

# SENATE JOURNAL

**EIGHTY-SECOND LEGISLATURE — REGULAR SESSION**

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**AUSTIN, TEXAS**

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**PROCEEDINGS**

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**SEVENTIETH DAY**

(Saturday, May 28, 2011)

The Senate met at 2:12 p.m. pursuant to adjournment and was called to order by President Pro Tempore Ogden.

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

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

The Reverend Edward Garcia, Emmanuel United Methodist Church, Austin, was introduced by Senator Watson and offered the invocation as follows:

God of wisdom, bring to us discernment that we may know what You see as right and wrong. God of justice, bring us around the table where all are heard without fear of judgment or rejection. God of grace, just as You give us abundantly let us give unconditionally to all who hunger and thirst. God of mercy, You forgave and You forgive; help us begin today forgiven and forgiving. God of love, teach us the power that comes with Your love to dissolve hate, pride, anger, and divisions. God of life, teach us the beauty of each moment in our life and in our neighbors. Speak to us Your will. Speak through us what is right and just. And tomorrow may the children learn, may the hungry be fed, may the homeless find shelter, may the sick find healing, may the unemployed find work, and may we all live together remembering the blessing of what You've done here today. Surrounded by Your holy presence and in Your holy name, we pray, so be it. Amen.

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

The motion prevailed without objection.

**MESSAGE FROM THE HOUSE**

HOUSE CHAMBER

Austin, Texas

Saturday, May 28, 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 CONCURRED IN THE SENATE AMENDMENTS TO THE FOLLOWING MEASURES:

**HB 4** (95 Yeas, 34 Nays, 2 Present, not voting)

**HB 1759** (141 Yeas, 0 Nays, 2 Present, not voting)

**HB 3708** (129 Yeas, 12 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 242** (non-record vote)

House Conferees: Craddick - Chair/Cook/Isaac/Martinez Fischer/Parker

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

**SB 40** (non-record vote)

House Conferees: Callegari - Chair/Frullo/Menendez/Miller, Sid/Orr

**SB 408** (non-record vote)

House Conferees: Keffer - Chair/Chisum/Hardcastle/Huberty/Lozano

**SB 542** (non-record vote)

House Conferees: Fletcher - Chair/Deshotel/Driver/King, Phil/Lavender

**SB 660** (non-record vote)

House Conferees: Ritter - Chair/Hopson/Keffer/King, Tracy O./Lucio III

**SB 1130** (non-record vote)

House Conferees: Kleinschmidt - Chair/Flynn/Lewis/Quintanilla/Sheets

THE HOUSE HAS ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

**HB 3577** (142 Yeas, 0 Nays, 2 Present, not voting)

**SB 249** (139 Yeas, 0 Nays, 2 Present, not voting)

**SB 263** (141 Yeas, 0 Nays, 2 Present, not voting)

**SB 602** (138 Yeas, 2 Nays, 2 Present, not voting)

THE HOUSE HAS DISCHARGED ITS CONFEREES AND CONCURRED IN SENATE AMENDMENTS TO THE FOLLOWING MEASURES:

**HB 2154** (136 Yeas, 0 Nays, 3 Present, not voting)

**HB 2549** (137 Yeas, 0 Nays, 2 Present, not voting)

Respectfully,

/s/Robert Haney, Chief Clerk  
House of Representatives

### **CONFERENCE COMMITTEE ON HOUSE BILL 362**

Senator West called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 362** 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 362** before appointment.

There were no motions offered.

Accordingly, the President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators West, Chair; Wentworth, Gallegos, Nichols, and Patrick.

### **CONFERENCE COMMITTEE REPORT ON SENATE BILL 263 ADOPTED**

Senator Carona called from the President's table the Conference Committee Report on **SB 263**. The Conference Committee Report was filed with the Senate on Thursday, May 26, 2011.

On motion of Senator Carona, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

### **CONFERENCE COMMITTEE REPORT ON SENATE BILL 144 ADOPTED**

Senator West called from the President's table the Conference Committee Report on **SB 144**. The Conference Committee Report was filed with the Senate on Friday, May 27, 2011.

On motion of Senator West, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

### **CONFERENCE COMMITTEE REPORT ON SENATE BILL 602 ADOPTED**

Senator Rodriguez called from the President's table the Conference Committee Report on **SB 602**. The Conference Committee Report was filed with the Senate on Wednesday, May 25, 2011.

On motion of Senator Rodriguez, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**SENATE RESOLUTION 1206**

Senator Carona offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 82nd Legislature, Regular Session, 2011, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the differences on Senate Bill 1087 (state-issued certificates of franchise authority to provide cable service and video service) to consider and take action on the following matters:

(1) Senate Rules 12.03(1) and (2) are suspended to permit the committee to change and omit text not in disagreement in proposed SECTION 2 of the bill, in amended Section 66.004(a), Utilities Code, 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).

Explanation: This change is necessary to clarify that a cable service provider or video service provider that received a franchise to provide cable service or video service to a municipality is not eligible to seek a state-issued certificate of franchise authority before the expiration of the franchise except as provided by Section 66.004, Utilities Code.

(2) Senate Rules 12.03(1) and (4) are suspended to permit the committee to change text which is not in disagreement and to add text on a matter which is not included in either the house or senate version of the bill in proposed SECTION 2 of the bill, in added Sections 66.004(b-1), (b-2), and (b-3), Utilities Code, to read as follows:

(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.

Explanation: This change is necessary to differentiate between termination of franchises by service providers in municipalities with populations of less than 215,000 and by service providers in municipalities with populations of at least 215,000.

(3) Senate Rule 12.03(1) is suspended to permit the committee to change text not in disagreement in proposed SECTION 2 of the bill, in amended Sections 66.004(c) and (f), Utilities Code, to read as follows:

(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.

Explanation: These changes are necessary to add cross-references to Section 66.004(b-2), Utilities Code.

(4) Senate Rules 12.03(1), (2), and (4) are suspended to permit the committee to change text not in disagreement, omit text not in disagreement, and add text on a matter which is not included in either the house or senate version of the bill, in proposed SECTION 4 of the bill, in amended Section 66.006(c) and added Section 66.006(c-2), Utilities Code, to read as follows:

(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-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.

Explanation: This change is necessary to clarify that all fees paid to municipalities under Section 66.006, Utilities Code, are not chargeable as a credit against franchise fee payments authorized under Chapter 66, Utilities Code, and that municipalities may not spend revenue from fees received under Section 66.006 except by spending the revenue directly from a separate account, to remove language requiring a detailed accounting of deposits, and to reletter Subsection (c-3) as Subsection (c-2).

(5) Senate Rules 12.03(1) and (2) are suspended to permit the committee to change and omit text not in disagreement in proposed SECTION 4 of the bill, in amended Section 66.006(d), Utilities Code, to read as follows:

(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, ~~[which ever 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.

Explanation: This change is necessary to clarify that institutional network capacity and cable services to community public buildings shall continue to be provided in all municipalities as they were provided before the expiration or termination of a franchise.

(6) Senate Rule 12.03(1) is suspended to permit the committee to change text not in disagreement in proposed SECTION 6 of the bill, to read as follows:

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.

Explanation: These changes are necessary to correct cross-references.

**SR 1206** was read and was adopted by the following vote: Yeas 31, Nays 0.

#### **CONFERENCE COMMITTEE REPORT ON SENATE BILL 1087 ADOPTED**

Senator Carona called from the President's table the Conference Committee Report on **SB 1087**. The Conference Committee Report was filed with the Senate on Wednesday, May 25, 2011.

On motion of Senator Carona, the Conference Committee Report was adopted 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.

#### **CONFERENCE COMMITTEE REPORT ON SENATE BILL 249 ADOPTED**

Senator Estes called from the President's table the Conference Committee Report on **SB 249**. The Conference Committee Report was filed with the Senate on Thursday, May 26, 2011.

On motion of Senator Estes, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

(Senator Eltife in Chair)

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 1335 ADOPTED**

Senator Van de Putte called from the President's table the Conference Committee Report on **HB 1335**. The Conference Committee Report was filed with the Senate on Friday, May 27, 2011.

On motion of Senator Van de Putte, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 1.

Nays: Nichols.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 1732 ADOPTED**

Senator Hinojosa called from the President's table the Conference Committee Report on **HB 1732**. The Conference Committee Report was filed with the Senate on Friday, May 27, 2011.

On motion of Senator Hinojosa, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 1489 ADOPTED**

Senator Whitmire called from the President's table the Conference Committee Report on **SB 1489**. The Conference Committee Report was filed with the Senate on Thursday, May 26, 2011.

On motion of Senator Whitmire, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 200 ADOPTED**

Senator Whitmire called from the President's table the Conference Committee Report on **HB 200**. The Conference Committee Report was filed with the Senate on Friday, May 27, 2011.

On motion of Senator Whitmire, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 871 ADOPTED**

Senator Zaffirini called from the President's table the Conference Committee Report on **HB 871**. The Conference Committee Report was filed with the Senate on Thursday, May 26, 2011.

On motion of Senator Zaffirini, the Conference Committee Report was adopted by the following vote: Yeas 29, Nays 2.



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

Nays: Birdwell, Shapiro.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 2560 ADOPTED**

Senator Estes called from the President's table the Conference Committee Report on **HB 2560**. The Conference Committee Report was filed with the Senate on Friday, May 27, 2011.

On motion of Senator Estes, the Conference Committee Report was adopted by the following vote: Yeas 23, Nays 8.

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

Nays: Ellis, Hinojosa, Rodriguez, Uresti, Van de Putte, Watson, West, Zaffirini.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 2729 ADOPTED**

Senator Watson called from the President's table the Conference Committee Report on **HB 2729**. The Conference Committee Report was filed with the Senate on Friday, May 27, 2011.

On motion of Senator Watson, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 313 ADOPTED**

Senator Seliger called from the President's table the Conference Committee Report on **SB 313**. The Conference Committee Report was filed with the Senate on Thursday, May 26, 2011.

On motion of Senator Seliger, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**SENATE RESOLUTION 1212**

Senator Huffman offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 82nd Legislature, Regular Session, 2011, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the differences on House Bill 2694 (continuation and functions of the Texas Commission on Environmental Quality), to consider and take action on the following matter:

Senate Rule 12.03(1) is suspended to permit the committee to change text not in disagreement in proposed Section 6.03 of the bill, in amended Section 5.701(n)(1), Water Code, to read as follows:

(1) Each provider of potable water or sewer utility service shall collect a regulatory assessment from each retail customer as follows:

(A) A public utility as defined in Section 13.002 ~~[of this code]~~ shall collect from each retail customer a regulatory assessment equal to one percent of the charge for retail water or sewer service.

(B) A water supply or sewer service corporation as defined in Section 13.002 ~~[of this code]~~ shall collect from each retail customer a regulatory assessment equal to one-half of one percent of the charge for retail water or sewer service.

(C) A district as defined in Section 49.001 ~~[of this code]~~ that provides potable water or sewer utility service to retail customers shall collect from each retail customer a regulatory assessment equal to one-half of one percent of the charge for retail water or sewer service.

Explanation: This change is necessary to remove a change to the regulatory assessment collected by certain water supply or sewer service corporations.

**SR 1212** was read and was adopted by the following vote: Yeas 31, Nays 0.

### **CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2694 ADOPTED**

Senator Huffman called from the President's table the Conference Committee Report on **HB 2694**. The Conference Committee Report was filed with the Senate on Thursday, May 26, 2011.

On motion of Senator Huffman, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

### **REMARKS ORDERED PRINTED**

On motion of Senator Watson and by unanimous consent, the exchange between Senators Huffman and Watson regarding **HB 2694** was ordered reduced to writing and printed in the *Senate Journal* as follows:

**Senator Watson:** I worked for some time on getting to a point where I was comfortable with the provisions in this bill that call for a more expedited review of a permit modification for the purpose of installing MACT controls on power plants, and for the purpose of establishing clear legislative intent, I want to ask you one question about that language in this bill. Page 33, lines 4-15 outlines a process for resolving any legitimate issues of material fact regarding whether the choice of technology approved in a draft permit is maximum achievable control technology. It allows a party to request a contested case hearing on that issue, and says that the commission should conduct the hearing. It is my understanding that the commission does not have an administrative law judge, and that the way it would work would be for TCEQ to refer the case to an ALJ, or have an ALJ come to the commission to conduct the contested case, and this would not be a contested case hearing where the ED of TCEQ would stand as the presiding officer. Is my understanding consistent with your understanding?

**Senator Huffman:** Yes.

**Senator Watson:** Thank you. I appreciate you letting me be involved in the negotiations on this.

**SENATE RESOLUTION 1219**

Senator Nichols offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 82nd Legislature, Regular Session, 2011, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the differences on House Bill 1112 (authority and powers of regional mobility authorities) to consider and take action on the following matter:

Senate Rule 12.03(4) is suspended to permit the committee to add text on a matter which is not included in either the house or senate version of the bill by adding the following section to the bill:

SECTION 16. Subchapter H, Chapter 370, Transportation Code, is amended by adding Section 370.333 to read as follows:

Sec. 370.333. VOLUNTARY DISSOLUTION OF AUTHORITY GOVERNED BY GOVERNING BODY OF MUNICIPALITY. In addition to the requirements of Section 370.331, an authority governed under Section 370.2511 may not be dissolved unless:

(1) the dissolution is approved by a vote of at least two-thirds of the members of the governing body;

(2) all debts, obligations, and liabilities of the authority have been paid and discharged or adequate provision has been made for the payment of all debts, obligations, and liabilities;

(3) there are no suits pending against the authority, or adequate provision has been made for the satisfaction of any judgment, order, or decree that may be entered against it in any pending suit; and

(4) the authority has commitments from other governmental entities to assume jurisdiction of all authority transportation facilities.

Explanation: This change is necessary to enact additional requirements for the voluntary dissolution of a regional mobility authority governed by the governing body of a municipality.

**SR 1219** was read and was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 1112 ADOPTED**

Senator Nichols called from the President's table the Conference Committee Report on **HB 1112**. The Conference Committee Report was filed with the Senate on Thursday, May 26, 2011.

On motion of Senator Nichols, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 647 ADOPTED**

Senator Hegar called from the President's table the Conference Committee Report on **SB 647**. The Conference Committee Report was filed with the Senate on Friday, May 27, 2011.

On motion of Senator Hegar, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 377 ADOPTED**

Senator Huffman called from the President's table the Conference Committee Report on **SB 377**. The Conference Committee Report was filed with the Senate on Friday, May 27, 2011.

On motion of Senator Huffman, the Conference Committee Report was adopted by the following vote: Yeas 29, Nays 2.

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

Nays: Ellis, Rodriguez.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 3577 ADOPTED**

Senator Zaffirini called from the President's table the Conference Committee Report on **HB 3577**. The Conference Committee Report was filed with the Senate on Thursday, May 26, 2011.

On motion of Senator Zaffirini, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**SENATE BILL 81 WITH HOUSE AMENDMENTS**

Senator Nelson called **SB 81** 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 81** by substituting in lieu thereof the following:

**A BILL TO BE ENTITLED  
AN ACT**

relating to food safety.

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

SECTION 1. Section 431.2211(a), Health and Safety Code, is amended to read as follows:

(a) A person is not required to hold a license under this subchapter if the person is:

(1) a person, firm, or corporation that only harvests, packages, or washes[ ~~or ships~~] raw fruits or vegetables for shipment at the location of harvest;

(2) an individual who only sells prepackaged nonperishable foods, including dietary supplements, from a private home as a direct seller;

(3) a person who holds a license under Chapter 432 and who only engages in conduct within the scope of that license; or

(4) a restaurant that provides food for immediate human consumption to a political subdivision or to a licensed nonprofit organization if the restaurant would not otherwise be required to hold a license under this subchapter.

SECTION 2. Section 431.226(b), Health and Safety Code, is amended to read as follows:

(b) The board by rule shall establish minimum standards for granting and maintaining a license. In adopting rules under this section, the board shall:

(1) ensure that the minimum standards prioritize safe handling of fruits and vegetables based on known safety risks, including any history of outbreaks of food-borne communicable diseases; and

(2) consider acceptable produce safety standards developed by a federal agency, state agency, or university.

SECTION 3. Subchapter J, Chapter 431, Health and Safety Code, is amended by adding Section 431.227 to read as follows:

Sec. 431.227. FOOD SAFETY BEST PRACTICE EDUCATION PROGRAM.

(a) The department shall approve food safety best practice education programs for places of business licensed under this chapter.

(b) A place of business that completes a food safety best practice education program approved by the department shall receive a certificate valid for five years from the date of completion of the program.

(c) When determining which places of business to inspect under Section 431.042, the appropriate inspecting authority shall consider whether the place of business holds a valid certificate from a food safety best practice education program under this section.

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

SECTION 4. Section 431.244, Health and Safety Code, is amended by adding Subsection (f) to read as follows:

(f) For any federal regulation adopted as a state rule under this chapter, including a regulation considered to be a rule for purposes of this chapter under Subsection (a), (b), or (c), the Department of State Health Services shall provide on its Internet website:

(1) a link to the text of the federal regulation;

(2) a clear explanation of the substance of and purpose for the regulation;

and

(3) information on providing comments in response to any proposed or pending federal regulation, including an address to which and the manner in which comments may be submitted.

SECTION 5. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2011.

(b) Section 431.2211(a), Health and Safety Code, as amended by this Act, takes effect September 1, 2012.

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

Amend **CSSB 81** (house committee report) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 437.001, Health and Safety Code, is amended by amending Subdivisions (1) and (3) and adding Subdivisions (2-a), (2-b), (3-a), and (5) to read as follows:

(1) "Board" means the executive commissioner [~~Texas Board of Health~~].

(2-a) "Baked good" includes cookies, cakes, breads, Danish, donuts, pastries, pies, and other items that are prepared by baking the item in an oven. A baked good does not include a potentially hazardous food item as defined by department rule.

(2-b) "Cottage food production operation" means an individual, operating out of the individual's home, who:

(A) produces a baked good, a canned jam or jelly, or a dried herb or herb mix for sale at the person's home or a farmers' market;

(B) has an annual gross income of \$50,000 or less from the sale of food described by Paragraph (A); and

(C) sells the foods produced under Paragraph (A) only directly to consumers.

(3) "Department" means the [~~Texas~~] Department of State Health Services.

(3-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(5) "Home" means a primary residence that contains a kitchen and appliances designed for common residential usage.

SECTION \_\_\_\_\_. Chapter 437, Health and Safety Code, is amended by adding Sections 437.0191 and 437.0192 to read as follows:

Sec. 437.0191. EXEMPTION FOR COTTAGE FOOD PRODUCTION OPERATIONS. A cottage food production operation is not a food service establishment for purposes of this chapter.

Sec. 437.0192. REGULATION OF COTTAGE FOOD PRODUCTION OPERATIONS BY LOCAL HEALTH DEPARTMENT PROHIBITED; COMPLAINTS. (a) A local health department may not regulate the production of food at a cottage food production operation.

(b) Each local health department and the department shall maintain a record of a complaint made by a person against a cottage food production operation.

## **Floor Amendment No. 2**

Amend **CSSB 81** (house committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Chapter 437, Health and Safety Code, is amended by adding Sections 437.0201 and 437.0202 to read as follows:

Sec. 437.0201. REGULATION OF FOOD AT FARMERS' MARKETS UNDER TEMPORARY FOOD ESTABLISHMENT PERMITS. (a) In this section:

(1) "Farmers' market" means a designated location used primarily for the distribution and sale directly to consumers of food products by farmers or other producers.

(2) "Food" means a raw, cooked, or processed edible substance, including a beverage, ice, or an ingredient in an edible substance, that is intended for use or sale wholly or partly for human consumption, or chewing gum.

(b) The department or a local health department may issue a temporary food establishment permit to a person who sells food at a farmers' market without limiting the number of days for which the permit is effective to the number of days during which the farmer's market takes place.

(c) A permit issued under Subsection (b) may be valid for up to one year and may be renewed on expiration.

Sec. 437.0202. TEMPERATURE REQUIREMENTS FOR FOOD AT FARMERS' MARKETS. (a) In this section, "farmers' market" and "food" have the meanings assigned by Section 437.0201.

(b) The executive commissioner by rule may adopt temperature requirements for food sold at, prepared on-site at, or transported to or from a farmers' market under Section 437.020 or 437.0201. Food prepared on-site at a farmers' market may be sold or distributed at the farmers' market only if the food is prepared in compliance with the temperature requirements adopted under this section.

(c) Except as provided by Subsection (d), the executive commissioner or a state or local enforcement agency may not mandate a specific method for complying with the temperature control requirements adopted under Subsection (b).

(d) The municipality in which a municipally owned farmers' market is located may adopt rules specifying the method or methods that must be used to comply with the temperature control requirements adopted under Subsection (b).

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

Amend Amendment No. 2 by Rodriguez to **CSSB 81** as follows:

(1) In added Section 437.0201, Health and Safety Code (page 1, between lines 23 and 24) add the following:

(d) This section does not apply to a farmers' market in a county:

(1) that has a population of less than 50,000; and

(2) over which no local health department has jurisdiction.

(2) In added Section 437.0202, Health and Safety Code (page 2, after line 12) add the following:

(e) This section does not apply to a farmers' market in a county:

(1) that has a population of less than 50,000; and

(2) over which no local health department has jurisdiction.

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

Amend Amendment No. 2 by Rodriguez to **CSSB 81** in added Section 437.0201(a)(2), Health and Safety Code (page 1, line 14), by striking "a beverage" and substituting "juice".

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

Amend **CSSB 81** on third reading as follows:

(1) In Section 437.001(2-b)(A), Health and Safety Code, as added by the bill, strike "or a farmer's market".

(2) Add the following appropriately numbered SECTION:

SECTION \_\_\_\_\_. Chapter 437, Health and Safety Code, is amended by adding Sections 437.0193 and 437.0194 to read as follows:

Sec. 437.0193. LABELING REQUIREMENTS FOR COTTAGE FOOD PRODUCTION OPERATIONS. The executive commissioner shall adopt rules requiring a cottage food production operation to label all of the foods described in Section 437.001(2-b)(A) that the operation sells to consumers. The label must include the name and address of the cottage food production operation and a statement that the food is not inspected by the department or a local food department.

Sec. 437.0194. SALES BY COTTAGE FOOD PRODUCTION OPERATIONS THROUGH THE INTERNET PROHIBITED. A cottage food production operation may not sell any of the foods described in Section 437.001(2-b)(A) through the Internet.

(3) Renumber the SECTIONS of the bill accordingly.

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

Amend **CSSB 81** (on third reading) by striking Subsection 437.0201 subdivision (2) as added by Amendment No. 2 by Rodriguez.

The amendments were read.

Senator Nelson moved to concur in the House amendments to **SB 81**.

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

### **SENATE BILL 223 WITH HOUSE AMENDMENTS**

Senator Nelson called **SB 223** 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 223** by substituting in lieu thereof the following:

#### **A BILL TO BE ENTITLED AN ACT**

relating to certain facilities and care providers, including providers under the state Medicaid program; providing penalties.

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

#### **ARTICLE 1. HOME AND COMMUNITY SUPPORT SERVICES AGENCIES**

SECTION 1.01. Section 142.001, Health and Safety Code, is amended by adding Subdivisions (11-a), (11-b), and (12-a) to read as follows:

(11-a) "Department" means the Department of Aging and Disability Services.

(11-b) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(12-a) "Home and community support services agency administrator" or "administrator" means the person who is responsible for implementing and supervising the administrative policies and operations of the home and community support services agency and for administratively supervising the provision of all services to agency clients on a day-to-day basis.

SECTION 1.02. Section 142.0025, Health and Safety Code, is amended to read as follows:



Sec. 142.0025. TEMPORARY LICENSE. If a person is in the process of becoming certified by the United States Department of Health and Human Services to qualify as a certified agency, the department may issue a temporary home and community support services agency license to the person authorizing the person to provide certified home health services. A temporary license is effective as provided by ~~[board]~~ rules adopted by the executive commissioner.

SECTION 1.03. Section 142.009, Health and Safety Code, is amended by adding Subsections (a-1) and (i) and amending Subsection (g) to read as follows:

(a-1) A license applicant or license holder must provide the department representative conducting the survey with a reasonable and safe workspace at the premises. The executive commissioner may adopt rules to implement this subsection.

(g) After a survey of a home and community support services agency by the department, the department shall provide to the home and community support services ~~chief executive officer of the~~ agency administrator:

(1) specific and timely written notice of the official findings of the survey, including:

(A) the specific nature of the survey;

(B) any alleged violations of a specific statute or rule;

(C) the specific nature of any finding regarding an alleged violation or deficiency; and

(D) if a deficiency is alleged, the severity of the deficiency;

(2) information on the identity, including the name ~~[signature]~~, of each department representative conducting ~~or~~ reviewing ~~or approving~~ the results of the survey and the date on which the department representative acted on the matter; and

(3) if requested by the agency, copies of all documents relating to the survey maintained by the department or provided by the department to any other state or federal agency that are not confidential under state law.

(i) Except as provided by Subsection (h), the department may not renew an initial home and community support services agency license unless the department has conducted an initial on-site survey of the agency.

SECTION 1.04. The heading to Section 142.0091, Health and Safety Code, is amended to read as follows:

Sec. 142.0091. ~~[SURVEYOR]~~ TRAINING.

SECTION 1.05. Section 142.0091, Health and Safety Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) In developing and updating the training required by Subsection (a) ~~[this section]~~, the department shall consult with and include providers of home health, hospice, and personal assistance services, recipients of those services and their family members, and representatives of appropriate advocacy organizations.

(c) The department at least semiannually shall provide joint training for home and community support services agencies and surveyors on subjects that address the 10 most common violations of federal or state law by home and community support services agencies. The department may charge a home and community support services agency a fee, not to exceed \$50 per person, for the training.

SECTION 1.06. Subchapter A, Chapter 142, Health and Safety Code, is amended by adding Section 142.0104 to read as follows:

Sec. 142.0104. CHANGE IN APPLICATION INFORMATION. (a) If certain application information as specified by executive commissioner rule changes after the applicant submits an application to the department for a license under this chapter or after the department issues the license, the license holder shall report the change to the department and pay a fee not to exceed \$50 not later than the time specified by executive commissioner rule.

(b) The executive commissioner by rule shall:

(1) specify the information provided in an application that a license holder shall report to the department if the information changes;

(2) prescribe the time for reporting a change in the application information required by Subdivision (1);

(3) establish which changes required to be reported under Subdivision (1) will require department evaluation and approval; and

(4) set the amount of a late fee to be assessed against a license holder who fails to report a change in the application information within the time prescribed under Subdivision (2).

