF BIRTH AND DEATH RECORDS.

SECTION 9. The heading to Section 552.117, Government Code, is amended to read as follows:

Sec. 552.117. EXCEPTION: CONFIDENTIALITY OF CERTAIN ADDRESSES, TELEPHONE NUMBERS, SOCIAL SECURITY NUMBERS, AND PERSONAL FAMILY INFORMATION.

SECTION 10. The heading to Section 552.118, Government Code, is amended to read as follows:

Sec. 552.118. EXCEPTION: CONFIDENTIALITY OF OFFICIAL PRESCRIPTION FORM.

SECTION 11. The heading to Section 552.119, Government Code, is amended to read as follows:

Sec. 552.119. EXCEPTION: CONFIDENTIALITY OF CERTAIN PHOTOGRAPHS ~~[PHOTOGRAPH]~~ OF PEACE OFFICERS ~~[OFFICER]~~.

SECTION 12. The heading to Section 552.120, Government Code, is amended to read as follows:

Sec. 552.120. EXCEPTION: CONFIDENTIALITY OF CERTAIN RARE BOOKS AND ORIGINAL MANUSCRIPTS.

SECTION 13. The heading to Section 552.121, Government Code, is amended to read as follows:

Sec. 552.121. EXCEPTION: CONFIDENTIALITY OF CERTAIN DOCUMENTS HELD FOR HISTORICAL RESEARCH.

SECTION 14. The heading to Section 552.123, Government Code, is amended to read as follows:

Sec. 552.123. EXCEPTION: CONFIDENTIALITY OF NAME OF APPLICANT FOR CHIEF EXECUTIVE OFFICER OF INSTITUTION OF HIGHER EDUCATION.

SECTION 15. The heading to Section 552.1235, Government Code, is amended to read as follows:

Sec. 552.1235. EXCEPTION: CONFIDENTIALITY OF IDENTITY OF PRIVATE DONOR TO INSTITUTION OF HIGHER EDUCATION.

SECTION 16. The heading to Section 552.124, Government Code, is amended to read as follows:

Sec. 552.124. EXCEPTION: CONFIDENTIALITY OF RECORDS OF LIBRARY OR LIBRARY SYSTEM.

SECTION 17. The heading to Section 552.126, Government Code, is amended to read as follows:

Sec. 552.126. EXCEPTION: CONFIDENTIALITY OF NAME OF APPLICANT FOR SUPERINTENDENT OF PUBLIC SCHOOL DISTRICT.

SECTION 18. The heading to Section 552.127, Government Code, is amended to read as follows:

Sec. 552.127. EXCEPTION: CONFIDENTIALITY OF PERSONAL INFORMATION RELATING TO PARTICIPANTS IN NEIGHBORHOOD CRIME WATCH ORGANIZATION.

SECTION 19. The heading to Section 552.128, Government Code, is amended to read as follows:

Sec. 552.128. EXCEPTION: CONFIDENTIALITY OF CERTAIN INFORMATION SUBMITTED BY POTENTIAL VENDOR OR CONTRACTOR.

SECTION 20. The heading to Section 552.129, Government Code, is amended to read as follows:

Sec. 552.129. CONFIDENTIALITY OF CERTAIN MOTOR VEHICLE INSPECTION INFORMATION.

SECTION 21. The heading to Section 552.130, Government Code, is amended to read as follows:

Sec. 552.130. EXCEPTION: CONFIDENTIALITY OF CERTAIN MOTOR VEHICLE RECORDS.

SECTION 22. Section 552.130, Government Code, is amended by adding Subsections (c), (d), and (e) to read as follows:

(c) Subject to Chapter 730, Transportation Code, a governmental body may redact information described by Subsections (a)(1) and (3) from any information the governmental body discloses under Section 552.021 without the necessity of requesting a decision from the attorney general under Subchapter G.

(d) If, under Subsection (c), a governmental body redacts or withholds information without requesting a decision from the attorney general about whether the information may be redacted or withheld, the requestor is entitled to seek a decision from the attorney general about the matter. The attorney general by rule shall establish procedures and deadlines for receiving information necessary to decide the matter and briefs from the requestor, the governmental body, and any other interested person. The attorney general shall promptly render a decision requested under this subsection, determining whether the redacted or withheld information was excepted from required disclosure to the requestor, not later than the 45th business day after the date the attorney general received the request for a decision under this subsection. The attorney general shall issue a written decision on the matter and provide a copy of the decision to the requestor, the governmental body, and any interested person who submitted necessary information or a brief to the attorney general about the matter. The requestor or the governmental body may appeal a decision of the attorney general under this subsection to a Travis County district court.