SECTION 1.07. Subsection (a), Section 142.011, Health and Safety Code, is amended to read as follows:

(a) The department may deny a license application or suspend or revoke the license of a person who:

(1) fails to comply with the rules or standards for licensing required by this chapter; or

(2) engages in conduct that violates Section 102.001, Occupations Code ~~[+61.09+]~~.

SECTION 1.08. Subsections (a), (b), and (c), Section 142.012, Health and Safety Code, are amended to read as follows:

(a) The executive commissioner ~~[board, with the recommendations of the council,]~~ shall adopt rules necessary to implement this chapter. The executive commissioner may adopt rules governing the duties and responsibilities of home and community support services agency administrators, including rules regarding:

(1) an administrator's management of daily operations of the home and community support services agency;

(2) an administrator's responsibility for supervising the provision of quality care to agency clients;

(3) an administrator's implementation of agency policy and procedures; and

(4) an administrator's responsibility to be available to the agency at all times in person or by telephone.

(b) The executive commissioner ~~[board]~~ by rule shall set minimum standards for home and community support services agencies licensed under this chapter that relate to:

(1) qualifications for professional and nonprofessional personnel, including volunteers;

(2) supervision of professional and nonprofessional personnel, including volunteers;

(3) the provision and coordination of treatment and services, including support and bereavement services, as appropriate;

(4) the management, ownership, and organizational structure, including lines of authority and delegation of responsibility and, as appropriate, the composition of an interdisciplinary team;

(5) clinical and business records;

(6) financial ability to carry out the functions as proposed;

(7) safety, fire prevention, and sanitary standards for residential units and inpatient units; and

(8) any other aspects of home health, hospice, or personal assistance services as necessary to protect the public.

(c) The initial minimum standards adopted ~~[by the board]~~ under Subsection (b) for hospice services must be at least as stringent as the conditions of participation for a Medicare certified provider of hospice services in effect on April 30, 1993, under Title XVIII, Social Security Act (42 U.S.C. Section 1395 et seq.).

SECTION 1.09. As soon as practicable after the effective date of this Act but not later than July 1, 2012, the executive commissioner of the Health and Human Services Commission shall adopt the rules necessary to implement the changes in law made by this article to Chapter 142, Health and Safety Code.

## ARTICLE 2. NURSING INSTITUTIONS

SECTION 2.01. Subsection (e), Section 242.032, Health and Safety Code, is amended to read as follows:

(e) In making the evaluation required by Subsection (d), the department shall require the applicant or license holder to file a sworn affidavit of a satisfactory compliance history and any other information required by the department to substantiate a satisfactory compliance history relating to each state or other jurisdiction in which the applicant or license holder and any other person described by Subsection (d) operated an institution at any time ~~before [during the five year period preceding]~~ the date on which the application is made. The department by rule shall determine what constitutes a satisfactory compliance history. The department may consider and evaluate the compliance history of the applicant and any other person described by Subsection (d) for any period during which the applicant or other person operated an institution in this state or in another state or jurisdiction. The department may also require the applicant or license holder to file information relating to the history of the financial condition of the applicant or license holder and any other person described by Subsection (d) with respect to an institution operated in another state or jurisdiction at any time ~~before [during the five year period preceding]~~ the date on which the application is made.

SECTION 2.02. Subsection (b), Section 242.0615, Health and Safety Code, is amended to read as follows:

(b) Exclusion of a person under this section must extend for a period of at least two years ~~and~~~~[, but]~~ may extend throughout the person's lifetime or existence ~~[not exceed a period of 10 years].~~

SECTION 2.03. Subsection (e), Section 242.032, Health and Safety Code, as amended by this article, applies only to an application, including a renewal application, filed on or after the effective date of this Act. An application filed before the effective date of this Act is governed by the law in effect when the application was filed, and the former law is continued in effect for that purpose.

SECTION 2.04. Subsection (b), Section 242.0615, Health and Safety Code, as amended by this article, applies only to conduct that occurs on or after the effective date of this Act. Conduct that occurs before the effective date of this Act is governed by the law in effect at the time the conduct occurred, and the former law is continued in effect for that purpose.

ARTICLE 3. PREVENTION OF CRIMINAL OR FRAUDULENT CONDUCT BY  
CERTAIN FACILITIES OR PROVIDERS

SECTION 3.01. Section 250.001, Health and Safety Code, is amended by amending Subdivision (1) and adding Subdivisions (3-a) and (3-b) to read as follows:

(1) "Nurse aide registry" means a list maintained by the ~~[Texas]~~ Department of Aging and Disability ~~[Human]~~ Services of nurse aides under the Omnibus Budget Reconciliation Act of 1987 (Pub. L. No. 100-203).

(3-a) "Financial management services agency" means an entity that contracts with the Department of Aging and Disability Services to serve as a fiscal and employer agent for an individual employer in the consumer-directed service option described by Section 531.051, Government Code.

(3-b) "Individual employer" means an individual or legally authorized representative who participates in the consumer-directed service option described by Section 531.051, Government Code, and is responsible for hiring service providers to deliver program services.

SECTION 3.02. Section 250.002, Health and Safety Code, is amended by amending Subsection (a) and adding Subsection (c-1) to read as follows:

(a) A facility, a regulatory agency, a financial management services agency on behalf of an individual employer, or a private agency on behalf of a facility is entitled to obtain from the Department of Public Safety of the State of Texas criminal history record information maintained by the Department of Public Safety that relates to a person who is:

(1) an applicant for employment at a facility other than a facility licensed under Chapter 142;

(2) an employee of a facility other than a facility licensed under Chapter 142; ~~or~~

(3) an applicant for employment at or an employee of a facility licensed under Chapter 142 whose employment duties would or do involve direct contact with a consumer in the facility; or

(4) an applicant for employment by or an employee of an individual employer.

(c-1) A financial management services agency shall forward criminal history record information received under this section to the individual employer requesting the information.

SECTION 3.03. Section 250.003, Health and Safety Code, is amended by amending Subsection (a) and adding Subsection (c-1) to read as follows:

(a) A facility or individual employer may not employ an applicant:

(1) if the facility or individual employer determines, as a result of a criminal history check, that the applicant has been convicted of an offense listed in this chapter that bars employment or that a conviction is a contraindication to employment with the consumers the facility or individual employer serves;

(2) if the applicant is a nurse aide, until the facility further verifies that the applicant is listed in the nurse aide registry; and

(3) until the facility verifies that the applicant is not designated in the registry maintained under this chapter or in the employee misconduct registry maintained under Section 253.007 as having a finding entered into the registry concerning abuse, neglect, or mistreatment of a consumer of a facility, or misappropriation of a consumer's property.

(c-1) An individual employer shall immediately discharge any employee whose criminal history check reveals conviction of a crime that bars employment or that the individual employer determines is a contraindication to employment as provided by this chapter.

SECTION 3.04. Section 250.004, Health and Safety Code, is amended to read as follows:

Sec. 250.004. CRIMINAL HISTORY RECORD OF EMPLOYEES.

(a) Identifying information of an employee in a covered facility or of an employee of an individual employer shall be submitted electronically, on disk, or on a typewritten form to the Department of Public Safety to obtain the person's criminal conviction record when the person applies for employment and at other times as the facility or individual employer may determine appropriate. In this subsection, "identifying information" includes:

- (1) the complete name, race, and sex of the employee;
- (2) any known identifying number of the employee, including social security number, driver's license number, or state identification number; and
- (3) the employee's date of birth.

(b) If the Department of Public Safety reports that a person has a criminal conviction of any kind, the conviction shall be reviewed by the facility, the financial management services agency, or the individual employer to determine if the conviction may bar the person from employment in a facility or by the individual employer under Section 250.006 or if the conviction may be a contraindication to employment.

SECTION 3.05. Section 250.005, Health and Safety Code, is amended to read as follows:

Sec. 250.005. NOTICE AND OPPORTUNITY TO BE HEARD CONCERNING ACCURACY OF INFORMATION. (a) If a facility, financial management services agency, or individual employer believes that a conviction may bar a person from employment in a facility or by the individual employer under Section 250.006 or may be a contraindication to employment, the facility or individual employer shall notify the applicant or employee.

(b) The Department of Public Safety of the State of Texas shall give a person notified under Subsection (a) the opportunity to be heard concerning the accuracy of the criminal history record information and shall notify the facility or individual employer if inaccurate information is discovered.

SECTION 3.06. Subsections (a) and (b), Section 250.006, Health and Safety Code, are amended to read as follows:

(a) A person for whom the facility or the individual employer is entitled to obtain criminal history record information may not be employed in a facility or by an individual employer if the person has been convicted of an offense listed in this subsection:

- (1) an offense under Chapter 19, Penal Code (criminal homicide);
- (2) an offense under Chapter 20, Penal Code (kidnapping and unlawful restraint);
- (3) an offense under Section 21.02, Penal Code (continuous sexual abuse of young child or children), or Section 21.11, Penal Code (indecentcy with a child);
- (4) an offense under Section 22.011, Penal Code (sexual assault);
- (5) an offense under Section 22.02, Penal Code (aggravated assault);
- (6) an offense under Section 22.04, Penal Code (injury to a child, elderly individual, or disabled individual);
- (7) an offense under Section 22.041, Penal Code (abandoning or endangering child);
- (8) an offense under Section 22.08, Penal Code (aiding suicide);
- (9) an offense under Section 25.031, Penal Code (agreement to abduct from custody);
- (10) an offense under Section 25.08, Penal Code (sale or purchase of a child);
- (11) an offense under Section 28.02, Penal Code (arson);
- (12) an offense under Section 29.02, Penal Code (robbery);
- (13) an offense under Section 29.03, Penal Code (aggravated robbery);
- (14) an offense under Section 21.08, Penal Code (indecent exposure);
- (15) an offense under Section 21.12, Penal Code (improper relationship between educator and student);
- (16) an offense under Section 21.15, Penal Code (improper photography or visual recording);
- (17) an offense under Section 22.05, Penal Code (deadly conduct);
- (18) an offense under Section 22.021, Penal Code (aggravated sexual assault);
- (19) an offense under Section 22.07, Penal Code (terroristic threat);
- (20) an offense under Section 33.021, Penal Code (online solicitation of a minor);
- (21) an offense under Section 34.02, Penal Code (money laundering);
- (22) an offense under Section 35A.02, Penal Code (Medicaid fraud);
- (23) an offense under Section 42.09, Penal Code (cruelty to animals); or
- (24) a conviction under the laws of another state, federal law, or the Uniform Code of Military Justice for an offense containing elements that are substantially similar to the elements of an offense listed by this subsection.

(b) A person may not be employed in a position the duties of which involve direct contact with a consumer in a facility or may not be employed by an individual employer before the fifth anniversary of the date the person is convicted of:

- (1) an offense under Section 22.01, Penal Code (assault), that is punishable as a Class A misdemeanor or as a felony;
- (2) an offense under Section 30.02, Penal Code (burglary);

(3) an offense under Chapter 31, Penal Code (theft), that is punishable as a felony;

(4) an offense under Section 32.45, Penal Code (misapplication of fiduciary property or property of a financial institution), that is punishable as a Class A misdemeanor or a felony;

(5) an offense under Section 32.46, Penal Code (securing execution of a document by deception), that is punishable as a Class A misdemeanor or a felony;

(6) an offense under Section 37.12, Penal Code (false identification as peace officer); or

(7) an offense under Section 42.01(a)(7), (8), or (9), Penal Code (disorderly conduct).

SECTION 3.07. Subsections (a) and (b), Section 250.007, Health and Safety Code, are amended to read as follows:

(a) The criminal history records are for the exclusive use of the regulatory agency, the requesting facility, the private agency on behalf of the requesting facility, the financial management services agency on behalf of the individual employer, the individual employer, and the applicant or employee who is the subject of the records.

(b) All criminal records and reports and the information they contain that are received by the regulatory agency or private agency for the purpose of being forwarded to the requesting facility or received by the financial management services agency under this chapter are privileged information.

SECTION 3.08. Subsection (a), Section 250.009, Health and Safety Code, is amended to read as follows:

(a) A facility, ~~or~~ an officer or employee of a facility, a financial management services agency, or an individual employer is not civilly liable for failure to comply with this chapter if the facility, financial management services agency, or individual employer makes a good faith effort to comply.

SECTION 3.09. Section 411.1143, Government Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a) The Health and Human Services Commission, ~~or~~ an agency operating part of the medical assistance program under Chapter 32, Human Resources Code, or the office of inspector general established under Chapter 531, Government Code, is entitled to obtain from the department the criminal history record information maintained by the department that relates to a provider under the medical assistance program or a person applying to enroll as a provider under the medical assistance program.

(a-1) Criminal history record information an agency or the office of inspector general is authorized to obtain under Subsection (a) includes criminal history record information relating to:

(1) a person with a direct or indirect ownership or control interest, as defined by 42 C.F.R. Section 455.101, in a provider of five percent or more; and

(2) a person whose information is required to be disclosed in accordance with 42 C.F.R. Part 1001.

SECTION 3.10. Subdivision (2), Subsection (g), Section 531.102, Government Code, is amended to read as follows:

(2) In addition to other instances authorized under state or federal law, the office shall impose without prior notice a hold on payment of claims for reimbursement submitted by a provider to compel production of records, ~~[or]~~ when requested by the state's Medicaid fraud control unit, or on receipt of reliable evidence that the circumstances giving rise to the hold on payment involve fraud or wilful misrepresentation under the state Medicaid program in accordance with 42 C.F.R. Section 455.23, as applicable. The office must notify the provider of the hold on payment in accordance with 42 C.F.R. Section 455.23(b) [not later than the fifth working day after the date the payment hold is imposed].

SECTION 3.11. The heading to Section 531.1031, Government Code, is amended to read as follows:

Sec. 531.1031. DUTY TO EXCHANGE INFORMATION ~~[REGARDING ALLEGATIONS OF MEDICAID FRAUD OR ABUSE].~~

SECTION 3.12. Subdivision (2), Subsection (a), Section 531.1031, Government Code, is amended to read as follows:

(2) "Participating agency" means:

(A) the Medicaid fraud enforcement divisions of the office of the attorney general; ~~[and]~~

(B) each board or agency with authority to license, register, regulate, or certify a health care professional or managed care organization that may participate in the state Medicaid program; and

(C) the commission's office of inspector general.

SECTION 3.13. Section 531.1031, Government Code, is amended by amending Subsections (b) and (c) and adding Subsection (c-1) to read as follows:

(b) This section applies only to criminal history record information held by a participating agency that relates to a health care professional and information held by a participating agency that relates to a health care professional or managed care organization that is the subject of an investigation by a participating agency for alleged fraud or abuse under the state Medicaid program.

(c) A participating agency may submit to another participating agency a written request for information described by Subsection (b) regarding a health care professional or managed care organization ~~[that is the subject of an investigation by the participating agency to any other participating agency]~~. The participating agency that receives the request shall provide the requesting agency with the information regarding the health care professional or managed care organization unless:

(1) the release of the information would jeopardize an ongoing investigation or prosecution by the participating agency with possession of the information; or

(2) the release of the information is prohibited by other law.

(c-1) Notwithstanding any other law, a participating agency may enter into a memorandum of understanding or agreement with another participating agency for the purpose of exchanging criminal history record information relating to a health care professional that both participating agencies are authorized to access under Chapter 411. Confidential criminal history record information in the possession of a participating agency that is provided to another participating agency in accordance with this subsection remains confidential while in the possession of the participating agency that receives the information.



SECTION 3.14. Section 32.0322, Human Resources Code, is amended to read as follows:

Sec. 32.0322. CRIMINAL HISTORY RECORD INFORMATION; ENROLLMENT OF PROVIDERS. (a) The department or the office of inspector general established under Chapter 531, Government Code, may obtain from any law enforcement or criminal justice agency the criminal history record information that relates to a provider under the medical assistance program or a person applying to enroll as a provider under the medical assistance program.

(a-1) The criminal history record information the department and the office of inspector general are authorized to obtain under Subsection (a) includes criminal history record information relating to:

(1) a person with a direct or indirect ownership or control interest, as defined by 42 C.F.R. Section 455.101, in a provider of five percent or more; and

(2) a person whose information is required to be disclosed in accordance with 42 C.F.R. Part 1001.

(b) The executive commissioner of the Health and Human Services Commission [department] by rule shall establish criteria for the department or the commission's office of inspector general to suspend a provider's billing privileges under the medical assistance program, revoke [revoking] a provider's enrollment under the program, or deny [denying] a person's application to enroll as a provider under the [medical assistance] program based on:

(1) the results of a criminal history check;

(2) any exclusion or debarment of the provider from participation in a state or federally funded health care program;

(3) the provider's failure to bill for medical assistance or refer clients for medical assistance within a 12-month period; or

(4) any of the provider screening or enrollment provisions contained in 42 C.F.R. Part 455, Subpart E.

(c) As a condition of eligibility to participate as a provider in the medical assistance program, the executive commissioner of the Health and Human Services Commission by rule shall:

(1) require a provider or a person applying to enroll as a provider to disclose:

(A) all persons described by Subsection (a-1)(1);

(B) any managing employees of the provider; and

(C) an agent or subcontractor of the provider if:

(i) the provider or a person described by Subsection (a-1)(1) has a direct or indirect ownership interest of at least five percent in the agent or subcontractor; or

(ii) the provider engages in a business transaction with the agent or subcontractor that meets the criteria specified by 42 C.F.R. Section 455.105; and

(2) require disclosure by persons applying for enrollment as providers and provide for screening of applicants for enrollment in conformity and compliance with the requirements of 42 C.F.R. Part 455, Subparts B and E.

(d) In adopting rules under this section, the executive commissioner of the Health and Human Services Commission shall adopt rules as authorized by and in conformity with 42 C.F.R. Section 455.470 for the imposition of a temporary moratorium on enrollment of new providers, or to impose numerical caps or other limits on the enrollment of providers, that the department or the commission's office of inspector general, in consultation with the department, determines have a significant potential for fraud, waste, or abuse.

SECTION 3.15. Section 32.039, Human Resources Code, is amended by amending Subsection (b) and adding Subsection (b-1) to read as follows:

(b) A person commits a violation if the person:

(1) presents or causes to be presented to the department a claim that contains a statement or representation the person knows or should know to be false;

(1-a) engages in conduct that violates Section 102.001, Occupations Code;

(1-b) solicits or receives, directly or indirectly, overtly or covertly any remuneration, including any kickback, bribe, or rebate, in cash or in kind for referring an individual to a person for the furnishing of, or for arranging the furnishing of, any item or service for which payment may be made, in whole or in part, under the medical assistance program, provided that this subdivision does not prohibit the referral of a patient to another practitioner within a multispecialty group or university medical services research and development plan (practice plan) for medically necessary services;

(1-c) solicits or receives, directly or indirectly, overtly or covertly any remuneration, including any kickback, bribe, or rebate, in cash or in kind for purchasing, leasing, or ordering, or arranging for or recommending the purchasing, leasing, or ordering of, any good, facility, service, or item for which payment may be made, in whole or in part, under the medical assistance program;

(1-d) offers or pays, directly or indirectly, overtly or covertly any remuneration, including any kickback, bribe, or rebate, in cash or in kind to induce a person to refer an individual to another person for the furnishing of, or for arranging the furnishing of, any item or service for which payment may be made, in whole or in part, under the medical assistance program, provided that this subdivision does not prohibit the referral of a patient to another practitioner within a multispecialty group or university medical services research and development plan (practice plan) for medically necessary services;

(1-e) offers or pays, directly or indirectly, overtly or covertly any remuneration, including any kickback, bribe, or rebate, in cash or in kind to induce a person to purchase, lease, or order, or arrange for or recommend the purchase, lease, or order of, any good, facility, service, or item for which payment may be made, in whole or in part, under the medical assistance program;

(1-f) provides, offers, or receives an inducement in a manner or for a purpose not otherwise prohibited by this section or Section 102.001, Occupations Code, to or from a person, including a recipient, provider, employee or agent of a provider, third-party vendor, or public servant, for the purpose of influencing or being influenced in a decision regarding:

(A) selection of a provider or receipt of a good or service under the medical assistance program;

(B) the use of goods or services provided under the medical assistance program; or

(C) the inclusion or exclusion of goods or services available under the medical assistance program; ~~or~~

(2) is a managed care organization that contracts with the department to provide or arrange to provide health care benefits or services to individuals eligible for medical assistance and:

(A) fails to provide to an individual a health care benefit or service that the organization is required to provide under the contract with the department;

(B) fails to provide to the department information required to be provided by law, department rule, or contractual provision;

(C) engages in a fraudulent activity in connection with the enrollment in the organization's managed care plan of an individual eligible for medical assistance or in connection with marketing the organization's services to an individual eligible for medical assistance; or

(D) engages in actions that indicate a pattern of:

(i) wrongful denial of payment for a health care benefit or service that the organization is required to provide under the contract with the department; or

(ii) wrongful delay of at least 45 days or a longer period specified in the contract with the department, not to exceed 60 days, in making payment for a health care benefit or service that the organization is required to provide under the contract with the department; or

(3) fails to maintain documentation to support a claim for payment in accordance with the requirements specified by department rule or medical assistance program policy or engages in any other conduct that a department rule has defined as a violation of the medical assistance program.

(b-1) A person who commits a violation described by Subsection (b)(3) is liable to the department for either the amount paid in response to the claim for payment or the payment of an administrative penalty in an amount not to exceed \$500 for each violation, as determined by the department.

SECTION 3.16. Subsection (a), Section 103.009, Human Resources Code, is amended to read as follows:

(a) The department may deny, suspend, or revoke the license of an applicant or holder of a license who fails to comply with the rules or standards for licensing required by this chapter or has committed an act described by Sections 103.012(a)(2)-(7).

#### ARTICLE 4. ADULT DAY-CARE FACILITIES

SECTION 4.01. Chapter 103, Human Resources Code, is amended by adding Sections 103.012 through 103.016 to read as follows:

Sec. 103.012. ADMINISTRATIVE PENALTY. (a) The department may assess an administrative penalty against a person who:

(1) violates this chapter, a rule, standard, or order adopted under this chapter, or a term of a license issued under this chapter;

(2) makes a false statement of a material fact that the person knows or should know is false;

(A) on an application for issuance or renewal of a license or in an attachment to the application; or

(B) with respect to a matter under investigation by the department;

(3) refuses to allow a representative of the department to inspect:

(A) a book, record, or file required to be maintained by an adult day-care facility; or

(B) any portion of the premises of an adult day-care facility;

(4) wilfully interferes with the work of a representative of the department or the enforcement of this chapter;

(5) wilfully interferes with a representative of the department preserving evidence of a violation of this chapter, a rule, standard, or order adopted under this chapter, or a term of a license issued under this chapter;

(6) fails to pay a penalty assessed under this chapter not later than the 30th day after the date the assessment of the penalty becomes final; or

(7) fails to notify the department of a change of ownership before the effective date of the change of ownership.

(b) Except as provided by Section 103.013(c), the penalty may not exceed \$500 for each violation.

(c) Each day of a continuing violation constitutes a separate violation.

(d) The department shall establish gradations of penalties in accordance with the relative seriousness of the violation.

(e) In determining the amount of a penalty, the department shall consider any matter that justice may require, including:

(1) the gradations of penalties established under Subsection (d);

(2) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the prohibited act and the hazard or potential hazard created by the act to the health or safety of the public;

(3) the history of previous violations;

(4) the deterrence of future violations; and

(5) the efforts to correct the violation.

(f) A penalty assessed under Subsection (a)(6) is in addition to the penalty previously assessed and not timely paid.

Sec. 103.013. RIGHT TO CORRECT BEFORE IMPOSITION OF ADMINISTRATIVE PENALTY. (a) The department may not collect an administrative penalty from an adult day-care facility under Section 103.012 if, not later than the 45th day after the date the facility receives notice under Section 103.014(c), the facility corrects the violation.

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

(1) a violation that the department determines:

(A) results in serious harm to or death of a person attending the facility;

(B) constitutes a serious threat to the health and safety of a person attending the facility; or

(C) substantially limits the facility's capacity to provide care;

(2) a violation described by Sections 103.012(a)(2)-(7); or

(3) a violation of Section 103.011.

(c) An adult day-care facility that corrects a violation must maintain the correction. If the facility fails to maintain the correction until at least the first anniversary after the date the correction was made, the department may assess and collect an administrative penalty for the subsequent violation. An administrative penalty assessed under this subsection is equal to three times the amount of the original penalty assessed but not collected. The department is not required to provide the facility with an opportunity under this section to correct the subsequent violation.

Sec. 103.014. REPORT RECOMMENDING ADMINISTRATIVE PENALTY; NOTICE. (a) The department shall issue a preliminary report stating the facts on which the department concludes that a violation of this chapter, a rule, standard, or order adopted under this chapter, or a term of a license issued under this chapter has occurred if the department has:

(1) examined the possible violation and facts surrounding the possible violation; and

(2) concluded that a violation has occurred.

(b) The report may recommend a penalty under Section 103.012 and the amount of the penalty.

(c) The department shall give written notice of the report to the person charged with the violation not later than the 10th day after the date on which the report is issued. The notice must include:

(1) a brief summary of the charges;

(2) a statement of the amount of penalty recommended;

(3) a statement of whether the violation is subject to correction under Section 103.013 and, if the violation is subject to correction under that section, a statement of:

(A) the date on which the adult day-care facility must file a plan of correction with the department that the department shall review and may approve, if satisfactory; and

(B) the date on which the plan of correction must be completed to avoid assessment of the penalty; and

(4) a statement that the person charged has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(d) Not later than the 20th day after the date on which the notice under Subsection (c) is received, the person charged may:

(1) give to the department written notice that the person agrees with the department's report and consents to the recommended penalty; or

(2) make a written request for a hearing.

(e) If the violation is subject to correction under Section 103.013, the adult day-care facility shall submit a plan of correction to the department for approval not later than the 10th day after the date on which the notice under Subsection (c) is received.

(f) If the violation is subject to correction under Section 103.013 and the person reports to the department that the violation has been corrected, the department shall inspect the correction or take any other step necessary to confirm the correction and shall notify the person that:

(1) the correction is satisfactory and a penalty will not be assessed; or

(2) the correction is not satisfactory and a penalty is recommended.

(g) Not later than the 20th day after the date on which a notice under Subsection (f)(2) is received, the person charged with the violation may:

(1) give to the department written notice that the person agrees with the department's report and consents to the recommended penalty; or

(2) make a written request for a hearing.

(h) If the person charged with the violation consents to the penalty recommended by the department or does not timely respond to a notice sent under Subsection (c) or (f)(2), the department's commissioner or the commissioner's designee shall assess the penalty recommended by the department.

(i) If the department's commissioner or the commissioner's designee assesses the recommended penalty, the department shall give written notice of the decision to the person charged with the violation and the person shall pay the penalty.

Sec. 103.015. ADMINISTRATIVE PENALTY HEARING. (a) An administrative law judge shall order a hearing and give notice of the hearing if a person assessed a penalty under Section 103.013(c) requests a hearing.

(b) The hearing shall be held before an administrative law judge.

(c) The administrative law judge shall make findings of fact and conclusions of law regarding the occurrence of a violation of this chapter, a rule or order adopted under this chapter, or a term of a license issued under this chapter.

(d) Based on the findings of fact and conclusions of law, and the recommendation of the administrative law judge, the department's commissioner or the commissioner's designee by order shall find:

(1) a violation has occurred and assess an administrative penalty; or

(2) a violation has not occurred.

(e) Proceedings under this section are subject to Chapter 2001, Government Code.

Sec. 103.016. NOTICE AND PAYMENT OF ADMINISTRATIVE PENALTY; INTEREST; REFUND. (a) The department's commissioner or the commissioner's designee shall give notice of the findings made under Section 103.015(d) to the person charged with a violation. If the commissioner or the commissioner's designee finds that a violation has occurred, the commissioner or the commissioner's designee shall give to the person charged written notice of:

(1) the findings;

(2) the amount of the administrative penalty;

(3) the rate of interest payable with respect to the penalty and the date on which interest begins to accrue; and

(4) the person's right to judicial review of the order of the commissioner or the commissioner's designee.

(b) Not later than the 30th day after the date on which the order of the department's commissioner or the commissioner's designee is final, the person assessed the penalty shall:

(1) pay the full amount of the penalty; or

(2) file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(c) Notwithstanding Subsection (b), the department may permit the person to pay a penalty in installments.

(d) If the person does not pay the penalty within the period provided by Subsection (b) or in accordance with Subsection (c), if applicable:

(1) the penalty is subject to interest; and

(2) the department may refer the matter to the attorney general for collection of the penalty and interest.

(e) Interest under Subsection (d)(1) accrues:

(1) at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank; and

(2) for the period beginning on the day after the date on which the penalty becomes due and ending on the date the penalty is paid.

(f) If the amount of the penalty is reduced or the assessment of a penalty is not upheld on judicial review, the department's commissioner or the commissioner's designee shall:

(1) remit to the person charged the appropriate amount of any penalty payment plus accrued interest; or

(2) execute a release of the supersedeas bond if one has been posted.

(g) Accrued interest on the amount remitted by the department's commissioner or the commissioner's designee under Subsection (f)(1) shall be paid:

(1) at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank; and

(2) for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted to the person charged with the violation.

#### ARTICLE 5. TRAINING AND CONTINUING EDUCATION RELATED TO CERTAIN LONG-TERM CARE FACILITIES

SECTION 5.01. Section 22.039(c), Human Resources Code, is amended to read as follows:

(c) The department shall semiannually provide training for surveyors and providers on subjects that address [at least one of] the 10 most common violations by long-term care facilities of [under] federal or state law. The department may charge providers a fee not to exceed \$50 per person for the training.

SECTION 5.02. As soon as practicable after the effective date of this Act but not later than July 1, 2012, the executive commissioner of the Health and Human Services Commission shall adopt rules necessary to implement Section 22.039, Human Resources Code, as amended by this article.

#### ARTICLE 6. WAIVER; EFFECTIVE DATE

SECTION 6.01. 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 6.02. This Act takes effect September 1, 2011.

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

Amend **CSSB 223** on third reading (house committee printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering the subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Subsections (a) and (c), Section 242.005, Health and Safety Code, are amended to read as follows:

(a) The department [~~and the attorney general each~~] shall prepare annually a full report of the operation and administration of the department's [~~their respective~~] responsibilities under this chapter, including recommendations and suggestions considered advisable.

(c) The department [~~and the attorney general~~] shall submit the required report [~~reports~~] to the governor and the legislature not later than October 1 of each year.

SECTION \_\_\_\_\_. Subsection (c), Section 247.050, Health and Safety Code, is amended to read as follows:

(c) The department [~~and the attorney general~~] shall file a copy of the quarterly reports required by this section with the substantive committees of each house of the legislature with jurisdiction over regulation of assisted living facilities.

SECTION \_\_\_\_\_. Subsection (b), Section 247.050, Health and Safety Code, is repealed.

The amendments were read.

Senator Nelson moved to concur in the House amendments to **SB 223**.

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

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 2048 ADOPTED**

Senator Deuell called from the President's table the Conference Committee Report on **HB 2048**. The Conference Committee Report was filed with the Senate on Friday, May 27, 2011.

On motion of Senator Deuell, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 1951 ADOPTED**

Senator Hegar called from the President's table the Conference Committee Report on **HB 1951**. The Conference Committee Report was filed with the Senate on Friday, May 27, 2011.

On motion of Senator Hegar, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 1.

Nays: Watson.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 156 ADOPTED**

Senator Huffman called from the President's table the Conference Committee Report on **SB 156**. The Conference Committee Report was filed with the Senate on Friday, May 27, 2011.



On motion of Senator Huffman, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

### **CONFERENCE COMMITTEE ON HOUSE BILL 3459**

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 3459** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 3459** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Whitmire, Chair; Hinojosa, Ogden, Hegar, and Carona.

### **CONFERENCE COMMITTEE ON HOUSE BILL 2327**

Senator Wentworth called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2327** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 2327** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Wentworth, Chair; Harris, Nichols, Eltife, and Rodriguez.

### **CONFERENCE COMMITTEE ON HOUSE BILL 242**

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 242** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 242** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Hegar, Chair; Ogden, Williams, Whitmire, and Harris.

### **RECESS**

On motion of Senator Whitmire, the Senate at 3:54 p.m. recessed until 4:30 p.m. today.

**AFTER RECESS**

The Senate met at 4:42 p.m. and was called to order by President Pro Tempore Ogden.

**MESSAGE FROM THE HOUSE**

HOUSE CHAMBER

Austin, Texas

Saturday, May 28, 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 ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

**HB 200** (149 Yeas, 0 Nays, 1 Present, not voting)

**HB 871** (78 Yeas, 68 Nays, 1 Present, not voting)

**HB 1732** (144 Yeas, 1 Nays, 2 Present, not voting)

**HB 2499** (144 Yeas, 2 Nays, 2 Present, not voting)

**HB 2560** (145 Yeas, 0 Nays, 2 Present, not voting)

**HB 2694** (147 Yeas, 0 Nays, 1 Present, not voting)

**SB 144** (145 Yeas, 0 Nays, 2 Present, not voting)

**SB 156** (97 Yeas, 45 Nays, 1 Present, not voting)

**SB 1087** (146 Yeas, 0 Nays, 2 Present, not voting)

THE HOUSE HAS DISCHARGED ITS CONFEREES AND CONCURRED IN SENATE AMENDMENTS TO THE FOLLOWING MEASURES:

**HB 1616** (144 Yeas, 4 Nays, 2 Present, not voting)

**HB 2194** (144 Yeas, 2 Nays, 2 Present, not voting)

**HB 3268** (147 Yeas, 0 Nays, 1 Present, not voting)

Respectfully,

/s/Robert Haney, Chief Clerk  
House of Representatives

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 1338 ADOPTED**

Senator Eltife called from the President's table the Conference Committee Report on **SB 1338**. The Conference Committee Report was filed with the Senate on Friday, May 27, 2011.

On motion of Senator Eltife, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 158 ADOPTED**

Senator Williams called from the President's table the Conference Committee Report on **SB 158**. The Conference Committee Report was filed with the Senate on Friday, May 27, 2011.

On motion of Senator Williams, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 1331 ADOPTED**

Senator Watson called from the President's table the Conference Committee Report on **SB 1331**. The Conference Committee Report was filed with the Senate on Friday, May 27, 2011.

On motion of Senator Watson, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**SENATE RESOLUTION 1218**

Senator Nichols offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 82nd Legislature, Regular Session, 2011, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the differences on House Bill 2499 (continuation and functions of the Department of Information Resources and the transfer of certain department functions to the comptroller of public accounts), to consider and take action on the following matter:

Senate Rule 12.03(4) is suspended to permit the committee to add text on a matter which is not included in either the house or senate version of the bill by adding the following sections to the bill:

SECTION 25. Subchapter A, Chapter 2157, Government Code, is amended by adding Section 2157.0013 to read as follows:

Sec. 2157.0013. SUNSET PROVISION. (a) The transfer of powers and duties to the comptroller under Section 2157.068 and under House Bill 2499, Acts of the 82nd Legislature, Regular Session, 2011, is subject to Chapter 325 (Texas Sunset Act).

(b) The Sunset Advisory Commission shall evaluate the transfer of powers and duties to the comptroller under Section 2157.068 and under House Bill 2499, Acts of the 82nd Legislature, Regular Session, 2011, and present to the 84th Legislature a report on its evaluation and recommendations in relation to the transfer. The comptroller shall perform all duties in relation to the evaluation that a state agency subject to review under Chapter 325 would perform in relation to a review.

(c) This section expires September 1, 2015.

SECTION 39. (a) The comptroller shall submit, on the dates prescribed by Subsection (c) of this section, a report regarding the transfer described by Section 37 of this Act to the following:

- (1) the Legislative Budget Board;
- (2) the speaker of the house of representatives;
- (3) the lieutenant governor; and
- (4) the chairs of the house and senate committees with primary oversight over the comptroller's purchasing functions.

(b) The report must analyze the efficiency and implementation of the transfer described by Section 37 of this Act.

(c) Each report described by this section is due not later than:

- (1) March 1, 2012;
- (2) September 1, 2012;
- (3) September 1, 2013; and
- (4) September 1, 2014.

Explanation: This change is necessary to require sunset review of, and a report on, the transfer of certain purchasing functions to the comptroller.

**SR 1218** was read and was adopted by the following vote: Yeas 31, Nays 0.

#### **CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2499 ADOPTED**

Senator Nichols called from the President's table the Conference Committee Report on **HB 2499**. The Conference Committee Report was filed with the Senate on Thursday, May 26, 2011.

On motion of Senator Nichols, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

#### **CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1286 ADOPTED**

Senator Davis called from the President's table the Conference Committee Report on **HB 1286**. The Conference Committee Report was filed with the Senate on Friday, May 27, 2011.

On motion of Senator Davis, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 1.

Nays: Ogden.

#### **CONFERENCE COMMITTEE REPORT ON SENATE BILL 747 ADOPTED**

Senator Carona called from the President's table the Conference Committee Report on **SB 747**. The Conference Committee Report was filed with the Senate on Friday, May 27, 2011.

On motion of Senator Carona, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

#### **CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2734 ADOPTED**

Senator Williams called from the President's table the Conference Committee Report on **HB 2734**. The Conference Committee Report was filed with the Senate on Friday, May 27, 2011.

On motion of Senator Williams, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 1.

Nays: Rodriguez.

### **CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1178 ADOPTED**

Senator Birdwell called from the President's table the Conference Committee Report on **HB 1178**. The Conference Committee Report was filed with the Senate on Friday, May 27, 2011.

On motion of Senator Birdwell, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

### **SENATE RESOLUTION 1246**

Senator Hinojosa offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 82nd Legislature, Regular Session, 2011, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the differences on Senate Bill 1420 (continuation and functions of the Texas Department of Transportation; providing penalties) to consider and take action on the following matters:

(1) Senate Rule 12.03(4) is suspended to permit the committee to add text on a matter not included in either the house or senate version of the bill by adding Subchapter F-1 to Chapter 201, Transportation Code, and adding a related nonamendatory provision:

SECTION 15. (a) Chapter 201, Transportation Code, is amended by adding Subchapter F-1 to read as follows:

#### **SUBCHAPTER F-1. COMPLIANCE PROGRAM**

Sec. 201.451. ESTABLISHMENT AND PURPOSE. The commission shall establish a compliance program, which must include a compliance office to oversee the program. The compliance office is responsible for:

(1) acting to prevent and detect serious breaches of departmental policy, fraud, waste, and abuse of office, including any acts of criminal conduct within the department;

(2) independently and objectively reviewing, investigating, delegating, and overseeing the investigation of:

(A) conduct described by Subdivision (1);

(B) criminal activity in the department;

(C) allegations of wrongdoing by department employees;

(D) crimes committed on department property; and

(E) serious breaches of department policy;

(3) overseeing the operation of the telephone hotline established under Section 201.211;

(4) ensuring that members of the commission and department employees receive appropriate ethics training; and

(5) performing other duties assigned to the office by the commission.

Sec. 201.452. INVESTIGATION OVERSIGHT. (a) The compliance office has primary jurisdiction for oversight and coordination of all investigations occurring on department property or involving department employees.

(b) The compliance office shall coordinate and provide oversight for an investigation under this subchapter, but the compliance office is not required to conduct the investigation.

(c) The compliance office shall continually monitor an investigation conducted within the department, and shall report to the commission on the status of pending investigations.

Sec. 201.453. INITIATION OF INVESTIGATIONS. The compliance office may only initiate an investigation based on:

- (1) authorization from the commission;
- (2) approval of the director of the compliance office;
- (3) approval of the director or deputy executive director of the department;

or

- (4) commission rules.

Sec. 201.454. REPORTS. (a) The compliance office shall report directly to the commission regarding performance of and activities related to investigations and provide the director with information regarding investigations as appropriate.

(b) The director of the compliance office shall present to the commission at each regularly scheduled commission meeting and at other appropriate times:

- (1) reports of investigations; and
- (2) a summary of information relating to investigations conducted under this subchapter that includes analysis of the number, type, and outcome of investigations, trends in investigations, and recommendations to avoid future complaints.

Sec. 201.455. COOPERATION WITH LAW ENFORCEMENT OFFICIALS AND OTHER ENTITIES. (a) The director of the compliance office shall provide information and evidence relating to criminal acts to the state auditor's office and appropriate law enforcement officials.

(b) The director of the compliance office shall refer matters for further civil, criminal, and administrative action to appropriate administrative and prosecutorial agencies, including the attorney general.

Sec. 201.456. AUTHORITY OF STATE AUDITOR. This subchapter or other law related to the operation of the department's compliance program does not preempt the authority of the state auditor to conduct an audit or investigation under Chapter 321, Government Code, or other law.

(b) Not later than January 1, 2013, the Texas Department of Transportation shall submit a report to the legislature on the effectiveness of the compliance program described by Subchapter F-1, Chapter 201, Transportation Code, as added by this Act, and any recommended changes in law to increase the effectiveness of the compliance program.

Explanation: The addition of text is necessary to establish a compliance program in the Texas Department of Transportation.

(2) Senate Rule 12.03(4) is suspended to permit the committee to add text on a matter not included in either the house or senate version of the bill by adding the following language to Section 222.106(i), Transportation Code:

(i) ... A municipality may issue bonds to pay all or part of the cost of the transportation project and may pledge and assign all or a specified amount of money in the tax increment account to secure repayment of those bonds.

Explanation: The addition of text is necessary to allow a municipality to issue bonds to pay all or part of the cost of a transportation project and pledge and assign all or a specified amount of money in a tax increment account to secure repayment of those bonds.

(3) Senate Rule 12.03(4) is suspended to permit the committee to add text on a matter not included in either the house or senate version of the bill by adding the following language to Section 222.107(f), Transportation Code:

(f) The order or resolution designating an area as a transportation reinvestment zone must:

...

(5) establish an ad valorem tax increment account for the zone.

Explanation: The addition of text is necessary to authorize a county to establish an ad valorem tax increment account for a transportation reinvestment zone.

(4) Senate Rule 12.03(4) is suspended to permit the committee to add text on a matter not included in either the house or senate version of the bill by adding the following language to Section 222.107(h), Transportation Code:

(h) The commissioners court may:

(1) from taxes collected on property in a zone, pay into a tax increment account for the zone an amount equal to the tax increment produced by the county less any amounts allocated under previous agreements, including agreements under Section 381.004, Local Government Code, or Chapter 312, Tax Code;

....

Explanation: The addition of text is necessary to allow a county to pay into a tax increment account certain amounts from taxes collected on property in a transportation reinvestment zone.

(5) Senate Rule 12.03(4) is suspended to permit the committee to add text on a matter not included in either the house or senate version of the bill by adding the following language to Section 222.107, Transportation Code:

(i-1) In the event a county collects a tax increment, it may issue bonds to pay all or part of the cost of a transportation project and may pledge and assign all or a specified amount of money in the tax increment account to secure those bonds.

Explanation: The addition of text is necessary to allow a county to issue bonds to pay all or part of the cost of a transportation project and pledge and assign all or a specified amount of money in a tax increment account to secure those bonds.

(6) Senate Rule 12.03(4) is suspended to permit the committee to add text on a matter not included in either the house or senate version of the bill by adding the following provision to Subchapter E, Chapter 223, Transportation Code, and adding a related nonamendatory provision:

Sec. 223.2012. NORTH TARRANT EXPRESS PROJECT PROVISIONS.

(a) In this section, the North Tarrant Express project is the project described by Section 223.201(f)(3) entered into on June 23, 2009.

(b) The comprehensive development agreement for the North Tarrant Express project may provide for negotiating and entering into facility agreements for future phases or segments of the project at the times that the department considers advantageous to the department.

(c) The department is not required to use any further competitive procurement process to enter into one or more related facility agreements with the developer or an entity controlled by, to be controlled by, or to be under common control with the developer under the comprehensive development agreement for the North Tarrant Express project.

(d) A facility agreement for the North Tarrant Express project must terminate on or before June 22, 2061. A facility agreement may not be extended or renewed beyond that date.

(e) The department may include or negotiate any matter in a comprehensive development agreement for the North Tarrant Express project that the department considers advantageous to the department.

(f) The comprehensive development agreement for the North Tarrant Express project may provide the developer or an entity controlled by, to be controlled by, or to be under common control with the developer with a right of first negotiation under which the developer may elect to negotiate with the department and enter into one or more related facility agreements for future phases or segments of the project.

(b) This Act does not validate any governmental act or decision that:

(1) is inconsistent with . . . Section 223.2012, Transportation Code, as added by this Act, relating to the North Tarrant Express Project;

. . . .

Explanation: The addition of text is necessary to implement provisions related to the comprehensive development agreement entered into for the North Tarrant Express Project.

(7) Senate Rule 12.03(4) is suspended to permit the committee to add text on a matter not included in either the house or senate version of the bill by making the following changes to Section 621.102, Transportation Code:

Sec. 621.102. ~~[COMMISSION'S]~~ AUTHORITY TO SET MAXIMUM WEIGHTS. (a) The executive director of the Texas Department of Transportation ~~[commission]~~ may set the maximum single axle weight, tandem axle weight, or gross weight of a vehicle, or maximum single axle weight, tandem axle weight, or gross weight of a combination of vehicles and loads, that may be moved over a state highway or a farm or ranch road if the executive director ~~[commission]~~ finds that heavier maximum weight would rapidly deteriorate or destroy the road or a bridge or culvert along the road. A maximum weight set under this subsection may not exceed the maximum set by statute for that weight.

(b) ~~[The commission must set a maximum weight under this section by order entered in its minutes.]~~

[(e)] The executive director of the Texas Department of Transportation ~~[commission]~~ must make the finding under this section on an engineering and traffic investigation and in making the finding shall consider the width, condition, and type of pavement structures and other circumstances on the road.



(c) ~~(d)~~ A maximum weight or load set under this section becomes effective on a highway or road when appropriate signs giving notice of the maximum weight or load are erected on the highway or road by the Texas Department of Transportation under order of the commission.

(d) ~~(e)~~ A vehicle operating under a permit issued under Section 623.011, 623.071, 623.094, 623.121, 623.142, 623.181, 623.192, or 623.212 may operate under the conditions authorized by the permit over a road for which the executive director of the Texas Department of Transportation ~~[commission]~~ has set a maximum weight under this section.

(e) ~~(f)~~ For the purpose of this section, a farm or ranch road is a state highway that is shown in the records of the commission to be a farm-to-market or ranch-to-market road.

(f) ~~(g)~~ This section does not apply to a vehicle delivering groceries, farm products, or liquefied petroleum gas.

Explanation: The addition of text is necessary to allow the executive director of the Texas Department of Transportation to set maximum weights for state highways, roads, and bridges.

**SR 1246** was read and was adopted by the following vote: Yeas 31, Nays 0.

### **CONFERENCE COMMITTEE REPORT ON SENATE BILL 1420 ADOPTED**

Senator Hinojosa called from the President's table the Conference Committee Report on **SB 1420**. The Conference Committee Report was filed with the Senate on Friday, May 27, 2011.

On motion of Senator Hinojosa, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

### **REMARKS ORDERED PRINTED**

On motion of Senator Williams and by unanimous consent, the remarks by Senators Williams and Hinojosa regarding **SB 1420** were ordered reduced to writing and printed in the *Senate Journal* as follows:

**Senator Williams:** SH 288 and US 290 Hempstead are included in the projects to be developed as a CDA. The counties (Harris and Brazoria) have primacy rights to develop these projects under existing law, but is it the intent that if the counties waive their primacy development rights or decline to develop the projects under existing law, then these projects may be developed by TxDOT?

**Senator Hinojosa:** Yes. SB 1420 adds Section 223.201(f)(6)&(7) to the Transportation Code, authorizing TxDOT to enter into a Comprehensive Development Agreement (CDA) for those projects. Those projects are also included in Section 228.011(a), Transportation Code, meaning that a county acting under Chapter 284, Transportation Code has primary responsibility for the financing, construction, and operation of those projects. The addition of those projects in this bill is intended to provide TxDOT with a procurement option in the event that the

counties waive their primacy development rights or decline to develop the projects under existing law. If the counties waive or decline to develop the projects, then TxDOT would have the opportunity to enter into a contract to develop the projects.

### SENATE RESOLUTION 1240

Senator Hegar offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 82nd Legislature, Regular Session, 2011, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the differences on Senate Bill 652 (governmental and certain quasi-governmental entities subject to the sunset review process) to consider and take action on the following matter:

Senate Rule 12.03(4) is suspended to permit the committee to add text on matters not included in either the house or senate version of the bill by adding the following:

SECTION 1.07. RAILROAD COMMISSION OF TEXAS. (a) Section 81.01001, Natural Resources Code, is amended to read as follows:

Sec. 81.01001. SUNSET PROVISION. The Railroad Commission of Texas is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished September 1, 2013 ~~[2011]~~.

(b) This section takes effect only if the 82nd Legislature, Regular Session, 2011, does not enact other legislation that becomes law and that amends Section 81.01001, Natural Resources Code, to extend the sunset date of the Railroad Commission of Texas. If the 82nd Legislature, Regular Session, 2011, enacts legislation of that kind, this section has no effect.

(c) The review of the Railroad Commission of Texas by the Sunset Advisory Commission in preparation for the work of the 83rd Legislature in Regular Session is not limited to the appropriateness of recommendations made by the commission to the 82nd Legislature. In the commission's report to the 83rd Legislature, the commission may include any recommendations it considers appropriate.

SECTION 1.08. PUBLIC UTILITY COMMISSION OF TEXAS. (a) Section 12.005, Utilities Code, is amended to read as follows:

Sec. 12.005. APPLICATION OF SUNSET ACT. The Public Utility Commission of Texas is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter or by Chapter 39, the commission is abolished and this title expires September 1, 2013 ~~[2011]~~.

(b) This section takes effect only if the 82nd Legislature, Regular Session, 2011, does not enact other legislation that becomes law and that amends Section 12.005, Utilities Code, to extend the sunset date of the Public Utility Commission of Texas. If the 82nd Legislature, Regular Session, 2011, enacts legislation of that kind, this section has no effect.

SECTION 1.09. ELECTRIC RELIABILITY COUNCIL OF TEXAS. (a) Section 39.151, Utilities Code, is amended by adding Subsections (n) and (n-1) to read as follows:

(n) An independent organization certified by the commission under this section is subject to review under Chapter 325, Government Code (Texas Sunset Act), but is not abolished under that chapter. The independent organization shall be reviewed during the periods in which the Public Utility Commission of Texas is reviewed.

(n-1) Notwithstanding Subsection (n), an independent organization certified by the commission under this section is not subject to review in preparation for the work of the 83rd Legislature in Regular Session. This subsection expires September 1, 2013.

(b) This section takes effect only if the 82nd Legislature, Regular Session, 2011, does not enact other legislation that becomes law and that amends Section 39.151, Utilities Code, to subject an independent organization certified by the Public Utility Commission of Texas under that section to sunset review during the periods in which the commission is reviewed. If the 82nd Legislature, Regular Session, 2011, enacts legislation of that kind, this section has no effect.

SECTION 1.10. PORT OF HOUSTON AUTHORITY. Chapter 97, Acts of the 40th Legislature, 1st Called Session, 1927, is amended by adding Section 9 to read as follows:

Sec. 9. SUNSET REVIEW. (a) The Port of Houston Authority is subject to review under Chapter 325, Government Code (Texas Sunset Act), as if it were a state agency but may not be abolished under that chapter. The review shall be conducted as if the authority were scheduled to be abolished September 1, 2013.

(b) The reviews must assess the authority's governance, management, and operating structure, and the authority's compliance with legislative requirements.

(c) The authority shall pay the cost incurred by the Sunset Advisory Commission in performing a review of the authority under this section. The Sunset Advisory Commission shall determine the cost, and the authority shall pay the amount promptly on receipt of a statement from the Sunset Advisory Commission detailing the cost.

(d) This section expires September 1, 2013.

SECTION 2.01. REGIONAL EDUCATION SERVICE CENTERS. Subchapter A, Chapter 8, Education Code, is amended by adding Section 8.010 to read as follows:

Sec. 8.010. SUNSET PROVISION. Regional education service centers are subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the centers are abolished and this chapter expires September 1, 2015.

SECTION 6.02. OFFICE OF PUBLIC UTILITY COUNSEL. Section 13.002, Utilities Code, is amended to read as follows:

Sec. 13.002. APPLICATION OF SUNSET ACT. The Office of Public Utility Counsel is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the office is abolished and this chapter expires September 1, 2023 ~~[2011]~~.

#### ARTICLE 8. SUNSET ADVISORY COMMISSION

SECTION 8.01. REVIEW OF AGENCIES REVIEWED FOR THE 82nd LEGISLATURE. For a state agency that was reviewed by the Sunset Advisory Commission in preparation for the work of the 82nd Legislature in Regular Session

and the abolition date of which was extended to 2013, the commission, unless expressly provided otherwise, shall limit its review of the agency in preparation for the work of the 83rd Legislature in Regular Session to the appropriateness of recommendations made by the commission to the 82nd Legislature. In the commission's report to the 83rd Legislature, the commission may include any recommendations it considers appropriate. This section expires September 1, 2013.