(e) A governmental body that redacts or withholds information under Subsection (c) shall provide the following information to the requestor on a form prescribed by the attorney general:

(1) a description of the redacted or withheld information;  
(2) a citation to this section; and  
(3) instructions regarding how the requestor may seek a decision from the attorney general regarding whether the redacted or withheld information is excepted from required disclosure.

SECTION 23. The heading to Section 552.131, Government Code, is amended to read as follows:

Sec. 552.131. EXCEPTION: CONFIDENTIALITY OF CERTAIN ECONOMIC DEVELOPMENT INFORMATION.

SECTION 24. The heading to Section 552.133, Government Code, is amended to read as follows:

Sec. 552.133. EXCEPTION: CONFIDENTIALITY OF PUBLIC POWER UTILITY COMPETITIVE MATTERS.

SECTION 25. The heading to Section 552.134, Government Code, is amended to read as follows:

Sec. 552.134. EXCEPTION: CONFIDENTIALITY OF CERTAIN INFORMATION RELATING TO INMATE OF DEPARTMENT OF CRIMINAL JUSTICE.

SECTION 26. The heading to Section 552.135, Government Code, is amended to read as follows:

Sec. 552.135. EXCEPTION: CONFIDENTIALITY OF CERTAIN INFORMATION HELD BY SCHOOL DISTRICT.

SECTION 27. Section 552.136, Government Code, is amended by adding Subsections (c), (d), and (e) to read as follows:

(c) A governmental body may redact information that must be withheld under Subsection (b) from any information the governmental body discloses under Section 552.021 without the necessity of requesting a decision from the attorney general under Subchapter G.

(d) If, under Subsection (c), a governmental body redacts or withholds information without requesting a decision from the attorney general about whether the information may be redacted or withheld, the requestor is entitled to seek a decision from the attorney general about the matter. The attorney general by rule shall establish procedures and deadlines for receiving information necessary to decide the matter and briefs from the requestor, the governmental body, and any other interested person. The attorney general shall promptly render a decision requested under this subsection, determining whether the redacted or withheld information was excepted from required disclosure to the requestor, not later than the 45th business day after the date the attorney general received the request for a decision under this subsection. The attorney general shall issue a written decision on the matter and provide a copy of the decision to the requestor, the governmental body, and any interested person who submitted necessary information or a brief to the attorney general about the matter. The requestor or the governmental body may appeal a decision of the attorney general under this subsection to a Travis County district court.

(e) A governmental body that redacts or withholds information under Subsection (c) shall provide the following information to the requestor on a form prescribed by the attorney general:

(1) a description of the redacted or withheld information;  
(2) a citation to this section; and  
(3) instructions regarding how the requestor may seek a decision from the attorney general regarding whether the redacted or withheld information is excepted from required disclosure.

SECTION 28. The heading to Section 552.138, Government Code, is amended to read as follows:

Sec. 552.138. EXCEPTION: CONFIDENTIALITY OF FAMILY VIOLENCE SHELTER CENTER AND SEXUAL ASSAULT PROGRAM INFORMATION.

SECTION 29. The heading to Section 552.139, Government Code, is amended to read as follows:

Sec. 552.139. EXCEPTION: CONFIDENTIALITY OF GOVERNMENT INFORMATION RELATED TO SECURITY OR INFRASTRUCTURE ISSUES FOR COMPUTERS.

SECTION 30. The heading to Section 552.140, Government Code, is amended to read as follows:

Sec. 552.140. EXCEPTION: CONFIDENTIALITY OF MILITARY DISCHARGE RECORDS.

SECTION 31. The heading to Section 552.142, Government Code, is amended to read as follows:

Sec. 552.142. EXCEPTION: CONFIDENTIALITY OF RECORDS OF CERTAIN DEFERRED ADJUDICATIONS AND CERTAIN MISDEMEANORS PUNISHABLE BY FINE ONLY.

SECTION 32. The heading to Section 552.145, Government Code, is amended to read as follows:

Sec. 552.145. EXCEPTION: CONFIDENTIALITY OF TEXAS NO-CALL LIST.