Explanation: This addition is necessary to change the sunset review date for various state agencies, to subject the Electric Reliability Council of Texas to sunset review during the periods in which the Public Utility Commission of Texas is reviewed, to subject the Port of Houston Authority and regional education service centers to sunset review, and to limit the review of state agencies that were reviewed by the Sunset Advisory Commission in preparation for the work of the 82nd Legislature in Regular Session.

**SR 1240** was read and was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 652 ADOPTED**

Senator Hegar called from the President's table the Conference Committee Report on **SB 652**. The Conference Committee Report was filed with the Senate on Friday, May 27, 2011.

On motion of Senator Hegar, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 1134 ADOPTED**

Senator Hegar called from the President's table the Conference Committee Report on **SB 1134**. The Conference Committee Report was filed with the Senate on Friday, May 27, 2011.

On motion of Senator Hegar, the Conference Committee Report was adopted by the following vote: Yeas 26, Nays 5.

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

Nays: Davis, Ellis, Gallegos, Rodriguez, Watson.

**SENATE RESOLUTION 1231**

Senator Hegar offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 82nd Legislature, Regular Session, 2011, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the differences on House Bill 1517 (disposition of fines for traffic violations collected by certain counties and municipalities) to consider and take action on the following matter:

Senate Rule 12.03(3) is suspended to permit the committee, in SECTION 1 of the bill, in Section 542.402, Transportation Code, to add text on a matter which is not in disagreement to read as follows:

(g) This subsection and Subsection (f) expire on September 1, 2021.

Explanation: The addition is necessary for Section 542.402(f), Transportation Code, to expire on September 1, 2021.

**SR 1231** was read and was adopted by the following vote: Yeas 31, Nays 0.

#### **CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1517 ADOPTED**

Senator Hegar called from the President's table the Conference Committee Report on **HB 1517**. The Conference Committee Report was filed with the Senate on Friday, May 27, 2011.

On motion of Senator Hegar, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

#### **CONFERENCE COMMITTEE REPORT ON SENATE BILL 958 ADOPTED**

Senator Wentworth called from the President's table the Conference Committee Report on **SB 958**. The Conference Committee Report was filed with the Senate on Friday, May 27, 2011.

On motion of Senator Wentworth, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 1.

Nays: Fraser.

#### **CONFERENCE COMMITTEE REPORT ON SENATE BILL 773 ADOPTED**

Senator Zaffirini called from the President's table the Conference Committee Report on **SB 773**. The Conference Committee Report was filed with the Senate on Friday, May 27, 2011.

On motion of Senator Zaffirini, the Conference Committee Report was adopted by the following vote: Yeas 27, Nays 4.

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

Nays: Birdwell, Estes, Nelson, Ogden.

#### **CONFERENCE COMMITTEE ON HOUSE BILL 3328**

Senator Fraser called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 3328** 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 3328** before appointment.

There were no motions offered.

Accordingly, the President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Fraser, Chair; Nelson, Hegar, Hinojosa, and Eltife.

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

Senator Jackson called from the President's table the Conference Committee Report on **HB 628**. The Conference Committee Report was filed with the Senate on Friday, May 27, 2011.

On motion of Senator Jackson, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

### **MESSAGE FROM THE HOUSE**

HOUSE CHAMBER

Austin, Texas

Saturday, May 28, 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 ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:**

**HB 1178** (146 Yeas, 0 Nays, 2 Present, not voting)

**HB 1711** (146 Yeas, 1 Nays, 2 Present, not voting)

**HB 1951** (143 Yeas, 5 Nays, 2 Present, not voting)

**HB 2048** (143 Yeas, 1 Nays, 1 Present, not voting)

**HB 2226** (148 Yeas, 0 Nays, 1 Present, not voting)

**HB 2490** (146 Yeas, 0 Nays, 2 Present, not voting)

**HB 2729** (147 Yeas, 0 Nays, 1 Present, not voting)

**HB 2734** (146 Yeas, 0 Nays, 1 Present, not voting)

**SB 377** (132 Yeas, 14 Nays, 2 Present, not voting)

**SB 563** (148 Yeas, 0 Nays, 2 Present, not voting)

**SB 647** (146 Yeas, 2 Nays, 1 Present, not voting)

**SB 773** (109 Yeas, 37 Nays, 2 Present, not voting)

**SB 875** (135 Yeas, 7 Nays, 1 Present, not voting)

**SB 1338** (147 Yeas, 0 Nays, 2 Present, not voting)

**SB 1489** (146 Yeas, 0 Nays, 1 Present, not voting)

Respectfully,

/s/Robert Haney, Chief Clerk  
House of Representatives

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 1816 ADOPTED**

Senator Zaffirini called from the President's table the Conference Committee Report on **SB 1816**. The Conference Committee Report was filed with the Senate on Friday, May 27, 2011.

On motion of Senator Zaffirini, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**(President in Chair)**

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 1711 ADOPTED**

Senator Jackson called from the President's table the Conference Committee Report on **HB 1711**. The Conference Committee Report was filed with the Senate on Friday, May 27, 2011.

On motion of Senator Jackson, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**SENATE RESOLUTION 1213**

Senator Ogden offered the following resolution:

**SR 1213**, Suspending limitations on conference committee jurisdiction, H.B. No. 1.

The resolution was read and was adopted by the following vote: Yeas 29, Nays 2.

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

Nays: West, Zaffirini.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 1 ADOPTED**

Senator Ogden called from the President's table the Conference Committee Report on **HB 1**. The Conference Committee Report was filed with the Senate on Thursday, May 26, 2011.

**(Senator Eltife in Chair)**

On motion of Senator Ogden, the Conference Committee Report was adopted by the following vote: Yeas 20, Nays 11.

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

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

**REASON FOR VOTE**

Senator Uresti submitted the following reason for vote on the adoption of the Conference Committee Report on **HB 1**:

I want to thank Senator Ogden for the work he put into this bill. The Finance Committee began the session with an impossible task and roadblocks were thrown in its way that made meaningful compromise on the budget extremely difficult and ultimately, impossible.

The budget brought to the Senate today is better than the one that came over from the House. There is no doubt of that. But compared to that bill, just about anything would look better.

This budget gives schools about \$4 billion less than they'd get under current law, inevitably leading to teacher layoffs or local property tax increases for districts that haven't reached their cap.

The last Census showed Texas to be one of the fastest growing states in the nation, but this budget doesn't come close to funding anticipated enrollment growth.

The cuts it imposes will ripple through the economies of the small communities I represent in West Texas, weakening their ability to sustain families and businesses.

I can't vote for this budget just because it's better than the original bill. Better isn't enough.

In the area of Health and Human Services, under this bill nursing homes may not close, but they will face staffing shortages and make fewer beds available to an aging population. Hospitals will take an 8 percent cut under this bill, and family planning is reduced by \$73 million.

The Legislature passed and the governor signed a sonogram bill because we want to reduce the number of abortions in Texas. We have one of the highest teen pregnancy rates in the nation, yet we are cutting a program that could do something about that.

And in the rural parts of my district, family planning services are the only health care that many women get. That's true as well for districts represented by Senator Seliger, Senator Duncan, and other rural senators.

The Health and Human Services agency overall takes a 17.2 percent cut under this bill, more than \$11 billion. In the area of Child Protective Services, there's no funding for expected caseload growth for in-home and relative support.



Full time direct delivery staff employees are reduced by 8 percent from what we appropriated for CPS reform in 2009. Adoption subsidies for 2012-13 are funded at about 85 percent of the projected need, adoption support services are cut about 30 percent, and child abuse and neglect prevention is cut by 44 percent.

So no, better isn't enough.

What troubles me most is that it doesn't have to be this way. No one throughout this entire debate has been able to give a good answer to one simple question: Why not use the rainy day fund now for the next biennium. We're going to have to do it in two years anyway.

When we come back in 2013, we will need to find almost \$5 billion for Medicaid. This bill makes us take out a state credit card, and we're not even supposed to have one.

I take Senator Ogden at his word when he says this is all the Senate could get in its negotiations with the House. I understand that, and I commend him for all his hard work.

But I can't vote for this bill because better just isn't enough.

URESTI

### SENATE RESOLUTION 1227

Senator Shapiro offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 82nd Legislature, Regular Session, 2011, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the differences on Senate Bill 1534 (the operation, certification, and accountability of career schools or colleges) to consider and take action on the following matter:

Senate Rule 12.03(4) is suspended to permit the committee to add text on a matter not included in either the house or senate version of the bill by adding the following new SECTION to the bill:

SECTION 1. Section 61.0904, Education Code, is amended to read as follows:

Sec. 61.0904. REVIEW OF INSTITUTIONAL GROUPINGS. (a) At least once every 10 years, the board shall conduct a review of the institutional groupings under the board's higher education accountability system, including a review of the criteria for and definitions assigned to those groupings.

(b) The board shall include within the board's higher education accountability system any career schools and colleges in this state that offer degree programs. Regardless of whether the board is conducting a periodic review of institutional groupings as required by Subsection (a), the board shall determine whether to create one or more separate institutional groupings for entities to which this subsection applies. In implementing this subsection, the board shall:

(1) consult with affected career schools and colleges regarding the imposition of reporting requirements on those entities; and

(2) adopt rules that clearly define the types and amounts of information to be reported to the board.

(c) In advance of each regular session of the legislature, the board shall report to each standing legislative committee with primary jurisdiction over higher education regarding any entities to which Subsection (b) applies that do not participate in the board's higher education accountability system as provided by that subsection.

Explanation: The addition of text is necessary to authorize and direct the Texas Higher Education Coordinating Board to include career schools and colleges in the board's higher education accountability system.

**SR 1227** was read and was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 1534 ADOPTED**

Senator Shapiro called from the President's table the Conference Committee Report on **SB 1534**. The Conference Committee Report was filed with the Senate on Friday, May 27, 2011.

On motion of Senator Shapiro, the Conference Committee Report was adopted by the following vote: Yeas 29, Nays 2.

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

Nays: Lucio, Van de Putte.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 563 ADOPTED**

Senator Jackson called from the President's table the Conference Committee Report on **SB 563**. The Conference Committee Report was filed with the Senate on Friday, May 27, 2011.

On motion of Senator Jackson, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 341 ADOPTED**

Senator Uresti called from the President's table the Conference Committee Report on **SB 341**. The Conference Committee Report was filed with the Senate on Friday, May 27, 2011.

On motion of Senator Uresti, the Conference Committee Report was adopted by the following vote: Yeas 30, Nays 1.

Nays: Zaffirini.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 875 ADOPTED**

Senator Fraser called from the President's table the Conference Committee Report on **SB 875**. The Conference Committee Report was filed with the Senate on Friday, May 27, 2011.

On motion of Senator Fraser, the Conference Committee Report was adopted by the following vote: Yeas 23, Nays 8.

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

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

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 3726**

Senator Van de Putte submitted the following Conference Committee Report:

Austin, Texas  
May 27, 2011

Honorable David Dewhurst  
President of the Senate

Honorable Joe Straus  
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 3726** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

VAN DE PUTTE  
ELTIFE  
URESTI

On the part of the Senate

GUILLEN  
KUEMPEL  
DESHOTEL  
LARSON

On the part of the House

The corrected Conference Committee Report on **HB 3726** was filed with the Secretary of the Senate on Saturday, May 28, 2011.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 542**

Senator Hegar submitted the following Conference Committee Report:

Austin, Texas  
May 27, 2011

Honorable David Dewhurst  
President of the Senate

Honorable Joe Straus  
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 542** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

HEGAR  
HUFFMAN  
SELIGER  
WHITMIRE  
WILLIAMS

On the part of the Senate

FLETCHER  
DRIVER  
LAVENDER  
DESHOTEL  
P. KING

On the part of the House

A BILL TO BE ENTITLED  
AN ACT

relating to the regulation of law enforcement officers by the Commission on Law Enforcement Officer Standards and Education.

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

SECTION 1. Subsection (c), Section 1701.055, Occupations Code, is amended to read as follows:

(c) Five members~~[, excluding ex officio members,]~~ constitute a quorum.

SECTION 2. Subsections (a) and (b), Section 1701.306, Occupations Code, are amended to read as follows:

(a) The commission may not issue a license to a person ~~[as an officer or county jailer]~~ unless the person is examined by:

(1) a licensed psychologist or by a psychiatrist who declares in writing that the person is in satisfactory psychological and emotional health to serve as the type of officer for which a license is sought; and

(2) a licensed physician who declares in writing that the person does not show any trace of drug dependency or illegal drug use after a ~~[physical examination,]~~ blood test~~[,]~~ or other medical test.

(b) An agency hiring a person for whom a license ~~[as an officer or county jailer]~~ is sought shall select the examining physician and the examining psychologist or psychiatrist. The agency shall prepare a report of each declaration required by Subsection (a) and shall maintain a copy of the report on file in a format readily accessible to the commission. A declaration is not public information.

SECTION 3. Subsection (e), Section 1701.310, Occupations Code, is amended to read as follows:

(e) A person trained and certified by the Texas Department of Criminal Justice to serve as a corrections officer in that agency's correctional institutions division is not required to complete the training requirements of this section to be appointed a part-time county jailer. Examinations under Section 1701.304 and psychological ~~[and physical]~~ examinations under Section 1701.306 apply.

SECTION 4. Section 1701.353, Occupations Code, is amended to read as follows:

Sec. 1701.353. CONTINUING EDUCATION PROCEDURES. (a) The commission by rule shall adopt procedures to:

(1) ensure the timely and accurate reporting by agencies and persons licensed under this chapter ~~[peace officers]~~ of information related to training programs offered under this subchapter, including procedures for creating training records for license holders ~~[individual peace officers]~~; and

(2) provide adequate notice to agencies and license holders ~~[peace officers]~~ of impending noncompliance with the training requirements of this subchapter so that the agencies and license holders ~~[peace officers]~~ may comply within the 24-month period or 48-month period, as appropriate.

(b) The commission shall require agencies to report to the commission in a timely manner the reasons that a license holder ~~[peace officer]~~ is in noncompliance after the agency receives notice by the commission of the license holder's ~~[peace officer's]~~ noncompliance. The commission shall, following receipt of an agency's report or on a determination that the agency has failed to report in a timely manner, notify the license holder ~~[peace officer]~~ by certified mail of the reasons the license holder ~~[peace officer]~~ is in noncompliance and that the commission at the request of the license holder ~~[peace officer]~~ will hold a hearing as provided by this subsection if the license holder ~~[peace officer]~~ fails to obtain the required training within 60 days after the date the license holder ~~[peace officer]~~ receives notice under this subsection. The commission shall conduct a hearing consistent with Section 1701.504 if the license holder ~~[peace officer]~~ claims that:

(1) mitigating circumstances exist; or

(2) the license holder ~~[peace officer]~~ failed to complete the required training because the license holder's ~~[peace officer's]~~ employing agency did not provide an adequate opportunity for the license holder ~~[peace officer]~~ to attend the required training course.

SECTION 5. Subchapter H, Chapter 1701, Occupations Code, is amended by adding Section 1701.358 to read as follows:

Sec. 1701.358. INITIAL TRAINING AND CONTINUING EDUCATION FOR POLICE CHIEFS. A police chief shall complete the initial training and continuing education required under Section 96.641, Education Code.

SECTION 6. Subsection (d), Section 1701.055, Occupations Code, is repealed.

SECTION 7. The changes in law made by this Act to Section 1701.306, Occupations Code, apply to a license for which an application is filed on or after the effective date of this Act. A license application filed before the effective date of this Act is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

SECTION 8. This Act takes effect September 1, 2011.

The Conference Committee Report on **SB 542** was filed with the Secretary of the Senate on Saturday, May 28, 2011.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 2817**

Senator Duncan submitted the following Conference Committee Report:

Austin, Texas  
May 28, 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 2817** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

DUNCAN  
JACKSON  
WILLIAMS  
ELLIS  
VAN DE PUTTE  
On the part of the Senate

L. TAYLOR  
BURKETT  
P. KING  
BRANCH  
HERNANDEZ LUNA  
On the part of the House

The Conference Committee Report on **HB 2817** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 753**

Senator Zaffirini submitted the following Conference Committee Report:

Austin, Texas  
May 27, 2011

Honorable David Dewhurst  
President of the Senate

Honorable Joe Straus  
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 753** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

ZAFFIRINI  
RODRIGUEZ  
CARONA  
ELTIFE  
On the part of the Senate

RAYMOND  
GONZALEZ  
HUNTER  
On the part of the House

The Conference Committee Report on **HB 753** was filed with the Secretary of the Senate on Saturday, May 28, 2011.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 516**

Senator Patrick submitted the following Conference Committee Report:

Austin, Texas  
May 27, 2011

Honorable David Dewhurst  
President of the Senate

Honorable Joe Straus  
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 516** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

PATRICK  
HUFFMAN  
BIRDWELL  
HINOJOSA

FLETCHER  
BERMAN  
P. KING  
C. ANDERSON  
BONNEN

On the part of the Senate

On the part of the House

**A BILL TO BE ENTITLED  
AN ACT**

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.

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

SECTION 1. Subsection (a), Section 11.131, Tax Code, is amended by adding Subdivision (3) to read as follows:

(3) "Surviving spouse" means the individual who was married to a disabled veteran at the time of the veteran's death.

SECTION 2. Section 11.131, Tax Code, is amended by adding Subsections (c) and (d) to read as follows:

(c) The surviving spouse of a disabled veteran who qualified for an exemption under Subsection (b) when the disabled veteran died is entitled to an exemption from taxation of the total appraised value of the same property to which the disabled veteran's exemption applied if:

(1) the surviving spouse has not remarried since the death of the disabled veteran; and

(2) the property:

(A) was the residence homestead of the surviving spouse when the disabled veteran died; and

(B) remains the residence homestead of the surviving spouse.

(d) If a surviving spouse who qualifies for an exemption under Subsection (c) subsequently qualifies a different property as the surviving spouse's residence homestead, the surviving spouse is entitled to an exemption from taxation of the subsequently qualified homestead in an amount equal to the dollar amount of the exemption from taxation of the former homestead under Subsection (c) in the last year in which the surviving spouse received an exemption under that subsection for that homestead if the surviving spouse has not remarried since the death of the disabled veteran. The surviving spouse is entitled to receive from the chief appraiser of the appraisal district in which the former residence homestead was located a written certificate providing the information necessary to determine the amount of the exemption to which the surviving spouse is entitled on the subsequently qualified homestead.

SECTION 3. Subsection (a), Section 11.431, Tax Code, is amended to read as follows:

(a) The chief appraiser shall accept and approve or deny an application for a residence homestead exemption, including an ~~[a disabled veteran residence homestead]~~ exemption under Section 11.131 for the residence homestead of a disabled veteran or the surviving spouse of a disabled veteran, after the deadline for filing it has passed if it is filed not later than one year after the delinquency date for the taxes on the homestead.

SECTION 4. Section 11.131, Tax Code, as amended by this Act, applies only to a tax year beginning on or after January 1, 2012.

SECTION 5. This Act takes effect January 1, 2012, but only if the constitutional amendment proposed by the 82nd Legislature, Regular Session, 2011, authorizing the legislature to provide for an exemption from ad valorem taxation of all or part of the market value of the residence homestead of the surviving spouse of a 100 percent or totally disabled veteran is approved by the voters. If that amendment is not approved by the voters, this Act has no effect.

The Conference Committee Report on **SB 516** was filed with the Secretary of the Senate on Saturday, May 28, 2011.

### **CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1103**

Senator Ellis submitted the following Conference Committee Report:

Austin, Texas  
May 27, 2011

Honorable David Dewhurst  
President of the Senate

Honorable Joe Straus  
Speaker of the House of Representatives



Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 1103** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

ELLIS  
WHITMIRE  
LUCIO  
SELIGER  
HUFFMAN

On the part of the Senate

LUCIO  
PENA  
SCOTT  
THOMPSON  
WOOLLEY

On the part of the House

The Conference Committee Report on **HB 1103** was filed with the Secretary of the Senate on Saturday, May 28, 2011.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 1600**

Senator Whitmire submitted the following Conference Committee Report:

Austin, Texas  
May 27, 2011

Honorable David Dewhurst  
President of the Senate

Honorable Joe Straus  
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 1600** 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.

WHITMIRE  
GALLEGOS  
HINOJOSA  
HUFFMAN  
NELSON

On the part of the Senate

P. KING  
BECK  
FLETCHER

On the part of the House

**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 has full-time employment as a peace officer 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) is employed 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) is not in the employ of another peace officer;

(C) is not a reserve peace officer; and

(D) works 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 Conference Committee Report on **SB 1600** was filed with the Secretary of the Senate on Saturday, May 28, 2011.

### CONFERENCE COMMITTEE REPORT ON HOUSE BILL 3109

Senator Seliger submitted the following Conference Committee Report:

Austin, Texas  
May 28, 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 3109** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

SELIGER  
DUNCAN  
ELTIFE  
URESTI  
HINOJOSA  
On the part of the Senate

CRADDICK  
DARBY  
LEWIS  
S. KING  
PARKER  
On the part of the House

The Conference Committee Report on **HB 3109** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 414**

Senator Hegar submitted the following Conference Committee Report:

Austin, Texas  
May 28, 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 414** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

HEGAR  
SELIGER  
ESTES  
JACKSON  
HINOJOSA  
On the part of the Senate

AYCOCK  
S. MILLER  
D. HOWARD  
LANDTROOP  
GEREN  
On the part of the House

The Conference Committee Report on **HB 414** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 1400**

Senator West submitted the following Conference Committee Report:

Austin, Texas  
May 27, 2011

Honorable David Dewhurst  
President of the Senate

Honorable Joe Straus  
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 1400** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

WEST  
NICHOLS  
SHAPIRO  
WATSON  
WENTWORTH

ELKINS  
ANCHIA  
BONNEN  
T. KING

On the part of the Senate

On the part of the House

The Conference Committee Report on **HB 1400** was filed with the Secretary of the Senate on Saturday, May 28, 2011.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 3246**

Senator West submitted the following Conference Committee Report:

Austin, Texas  
May 27, 2011

Honorable David Dewhurst  
President of the Senate

Honorable Joe Straus  
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 3246** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

WEST  
NICHOLS  
SHAPIRO  
WATSON  
WENTWORTH

ELKINS  
JACKSON  
T. KING  
D. MILLER  
PAXTON

On the part of the Senate

On the part of the House

The Conference Committee Report on **HB 3246** was filed with the Secretary of the Senate on Saturday, May 28, 2011.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 3275**

Senator Ellis submitted the following Conference Committee Report:

Austin, Texas  
May 28, 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 3275** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

ELLIS  
WEST  
JACKSON  
WATSON

COLEMAN  
Y. DAVIS  
J. DAVIS  
MURPHY  
HUBERTY

On the part of the Senate

On the part of the House

The Conference Committee Report on **HB 3275** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 660**

Senator Hinojosa submitted the following Conference Committee Report:

Austin, Texas  
May 28, 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 660** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

HINOJOSA  
DUNCAN  
FRASER  
HEGAR  
WHITMIRE

RITTER  
T. KING  
KEFFER

On the part of the Senate

On the part of the House

**A BILL TO BE ENTITLED  
AN ACT**

relating to the review and functions of the Texas Water Development Board, including the functions of the board and related entities in connection with the process for establishing and appealing desired future conditions in a groundwater management area.

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

SECTION 1. SECTION 6.013, Water Code, is amended to read as follows:

Sec. 6.013. SUNSET PROVISION. The Texas Water Development Board is subject to review under Chapter 325, Government Code (Texas Sunset Act), but is not abolished under that chapter. The board shall be reviewed during the period in which state agencies abolished in 2023 [~~2011~~] and every 12th year after 2023 [~~2011~~] are reviewed.

SECTION 2. Subchapter D, Chapter 6, Water Code, is amended by adding Sections 6.113, 6.114, and 6.115 to read as follows:

Sec. 6.113. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION. (a) The board shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of board rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the board's jurisdiction.

(b) The board's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The board shall:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) provide training as needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures.

Sec. 6.114. FINANCIAL ASSISTANCE PROGRAMS: DEFAULT, REMEDIES, AND ENFORCEMENT. (a) In this section:

(1) "Default" means:

(A) default in payment of the principal of or interest on bonds, securities, or other obligations purchased or acquired by the board;

(B) failure to perform any covenant related to a bond, security, or other obligation purchased or acquired by the board;

(C) a failure to perform any of the terms of a loan, grant, or other financing agreement; or

(D) any other failure to perform an obligation, breach of a term of an agreement, or default as provided by any proceeding or agreement evidencing an obligation or agreement of a recipient, beneficiary, or guarantor of financial assistance provided by the board.

(2) "Financial assistance program recipient" means a recipient or beneficiary of funds administered by the board under this code, including a borrower, grantee, guarantor, or other beneficiary.

(b) In the event of a default and on request by the board, the attorney general shall seek:

(1) a writ of mandamus to compel a financial assistance program recipient or the financial assistance program recipient's officers, agents, and employees to cure the default; and

(2) any other legal or equitable remedy the board and the attorney general consider necessary and appropriate.

(c) A proceeding authorized by this section shall be brought and venue is in a district court in Travis County.

(d) In a proceeding under this section, the attorney general may recover reasonable attorney's fees, investigative costs, and court costs incurred on behalf of the state in the proceeding in the same manner as provided by general law for a private litigant.

Sec. 6.115. RECEIVERSHIP. (a) In this section, "financial assistance program recipient" has the meaning assigned by Section 6.114.

(b) In addition to the remedies available under Section 6.114, at the request of the board, the attorney general shall bring suit in a district court in Travis County for the appointment of a receiver to collect the assets and carry on the business of a financial assistance program recipient if:

(1) the action is necessary to cure a default by the recipient; and

(2) the recipient is not:

(A) a municipality or county; or

(B) a district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution.

(c) The court shall vest a receiver appointed by the court with any power or duty the court finds necessary to cure the default, including the power or duty to:

(1) perform audits;

(2) raise wholesale or retail water or sewer rates or other fees;

(3) fund reserve accounts;

(4) make payments of the principal of or interest on bonds, securities, or other obligations purchased or acquired by the board; and

(5) take any other action necessary to prevent or to remedy the default.

(d) The receiver shall execute a bond in an amount to be set by the court to ensure the proper performance of the receiver's duties.

(e) After appointment and execution of bond, the receiver shall take possession of the books, records, accounts, and assets of the financial assistance program recipient specified by the court. Until discharged by the court, the receiver shall perform the duties that the court directs and shall strictly observe the final order involved.

(f) On a showing of good cause by the financial assistance program recipient, the court may dissolve the receivership.

SECTION 3. Section 6.154, Water Code, is amended to read as follows:

Sec. 6.154. COMPLAINT FILE. (a) The board shall maintain a system to promptly and efficiently act on complaints ~~[file on each written complaint]~~ filed with the board. The board shall maintain information about parties to the complaint. ~~[file must include:~~

- ~~(1) the name of the person who filed the complaint;~~
- ~~(2) the date the complaint is received by the board;~~
- ~~(3) the subject matter of the complaint;~~
- ~~(4) the name of each person contacted in relation to the complaint;~~
- ~~(5) a summary of the results of the review or investigation of the complaint, and the complaint's disposition]; and~~
- ~~(6) an explanation of the reason the file was closed, if the agency closed the file without taking action other than to investigate the complaint].~~

(b) The board shall make information available describing its ~~[provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the board's policies and]~~ procedures for ~~[relating to]~~ complaint investigation and resolution.

SECTION 4. Section 6.155, Water Code, is amended to read as follows:

Sec. 6.155. NOTICE OF COMPLAINT. The board~~[at least quarterly until final disposition of the complaint]~~ shall periodically notify the ~~[person filing the]~~ complaint parties ~~[and each person who is a subject of the complaint]~~ of the status of the complaint until final disposition ~~[investigation unless the notice would jeopardize an undercover investigation].~~

SECTION 5. Section 11.1271, Water Code, is amended by amending Subsection (f) and adding Subsection (g) to read as follows:

(f) The commission shall adopt rules:

(1) establishing criteria and deadlines for submission of water conservation plans, including any required amendments, and for submission of implementation reports; and

(2) requiring the methodology and guidance for calculating water use and conservation developed under Section 16.403 to be used in the water conservation plans required by this section.

(g) At a minimum, rules adopted under Subsection (f)(2) must require an entity to report the most detailed level of municipal water use data currently available to the entity. The commission may not adopt a rule that requires an entity to report municipal water use data that is more detailed than the entity's billing system is capable of producing.

SECTION 6. Section 16.021, Water Code, is amended by amending Subsections (c), (d), and (e) and adding Subsections (d-1) and (g) to read as follows:

(c) The executive administrator shall designate the director of the Texas Natural Resources Information System to serve as the state geographic information officer. The state geographic information officer shall:

(1) coordinate the acquisition and use of high-priority imagery and data sets;  
(2) establish, support, and disseminate authoritative statewide geographic data sets;

(3) support geographic data needs of emergency management responders during emergencies;



(4) monitor trends in geographic information technology; and

(5) support public access to state geographic data and resources [The Texas Geographic Information Council (TGIC) is created to provide strategic planning and coordination in the acquisition and use of geo-spatial data and related technologies in the State of Texas. The executive administrator and the executive director of the Department of Information Resources shall designate entities to be members of the TGIC. The chief administrative officer of each member entity shall select one representative to serve on the TGIC. The duties of the TGIC shall include providing guidance to the executive administrator in carrying out the executive administrator's duties under this section and guidance to the Department of Information Resources for development of rules related to statewide geo-spatial data and technology standards].

(d) Not later than December 1, 2016, and before the end of each successive five-year period after that date, the board shall submit to the governor, lieutenant governor, and speaker of the house of representatives a report that contains recommendations regarding:

(1) statewide geographic data acquisition needs and priorities, including updates on progress in maintaining the statewide digital base maps described by Subsection (e)(6);

(2) policy initiatives to address the acquisition, use, storage, and sharing of geographic data across the state;

(3) funding needs to acquire data, implement technologies, or pursue statewide policy initiatives related to geographic data; and

(4) opportunities for new initiatives to improve the efficiency, effectiveness, or accessibility of state government operations through the use of geographic data [Member entities of the TGIC that are state agencies shall, and member entities that are not state agencies may, provide information to the TGIC about their investments in geographic information and plans for its use. Not later than November 1 of each even-numbered year, the TGIC shall prepare and provide to the board, the Department of Information Resources, the governor, and the legislature a report that:

[(1) describes the progress made by each TGIC member entity toward achieving geographic information system goals and in implementing geographic information systems initiatives; and

[(2) recommends additional initiatives to improve the state's geographic information systems programs].

(d-1) The board shall consult with stakeholders in preparing the report required by Subsection (d).

(e) The [Under the guidance of the TGIC, the] executive administrator shall:

(1) further develop the Texas Natural Resources Information System by promoting and providing for effective acquisition, archiving, documentation, indexing, and dissemination of natural resource and related digital and nondigital data and information;

(2) obtain information in response to disagreements regarding names and name spellings for natural and cultural features in the state and provide this information to the Board on Geographic Names of the United States Department of the Interior;

(3) make recommendations to the Board on Geographic Names of the United States Department of the Interior for naming any natural or cultural feature subject to the limitations provided by Subsection (f);

(4) make recommendations to the Department of Information Resources to adopt and promote standards that facilitate sharing of digital natural resource data and related socioeconomic data among federal, state, and local governments and other interested parties;

(5) acquire and disseminate natural resource and related socioeconomic data describing the Texas-Mexico border region; and

(6) coordinate, conduct, and facilitate the development, maintenance, and use of mutually compatible statewide digital base maps depicting natural resources and man-made features.

(g) The board may establish one or more advisory committees to assist the board or the executive administrator in implementing this section, including by providing information in connection with the preparation of the report required by Subsection (d). In appointing members to an advisory committee, the board shall consider including representatives of:

(1) state agencies that are major users of geographic data;

(2) federal agencies;

(3) local governments; and

(4) the Department of Information Resources.

SECTION 7. Subsection (b), Section 16.023, Water Code, is amended to read as follows:

(b) The account may be appropriated only to the board to:

(1) develop, administer, and implement the strategic mapping program;

(2) provide grants to political subdivisions for projects related to the development, use, and dissemination of digital, geospatial information; and

(3) administer, implement, and operate other programs of the Texas Natural Resources Information System, including:

(A) the operation of a Texas-Mexico border region information center for the purpose of implementing Section 16.021(e)(5);

(B) the acquisition, storage, and distribution of historical maps, photographs, and paper map products;

(C) the maintenance and enhancement of information technology; and

(D) the production, storage, and distribution of other digital base maps, as determined by the executive administrator ~~[or a state agency that is a member of the Texas Geographic Information Council].~~

SECTION 8. Section 16.051, Water Code, is amended by adding Subsections (a-1) and (a-2) to read as follows:

(a-1) The state water plan must include:

(1) an evaluation of the state's progress in meeting future water needs, including an evaluation of the extent to which water management strategies and projects implemented after the adoption of the preceding state water plan have affected that progress; and

(2) an analysis of the number of projects included in the preceding state water plan that received financial assistance from the board.

(a-2) To assist the board in evaluating the state's progress in meeting future water needs, the board may obtain implementation data from the regional water planning groups.

SECTION 9. Subsections (c) and (e), Section 16.053, Water Code, are amended to read as follows:

(c) No later than 60 days after the designation of the regions under Subsection (b), the board shall designate representatives within each regional water planning area to serve as the initial coordinating body for planning. The initial coordinating body may then designate additional representatives to serve on the regional water planning group. The initial coordinating body shall designate additional representatives if necessary to ensure adequate representation from the interests comprising that region, including the public, counties, municipalities, industries, agricultural interests, environmental interests, small businesses, electric generating utilities, river authorities, water districts, and water utilities. The regional water planning group shall maintain adequate representation from those interests. In addition, the groundwater conservation districts located in each management area, as defined by Section 36.001, located in the regional water planning area shall appoint one representative of a groundwater conservation district located in the management area and in the regional water planning area to serve on the regional water planning group. In addition, representatives of the board, the Parks and Wildlife Department, and the Department of Agriculture shall serve as ex officio members of each regional water planning group.

(e) Each regional water planning group shall submit to the development board a regional water plan that:

(1) is consistent with the guidance principles for the state water plan adopted by the development board under Section 16.051(d);

(2) provides information based on data provided or approved by the development board in a format consistent with the guidelines provided by the development board under Subsection (d);

(2-a) is consistent with the desired future conditions adopted under Section 36.108 for the relevant aquifers located in the regional water planning area as of the date the board most recently adopted a state water plan under Section 16.051 or, at the option of the regional water planning group, established subsequent to the adoption of the most recent plan;

(3) identifies:

(A) each source of water supply in the regional water planning area, including information supplied by the executive administrator on the amount of modeled ~~managed~~ available groundwater in accordance with the guidelines provided by the development board under Subsections (d) and (f);

(B) factors specific to each source of water supply to be considered in determining whether to initiate a drought response;

(C) actions to be taken as part of the response; and

(D) existing major water infrastructure facilities that may be used for interconnections in the event of an emergency shortage of water;

(4) has specific provisions for water management strategies to be used during a drought of record;

(5) includes but is not limited to consideration of the following:

(A) any existing water or drought planning efforts addressing all or a portion of the region;

(B) approved groundwater conservation district management plans and other plans submitted under Section 16.054;

(C) all potentially feasible water management strategies, including but not limited to improved conservation, reuse, and management of existing water supplies, conjunctive use, acquisition of available existing water supplies, and development of new water supplies;

(D) protection of existing water rights in the region;

(E) opportunities for and the benefits of developing regional water supply facilities or providing regional management of water supply facilities;

(F) appropriate provision for environmental water needs and for the effect of upstream development on the bays, estuaries, and arms of the Gulf of Mexico and the effect of plans on navigation;

(G) provisions in Section 11.085(k)(1) if interbasin transfers are contemplated;

(H) voluntary transfer of water within the region using, but not limited to, regional water banks, sales, leases, options, subordination agreements, and financing agreements; and

(I) emergency transfer of water under Section 11.139, including information on the part of each permit, certified filing, or certificate of adjudication for nonmunicipal use in the region that may be transferred without causing unreasonable damage to the property of the nonmunicipal water rights holder;

(6) identifies river and stream segments of unique ecological value and sites of unique value for the construction of reservoirs that the regional water planning group recommends for protection under Section 16.051;

(7) assesses the impact of the plan on unique river and stream segments identified in Subdivision (6) if the regional water planning group or the legislature determines that a site of unique ecological value exists; and

(8) describes the impact of proposed water projects on water quality.

SECTION 10. Section 16.402, Water Code, is amended by amending Subsection (e) and adding Subsection (f) to read as follows:

(e) The board and commission jointly shall adopt rules:

(1) identifying the minimum requirements and submission deadlines for the annual reports required by Subsection (b); ~~and~~

(2) requiring the methodology and guidance for calculating water use and conservation developed under Section 16.403 to be used in the reports required by Subsection (b); and

(3) providing for the enforcement of this section and rules adopted under this section.

(f) At a minimum, rules adopted under Subsection (e)(2) must require an entity to report the most detailed level of municipal water use data currently available to the entity. The board and commission may not adopt a rule that requires an entity to report municipal water use data that is more detailed than the entity's billing system is capable of producing.

SECTION 11. Subchapter K, Chapter 16, Water Code, is amended by adding Sections 16.403 and 16.404 to read as follows:

Sec. 16.403. WATER USE REPORTING. (a) The board and the commission, in consultation with the Water Conservation Advisory Council, shall develop a uniform, consistent methodology and guidance for calculating water use and conservation to be used by a municipality or water utility in developing water conservation plans and preparing reports required under this code. At a minimum, the methodology and guidance must include:

(1) a method of calculating water use for each sector of water users served by a municipality or water utility;

(2) a method of classifying water users within sectors;

(3) a method of calculating water use in the residential sector that includes both single-family and multifamily residences, in gallons per capita per day;

(4) a method of calculating water use in the industrial, agricultural, commercial, and institutional sectors that is not dependent on a municipality's population or the number of customers served by a water utility; and

(5) guidelines on the use of service populations by a municipality or water utility in developing a per-capita-based method of calculation, including guidance on the use of permanent and temporary populations in making calculations.

(b) The board or the commission, as appropriate, shall use the methodology and guidance developed under Subsection (a) in evaluating a water conservation plan, program of water conservation, survey, or other report relating to water conservation submitted to the board or the commission under:

(1) Section 11.1271;

(2) Section 13.146;

(3) Section 15.106;

(4) Section 15.607;

(5) Section 15.975;

(6) Section 15.995;

(7) Section 16.012(m);

(8) Section 16.402;

(9) Section 17.125;

(10) Section 17.277;

(11) Section 17.857; or

(12) Section 17.927.

(c) The board, in consultation with the commission and the Water Conservation Advisory Council, shall develop a data collection and reporting program for municipalities and water utilities with more than 3,300 connections.

(d) Not later than January 1 of each odd-numbered year, the board shall submit to the legislature a report that includes the most recent data relating to:

(1) statewide water usage in the residential, industrial, agricultural, commercial, and institutional sectors; and

(2) the data collection and reporting program developed under Subsection (c).

(e) Data included in a water conservation plan or report required under this code and submitted to the board or commission must be interpreted in the context of variations in local water use. The data may not be the only factor considered by the commission in determining the highest practicable level of water conservation and efficiency achievable in the jurisdiction of a municipality or water utility for purposes of Section 11.085(l).

Sec. 16.404. RULES AND STANDARDS. The commission and the board, as appropriate, shall adopt rules and standards as necessary to implement this subchapter.

SECTION 12. Section 17.003, Water Code, is amended by adding Subsections (c), (d), (e), and (f) to read as follows:

(c) Water financial assistance bonds that have been authorized but have not been issued are not considered to be state debt payable from the general revenue fund for purposes of Section 49-j, Article III, Texas Constitution, until the legislature makes an appropriation from the general revenue fund to the board to pay the debt service on the bonds.

(d) In requesting approval for the issuance of bonds under this chapter, the executive administrator shall certify to the bond review board whether the bonds are reasonably expected to be paid from:

(1) the general revenues of the state; or

(2) revenue sources other than the general revenues of the state.

(e) The bond review board shall verify whether debt service on bonds to be issued by the board under this chapter is state debt payable from the general revenues of the state, in accordance with the findings made by the board in the resolution authorizing the issuance of the bonds and the certification provided by the executive administrator under Subsection (d).

(f) Bonds issued under this chapter that are designed to be paid from the general revenues of the state shall cease to be considered bonds payable from those revenues if:

(1) the bonds are backed by insurance or another form of guarantee that ensures payment from a source other than the general revenues of the state; or

(2) the board demonstrates to the satisfaction of the bond review board that the bonds no longer require payment from the general revenues of the state and the bond review board so certifies to the Legislative Budget Board.

SECTION 13. Section 17.9022, Water Code, is amended to read as follows:

Sec. 17.9022. FINANCING OF GRANT OR LOAN FOR POLITICAL SUBDIVISION; DEFAULT; VENUE. ~~[(a)]~~ The board may make a loan or grant available to a political subdivision in any manner the board considers economically feasible, including purchase of bonds or securities of the political subdivision or execution of a loan or grant agreement with the political subdivision. The board may not purchase bonds or securities that have not been approved by the attorney general and registered by the comptroller.

~~[(b) In the event of a default in payment of the principal of or interest on bonds or securities purchased by the board, or any other default as defined in the proceedings or indentures authorizing the issuance of bonds, or a default of any of the terms of a loan agreement, the attorney general shall seek a writ of mandamus or other legal remedy to compel the political subdivision or its officers, agents, and employees~~

~~to cure the default by performing the duties they are legally obligated to perform. The proceedings shall be brought and venue is in a district court in Travis County. This subsection is cumulative of any other rights or remedies to which the board may be entitled.]~~

SECTION 14. Section 36.001, Water Code, is amended by adding Subdivision (30) to read as follows:

(30) "Desired future condition" means a quantitative description, adopted in accordance with Section 36.108, of the desired condition of the groundwater resources in a management area at one or more specified future times.

SECTION 15. Section 36.063, Water Code, is amended to read as follows:

Sec. 36.063. NOTICE OF MEETINGS. (a) Except as provided by Subsections (b) and (c), notice ~~[Notice]~~ of meetings of the board shall be given as set forth in the Open Meetings Act, Chapter 551, Government Code. Neither failure to provide notice of a regular meeting nor an insubstantial defect in notice of any meeting shall affect the validity of any action taken at the meeting.

(b) At least 10 days before a hearing under Section 36.108(d-2) or a meeting at which a district will adopt a desired future condition under Section 36.108(d-4), the board must post notice that includes:

(1) the proposed desired future conditions and a list of any other agenda items;

(2) the date, time, and location of the meeting or hearing;

(3) the name, telephone number, and address of the person to whom questions or requests for additional information may be submitted;

(4) the names of the other districts in the district's management area; and

(5) information on how the public may submit comments.

(c) Except as provided by Subsection (b), notice of a hearing described by Subsection (b) must be provided in the manner prescribed for a rulemaking hearing under Section 36.101(d).

SECTION 16. Subsections (a) and (e), Section 36.1071, Water Code, are amended to read as follows:

(a) Following notice and hearing, the district shall, in coordination with surface water management entities on a regional basis, develop a comprehensive management plan which addresses the following management goals, as applicable:

(1) providing the most efficient use of groundwater;

(2) controlling and preventing waste of groundwater;

(3) controlling and preventing subsidence;

(4) addressing conjunctive surface water management issues;

(5) addressing natural resource issues;

(6) addressing drought conditions;

(7) addressing conservation, recharge enhancement, rainwater harvesting, precipitation enhancement, or brush control, where appropriate and cost-effective; and

(8) addressing ~~[in a quantitative manner]~~ the desired future conditions adopted by the district under Section 36.108 ~~[of the groundwater resources]~~.

(e) In the management plan described under Subsection (a), the district shall:

(1) identify the performance standards and management objectives under which the district will operate to achieve the management goals identified under Subsection (a);

(2) specify, in as much detail as possible, the actions, procedures, performance, and avoidance that are or may be necessary to effect the plan, including specifications and proposed rules;

(3) include estimates of the following:

(A) modeled ~~managed~~ available groundwater in the district based on the desired future condition established under Section 36.108;

(B) the amount of groundwater being used within the district on an annual basis;

(C) the annual amount of recharge from precipitation, if any, to the groundwater resources within the district;

(D) for each aquifer, the annual volume of water that discharges from the aquifer to springs and any surface water bodies, including lakes, streams, and rivers;

(E) the annual volume of flow into and out of the district within each aquifer and between aquifers in the district, if a groundwater availability model is available;

(F) the projected surface water supply in the district according to the most recently adopted state water plan; and

(G) the projected total demand for water in the district according to the most recently adopted state water plan; and

(4) consider the water supply needs and water management strategies included in the adopted state water plan.

SECTION 17. Subchapter D, Chapter 36, Water Code, is amended by amending Section 36.108 and adding Sections 36.1081 through 36.1086 to read as follows:

Sec. 36.108. JOINT PLANNING IN MANAGEMENT AREA. (a) In this section:

(1) "Development ~~[-"development]~~ board" means the Texas Water Development Board.

(2) "District representative" means the presiding officer or the presiding officer's designee for any district located wholly or partly in the management area.

(b) If two or more districts are located within the boundaries of the same management area, each district shall prepare a comprehensive management plan as required by Section 36.1071 covering that district's respective territory. On completion and approval of the plan as required by Section 36.1072, each district shall forward a copy of the new or revised management plan to the other districts in the management area. The boards of the districts shall consider the plans individually and shall compare them to other management plans then in force in the management area.

(c) The district representatives ~~[presiding officer, or the presiding officer's designee, of each district located in whole or in part in the management area]~~ shall meet at least annually to conduct joint planning with the other districts in the



management area and to review the management plans, the ~~[and]~~ accomplishments of ~~[for]~~ the management area, and proposals to adopt new or amend existing desired future conditions. In reviewing the management plans, the districts shall consider:

(1) the goals of each management plan and its impact on planning throughout the management area;

(2) the effectiveness of the measures established by each management plan for conserving and protecting groundwater and preventing waste, and the effectiveness of these measures in the management area generally;

(3) any other matters that the boards consider relevant to the protection and conservation of groundwater and the prevention of waste in the management area; and

(4) the degree to which each management plan achieves the desired future conditions established during the joint planning process.

(d) Not later than September 1, 2010, and every five years thereafter, the districts shall consider groundwater availability models and other data or information for the management area and shall propose for adoption ~~[establish]~~ desired future conditions for the relevant aquifers within the management area. Before voting on the proposed ~~[In establishing the]~~ desired future conditions of the aquifers under Subsection (d-2) ~~[this section]~~, the districts shall consider:

(1) aquifer uses or conditions within the management area, including conditions that differ substantially from one geographic area to another;

(2) the water supply needs and water management strategies included in the state water plan;

(3) hydrological conditions, including for each aquifer in the management area the total estimated recoverable storage as provided by the executive administrator, and the average annual recharge, inflows, and discharge;

(4) other environmental impacts, including impacts on spring flow and other interactions between groundwater and surface water;

(5) the impact on subsidence;

(6) socioeconomic impacts reasonably expected to occur;

(7) the impact on the interests and rights in private property, including ownership and the rights of management area landowners and their lessees and assigns in groundwater as recognized under Section 36.002;

(8) the feasibility of achieving the desired future condition; and

(9) any other information relevant to the specific desired future conditions ~~[uses or conditions of an aquifer within the management area that differ substantially from one geographic area to another]~~.

(d-1) The districts may establish different desired future conditions for:

(1) each aquifer, subdivision of an aquifer, or geologic strata located in whole or in part within the boundaries of the management area; or

(2) each geographic area overlying an aquifer in whole or in part or subdivision of an aquifer within the boundaries of the management area.

(d-2) ~~(d-1)~~ The desired future conditions proposed ~~[established]~~ under Subsection (d) must provide a balance between the highest practicable level of groundwater production and the conservation, preservation, protection, recharging, and prevention of waste of groundwater and control of subsidence in the management area. This subsection does not prohibit the establishment of desired future conditions

that provide for the reasonable long-term management of groundwater resources consistent with the management goals under Section 36.1071(a). The desired future conditions proposed under Subsection (d) must be approved [adopted] by a two-thirds vote of all the district representatives for distribution to the districts in the management area. A period of not less than 90 days for public comments begins on the day the proposed desired future conditions are mailed to the districts. During the public comment period and after posting notice as required by Section 36.063, each district shall hold a public hearing on any proposed desired future conditions relevant to that district. During the public comment period, the district shall make available in its office a copy of the proposed desired future conditions and any supporting materials, such as the documentation of factors considered under Subsection (d) and groundwater availability model run results. After the public hearing, the district shall compile for consideration at the next joint planning meeting a summary of relevant comments received, any suggested revisions to the proposed desired future conditions, and the basis for the revisions [present at a meeting:

~~[(1) at which at least two thirds of the districts located in whole or in part in the management area have a voting representative in attendance; and~~

~~[(2) for which all districts located in whole or in part in the management area provide public notice in accordance with Chapter 551, Government Code.~~

~~[(d-2) Each district in the management area shall ensure that its management plan contains goals and objectives consistent with achieving the desired future conditions of the relevant aquifers as adopted during the joint planning process].~~

(d-3) After the earlier of the date on which all the districts have submitted their district summaries or the expiration of the public comment period under Subsection (d-2), the district representatives shall reconvene to review the reports, consider any district's suggested revisions to the proposed desired future conditions, and finally adopt the desired future conditions for the management area. The desired future conditions must be adopted as a resolution by a two-thirds vote of all the district representatives. The district representatives shall produce a desired future conditions explanatory report for the management area and submit to the development board and each district in the management area proof that notice was posted for the joint planning meeting, a copy of the resolution, and a copy of the explanatory report. The report must:

(1) identify each desired future condition;

(2) provide the policy and technical justifications for each desired future condition;

(3) include documentation that the factors under Subsection (d) were considered by the districts and a discussion of how the adopted desired future conditions impact each factor;

(4) list other desired future condition options considered, if any, and the reasons why those options were not adopted; and

(5) discuss reasons why recommendations made by advisory committees and relevant public comments received by the districts were or were not incorporated into the desired future conditions.

(d-4) As soon as possible after a district receives the desired future conditions resolution and explanatory report under Subsection (d-3), the district shall adopt the desired future conditions in the resolution and report that apply to the district.

(e) Except as provided by this section, a [A] joint meeting under this section must be held in accordance with Chapter 551, Government Code. Each district shall comply with Chapter 552, Government Code. The district representatives may elect one district to be responsible for providing the notice of a joint meeting that this section would otherwise require of each district in the management area. Notice of a joint [the] meeting must be provided at least 10 days before the date of the meeting by:

- (1) providing notice to the secretary of state;
- (2) providing notice to the county clerk of each county located wholly or partly in a district that is located wholly or partly in the management area; and
- (3) posting notice at a place readily accessible to the public at the district office of each district located wholly or partly in the management area.

(e-1) The secretary of state and the county clerk of each county described by Subsection (e) shall post notice of the meeting in the manner provided by Section 551.053, Government Code.

(e-2) Notice of a joint meeting must include:

- (1) the date, time, and location of the meeting;
- (2) a summary of any action proposed to be taken;
- (3) the name of each district located wholly or partly in the management area; and
- (4) the name, telephone number, and address of one or more persons to whom questions, requests for additional information, or comments may be submitted.

(e-3) The failure or refusal of one or more districts to post notice for a joint meeting under Subsection (e)(3) does not invalidate an action taken at the joint meeting [shall be given in accordance with the requirements for notice of district board of directors meetings under that Act].

Sec. 36.1081. TECHNICAL STAFF AND SUBCOMMITTEES FOR JOINT PLANNING. (a) On request, the commission and the Texas Water Development Board shall make technical staff available to serve in a nonvoting advisory capacity to assist with the development of desired future conditions during the joint planning process under Section 36.108.

(b) During the joint planning process under Section 36.108, the district representatives may appoint and convene nonvoting advisory subcommittees who represent social, governmental, environmental, or economic interests to assist in the development of desired future conditions.

Sec. 36.1082. PETITION FOR INQUIRY. (a) In this section, "affected person" means, with respect to a management area:

- (1) an owner of land in the management area;
- (2) a district in or adjacent to the management area;
- (3) a regional water planning group with a water management strategy in the management area;
- (4) a person who holds or is applying for a permit from a district in the management area;

(5) a person who has groundwater rights in the management area; or

(6) any other person defined as affected by commission rule.