SECTION 33. The heading to Section 552.148, Government Code, is amended to read as follows:

Sec. 552.148. EXCEPTION: CONFIDENTIALITY OF CERTAIN PERSONAL INFORMATION MAINTAINED BY MUNICIPALITY PERTAINING TO A MINOR.

SECTION 34. The heading to Section 552.149, Government Code, is amended to read as follows:

Sec. 552.149. EXCEPTION: CONFIDENTIALITY OF RECORDS OF COMPTROLLER OR APPRAISAL DISTRICT RECEIVED FROM PRIVATE ENTITY.

SECTION 35. The heading to Section 552.150, Government Code, is amended to read as follows:

Sec. 552.150. EXCEPTION: CONFIDENTIALITY OF INFORMATION THAT COULD COMPROMISE SAFETY OF OFFICER OR EMPLOYEE OF HOSPITAL DISTRICT.

SECTION 36. The heading to Section 552.151, Government Code, as added by Chapter 1377 (S.B. 1182), Acts of the 81st Legislature, Regular Session, 2009, is amended to read as follows:

Sec. 552.151. EXCEPTION: CONFIDENTIALITY OF INFORMATION REGARDING SELECT AGENTS.

SECTION 37. The heading to Section 552.151, Government Code, as added by Chapter 283 (S.B. 1068), Acts of the 81st Legislature, Regular Session, 2009, is amended to read as follows:

Sec. 552.151. EXCEPTION: CONFIDENTIALITY OF INFORMATION CONCERNING PUBLIC EMPLOYEE OR OFFICER PERSONAL SAFETY.

SECTION 38. Section 552.263, Government Code, is amended by adding Subsection (e-1) to read as follows:

(e-1) If a requestor modifies the request in response to the requirement of a deposit or bond authorized by this section, the modified request is considered a separate request for the purposes of this chapter and is considered received on the date the governmental body receives the written modified request.

SECTION 39. Section 552.301, Government Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) For the purposes of this subchapter, if a governmental body receives a written request by United States mail and cannot adequately establish the actual date on which the governmental body received the request, the written request is considered to have been received by the governmental body on the third business day after the date of the postmark on a properly addressed request.

SECTION 40. The changes in law made by this Act to Sections 552.022, 552.263, and 552.301, Government Code, apply only to a request for information that is received by a governmental body or an officer for public information on or after the

effective date of this Act. A request for information that was received before the effective date of this Act is governed by the law in effect on the date the request was received, and the former law is continued in effect for that purpose.

SECTION 41. This Act takes effect September 1, 2011.

The Conference Committee Report on **SB 602** was filed with the Secretary of the Senate on Wednesday, May 25, 2011.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 1087**

Senator Carona submitted the following Conference Committee Report:

Austin, Texas  
May 25, 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 1087** 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

LUCIO

WATSON

VAN DE PUTTE

On the part of the Senate

HILDERBRAN

FRULLO

GOODEN

GALLEGO

T. KING

On the part of the House

**A BILL TO BE ENTITLED  
AN ACT**

relating to state-issued certificates of franchise authority to provide cable service and video service.

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

SECTION 1. Section 66.003(a), Utilities Code, is amended to read as follows:

(a) An entity or person seeking to provide cable service or video service in this state [~~after September 1, 2005,~~] shall file an application for a state-issued certificate of franchise authority with the commission as required by this section. An entity providing cable service or video service under a franchise agreement with a municipality is not subject to this subsection with respect to such municipality until the franchise agreement is terminated under Section 66.004 or until the franchise agreement expires[~~, except as provided by Section 66.004~~].

SECTION 2. Section 66.004, Utilities Code, is amended by amending Subsections (a), (c), and (f) and adding Subsections (b-1), (b-2), and (b-3) to read as follows:

(a) A cable service provider or a video service provider that currently has or had previously received a franchise to provide cable service or video service with respect to such municipalities is not eligible to seek a state-issued certificate of franchise authority under this chapter as to those municipalities until the expiration date of the existing franchise agreement, except as provided by Subsections (b), (b-1), (b-2), (b-3), and (c).

(b-1) Beginning September 1, 2011, a cable service provider or video service provider in a municipality with a population of less than 215,000 that was not allowed to or did not terminate a municipal franchise under Subsection (b) may elect to terminate not less than all unexpired franchises in municipalities with a population of less than 215,000 and seek a state-issued certificate of franchise authority for each area served under a terminated municipal franchise by providing written notice to the commission and each affected municipality before January 1, 2012. A municipal franchise is terminated on the date the commission issues a state-issued certificate of franchise authority to the provider for the area served under that terminated franchise.

(b-2) A cable service provider or video service provider in a municipality with a population of at least 215,000 may terminate a municipal franchise in that municipality in the manner described by Subsection (b-1) if:

(1) the cable service provider or video service provider is not the incumbent cable service provider in that municipality; and

(2) the incumbent cable service provider received a state-issued certificate of franchise authority from the commission before September 1, 2011.

(b-3) A municipality with a population of at least 215,000 may enter into an agreement with any cable service provider in the municipality to terminate a municipal cable franchise before the expiration of the franchise. To the extent that the mutually agreed on terms and conditions for early termination of the unexpired municipal cable franchise conflict with a provision of this chapter, the agreed on terms and conditions control.

(c) A cable service provider [~~that serves fewer than 40 percent of the total cable customers in a municipal franchise area and~~] that elects under Subsection (b), (b-1), or (b-2) to terminate an existing municipal franchise is responsible for remitting to the affected municipality before the 91st day after the date the municipal franchise is terminated any accrued but unpaid franchise fees due under the terminated franchise. If the cable service provider has credit remaining from prepaid franchise fees, the provider may deduct the amount of the remaining credit from any future fees or taxes it must pay to the municipality, either directly or through the comptroller.

(f) Except as provided in this chapter, nothing in this chapter is intended to abrogate, nullify, or adversely affect in any way the contractual rights, duties, and obligations existing and incurred by a cable service provider or a video service provider before the date a franchise expires or the date a provider terminates a franchise under Subsection (b-1) or (b-2), as applicable, [~~enactment of this chapter,~~] and owed or owing to any private person, firm, partnership, corporation, or other entity including without limitation those obligations measured by and related to the gross revenue hereafter received by the holder of a state-issued certificate of franchise authority for services provided in the geographic area to which such prior franchise or permit applies. All liens, security interests, royalties, and other contracts, rights, and

interests in effect on September 1, 2005, or the date a franchise is terminated under Subsection (b-1) or (b-2) shall continue in full force and effect, without the necessity for renewal, extension, or continuance, and shall be paid and performed by the holder of a state-issued certificate of franchise authority, and shall apply as though the revenue generated by the holder of a state-issued certificate of franchise authority continued to be generated pursuant to the permit or franchise issued by the prior local franchising authority or municipality within the geographic area to which the prior permit or franchise applies. It shall be a condition to the issuance and continuance of a state-issued certificate of franchise authority that the private contractual rights and obligations herein described continue to be honored, paid, or performed to the same extent as though the cable service provider continued to operate under its prior franchise or permit, for the duration of such state-issued certificate of franchise authority and any renewals or extensions thereof, and that the applicant so agrees. Any person, firm, partnership, corporation, or other entity holding or claiming rights herein reserved may enforce same by an action brought in a court of competent jurisdiction.

SECTION 3. Section 66.005(b), Utilities Code, is amended to read as follows:

(b) The franchise fee payable under this section is to be paid quarterly, within 45 days after the end of the quarter for the preceding calendar quarter. Each payment shall be accompanied by a summary explaining the basis for the calculation of the fee. A municipality may review the business records of the cable service provider or video service provider to the extent necessary to ensure compensation in accordance with Subsection (a), provided that the municipality may only review records that relate to the 48-month period preceding the date of the last franchise fee payment. Each party shall bear the party's own costs of the examination. A municipality may, in the event of a dispute concerning compensation under this section, bring an action in a court of competent jurisdiction.

SECTION 4. Section 66.006, Utilities Code, is amended to read as follows:

Sec. 66.006. IN-KIND CONTRIBUTIONS TO MUNICIPALITY. (a) Until the expiration or termination of the incumbent cable service provider's agreement, the holder of a state-issued certificate of franchise authority shall pay a municipality in which it is offering cable service or video service the same cash payments on a per subscriber basis as required by the incumbent cable service provider's franchise agreement. All cable service providers and all video service providers shall report quarterly to the municipality the total number of subscribers served within the municipality. The amount paid by the holder of a state-issued certificate of franchise authority shall be calculated quarterly by the municipality by multiplying the amount of cash payment under the incumbent cable service provider's franchise agreement by a number derived by dividing the number of subscribers served by a video service provider or cable service provider by the total number of video or cable service subscribers in the municipality. Such pro rata payments are to be paid quarterly to the municipality within 45 days after the end of the quarter for the preceding calendar quarter.