(b) An affected person ~~[(f) A district or person with a legally defined interest in the groundwater within the management area]~~ may file a petition with the commission requesting an inquiry for any of the following reasons:

(1) a district fails to submit its management plan to the executive administrator;

(2) ~~[(f)]~~ a district fails ~~[or districts refused]~~ to participate ~~[join]~~ in the joint planning process under Section 36.108;

(3) a district fails to adopt rules;

(4) a district fails to adopt the applicable desired future conditions adopted by the management area at a joint meeting;

(5) a district fails to update its management plan before the second anniversary of the adoption of desired future conditions by the management area;

(6) a district fails to update its rules to implement the applicable desired future conditions before the first anniversary of the date it updated its management plan with the adopted desired future conditions;

(7) ~~[or the process failed to result in adequate planning, including the establishment of reasonable future desired conditions of the aquifers, and the petition provides evidence that:~~

~~[(1) a district in the groundwater management area has failed to adopt rules;~~

~~[(2)] the rules adopted by a district are not designed to achieve the desired future conditions adopted by [condition of the groundwater resources in] the [groundwater] management area [established] during the joint planning process;~~

~~(8) ~~[(3)]~~ the groundwater in the management area is not adequately protected by the rules adopted by a district; or~~

~~(9) ~~[(4)]~~ the groundwater in the [groundwater] management area is not adequately protected due to the failure of a district to enforce substantial compliance with its rules.~~

(c) ~~[(g)]~~ Not later than the 90th day after the date the petition is filed, the commission shall review the petition and either:

(1) dismiss the petition if the commission finds that the evidence is not adequate to show that any of the conditions alleged in the petition exist; or

(2) select a review panel as provided in Subsection (d) ~~[(h)]~~.

(d) ~~[(h)]~~ If the petition is not dismissed under Subsection (c) ~~[(g)]~~, the commission shall appoint a review panel consisting of a chairman and four other members. A director or general manager of a district located outside the ~~[groundwater]~~ management area that is the subject of the petition may be appointed to the review panel. The commission may not appoint more than two members of the review panel from any one district. The commission also shall appoint a disinterested person to serve as a nonvoting recording secretary for the review panel. The recording secretary may be an employee of the commission. The recording secretary shall record and document the proceedings of the panel.

(e) ~~[(i)]~~ Not later than the 120th day after appointment, the review panel shall review the petition and any evidence relevant to the petition and, in a public meeting, consider and adopt a report to be submitted to the commission. The commission may

direct the review panel to conduct public hearings at a location in the [groundwater] management area to take evidence on the petition. The review panel may attempt to negotiate a settlement or resolve the dispute by any lawful means.

(f) ~~(f)~~ In its report, the review panel shall include:

- (1) a summary of all evidence taken in any hearing on the petition;
- (2) a list of findings and recommended actions appropriate for the commission to take and the reasons it finds those actions appropriate; and
- (3) any other information the panel considers appropriate.

(g) ~~(g)~~ The review panel shall submit its report to the commission. The commission may take action under Section 36.3011.

Sec. 36.1083. APPEAL OF DESIRED FUTURE CONDITIONS. (a) In this section, "development board" means the Texas Water Development Board.

(b) ~~(b)~~ A person with a legally defined interest in the groundwater in the [groundwater] management area, a district in or adjacent to the [groundwater] management area, or a regional water planning group for a region in the [groundwater] management area may file a petition with the development board appealing the approval of the desired future conditions of the groundwater resources established under this section. The petition must provide evidence that the districts did not establish a reasonable desired future condition of the groundwater resources in the [groundwater] management area.

(c) ~~(c)~~ The development board shall review the petition and any evidence relevant to the petition. The development board shall hold at least one hearing at a central location in the management area to take testimony on the petition. The development board may delegate responsibility for a hearing to the executive administrator or to a person designated by the executive administrator. If the development board finds that the conditions require revision, the development board shall submit a report to the districts that includes a list of findings and recommended revisions to the desired future conditions of the groundwater resources.

(d) ~~(d)~~ The districts shall prepare a revised plan in accordance with development board recommendations and hold, after notice, at least one public hearing at a central location in the [groundwater] management area. After consideration of all public and development board comments, the districts shall revise the conditions and submit the conditions to the development board for review.

Sec. 36.1084. MODELED AVAILABLE GROUNDWATER. (a) The Texas Water Development Board shall require the ~~(c) The~~ districts in a management area to ~~shall~~ submit to the executive administrator not later than the 60th day after the date on which the districts adopted desired future conditions under Section 36.108(d-3):

(1) the desired future conditions adopted ~~(established)~~ under Section 36.108;

(2) proof that notice was posted for the joint planning meeting; and

(3) the desired future conditions explanatory report ~~[this section to the executive administrator].~~

(b) The executive administrator shall provide each district and regional water planning group located wholly or partly in the management area with the modeled ~~[managed]~~ available groundwater in the management area based upon the desired future conditions adopted by the districts ~~[condition of the groundwater resources established under this section]~~.

Sec. 36.1085. MANAGEMENT PLAN GOALS AND OBJECTIVES. Each district in the management area shall ensure that its management plan contains goals and objectives consistent with achieving the desired future conditions of the relevant aquifers as adopted during the joint planning process.

Sec. 36.1086. JOINT EFFORTS BY DISTRICTS IN A MANAGEMENT AREA. ~~(p)~~ Districts located within the same ~~[groundwater]~~ management areas or in adjacent management areas may contract to jointly conduct studies or research, or to construct projects, under terms and conditions that the districts consider beneficial. These joint efforts may include studies of groundwater availability and quality, aquifer modeling, and the interaction of groundwater and surface water; educational programs; the purchase and sharing of equipment; and the implementation of projects to make groundwater available, including aquifer recharge, brush control, weather modification, desalination, regionalization, and treatment or conveyance facilities. The districts may contract under their existing authorizations including those of Chapter 791, Government Code, if their contracting authority is not limited by Sections 791.011(c)(2) and (d)(3) and Section 791.014, Government Code.

SECTION 18. Section 36.3011, Water Code, is amended to read as follows:

Sec. 36.3011. COMMISSION ACTION REGARDING ~~[FAILURE OF]~~ DISTRICT DUTIES ~~[TO CONDUCT JOINT PLANNING]~~. Not later than the 45th day after receiving the review panel's report under Section 36.1082 ~~[36.108]~~, the executive director or the commission shall take action to implement any or all of the panel's recommendations. The commission may take any action against a district it considers necessary in accordance with Section 36.303 if the commission finds that:

(1) the ~~[a]~~ district has failed to submit its management plan to the executive administrator;

(2) the district has failed to participate in the joint planning process under Section 36.108;

(3) the ~~[a]~~ district has failed to adopt rules;

(4) the district has failed to adopt the applicable desired future conditions adopted by the management area at a joint meeting;

(5) the district has failed to update its management plan before the second anniversary of the adoption of desired future conditions by the management area;

(6) the district has failed to update its rules to implement the applicable desired future conditions before the first anniversary of the date it updated its management plan with the adopted desired future conditions;

(7) ~~(3)~~ the rules adopted by the district are not designed to achieve the desired future conditions adopted by ~~[condition of the groundwater resources in]~~ the ~~[groundwater]~~ management area during the joint planning process; ~~[or]~~

(8) ~~(4)~~ the groundwater in the management area is not adequately protected by the rules adopted by the district; ~~[or]~~

(9) the groundwater in the management area is not adequately protected because of the district's failure to enforce substantial compliance with its rules.

SECTION 19. Sections 15.908 and 17.180, Water Code, are repealed.

SECTION 20. As soon as practicable after the effective date of this Act, groundwater conservation districts shall appoint initial representatives to regional water planning groups as required by Subsection (c), Section 16.053, Water Code, as amended by this Act.

SECTION 21. Not later than January 1, 2013:

(1) the Texas Commission on Environmental Quality shall adopt rules under Subsection (f), Section 11.1271, Water Code, as amended by this Act;

(2) the Texas Water Development Board and the Texas Commission on Environmental Quality jointly shall adopt rules under Subsection (e), Section 16.402, Water Code, as amended by this Act; and

(3) the Texas Water Development Board and the Texas Commission on Environmental Quality, in consultation with the Water Conservation Advisory Council, shall develop the water use and conservation calculation methodology and guidance and the data collection and reporting program required by Subsections (a) and (c), Section 16.403, Water Code, as added by this Act.

SECTION 22. Not later than January 1, 2015, the Texas Water Development Board shall submit to the legislature the first report required by Subsection (d), Section 16.403, Water Code, as added by this Act.

SECTION 23. The notice provisions of Subsections (b) and (c), Section 36.063, Water Code, as added by this Act, apply only to a meeting or hearing of a groundwater conservation district or a joint planning meeting of groundwater conservation districts held on or after the effective date of this Act. A meeting or hearing held before the effective date of this Act is subject to the notice provisions in effect at the time of the meeting or hearing, and those provisions are continued in effect for that purpose.

SECTION 24. The requirement that a groundwater conservation district's management plan under Subsection (a), Section 36.1071, Water Code, as amended by this Act, include the desired future conditions adopted under Section 36.108, Water Code, as amended by this Act, for submission to the executive administrator of the Texas Water Development Board before the plan is considered administratively complete applies only to a district management plan submitted to the executive administrator on or after the effective date of this Act. A management plan submitted before the effective date of this Act is governed by the law in effect on the date the plan was submitted, and that law is continued in effect for that purpose.

SECTION 25. The procedures for the adoption and reporting of desired future conditions of groundwater resources in a management area under Section 36.108, Water Code, as amended by this Act, and Section 36.1084, Water Code, as added by this Act, apply only to the adoption of desired future conditions that occurs on or after the effective date of this Act. Desired future conditions adopted before the effective date of this Act are governed by the law in effect on the date the desired future conditions were adopted, and that law is continued in effect for that purpose.

SECTION 26. This Act takes effect September 1, 2011.

The Conference Committee Report on **SB 660** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 2605**

Senator Huffman submitted the following Conference Committee Report:

Austin, Texas  
May 28, 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 2605** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

HUFFMAN  
HEGAR  
HINOJOSA  
NELSON  
WHITMIRE

On the part of the Senate

L. TAYLOR  
COOK  
MENENDEZ  
SOLOMONS

On the part of the House

The Conference Committee Report on **HB 2605** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 89**

Senator Lucio submitted the following Conference Committee Report:

Austin, Texas  
May 26, 2011

Honorable David Dewhurst  
President of the Senate

Honorable Joe Straus  
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 89** 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.

LUCIO  
DEUELL  
SELIGER

RODRIGUEZ  
LOZANO  
ISAAC



VAN DE PUTTE  
SHAPIRO

MILES

On the part of the Senate

On the part of the House

A BILL TO BE ENTITLED  
AN ACT

relating to summer nutrition programs provided for by school districts.

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

SECTION 1. Chapter 12, Agriculture Code, is amended by adding Section 12.0029 to read as follows:

Sec. 12.0029. SUMMER NUTRITION PROGRAMS. (a) In this section:

(1) "Field office" means a field office of a nutrition program administered by the department.

(2) "Summer nutrition program" means the summer food service program under 42 U.S.C. Section 1761. The term includes the seamless summer option under 42 U.S.C. Section 1761(a)(8).

(b) Unless the department grants a school district a waiver under Subsection (f), a district in which 50 percent or more of the students are eligible to participate in the national free or reduced-price lunch program under 42 U.S.C. Section 1751 et seq. shall provide or arrange for the provision of a summer nutrition program for at least 30 days during the period in which district schools are recessed for the summer.

(c) Not later than October 31 of each year, the department shall notify each school district described by Subsection (b) of the district's responsibility concerning provision of a summer nutrition program during the next period in which school is recessed for the summer.

(d) Not later than November 30 of each year, the board of trustees of a school district that intends to request a waiver under Subsection (e)(2) must send written notice of the district's intention to the district's local school health advisory council. The notice must include an explanation of the district's reason for requesting a waiver of the requirement.

(e) Each school district that receives a notice under Subsection (c) shall, not later than January 31 of the year following the year in which the notice was received:

(1) inform the department in writing that the district intends to provide or arrange for the provision of a summer nutrition program during the next period in which district schools are recessed for the summer; or

(2) request in writing that the department grant the district a waiver of the requirement to provide or arrange for the provision of a summer nutrition program.

(f) The department may grant a school district a waiver of the requirement to provide or arrange for the provision of a summer nutrition program only if:

(1) the district:

(A) provides documentation, verified by the department, showing that:

(i) there are fewer than 100 children in the district currently eligible for the national free or reduced-price lunch program;

(ii) transportation to enable district students to participate in the program is an insurmountable obstacle to the district's ability to provide or arrange for the provision of the program despite consultation by the district with public transit providers;

(iii) the district is unable to provide or arrange for the provision of a program due to renovation or construction of district facilities and the unavailability of an appropriate alternate provider or site; or

(iv) the district is unable to provide or arrange for the provision of a program due to another specified extenuating circumstance and the unavailability of an appropriate alternate provider or site; and

(B) has worked with the field offices to identify another possible provider for the program in the district; or

(2) the cost to the district to provide or arrange for provision of a program would be cost-prohibitive, as determined by the department using the criteria and methodology established under Subsection (g).

(g) The department by rule shall establish criteria and a methodology for determining whether the cost to a school district to provide or arrange for provision of a summer nutrition program would be cost-prohibitive for purposes of granting a waiver under Subsection (f)(2).

(h) A waiver granted under Subsection (f) is for a one-year period.

(i) If a school district has requested a waiver under Subsection (e)(2) and has been unable to provide to the department a list of possible providers for the summer nutrition program, the field offices shall continue to attempt to identify an alternate provider for the district's summer nutrition program.

(j) Not later than December 31 of each even-numbered year, the department shall provide to the legislature by e-mail a report that, for each year of the biennium:

(1) states the name of each school district that receives a notice under Subsection (c) and indicates whether the district:

(A) has provided or arranged for the provision of a summer nutrition program; or

(B) has not provided or arranged for the provision of a program and did not receive a waiver;

(2) identifies the funds, other than federal funds, used by school districts and the state in complying with this section; and

(3) identifies the total amount of any profit made or loss incurred through summer nutrition programs under this section.

(k) The department shall post and maintain on the department's Internet website the most recent report required by Subsection (j).

SECTION 2. Section 33.024, Human Resources Code, is repealed.

SECTION 3. Not later than October 1, 2011, the Department of Agriculture shall adopt rules under Subsection (g), Section 12.0029, Agriculture Code, as added by this Act, establishing criteria and a methodology regarding costs of school district summer nutrition programs.

SECTION 4. This Act takes effect September 1, 2011.

The Conference Committee Report on **SB 89** was filed with the Secretary of the Senate on Saturday, May 28, 2011.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 2380**

Senator Shapiro submitted the following Conference Committee Report:

Austin, Texas  
May 27, 2011

Honorable David Dewhurst  
President of the Senate  
Honorable Joe Straus  
Speaker of the House of Representatives  
Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2380** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

SHAPIRO  
NELSON  
CARONA  
PATRICK  
SELIGER

On the part of the Senate

SHELTON  
PATRICK  
REYNOLDS  
FRULLO  
VILLARREAL

On the part of the House

The Conference Committee Report on **HB 2380** was filed with the Secretary of the Senate on Saturday, May 28, 2011.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 2357**

Senator Williams submitted the following Conference Committee Report:

Austin, Texas  
May 27, 2011

Honorable David Dewhurst  
President of the Senate  
Honorable Joe Straus  
Speaker of the House of Representatives  
Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2357** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

WILLIAMS  
WENTWORTH  
LUCIO  
WATSON  
NICHOLS

On the part of the Senate

PICKETT  
PHILLIPS  
HUNTER  
LAVENDER

On the part of the House

The Conference Committee Report on **HB 2357** was filed with the Secretary of the Senate on Saturday, May 28, 2011.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 293**

Senator Watson submitted the following Conference Committee Report:

Austin, Texas  
May 28, 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 293** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

WATSON  
HARRIS  
NELSON  
URESTI  
WEST

On the part of the Senate

J. DAVIS  
SHEETS  
HOPSON  
TRUITT

On the part of the House

**A BILL TO BE ENTITLED  
AN ACT**

relating to telemedicine medical services, telehealth services, and home telemonitoring services provided to certain Medicaid recipients.

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

SECTION 1. Section 531.001, Government Code, is amended by adding Subdivisions (4-a), (7), and (8) to read as follows:

(4-a) "Home telemonitoring service" means a health service that requires scheduled remote monitoring of data related to a patient's health and transmission of the data to a licensed home health agency or a hospital, as those terms are defined by Section 531.02164(a).

(7) "Telehealth service" means a health service, other than a telemedicine medical service, that is delivered by a licensed or certified health professional acting within the scope of the health professional's license or certification who does not perform a telemedicine medical service and that requires the use of advanced telecommunications technology, other than telephone or facsimile technology, including:

(A) compressed digital interactive video, audio, or data transmission;

(B) clinical data transmission using computer imaging by way of still-image capture and store and forward; and

(C) other technology that facilitates access to health care services or medical specialty expertise.

(8) "Telemedicine medical service" means a health care service that is initiated by a physician or provided by a health professional acting under physician delegation and supervision, that is provided for purposes of patient assessment by a health professional, diagnosis or consultation by a physician, or treatment, or for the transfer of medical data, and that requires the use of advanced telecommunications technology, other than telephone or facsimile technology, including:

(A) compressed digital interactive video, audio, or data transmission;

(B) clinical data transmission using computer imaging by way of still-image capture and store and forward; and

(C) other technology that facilitates access to health care services or medical specialty expertise.

SECTION 2. Section 531.0216, Government Code, is amended to read as follows:

Sec. 531.0216. PARTICIPATION AND REIMBURSEMENT OF TELEMEDICINE MEDICAL SERVICE PROVIDERS AND TELEHEALTH SERVICE PROVIDERS UNDER MEDICAID. (a) The commission by rule shall develop and implement a system to reimburse providers of services under the state Medicaid program for services performed using telemedicine medical services or telehealth services.

(b) In developing the system, the executive commissioner by rule shall:

(1) review programs and pilot projects in other states to determine the most effective method for reimbursement;

(2) establish billing codes and a fee schedule for services;

(3) provide for an approval process before a provider can receive reimbursement for services;

(4) consult with the Department of State Health Services and the telemedicine and telehealth advisory committee to establish procedures to:

(A) identify clinical evidence supporting delivery of health care services using a telecommunications system; and

(B) ~~[establish pilot studies for telemedicine medical service delivery; and~~

~~[(C)]~~ annually review health care services, considering new clinical findings, to determine whether reimbursement for particular services should be denied or authorized;

~~(5) [establish pilot programs in designated areas of this state under which the commission, in administering government funded health programs, may reimburse a health professional participating in the pilot program for telehealth services authorized under the licensing law applicable to the health professional;~~

~~[(6)]~~ establish a separate provider identifier for telemedicine medical services providers, telehealth services providers, and home telemonitoring services providers; and

(6) [(7)] establish a separate modifier for telemedicine medical services, telehealth services, and home telemonitoring services eligible for reimbursement.

(c) The commission shall encourage health care providers and health care facilities to participate as telemedicine medical service providers or telehealth service providers in the health care delivery system. The commission may not require that a service be provided to a patient through telemedicine medical services or telehealth services when the service can reasonably be provided by a physician through a face-to-face consultation with the patient in the community in which the patient resides or works. This subsection does not prohibit the authorization of the provision of any service to a patient through telemedicine medical services or telehealth services at the patient's request.

(d) Subject to Section 153.004, Occupations Code, the commission may adopt rules as necessary to implement this section. In the rules adopted under this section, the commission shall:

(1) refer to the site where the patient is physically located as the patient site; and

(2) refer to the site where the physician or health professional providing the telemedicine medical service or telehealth service is physically located as the distant site.

(e) The commission may not reimburse a health care facility for telemedicine medical services or telehealth services provided to a Medicaid recipient unless the facility complies with the minimum standards adopted under Section 531.02161.

(f) Not later than December 1 of each even-numbered year, the commission shall report to the speaker of the house of representatives and the lieutenant governor on the effects of telemedicine medical services, telehealth services, and home telemonitoring services on the Medicaid program in the state, including the number of physicians, ~~and~~ health professionals, and licensed health care facilities using telemedicine medical services, telehealth services, or home telemonitoring services, the geographic and demographic disposition of the physicians and health professionals, the number of patients receiving telemedicine medical services, telehealth services, and home telemonitoring services, the types of services being provided, and the cost of utilization of telemedicine medical services, telehealth services, and home telemonitoring services to the program.

~~[(g) In this section:~~

~~[(1) "Telehealth service" has the meaning assigned by Section 57.042, Utilities Code.~~

~~[(2) "Telemedicine medical service" has the meaning assigned by Section 57.042, Utilities Code.]~~

SECTION 3. The heading to Section 531.02161, Government Code, is amended to read as follows:

Sec. 531.02161. TELEMEDICINE, TELEHEALTH, AND HOME TELEMONITORING TECHNOLOGY STANDARDS.

SECTION 4. Subsection (b), Section 531.02161, Government Code, is amended to read as follows:

(b) The commission and the Telecommunications Infrastructure Fund Board by joint rule shall establish and adopt minimum standards for an operating system used in the provision of telemedicine medical services, telehealth services, or home telemonitoring services by a health care facility participating in the state Medicaid program, including standards for electronic transmission, software, and hardware.

SECTION 5. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.02164 to read as follows:

Sec. 531.02164. MEDICAID SERVICES PROVIDED THROUGH HOME TELEMONITORING SERVICES. (a) In this section:

(1) "Home health agency" means a facility licensed under Chapter 142, Health and Safety Code, to provide home health services as defined by Section 142.001, Health and Safety Code.

(2) "Hospital" means a hospital licensed under Chapter 241, Health and Safety Code.

(b) If the commission determines that establishing a statewide program that permits reimbursement under the state Medicaid program for home telemonitoring services would be cost-effective and feasible, the executive commissioner by rule shall establish the program as provided under this section.

(c) The program required under this section must:

(1) provide that home telemonitoring services are available only to persons who:

(A) are diagnosed with one or more of the following conditions:

(i) pregnancy;

(ii) diabetes;

(iii) heart disease;

(iv) cancer;

(v) chronic obstructive pulmonary disease;

(vi) hypertension;

(vii) congestive heart failure;

(viii) mental illness or serious emotional disturbance;

(ix) asthma;

(x) myocardial infarction; or

(xi) stroke; and

(B) exhibit two or more of the following risk factors:

(i) two or more hospitalizations in the prior 12-month period;

(ii) frequent or recurrent emergency room admissions;

(iii) a documented history of poor adherence to ordered medication

regimens;

(iv) a documented history of falls in the prior six-month period;

(v) limited or absent informal support systems;

(vi) living alone or being home alone for extended periods of time;

and

(vii) a documented history of care access challenges;

(2) ensure that clinical information gathered by a home health agency or hospital while providing home telemonitoring services is shared with the patient's physician; and

(3) ensure that the program does not duplicate disease management program services provided under Section 32.057, Human Resources Code.

(d) If, after implementation, the commission determines that the program established under this section is not cost-effective, the commission may discontinue the program and stop providing reimbursement under the state Medicaid program for home telemonitoring services, notwithstanding Section 531.0216 or any other law.

(e) The commission shall determine whether the provision of home telemonitoring services to persons who are eligible to receive benefits under both the Medicaid and Medicare programs achieves cost savings for the Medicare program.

SECTION 6. The heading to Section 531.02172, Government Code, is amended to read as follows:

Sec. 531.02172. TELEMEDICINE AND TELEHEALTH ADVISORY COMMITTEE.

SECTION 7. Subsections (a) and (b), Section 531.02172, Government Code, are amended to read as follows:

(a) The executive commissioner shall establish an advisory committee to assist the commission in:

(1) evaluating policies for telemedical consultations under Sections 531.02163 and 531.0217;

~~(2) [evaluating policies for telemedicine medical services or telehealth services pilot programs established under Section 531.02171];~~

~~[(3)]~~ ensuring the efficient and consistent development and use of telecommunication technology for telemedical consultations and telemedicine medical services or telehealth services reimbursed under government-funded health programs;

(3) ~~[(4)]~~ monitoring the type of consultations and other services ~~[programs]~~ receiving reimbursement under Section ~~[Sections]~~ 531.0217 ~~[and 531.02171]~~; and

(4) ~~[(5)]~~ coordinating the activities of state agencies concerned with the use of telemedical consultations and telemedicine medical services or telehealth services.

(b) The advisory committee must include:

(1) representatives of health and human services agencies and other state agencies concerned with the use of telemedical and telehealth consultations and home telemonitoring services in the Medicaid program and the state child health plan program, including representatives of:

(A) the commission;

(B) the Department of State Health Services;

(C) the Texas Department of Rural Affairs;

(D) the Texas Department of Insurance;

(E) the Texas Medical Board;

(F) the Texas Board of Nursing; and

(G) the Texas State Board of Pharmacy;

(2) representatives of health science centers in this state;

(3) experts on telemedicine, telemedical consultation, and telemedicine medical services or telehealth services; ~~[and]~~

(4) representatives of consumers of health services provided through telemedical consultations and telemedicine medical services or telehealth services; and



(5) representatives of providers of telemedicine medical services, telehealth services, and home telemonitoring services.

SECTION 8. Subsection (c), Section 531.02173, Government Code, is amended to read as follows:

(c) The commission shall perform its duties under this section with assistance from the telemedicine and telehealth advisory committee established under Section 531.02172.

SECTION 9. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.02176 to read as follows:

Sec. 531.02176. EXPIRATION OF MEDICAID REIMBURSEMENT FOR PROVISION OF HOME TELEMONITORING SERVICES. Notwithstanding any other law, the commission may not reimburse providers under the Medicaid program for the provision of home telemonitoring services on or after September 1, 2015.

SECTION 10. The following provisions of the Government Code are repealed:

- (1) Subsection (a), Section 531.02161;
- (2) Subdivisions (3) and (4), Subsection (a), Section 531.0217;
- (3) Section 531.02171, as added by Chapter 661 (H.B. 2700), Acts of the 77th Legislature, Regular Session, 2001; and
- (4) Section 531.02171, as added by Chapter 959 (S.B. 1536), Acts of the 77th Legislature, Regular Session, 2001.

SECTION 11. Not later than December 31, 2012, the Health and Human Services Commission shall submit a report to the governor, the lieutenant governor, and the speaker of the house of representatives regarding the establishment and implementation of the program to permit reimbursement under the state Medicaid program for home telemonitoring services under Section 531.02164, Government Code, as added by this Act. The report must include:

- (1) the methods used by the commission to determine whether the program was cost-effective and feasible; and
- (2) if the program has been established, information regarding:
  - (A) the utilization of home telemonitoring services by Medicaid recipients under the program;
  - (B) the health outcomes of Medicaid recipients who receive home telemonitoring services under the program;
  - (C) the hospital admission rate of Medicaid recipients who receive home telemonitoring services under the program;
  - (D) the cost of the home telemonitoring services provided under the program; and
  - (E) the estimated cost savings to the state as a result of the program.