(b) On the expiration or termination of the incumbent cable service provider's agreement, the holder of a state-issued certificate of franchise authority shall pay a municipality in which it is offering cable service or video service one percent of the

provider's gross revenues, as defined by this chapter, or at the municipality's election, the per subscriber fee that was paid to the municipality under the expired or terminated incumbent cable service provider's agreement, in lieu of in-kind compensation and grants. Payments under this subsection shall be paid in the same manner as outlined in Section 66.005(b).

(c) All fees paid to municipalities under this section are paid in accordance with 47 U.S.C. Sections 531 and 541(a)(4)(B) and may be used by the municipality as allowed by federal law; further, these payments are not chargeable as a credit against the franchise fee payments authorized under this chapter.

(c-1) The holder of a state-issued certificate of franchise authority shall include with a fee paid to a municipality under this section a statement identifying the fee.

(c-2) A municipality that receives fees under this section:

(1) shall maintain revenue from the fees in a separate account established for that purpose;

(2) may not commingle revenue from the fees with any other money;

(3) shall maintain a record of each deposit to and disbursement from the separate account, including a record of the payee and purpose of each disbursement; and

(4) may not spend revenue from the fees except directly from the separate account.

(d) The following services shall continue to be provided by the cable provider that was furnishing services pursuant to its municipal cable franchise [~~until January 1, 2008, or~~ until the expiration or termination [term] of the franchise [was to expire, whichever is later,] and thereafter as provided in Subdivisions (1) and (2) below:

(1) institutional network capacity, however defined or referred to in the municipal cable franchise but generally referring to a private line data network capacity for use by the municipality for noncommercial purposes, shall continue to be provided at the same capacity as was provided to the municipality prior to the date of expiration or [the] termination, provided that the municipality will compensate the provider for the actual incremental cost of the capacity; and

(2) cable services to community public buildings, such as municipal buildings and public schools, shall continue to be provided to the same extent provided immediately prior to the date of the termination. On [Beginning on January 1, 2008, or] the expiration or termination of the franchise agreement, [whichever is later,] a provider that provides the services may deduct from the franchise fee to be paid to the municipality an amount equal to the actual incremental cost of the services if the municipality requires the services after that date. Such cable service generally refers to the existing cable drop connections to such facilities and the tier of cable service provided pursuant to the franchise at the time of the expiration or termination.

SECTION 5. Sections 66.009(c) and (h), Utilities Code, are amended to read as follows:

(c) If a municipality did not have the maximum number of PEG access channels as of September 1, 2005, as provided by Subdivisions (1) and (2) based on the municipality's population on that date, the cable service provider or video service provider shall furnish at the request of the municipality:

(1) up to three PEG channels for a municipality with a population of at least 50,000; and

(2) up to two PEG channels for a municipality with a population of less than 50,000.

(h) Where technically feasible, the holder of a state-issued certificate of franchise authority that is not an incumbent cable service provider and an incumbent cable service provider, including an incumbent cable service provider that holds a state-issued certificate of franchise authority issued under Section 66.004(b-1), shall use reasonable efforts to interconnect their cable or video systems for the purpose of providing PEG programming. Interconnection may be accomplished by direct cable, microwave link, satellite, or other reasonable method of connection. The holder [~~Holders~~] of a state-issued certificate of franchise authority and the incumbent cable service provider [~~providers~~] shall negotiate in good faith, and the incumbent cable service provider [~~providers~~] may not withhold interconnection of PEG channels.

SECTION 6. (a) A municipality that received fees described by Section 66.006(c), Utilities Code, before September 1, 2011, shall, on September 1, 2011, transfer any fees that have not been disbursed to a separate account as required by Section 66.006(c-2), Utilities Code, as added by this Act.

(b) The change in law made by this Act in adding Section 66.006(c-2)(3), Utilities Code, applies only to transfers, deposits, and disbursements made on or after the effective date of this Act. A transfer, deposit, or disbursement made before the effective date of this Act is governed by the law in effect on the date the transfer, deposit, or disbursement was made, 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 1087** was filed with the Secretary of the Senate.