SECTION 12. 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 13. This Act takes effect September 1, 2011.

The Conference Committee Report on **SB 293** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 90**

Senator Birdwell submitted the following Conference Committee Report:

Austin, Texas  
May 28, 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 90** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

BIRDWELL  
NICHOLS  
PATRICK  
WILLIAMS

On the part of the Senate

COOK  
LAVENDER  
S. MILLER  
PHILLIPS

On the part of the House

The Conference Committee Report on **HB 90** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 2093**

Senator Van de Putte submitted the following Conference Committee Report:

Austin, Texas  
May 28, 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 2093** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

VAN DE PUTTE  
DEUELL  
DUNCAN  
JACKSON

On the part of the Senate

THOMPSON  
EILAND  
SHEETS  
SMITHEE

On the part of the House

The Conference Committee Report on **HB 2093** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 1788**

Senator Patrick submitted the following Conference Committee Report:

Austin, Texas  
May 28, 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 1788** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

PATRICK  
WEST  
NELSON  
HUFFMAN  
SHAPIRO

On the part of the Senate

HUBERTY  
STRAMA  
L. TAYLOR  
AYCOCK

On the part of the House

A BILL TO BE ENTITLED  
AN ACT

relating to planning for students enrolled in public school special education programs.

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

SECTION 1. Section 29.005, Education Code, is amended by adding Subsection (f) to read as follows:

(f) The written statement of a student's individualized education program may be required to include only information included in the model form developed under Section 29.0051(a).

SECTION 2. Subchapter A, Chapter 29, Education Code, is amended by adding Section 29.0051 to read as follows:

Sec. 29.0051. MODEL FORM. (a) The agency shall develop a model form for use in developing an individualized education program under Section 29.005(b). The form must be clear, concise, well organized, and understandable to parents and educators and may include only:

(1) the information included in the model form developed under 20 U.S.C. Section 1417(e)(1);

(2) a state-imposed requirement relevant to an individualized education program not required under federal law; and

(3) the requirements identified under 20 U.S.C. Section 1407(a)(2).

(b) The agency shall post on the agency's Internet website the form developed under Subsection (a).

(c) A school district may use the form developed under Subsection (a) to comply with the requirements for an individualized education program under 20 U.S.C. Section 1414(d).

SECTION 3. Subchapter A, Chapter 29, Education Code, is amended by adding Section 29.0111 to read as follows:

Sec. 29.0111. BEGINNING OF TRANSITION PLANNING. Appropriate state transition planning under the procedure adopted under Section 29.011 must begin for a student not later than when the student reaches 14 years of age.

SECTION 4. Not later than December 1, 2011, the Texas Education Agency shall develop the model form required under Section 29.0051, Education Code, as added by this Act.

SECTION 5. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2011.

The Conference Committee Report on **SB 1788** was filed with the Secretary of the Senate.

### **CONFERENCE COMMITTEE REPORT ON SENATE BILL 100**

Senator Van de Putte submitted the following Conference Committee Report:

Austin, Texas

May 28, 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 100** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

VAN DE PUTTE  
WILLIAMS  
DUNCAN  
SHAPIRO  
SELIGER

On the part of the Senate

V. TAYLOR  
BRANCH  
MADDEN  
PICKETT

On the part of the House

### **A BILL TO BE ENTITLED AN ACT**

relating to the adoption of certain voting procedures and to certain elections, including procedures necessary to implement the federal Military and Overseas Voter Empowerment Act, deadlines for declaration of candidacy and dates for certain elections, and to terms of certain elected officials.

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

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

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

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

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

(2) the person is:

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

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

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

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

Sec. 101.003. DEFINITIONS. ~~[FORM AND CONTENTS OF APPLICATION.~~  
~~(a) An application for a ballot to be voted under this chapter must:~~  
~~[(1) be submitted on an official federal postcard application form; and~~  
~~[(2) include the information necessary to indicate that the applicant is~~  
~~eligible to vote in the election for which the ballot is requested.~~

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

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

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

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

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

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

Sec. 101.007. DESIGNATION OF SECRETARY OF STATE. (a) The secretary of state is designated as the state office to provide information regarding voter registration procedures and absentee ballot procedures, including procedures related to

the federal write-in absentee ballot, to be used by persons eligible to vote under the federal Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. Section 1973ff et seq.).

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

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

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

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

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

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

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

#### **SUBCHAPTER B. SUBMISSION OF FEDERAL POSTCARD APPLICATION**

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

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

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

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

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

(1) mail; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) in the same calendar year; and

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

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

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

Sec. 101.053 ~~[101.004]~~. ACTION BY EARLY VOTING CLERK ON CERTAIN APPLICATIONS. The early voting clerk shall notify the voter registrar of a federal postcard application submitted by an applicant that states a voting residence address located outside the registrar's county.

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 101.056 ~~[101.007]~~. METHOD OF PROVIDING BALLOT; REQUIRED ADDRESS. (a) The balloting materials provided under this subchapter ~~[chapter]~~ shall be airmailed to the voter free of United States postage, as provided by the federal Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. Section 1973ff et



seq.), in an envelope labeled "Official Election Balloting Material - via Airmail." The secretary of state shall provide early voting clerks with instructions on compliance with this subsection.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) an election held jointly with an election described by Subdivision (1) or (2).

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

(1) the appropriate ballot;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) For an election to be held on:

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

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

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

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

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

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

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

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

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

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

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

(b) A governing body changing an election date under this section shall adjust the terms of office to conform to the new election date.

(c) A home-rule city may implement the change authorized by Subsection (a) or provide for the election of all members of the governing body at the same election through the adoption of a resolution. The change contained in the resolution supersedes a city charter provision that requires a different general election date or that requires the terms of members of the governing body to be staggered.

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

SECTION 6. Subsection (b), Section 41.007, Election Code, is amended to read as follows:

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

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

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

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

(b) For an election to which Section 101.104 applies ~~[the general election for state and county officers]~~, the balloting materials for a voter who indicates on the application for a ballot to be voted by mail or the federal postcard application that the voter is eligible to vote early by mail as a consequence of the voter's being outside the United States shall be mailed on or before the later of the 45th day before election day or the seventh calendar day after the date the clerk receives the application. However, if it is not possible to mail the ballots by the deadline of the 45th day before election day, the clerk shall notify the secretary of state within 24 hours of knowing that the

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

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

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

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

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

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

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

(1) both ballots are returned; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) any general, special, primary, or runoff election for federal office; or  
(2) an election for any office for which balloting materials may be sent under Section 101.104.

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

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

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

(c) For an election to be held on:

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

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

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

(d) For an election to be held on:

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

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

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

(b) For an election to be held on:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) For an election to be held on:

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

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

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

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

SECTION 29. Subsection (a), Section 172.023, Election Code, is amended to read as follows:

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

SECTION 30. Subsection (d), Section 171.0231, Election Code, is amended to read as follows:

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

SECTION 31. Subsection (b), Section 172.028, Election Code, is amended to read as follows:



(b) Not later than the 81st ~~[57th]~~ day before general primary election day, the state chair shall deliver the certification to the county chair in each county in which the candidate's name is to appear on the ballot.

SECTION 32. Subsection (a), Section 172.052, Election Code, is amended to read as follows:

(a) A candidate for nomination may not withdraw from the general primary election after the 79th ~~[62nd]~~ day before general primary election day.

SECTION 33. Subsections (a) and (b), Section 172.054, Election Code, are amended to read as follows:

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

(1) dies on or after the fifth day before the date of the regular filing deadline and on or before the 79th ~~[62nd]~~ day before general primary election day;

(2) holds the office for which the application was made and withdraws or is declared ineligible on or after the date of the regular filing deadline and on or before the 79th ~~[62nd]~~ day before general primary election day; or

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

(b) An application for an office sought by a withdrawn, deceased, or ineligible candidate must be filed not later than 6 p.m. of the 81st ~~[60th]~~ day before general primary election day. An application filed by mail with the state chair is not timely if received later than 5 p.m. of the 81st ~~[60th]~~ day before general primary election day.

SECTION 34. Section 172.057, Election Code, is amended to read as follows:

Sec. 172.057. WITHDRAWN, DECEASED, OR INELIGIBLE CANDIDATE'S NAME OMITTED FROM GENERAL PRIMARY BALLOT. A candidate's name shall be omitted from the general primary election ballot if the candidate withdraws, dies, or is declared ineligible on or before the 79th ~~[62nd]~~ day before general primary election day.

SECTION 35. Subsection (a), Section 172.058, Election Code, is amended to read as follows:

(a) If a candidate who has made an application for a place on the general primary election ballot that complies with the applicable requirements dies or is declared ineligible after the 79th ~~[62nd]~~ day before general primary election day, the candidate's name shall be placed on the ballot and the votes cast for the candidate shall be counted and entered on the official election returns in the same manner as for the other candidates.

SECTION 36. Subsection (a), Section 172.059, Election Code, is amended to read as follows:

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

SECTION 37. Subsection (c), Section 172.082, Election Code, is amended to read as follows:

(c) The drawing shall be conducted at the county seat not later than the third Tuesday in December of an odd-numbered year [~~53rd day before general primary election day~~].

SECTION 38. Subsection (b), Section 192.033, Election Code, is amended to read as follows:

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

SECTION 39. Subsection (b), Section 201.051, Election Code, is amended to read as follows:

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

SECTION 40. Subsection (f), Section 201.054, Election Code, is amended to read as follows:

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

SECTION 41. Section 501.109, Election Code, is amended to read as follows:

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

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

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

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

(3) the county clerk or voter registrar is considered to refer to the secretary of the municipality or, if the municipality does not have a secretary, to the person performing the functions of a secretary of the municipality; and

(4) the county judge is considered to refer to the mayor of the municipality or, if the municipality does not have a mayor, to the presiding officer of the governing body of the municipality.

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

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

SECTION 42. Subsections (a) and (c), Section 11.055, Education Code, are amended to read as follows:

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

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

SECTION 43. Subsection (b), Section 11.056, Education Code, is amended to read as follows:

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

SECTION 44. Subsection (e), Section 11.059, Education Code, is amended to read as follows:

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

SECTION 45. Subsection (b), Section 130.0825, Education Code, is amended to read as follows:

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

SECTION 46. Subsection (d), Section 285.131, Health and Safety Code, is amended to read as follows:

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

SECTION 47. Subchapter A, Chapter 21, Local Government Code, is amended by adding Section 21.004 to read as follows:

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

- (1) a term of one or three years; or
- (2) staggered terms.

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

- (1) changing the length of the terms of its members to two years; or
- (2) providing for the election of all members of the governing body at the same election.

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

(d) This section expires January 1, 2016.

SECTION 48. Subsection (d), Section 63.0945, Water Code, is amended to read as follows:

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

SECTION 49. To the extent of any conflict, this Act prevails over another Act of the 82nd Legislature, Regular Session, 2011, regardless of the relative dates of enactment.

SECTION 50. The secretary of state shall adopt rules as necessary to implement this Act, including the adjustment or modification of any affected date, deadline, or procedure.

SECTION 51. The following are repealed:

- (1) Section 41.0053, Election Code;
- (2) Subsection (e), Section 11.056, and Subsection (e), Section 130.0825, Education Code;
- (3) Subsection (g), Section 285.131, Health and Safety Code; and
- (4) Subsection (f), Section 63.0945, Water Code.

SECTION 52. (a) This section applies only to a political subdivision that elects the members of its governing body to a term that consists of an odd number of years.

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

(c) This section expires January 1, 2020.

SECTION 53. The changes in law made by this Act do not apply to an election held on November 8, 2011.

SECTION 54. This Act takes effect September 1, 2011.

The Conference Committee Report on **SB 100** was filed with the Secretary of the Senate.

### **CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2608**

Senator Hinojosa submitted the following Conference Committee Report:

Austin, Texas  
May 27, 2011

Honorable David Dewhurst  
President of the Senate

Honorable Joe Straus  
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2608** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

HEGAR  
NICHOLS  
ELTIFE

HARPER-BROWN  
P. KING  
L. TAYLOR  
J. DAVIS  
TURNER

On the part of the Senate

On the part of the House

The Conference Committee Report on **HB 2608** was filed with the Secretary of the Senate on Saturday, May 28, 2011.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 472**

Senator West submitted the following Conference Committee Report:

Austin, Texas  
May 28, 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 472** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

WEST  
DAVIS  
NICHOLS  
NELSON  
WENTWORTH  
On the part of the Senate

GIDDINGS  
DESHOTEL  
OTTO  
SOLOMONS  
TURNER  
On the part of the House

**A BILL TO BE ENTITLED  
AN ACT**

relating to voting practices and elections of property owners' associations.

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

SECTION 1. Section 209.003, Property Code, is amended by adding Subsection (e) to read as follows:

(e) The following provisions of this chapter do not apply to a property owners' association that is a mixed use master association that existed before January 1, 1974, and that does not have the authority under a dedicatory instrument or other governing document to impose fines:

(1) Section 209.0058; and

(2) Section 209.00593.

SECTION 2. Chapter 209, Property Code, is amended by adding Section 209.0041 to read as follows:

Sec. 209.0041. ADOPTION OR AMENDMENT OF CERTAIN DEDICATORY INSTRUMENTS. (a) In this section, "development period" means a period stated in a declaration during which a declarant reserves:

(1) a right to facilitate the development, construction, and marketing of the subdivision; and

(2) a right to direct the size, shape, and composition of the subdivision.

(b) This section applies to a residential subdivision in which property owners are subject to mandatory membership in a property owners' association.

(c) This section does not apply to a property owners' association that is subject to Chapter 552, Government Code, by application of Section 552.0036, Government Code.

(d) This section does not apply to the amendment of a declaration during a development period.

(e) This section applies to a dedicatory instrument regardless of the date on which the dedicatory instrument was created.

(f) This section supersedes any contrary requirement in a dedicatory instrument.

(g) To the extent of any conflict with another provision of this title, this section prevails.

(h) Except as provided by this subsection, a declaration may be amended only by a vote of 67 percent of the total votes allocated to property owners in the property owners' association, in addition to any governmental approval required by law. If the declaration contains a lower percentage, the percentage in the declaration controls.

(i) A bylaw may not be amended to conflict with the declaration.

SECTION 3. Chapter 209, Property Code, is amended by adding Sections 209.0058, 209.0059, 209.00592, 209.00593, and 209.00594 to read as follows:

Sec. 209.0058. BALLOTS. (a) Any vote cast in an election or vote by a member of a property owners' association must be in writing and signed by the member.

(b) Electronic votes cast under Section 209.00593 constitute written and signed ballots.

(c) In an association-wide election, written and signed ballots are not required for uncontested races.

Sec. 209.0059. RIGHT TO VOTE. (a) A provision in a dedicatory instrument that would disqualify a property owner from voting in an association election of board members or on any matter concerning the rights or responsibilities of the owner is void.

(b) This section does not apply to a property owners' association that is subject to Chapter 552, Government Code, by application of Section 552.0036, Government Code.

Sec. 209.00592. BOARD MEMBERSHIP. (a) Except as provided by Subsection (b), a provision in a dedicatory instrument that restricts a property owner's right to run for a position on the board of the property owners' association is void.

(b) If a board is presented with written, documented evidence from a database or other record maintained by a governmental law enforcement authority that a board member has been convicted of a felony or crime involving moral turpitude, the board member is immediately ineligible to serve on the board of the property owners' association, automatically considered removed from the board, and prohibited from future service on the board.

Sec. 209.00593. VOTING; QUORUM. (a) The voting rights of an owner may be cast or given:

(1) in person or by proxy at a meeting of the property owners' association;

(2) by absentee ballot in accordance with this section;

(3) by electronic ballot in accordance with this section; or

(4) by any method of representative or delegated voting provided by a dedicatory instrument.

(b) An absentee or electronic ballot:

(1) may be counted as an owner present and voting for the purpose of establishing a quorum only for items appearing on the ballot;

(2) may not be counted, even if properly delivered, if the owner attends any meeting to vote in person, so that any vote cast at a meeting by a property owner supersedes any vote submitted by absentee or electronic ballot previously submitted for that proposal; and

(3) may not be counted on the final vote of a proposal if the motion was amended at the meeting to be different from the exact language on the absentee or electronic ballot.

(c) A solicitation for votes by absentee ballot must include:

(1) an absentee ballot that contains each proposed action and provides an opportunity to vote for or against each proposed action;

(2) instructions for delivery of the completed absentee ballot, including the delivery location; and

(3) the following language: "By casting your vote via absentee ballot you will forgo the opportunity to consider and vote on any action from the floor on these proposals, if a meeting is held. This means that if there are amendments to these proposals your votes will not be counted on the final vote on these measures. If you desire to retain this ability, please attend any meeting in person. You may submit an absentee ballot and later choose to attend any meeting in person, in which case any in-person vote will prevail."

(d) For the purposes of this section, "electronic ballot" means a ballot:

(1) given by:

(A) e-mail;

(B) facsimile; or

(C) posting on an Internet website;

(2) for which the identity of the property owner submitting the ballot can be confirmed; and

(3) for which the property owner may receive a receipt of the electronic transmission and receipt of the owner's ballot.

(e) If an electronic ballot is posted on an Internet website, a notice of the posting shall be sent to each owner that contains instructions on obtaining access to the posting on the website.

(f) This section supersedes any contrary provision in a dedicatory instrument.

(g) This section does not apply to a property owners' association that is subject to Chapter 552, Government Code, by application of Section 552.0036, Government Code.

Sec. 209.00594. TABULATION OF AND ACCESS TO BALLOTS.

(a) Notwithstanding any other provision of this chapter or any other law, a person who is a candidate in a property owners' association election or who is otherwise the subject of an association vote, or a person related to that person within the third degree by consanguinity or affinity, as determined under Chapter 573, Government Code, may not tabulate or otherwise be given access to the ballots cast in that election or vote except as provided by this section.

(b) A person other than a person described by Subsection (a) may tabulate votes in an association election or vote but may not disclose to any other person how an individual voted.

(c) Notwithstanding any other provision of this chapter or any other law, a person other than a person who tabulates votes under Subsection (b), including a person described by Subsection (a), may be given access to the ballots cast in the election or vote only as part of a recount process authorized by law.

SECTION 4. Section 209.0059, Subsection (a), Section 209.00592, and Section 209.00593, Property Code, as added by this Act, apply to a provision in a dedicatory instrument enacted before, on, or after the effective date of this Act.

SECTION 5. This Act takes effect September 1, 2011.

The Conference Committee Report on **SB 472** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 213**

Senator Lucio submitted the following Conference Committee Report:

Austin, Texas  
May 28, 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 213** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

LUCIO  
CARONA  
ESTES

ELTIFE  
VAN DE PUTTE

On the part of the Senate

RODRIGUEZ

MUNOZ

ANCHIA

KEFFER

TRUITT

On the part of the House

The Conference Committee Report on **HB 213** was filed with the Secretary of the Senate.

### **CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2770**

Senator Williams submitted the following Conference Committee Report:

Austin, Texas

May 28, 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 2770** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

WILLIAMS

ELLIS

JACKSON

NICHOLS

WHITMIRE

On the part of the Senate

W. SMITH

HUNTER

PHILLIPS

On the part of the House

The Conference Committee Report on **HB 2770** was filed with the Secretary of the Senate.

### **CONFERENCE COMMITTEE REPORT ON HOUSE BILL 300**

Senator Nelson submitted the following Conference Committee Report:

Austin, Texas

May 28, 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 300** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

NELSON  
HUFFMAN  
NICHOLS  
SHAPIRO

KOLKHORST  
FLYNN  
LAUBENBERG  
NAISHTAT  
TRUITT

On the part of the Senate

On the part of the House

The Conference Committee Report on **HB 300** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 1543**

Senator Wentworth submitted the following Conference Committee Report:

Austin, Texas  
May 27, 2011

Honorable David Dewhurst  
President of the Senate

Honorable Joe Straus  
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 1543** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

WENTWORTH  
CARONA  
DAVIS  
SELIGER  
SHAPIRO

LARSON  
KUEMPEL  
GUILLEN  
RODRIGUEZ

On the part of the Senate

On the part of the House

**A BILL TO BE ENTITLED  
AN ACT**

relating to the authority of an independent school district to invest in corporate bonds.

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

SECTION 1. Subchapter A, Chapter 2256, Government Code, is amended by adding Section 2256.0204 to read as follows:

Sec. 2256.0204. AUTHORIZED INVESTMENTS: INDEPENDENT SCHOOL DISTRICTS. (a) In this section, "corporate bond" means a senior secured debt obligation issued by a domestic business entity and rated not lower than "AA-" or the equivalent by a nationally recognized investment rating firm. The term does not include a debt obligation that:

(1) on conversion, would result in the holder becoming a stockholder or shareholder in the entity, or any affiliate or subsidiary of the entity, that issued the debt obligation; or

(2) is an unsecured debt obligation.

(b) This section applies only to an independent school district that qualifies as an issuer as defined by Section 1371.001.

(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.

(d) An independent school district subject to this section is not authorized by this section to:

(1) invest in the aggregate more than 15 percent of its monthly average fund balance, excluding bond proceeds, reserves, and other funds held for the payment of debt service, in corporate bonds; or

(2) invest more than 25 percent of the funds invested in corporate bonds in any one domestic business entity, including subsidiaries and affiliates of the entity.

(e) An independent school district subject to this section may purchase, sell, and invest its funds and funds under its control in corporate bonds if the governing body of the district:

(1) amends its investment policy to authorize corporate bonds as an eligible investment;

(2) adopts procedures to provide for:

(A) monitoring rating changes in corporate bonds acquired with public funds; and

(B) liquidating the investment in corporate bonds; and

(3) identifies the funds eligible to be invested in corporate bonds.

(f) The investment officer of an independent school district, acting on behalf of the district, shall sell corporate bonds in which the district has invested its funds not later than the seventh day after the date a nationally recognized investment rating firm:

(1) issues a release that places the corporate bonds or the domestic business entity that issued the corporate bonds on negative credit watch or the equivalent, if the corporate bonds are rated "AA-" or the equivalent at the time the release is issued; or

(2) changes the rating on the corporate bonds to a rating lower than "AA-" or the equivalent.

(g) Corporate bonds are not an eligible investment for a public funds investment pool.

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 Conference Committee Report on **SB 1543** was filed with the Secretary of the Senate on Saturday, May 28, 2011.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 2327**

Senator Wentworth submitted the following Conference Committee Report:

Austin, Texas  
May 28, 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 2327** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

WENTWORTH  
RODRIGUEZ  
ELTIFE  
NICHOLS  
HARRIS

On the part of the Senate

MCCLENDON  
RODRIGUEZ  
FLETCHER  
PICKETT

On the part of the House

The Conference Committee Report on **HB 2327** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 725**

Senator Fraser submitted the following Conference Committee Report:

Austin, Texas  
May 27, 2011

Honorable David Dewhurst  
President of the Senate

Honorable Joe Straus  
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 725** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

FRASER  
DEUELL  
ELTIFE  
WATSON

On the part of the Senate

CALLEGARI  
HARDCASTLE  
HOPSON  
RITTER

On the part of the House

The Conference Committee Report on **HB 725** was filed with the Secretary of the Senate on Saturday, May 28, 2011.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 242**

Senator Hegar submitted the following Conference Committee Report:

Austin, Texas  
May 28, 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 242** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

HEGAR  
WILLIAMS  
OGDEN

On the part of the Senate

CRADDICK  
ISAAC  
COOK  
MARTINEZ FISCHER  
PARKER

On the part of the House

The Conference Committee Report on **HB 242** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 362**

Senator West submitted the following Conference Committee Report:

Austin, Texas  
May 28, 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 362** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

WEST  
NICHOLS  
WENTWORTH  
PATRICK

SOLOMONS  
BOHAC  
DESHOTEL  
GIDDINGS  
ORR

On the part of the Senate

On the part of the House

The Conference Committee Report on **HB 362** was filed with the Secretary of the Senate.

### CONFERENCE COMMITTEE REPORT ON SENATE BILL 23

Senator Nelson submitted the following Conference Committee Report:

Austin, Texas  
May 28, 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 23** 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.

NELSON  
DEUELL  
HINOJOSA  
SHAPIRO  
WILLIAMS

ZERWAS  
J. DAVIS  
V. GONZALES  
HOPSON  
PITTS

On the part of the Senate

On the part of the House

### A BILL TO BE ENTITLED AN ACT

relating to the administration of and efficiency, cost-saving, fraud prevention, and funding measures for certain health and human services and health benefits programs, including the medical assistance and child health plan programs.

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

SECTION 1. SEXUAL ASSAULT PROGRAM FUND; FEE IMPOSED ON CERTAIN SEXUALLY ORIENTED BUSINESSES. (a) Section 102.054, Business & Commerce Code, is amended to read as follows:

Sec. 102.054. ALLOCATION OF ~~[CERTAIN]~~ REVENUE FOR SEXUAL ASSAULT PROGRAMS. The comptroller shall deposit the amount ~~[first \$25 million]~~ received from the fee imposed under this subchapter ~~[in a state fiscal biennium]~~ to the credit of the sexual assault program fund.