#### **CO-AUTHOR OF SENATE BILL 773**

On motion of Senator Zaffirini, Senator Van de Putte will be shown as Co-author of **SB 773**.

#### **CO-SPONSOR OF HOUSE BILL 602**

On motion of Senator Lucio, Senator Davis will be shown as Co-sponsor of **HB 602**.

#### **RESOLUTIONS OF RECOGNITION**

The following resolutions were adopted by the Senate:

##### **Memorial Resolutions**

**SR 1173** by Hinojosa, In memory of Edward H. Harte of Corpus Christi.

**SR 1178** by Davis, In memory of Cornell Dupree, Jr., of Fort Worth.

**SR 1179** by Estes, In memory of Alexis Vicente Maldonado.

**SR 1191** by Watson, In memory of Angelina G. Garcia.

**SR 1192** by Watson, In memory of Mitchell George Attal of Austin.

**SR 1194** by Estes, In memory of Austin Garrett Staggs.

**SR 1196** by Hinojosa, In memory of Humberto Lozano Lopez of Robstown.

**SR 1197** by Hinojosa, In memory of Oscar Raul Cárdenas of McAllen.

### **Congratulatory Resolutions**

**SR 1174** by Jackson, Recognizing Jimmy and Peggy Burke on the occasion of their 50th wedding anniversary.

**SR 1175** by Van de Putte, Recognizing Saint Mary's University for earning the President's Higher Education Community Service Award.

**SR 1180** by West, Recognizing the members of the Barton and Elder families on the occasion of their family reunion.

**SR 1181** by West, Recognizing New Hope Baptist Church in Dallas on the occasion of its 138th anniversary.

**SR 1182** by West, Recognizing the members of the Williams-Livingston family on the occasion of their family reunion.

**SR 1187** by Ellis, Recognizing Saba Abashawl for her accomplishments in promoting international trade and travel in the City of Houston.

**SR 1188** by Ellis, Recognizing J. J. Jackson III for his contributions to his church and community.

**SR 1189** by Ellis, Recognizing Henry M. Williamson, Sr., for his service as the 52nd bishop of the Christian Methodist Episcopal Church.

**SR 1190** by Ellis, Recognizing Gertrude Jack Lewis on the occasion of her 100th birthday.

**SR 1193** by Watson, Recognizing Alelhie "Lila" Valencia for receiving her doctorate from the College of Public Policy at The University of Texas at San Antonio.

**SR 1195** by Hinojosa, Recognizing Rachelle Grace for receiving an H-E-B Excellence in Education Award in the Leadership category for secondary schools.

**SR 1198** by Nichols, Recognizing the First United Methodist Church of Palestine on the occasion of its 175th anniversary.

**SR 1199** by Van de Putte, Recognizing Hector and Maria Morales on the occasion of their 50th anniversary.

**SR 1200** by Van de Putte, Recognizing Robert L. Comeaux on the occasion of his retirement from the Texas Federation of Teachers.

**SR 1201** by Carona, Recognizing Eddie Wayne Crawford on the occasion of his retirement from the Dallas Police Department.

**HCR 142** (Jackson), Congratulating Clear Lake High School junior Cameron Blizzard on overcoming cancer.

**HCR 162** (Jackson), Congratulating the Space Center Intermediate Band in Houston on its receipt of a 2010 Sudler Cup.

**ADJOURNMENT**

On motion of Senator Whitmire, the Senate at 11:05 p.m. adjourned, in memory of Robert C. Thornell, Sr., and James Wyatt Edwards, until 1:30 p.m. tomorrow.

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**APPENDIX**

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**BILL ENGROSSED**

May 24, 2011

**SB 1460**

**BILLS AND RESOLUTIONS ENROLLED**

May 24, 2011

**SB 201, SB 271, SB 329, SB 370, SB 1726, SB 1799, SJR 9, SJR 14, SJR 26, SJR 37, SJR 50, SR 1144, SR 1145, SR 1146, SR 1148, SR 1149, SR 1150, SR 1151, SR 1152, SR 1153, SR 1154, SR 1155, SR 1156, SR 1157, SR 1158, SR 1159, SR 1160, SR 1161, SR 1162, SR 1163, SR 1164, SR 1165, SR 1166, SR 1167, SR 1168, SR 1169, SR 1170, SR 1171**

**SENT TO SECRETARY OF STATE**

May 25, 2011

**SJR 16**

**SENT TO GOVERNOR**

May 25, 2011

**SB 32, SB 54, SB 61, SB 77, SB 86, SB 116, SB 141, SB 149, SB 150, SB 162, SB 187, SB 189, SB 192, SB 193, SB 226, SB 260, SB 290, SB 335, SB 482, SB 494, SB 496, SB 512, SB 519, SB 530, SB 544, SB 626, SB 639, SB 690, SB 743, SB 796, SB 811, SB 851, SB 855, SB 867, SB 886, SB 899, SB 957, SB 1002, SB 1043, SB 1103, SB 1159, SB 1228, SB 1292, SB 1361, SB 1404, SB 1421, SB 1431, SB 1610, SB 1613, SB 1638, SB 1662, SB 1698, SB 1751, SB 1887, SB 1907, SB 1914, SB 1927, SCR 11, SCR 16**

**In Memory**  
**of**  
**Robert C. Thornell, Sr.**  
**Senate Resolution 1176**

WHEREAS, The Senate of the State of Texas honors and commemorates the life of Robert C. Thornell, Sr., who died April 16, 2011, at the age of 61; and

WHEREAS, Mr. Thornell was a beloved and respected member of his community; fiercely loyal, steadfast, and generous, he set an example for all who knew him and left a legacy of honor and selfless dedication; throughout his life, he served as an inspiration to countless friends, colleagues, and fellow members of the armed forces; and

WHEREAS, Robert Thornell was born October 9, 1949; he joined the United States Marine Corps when he was 18 years old and served in Vietnam from November of 1968 to December of 1969 with Mike Company, 3rd Battalion, 7th Marine Regiment, 1st Marine Division; and

WHEREAS, The Vietnam War had a profound effect on him; while in a relentless battle with the enemy in Quang Nam Province in February of 1969, he was wounded while trying to save the life of his best friend; he carried the memory of his friend with him for the rest of his life; and

WHEREAS, The Marine Corps is noted for the loyalty that Marines share with one another and their devotion to their country; Robert Thornell exemplified that ideal and lived his life faithful to the Marine Corps motto, "Semper Fidelis"; he was awarded the Purple Heart, the National Defense Service Medal, the Vietnam Campaign Medal, the Vietnam Service Medal, and the Combat Action Ribbon; and

WHEREAS, A patriotic American, a great Texan, a loving husband, and a devoted father and grandfather, Robert Thornell leaves behind memories that will be treasured forever by his family and his many friends; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 82nd Legislature, hereby pay tribute to the life of Robert C. Thornell, Sr., and extend sincere condolences to his bereaved family: his wife, Sheridan; his children, Melissa, Carrie, Stacey, and Robert Thornell, Jr.; and his eight grandchildren; and, be it further

RESOLVED, That a copy of this Resolution be prepared for his family as an expression of deepest sympathy from the Texas Senate, and that when the Senate adjourns this day, it do so in memory of Robert C. Thornell, Sr.

RODRIGUEZ

**In Memory**  
**of**  
**James Wyatt Edwards**  
**Senate Resolution 1052**

WHEREAS, The Senate of the State of Texas honors and commemorates the life of James Wyatt Edwards, who died May 13, 2011, at the age of 73; and

WHEREAS, James Wyatt "Jim" Edwards was born September 6, 1937; he served the North Texas community with honor and distinction over the course of a varied career that saw him serve as mayor of Plano for two terms and hold leading roles at several colleges and universities; he is credited with drawing a number of large corporations to the area and spurring development of major roadways, public transportation, retail centers, and educational institutions in Collin County; and

WHEREAS, Mr. Edwards was active in Republican Party politics, serving as a coordinator for Mike Huckabee's 2008 presidential campaign in Texas and working with the George W. Bush campaign in Palm Beach County, Florida, in 2000; and

WHEREAS, A passionate advocate for the education of at-risk young people, he worked with the nonprofit organization Heart of a Champion; his most recent initiative was the Changing Hearts Project, which is dedicated to aiding the children of veterans of combat in Iraq and Afghanistan; and

WHEREAS, He was a devoted husband, father, and grandfather, and although he will be deeply missed by his family and countless friends, he will continue to live in their hearts and minds for years to come; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 82nd Legislature, hereby extend sincere condolences to the bereaved family of James Wyatt Edwards; and, be it further

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

SHAPIRO