(b) Section 420.008, Government Code, is amended by amending Subsection (c) and adding Subsection (d) to read as follows:

(c) The legislature may appropriate money deposited to the credit of the fund only to:

(1) the attorney general, for:

(A) sexual violence awareness and prevention campaigns;

(B) grants to faith-based groups, independent school districts, and community action organizations for programs for the prevention of sexual assault and programs for victims of human trafficking;

(C) grants for equipment for sexual assault nurse examiner programs, to support the preceptorship of future sexual assault nurse examiners, and for the continuing education of sexual assault nurse examiners;

(D) grants to increase the level of sexual assault services in this state;

(E) grants to support victim assistance coordinators;

(F) grants to support technology in rape crisis centers;

(G) grants to and contracts with a statewide nonprofit organization exempt from federal income taxation under Section 501(c)(3), Internal Revenue Code of 1986, having as a primary purpose ending sexual violence in this state, for programs for the prevention of sexual violence, outreach programs, and technical assistance to and support of youth and rape crisis centers working to prevent sexual violence; ~~and~~

(H) grants to regional nonprofit providers of civil legal services to provide legal assistance for sexual assault victims;

(I) grants to health science centers and related nonprofit entities exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed as an exempt organization under Section 501(c)(3) of that code, for research relating to the prevention and mitigation of sexual assault; and

(J) Internet Crimes Against Children Task Force locations in this state recognized by the United States Department of Justice;

(2) the Department of State Health Services, to measure the prevalence of sexual assault in this state and for grants to support programs assisting victims of human trafficking;

(3) the Institute on Domestic Violence and Sexual Assault at The University of Texas at Austin, to conduct research on all aspects of sexual assault and domestic violence;

(4) Texas State University, for training and technical assistance to independent school districts for campus safety;

(5) the office of the governor, for grants to support sexual assault and human trafficking prosecution projects;

(6) the Department of Public Safety, to support sexual assault training for commissioned officers;

(7) the comptroller's judiciary section, for increasing the capacity of the sex offender civil commitment program;

(8) the Texas Department of Criminal Justice:

(A) for pilot projects for monitoring sex offenders on parole; and

(B) for increasing the number of adult incarcerated sex offenders receiving treatment;

(9) the Texas Youth Commission, for increasing the number of incarcerated juvenile sex offenders receiving treatment;

(10) the comptroller, for the administration of the fee imposed on sexually oriented businesses under Section 102.052, Business & Commerce Code; ~~and~~

(11) the supreme court, to be transferred to the Texas Equal Access to Justice Foundation, or a similar entity, to provide victim-related legal services to sexual assault victims, including legal assistance with protective orders, relocation-related matters, victim compensation, and actions to secure privacy protections available to victims under law; and

(12) the Department of Family and Protective Services for:

(A) programs related to sexual assault prevention and intervention; and

(B) research relating to how the department can effectively address the prevention of sexual assault.

(d) A board, commission, department, office, or other agency in the executive or judicial branch of state government to which money is appropriated from the sexual assault program fund under this section shall, not later than December 1 of each even-numbered year, provide to the Legislative Budget Board a report stating, for the preceding fiscal biennium:

(1) the amount appropriated to the entity under this section;

(2) the purposes for which the money was used; and

(3) any results of a program or research funded under this section.

(e) The comptroller of public accounts shall collect the fee imposed under Section 102.052, Business & Commerce Code, until a court, in a final judgment upheld on appeal or no longer subject to appeal, finds Section 102.052, Business & Commerce Code, or its predecessor statute, to be unconstitutional.

(d) Section 102.055, Business & Commerce Code, is repealed.

(e) This section prevails over any other Act of the 82nd Legislature, Regular Session, 2011, regardless of the relative dates of enactment, that purports to amend or repeal Subchapter B, Chapter 102, Business & Commerce Code, or any provision of Chapter 1206 (H.B. 1751), Acts of the 80th Legislature, Regular Session, 2007.

SECTION 2. OBJECTIVE ASSESSMENT PROCESSES FOR CERTAIN MEDICAID SERVICES. (a) Subchapter B, Chapter 531, Government Code, is amended by adding Sections 531.02417, 531.024171, and 531.024172 to read as follows:



Sec. 531.02417. MEDICAID NURSING SERVICES ASSESSMENTS. (a) In this section, "acute nursing services" means home health skilled nursing services, home health aide services, and private duty nursing services.

(b) If cost-effective, the commission shall develop an objective assessment process for use in assessing a Medicaid recipient's needs for acute nursing services. If the commission develops an objective assessment process under this section, the commission shall require that:

(1) the assessment be conducted:

(A) by a state employee or contractor who is not the person who will deliver any necessary services to the recipient and is not affiliated with the person who will deliver those services; and

(B) in a timely manner so as to protect the health and safety of the recipient by avoiding unnecessary delays in service delivery; and

(2) the process include:

(A) an assessment of specified criteria and documentation of the assessment results on a standard form;

(B) an assessment of whether the recipient should be referred for additional assessments regarding the recipient's needs for therapy services, as defined by Section 531.024171, attendant care services, and durable medical equipment; and

(C) completion by the person conducting the assessment of any documents related to obtaining prior authorization for necessary nursing services.

(c) If the commission develops the objective assessment process under Subsection (b), the commission shall:

(1) implement the process within the Medicaid fee-for-service model and the primary care case management Medicaid managed care model; and

(2) take necessary actions, including modifying contracts with managed care organizations under Chapter 533 to the extent allowed by law, to implement the process within the STAR and STAR + PLUS Medicaid managed care programs.

(d) An assessment under Subsection (b)(2)(B) of whether a recipient should be referred for additional therapy services shall be waived if the recipient's need for therapy services has been established by a recommendation from a therapist providing care prior to discharge of the recipient from a licensed hospital or nursing home. The assessment may not be waived if the recommendation is made by a therapist who will deliver any services to the recipient or is affiliated with a person who will deliver those services when the recipient is discharged from the licensed hospital or nursing home.

(e) The executive commissioner shall adopt rules providing for a process by which a provider of acute nursing services who disagrees with the results of the assessment conducted under Subsection (b) may request and obtain a review of those results.

Sec. 531.024171. THERAPY SERVICES ASSESSMENTS. (a) In this section, "therapy services" includes occupational, physical, and speech therapy services.

(b) After implementing the objective assessment process for acute nursing services in accordance with Section 531.02417, the commission shall consider whether implementing age- and diagnosis-appropriate objective assessment processes for assessing the needs of a Medicaid recipient for therapy services would be feasible and beneficial.

(c) If the commission determines that implementing age- and diagnosis-appropriate processes with respect to one or more types of therapy services is feasible and would be beneficial, the commission may implement the processes within:

- (1) the Medicaid fee-for-service model;
- (2) the primary care case management Medicaid managed care model; and
- (3) the STAR and STAR + PLUS Medicaid managed care programs.

(d) An objective assessment process implemented under this section must include a process that allows a provider of therapy services to request and obtain a review of the results of an assessment conducted as provided by this section that is comparable to the process implemented under rules adopted under Section 531.02417(e).

Sec. 531.024172. ELECTRONIC VISIT VERIFICATION SYSTEM. (a) In this section, "acute nursing services" has the meaning assigned by Section 531.02417.

(b) If it is cost-effective and feasible, the commission shall implement an electronic visit verification system to electronically verify and document, through a telephone or computer-based system, basic information relating to the delivery of Medicaid acute nursing services, including:

- (1) the provider's name;
- (2) the recipient's name; and
- (3) the date and time the provider begins and ends each service delivery

visit.

(b) Not later than September 1, 2012, the Health and Human Services Commission shall implement the electronic visit verification system required by Section 531.024172, Government Code, as added by this section, if the commission determines that implementation of that system is cost-effective and feasible.

SECTION 3. MEDICAID MANAGED CARE PROGRAM. (a) Subsection (e), Section 533.0025, Government Code, is amended to read as follows:

(e) The commission shall determine the most cost-effective alignment of managed care service delivery areas. The commissioner may consider the number of lives impacted, the usual source of health care services for residents in an area, and other factors that impact the delivery of health care services in the area. [Notwithstanding Subsection (b)(1), the commission may not provide medical assistance using a health maintenance organization in Cameron County, Hidalgo County, or Maverick County.]

(b) Subchapter A, Chapter 533, Government Code, is amended by adding Sections 533.0027, 533.0028, and 533.0029 to read as follows:

Sec. 533.0027. PROCEDURES TO ENSURE CERTAIN RECIPIENTS ARE ENROLLED IN SAME MANAGED CARE PLAN. The commission shall ensure that all recipients who are children and who reside in the same household may, at the family's election, be enrolled in the same managed care plan.

Sec. 533.0028. EVALUATION OF CERTAIN STAR + PLUS MEDICAID MANAGED CARE PROGRAM SERVICES. The external quality review organization shall periodically conduct studies and surveys to assess the quality of care and satisfaction with health care services provided to enrollees in the STAR + PLUS Medicaid managed care program who are eligible to receive health care benefits under both the Medicaid and Medicare programs.

Sec. 533.0029. PROMOTION AND PRINCIPLES OF PATIENT-CENTERED MEDICAL AND HEALTH HOMES FOR RECIPIENTS. (a) For purposes of this section:

(1) "Patient-centered health home" means a health care relationship:

(A) between a primary health care provider, other than a physician, and a child or adult patient in which the provider:

(i) provides comprehensive primary care to the patient; and

(ii) facilitates partnerships between the provider, the patient, physicians and other health care providers, including acute care providers, and, when appropriate, the patient's family; and

(B) that encompasses the following primary principles:

(i) the patient has an ongoing relationship with the provider, and the provider is the first contact for the patient and provides continuous and comprehensive care to the patient;

(ii) the provider coordinates a team of individuals at the practice level who are collectively responsible for the ongoing care of the patient;

(iii) the provider is responsible for providing all of the care the patient needs or for coordinating with physicians or other qualified providers to provide care to the patient throughout the patient's life, including preventive care, acute care, chronic care, and end-of-life care;

(iv) the patient's care is coordinated across health care facilities and the patient's community and is facilitated by registries, information technology, and health information exchange systems to ensure that the patient receives care when and where the patient wants and needs the care and in a culturally and linguistically appropriate manner; and

(v) quality and safe care is provided.

(2) "Patient-centered medical home" means a medical relationship:

(A) between a primary care physician and a child or adult patient in which the physician:

(i) provides comprehensive primary care to the patient; and

(ii) facilitates partnerships between the physician, the patient, acute care and other care providers, and, when appropriate, the patient's family; and

(B) that encompasses the following primary principles:

(i) the patient has an ongoing relationship with the physician, who is trained to be the first contact for the patient and to provide continuous and comprehensive care to the patient;

(ii) the physician leads a team of individuals at the practice level who are collectively responsible for the ongoing care of the patient;

(iii) the physician is responsible for providing all of the care the patient needs or for coordinating with other qualified providers to provide care to the patient throughout the patient's life, including preventive care, acute care, chronic care, and end-of-life care;

(iv) the patient's care is coordinated across health care facilities and the patient's community and is facilitated by registries, information technology, and health information exchange systems to ensure that the patient receives care when and where the patient wants and needs the care and in a culturally and linguistically appropriate manner; and

(v) quality and safe care is provided.

(b) The commission shall, to the extent possible, work to ensure that managed care organizations:

(1) promote the development of patient-centered medical or health homes for recipients; and

(2) provide payment incentives for providers that meet the requirements of a patient-centered medical or health home.

(c) Section 533.003, Government Code, is amended to read as follows:

Sec. 533.003. CONSIDERATIONS IN AWARDING CONTRACTS. In awarding contracts to managed care organizations, the commission shall:

(1) give preference to organizations that have significant participation in the organization's provider network from each health care provider in the region who has traditionally provided care to Medicaid and charity care patients;

(2) give extra consideration to organizations that agree to assure continuity of care for at least three months beyond the period of Medicaid eligibility for recipients;

(3) consider the need to use different managed care plans to meet the needs of different populations; ~~and~~

(4) consider the ability of organizations to process Medicaid claims electronically; and

(5) in the initial implementation of managed care in the South Texas service region, give extra consideration to an organization that either:

(A) is locally owned, managed, and operated, if one exists; or

(B) is in compliance with the requirements of Section 533.004.

(6) The commission when considering approval of a subcontract between a managed care organization and pharmacy benefit manager to provide prescription drug benefits in the Medicaid program shall review and consider whether the pharmacy benefit manager in the preceding three years has been convicted of making a material misrepresentation, an act of fraud, a violation of state or federal law or has been adjudicated to have committed a breach of contract or has been assessed a penalty or fine in the amount of \$500,000 or more in a state or federal administrative proceeding.

(d) Section 533.005, Government Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a) A contract between a managed care organization and the commission for the organization to provide health care services to recipients must contain:

(1) procedures to ensure accountability to the state for the provision of health care services, including procedures for financial reporting, quality assurance, utilization review, and assurance of contract and subcontract compliance;

(2) capitation rates that ensure the cost-effective provision of quality health care;

(3) a requirement that the managed care organization provide ready access to a person who assists recipients in resolving issues relating to enrollment, plan administration, education and training, access to services, and grievance procedures;

(4) a requirement that the managed care organization provide ready access to a person who assists providers in resolving issues relating to payment, plan administration, education and training, and grievance procedures;

(5) a requirement that the managed care organization provide information and referral about the availability of educational, social, and other community services that could benefit a recipient;

(6) procedures for recipient outreach and education;

(7) a requirement that the managed care organization make payment to a physician or provider for health care services rendered to a recipient under a managed care plan not later than the 45th day after the date a claim for payment is received with documentation reasonably necessary for the managed care organization to process the claim, or within a period, not to exceed 60 days, specified by a written agreement between the physician or provider and the managed care organization;

(8) a requirement that the commission, on the date of a recipient's enrollment in a managed care plan issued by the managed care organization, inform the organization of the recipient's Medicaid certification date;

(9) a requirement that the managed care organization comply with Section 533.006 as a condition of contract retention and renewal;

(10) a requirement that the managed care organization provide the information required by Section 533.012 and otherwise comply and cooperate with the commission's office of inspector general and the office of the attorney general;

(11) a requirement that the managed care organization's usages of out-of-network providers or groups of out-of-network providers may not exceed limits for those usages relating to total inpatient admissions, total outpatient services, and emergency room admissions determined by the commission;

(12) if the commission finds that a managed care organization has violated Subdivision (11), a requirement that the managed care organization reimburse an out-of-network provider for health care services at a rate that is equal to the allowable rate for those services, as determined under Sections 32.028 and 32.0281, Human Resources Code;

(13) a requirement that the organization use advanced practice nurses in addition to physicians as primary care providers to increase the availability of primary care providers in the organization's provider network;

(14) a requirement that the managed care organization reimburse a federally qualified health center or rural health clinic for health care services provided to a recipient outside of regular business hours, including on a weekend day or holiday, at

a rate that is equal to the allowable rate for those services as determined under Section 32.028, Human Resources Code, if the recipient does not have a referral from the recipient's primary care physician; ~~and~~

(15) a requirement that the managed care organization develop, implement, and maintain a system for tracking and resolving all provider appeals related to claims payment, including a process that will require:

(A) a tracking mechanism to document the status and final disposition of each provider's claims payment appeal;

(B) the contracting with physicians who are not network providers and who are of the same or related specialty as the appealing physician to resolve claims disputes related to denial on the basis of medical necessity that remain unresolved subsequent to a provider appeal; and

(C) the determination of the physician resolving the dispute to be binding on the managed care organization and provider;

(16) a requirement that a medical director who is authorized to make medical necessity determinations is available to the region where the managed care organization provides health care services;

(17) a requirement that the managed care organization ensure that medical director, patient care coordinators, and provider and recipient support services personnel are located in the South Texas service region, if the managed care organization provides a managed care plan in that region;

(18) a requirement that the managed care organization provide special programs and materials for recipients with limited English proficiency or low literacy skills;

(19) a requirement that the managed care organization develop and establish a process for responding to provider appeals in the region where the organization provides health care services;

(20) a requirement that the managed care organization develop and submit to the commission, before the organization begins to provide health care services to recipients, a comprehensive plan that describes how the organization's provider network will provide recipients sufficient access to:

(A) preventive care;

(B) primary care;

(C) specialty care;

(D) after-hours urgent care; and

(E) chronic care;

(21) a requirement that the managed care organization demonstrate to the commission, before the organization begins to provide health care services to recipients, that:

(A) the organization's provider network has the capacity to serve the number of recipients expected to enroll in a managed care plan offered by the organization;

(B) the organization's provider network includes:

(i) a sufficient number of primary care providers;

(ii) a sufficient variety of provider types; and

(iii) providers located throughout the region where the organization will provide health care services; and

(C) health care services will be accessible to recipients through the organization's provider network to a comparable extent that health care services would be available to recipients under a fee-for-service or primary care case management model of Medicaid managed care;

(22) a requirement that the managed care organization develop a monitoring program for measuring the quality of the health care services provided by the organization's provider network that:

(A) incorporates the National Committee for Quality Assurance's Healthcare Effectiveness Data and Information Set (HEDIS) measures;

(B) focuses on measuring outcomes; and

(C) includes the collection and analysis of clinical data relating to prenatal care, preventive care, mental health care, and the treatment of acute and chronic health conditions and substance abuse;

(23) subject to Subsection (a-1), a requirement that the managed care organization develop, implement, and maintain an outpatient pharmacy benefit plan for its enrolled recipients:

(A) that exclusively employs the vendor drug program formulary and preserves the state's ability to reduce waste, fraud, and abuse under the Medicaid program;

(B) that adheres to the applicable preferred drug list adopted by the commission under Section 531.072;

(C) that includes the prior authorization procedures and requirements prescribed by or implemented under Sections 531.073(b), (c), and (g) for the vendor drug program;

(D) for purposes of which the managed care organization:

(i) may not negotiate or collect rebates associated with pharmacy products on the vendor drug program formulary; and

(ii) may not receive drug rebate or pricing information that is confidential under Section 531.071;

(E) that complies with the prohibition under Section 531.089;

(F) under which the managed care organization may not prohibit, limit, or interfere with a recipient's selection of a pharmacy or pharmacist of the recipient's choice for the provision of pharmaceutical services under the plan through the imposition of different copayments;

(G) that allows the managed care organization or any subcontracted pharmacy benefit manager to contract with a pharmacist or pharmacy providers separately for specialty pharmacy services, except that:

(i) the managed care organization and pharmacy benefit manager are prohibited from allowing exclusive contracts with a specialty pharmacy owned wholly or partly by the pharmacy benefit manager responsible for the administration of the pharmacy benefit program; and

(ii) the managed care organization and pharmacy benefit manager must adopt policies and procedures for reclassifying prescription drugs from retail to specialty drugs, and those policies and procedures must be consistent with rules adopted by the executive commissioner and include notice to network pharmacy providers from the managed care organization;

(H) under which the managed care organization may not prevent a pharmacy or pharmacist from participating as a provider if the pharmacy or pharmacist agrees to comply with the financial terms and conditions of the contract as well as other reasonable administrative and professional terms and conditions of the contract;

(I) under which the managed care organization may include mail-order pharmacies in its networks, but may not require enrolled recipients to use those pharmacies, and may not charge an enrolled recipient who opts to use this service a fee, including postage and handling fees; and

(J) under which the managed care organization or pharmacy benefit manager must pay claims in accordance with Section 843.339, Insurance Code; and

(24) a requirement that the managed care organization and any entity with which the managed care organization contracts for the performance of services under a managed care plan disclose, at no cost, to the commission and, on request, the office of the attorney general all discounts, incentives, rebates, fees, free goods, bundling arrangements, and other agreements affecting the net cost of goods or services provided under the plan.

(a-1) The requirements imposed by Subsections (a)(23)(A), (B), and (C) do not apply, and may not be enforced, on and after August 31, 2013.

(e) Subchapter A, Chapter 533, Government Code, is amended by adding Section 533.0066 to read as follows:

Sec. 533.0066. PROVIDER INCENTIVES. The commission shall, to the extent possible, work to ensure that managed care organizations provide payment incentives to health care providers in the organizations' networks whose performance in promoting recipients' use of preventive services exceeds minimum established standards.

(f) Section 533.0071, Government Code, is amended to read as follows:

Sec. 533.0071. ADMINISTRATION OF CONTRACTS. The commission shall make every effort to improve the administration of contracts with managed care organizations. To improve the administration of these contracts, the commission shall:

(1) ensure that the commission has appropriate expertise and qualified staff to effectively manage contracts with managed care organizations under the Medicaid managed care program;

(2) evaluate options for Medicaid payment recovery from managed care organizations if the enrollee dies or is incarcerated or if an enrollee is enrolled in more than one state program or is covered by another liable third party insurer;

(3) maximize Medicaid payment recovery options by contracting with private vendors to assist in the recovery of capitation payments, payments from other liable third parties, and other payments made to managed care organizations with respect to enrollees who leave the managed care program;



(4) decrease the administrative burdens of managed care for the state, the managed care organizations, and the providers under managed care networks to the extent that those changes are compatible with state law and existing Medicaid managed care contracts, including decreasing those burdens by:

(A) where possible, decreasing the duplication of administrative reporting requirements for the managed care organizations, such as requirements for the submission of encounter data, quality reports, historically underutilized business reports, and claims payment summary reports;

(B) allowing managed care organizations to provide updated address information directly to the commission for correction in the state system;

(C) promoting consistency and uniformity among managed care organization policies, including policies relating to the preauthorization process, lengths of hospital stays, filing deadlines, levels of care, and case management services; ~~and~~

(D) reviewing the appropriateness of primary care case management requirements in the admission and clinical criteria process, such as requirements relating to including a separate cover sheet for all communications, submitting handwritten communications instead of electronic or typed review processes, and admitting patients listed on separate notifications; and

(E) providing a single portal through which providers in any managed care organization's provider network may submit claims; and

(5) reserve the right to amend the managed care organization's process for resolving provider appeals of denials based on medical necessity to include an independent review process established by the commission for final determination of these disputes.

(g) Subchapter A, Chapter 533, Government Code, is amended by adding Section 533.0073 to read as follows:

Sec. 533.0073. MEDICAL DIRECTOR QUALIFICATIONS. A person who serves as a medical director for a managed care plan must be a physician licensed to practice medicine in this state under Subtitle B, Title 3, Occupations Code.

(h) Subsections (a) and (c), Section 533.0076, Government Code, are amended to read as follows:

(a) Except as provided by Subsections (b) and (c), and to the extent permitted by federal law, ~~[the commission may prohibit]~~ a recipient enrolled ~~[from disenrolling]~~ in a managed care plan under this chapter may not disenroll from that plan and enroll ~~[enrolling]~~ in another managed care plan during the 12-month period after the date the recipient initially enrolls in a plan.

(c) The commission shall allow a recipient who is enrolled in a managed care plan under this chapter to disenroll from ~~[in]~~ that plan and enroll in another managed care plan:

(1) at any time for cause in accordance with federal law; and

(2) once for any reason after the periods described by Subsections (a) and (b).

(i) Subsections (a), (b), (c), and (e), Section 533.012, Government Code, are amended to read as follows:

(a) Each managed care organization contracting with the commission under this chapter shall submit the following, at no cost, to the commission and, on request, the office of the attorney general:

(1) a description of any financial or other business relationship between the organization and any subcontractor providing health care services under the contract;

(2) a copy of each type of contract between the organization and a subcontractor relating to the delivery of or payment for health care services;

(3) a description of the fraud control program used by any subcontractor that delivers health care services; and

(4) a description and breakdown of all funds paid to or by the managed care organization, including a health maintenance organization, primary care case management provider, pharmacy benefit manager, and ~~[an]~~ exclusive provider organization, necessary for the commission to determine the actual cost of administering the managed care plan.

(b) The information submitted under this section must be submitted in the form required by the commission or the office of the attorney general, as applicable, and be updated as required by the commission or the office of the attorney general, as applicable.

(c) The commission's office of investigations and enforcement or the office of the attorney general, as applicable, shall review the information submitted under this section as appropriate in the investigation of fraud in the Medicaid managed care program.

(e) Information submitted to the commission or the office of the attorney general, as applicable, under Subsection (a)(1) is confidential and not subject to disclosure under Chapter 552, Government Code.

(j) The heading to Section 32.046, Human Resources Code, is amended to read as follows:

Sec. 32.046. ~~[VENDOR DRUG PROGRAM;]~~ SANCTIONS AND PENALTIES RELATED TO THE PROVISION OF PHARMACY PRODUCTS.

(k) Subsection (a), Section 32.046, Human Resources Code, is amended to read as follows:

(a) The executive commissioner of the Health and Human Services Commission ~~[department]~~ shall adopt rules governing sanctions and penalties that apply to a provider who participates in the vendor drug program or is enrolled as a network pharmacy provider of a managed care organization contracting with the commission under Chapter 533, Government Code, or its subcontractor and who submits an improper claim for reimbursement under the program.

(l) Subsection (d), Section 533.012, Government Code, is repealed.

(m) Not later than December 1, 2013, the Health and Human Services Commission shall submit a report to the legislature regarding the commission's work to ensure that Medicaid managed care organizations promote the development of patient-centered medical or health homes for recipients of medical assistance as required under Section 533.0029, Government Code, as added by this section.

(n) The Health and Human Services Commission shall, in a contract between the commission and a managed care organization under Chapter 533, Government Code, that is entered into or renewed on or after the effective date of this Act, include the provisions required by Subsection (a), Section 533.005, Government Code, as amended by this section.

(o) Section 533.0073, Government Code, as added by this section, applies only to a person hired or otherwise retained as the medical director of a Medicaid managed care plan on or after the effective date of this Act. A person hired or otherwise retained before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(p) Subsections (a) and (c), Section 533.0076, Government Code, as amended by this section, apply only to a request for disenrollment from a Medicaid managed care plan under Chapter 533, Government Code, made by a recipient on or after the effective date of this Act. A request made by a recipient before that date is governed by the law in effect on the date the request was made, and the former law is continued in effect for that purpose.

#### SECTION 4. ABOLISHING STATE KIDS INSURANCE PROGRAM.

(a) Section 62.101, Health and Safety Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) A child who is the dependent of an employee of an agency of this state and who meets the requirements of Subsection (a) may be eligible for health benefits coverage in accordance with 42 U.S.C. Section 1397jj(b)(6) and any other applicable law or regulations.

(b) Sections 1551.159 and 1551.312, Insurance Code, are repealed.

(c) The State Kids Insurance Program operated by the Employees Retirement System of Texas is abolished on the effective date of this Act. The Health and Human Services Commission shall:

(1) establish a process in cooperation with the Employees Retirement System of Texas to facilitate the enrollment of eligible children in the child health plan program established under Chapter 62, Health and Safety Code, on or before the date those children are scheduled to stop receiving dependent child coverage under the State Kids Insurance Program; and

(2) modify any applicable administrative procedures to ensure that children described by this subsection maintain continuous health benefits coverage while transitioning from enrollment in the State Kids Insurance Program to enrollment in the child health plan program.

SECTION 5. PREVENTION OF CRIMINAL OR FRAUDULENT CONDUCT BY CERTAIN FACILITIES, PROVIDERS, AND RECIPIENTS. (a) Subchapter B, Chapter 31, Human Resources Code, is amended by adding Section 31.0326 to read as follows:

Sec. 31.0326. VERIFICATION OF IDENTITY AND PREVENTION OF DUPLICATE PARTICIPATION. The Health and Human Services Commission shall use appropriate technology to:

(1) confirm the identity of applicants for benefits under the financial assistance program; and

(2) prevent duplicate participation in the program by a person.

(b) Chapter 33, Human Resources Code, is amended by adding Section 33.0231 to read as follows:

Sec. 33.0231. VERIFICATION OF IDENTITY AND PREVENTION OF DUPLICATE PARTICIPATION IN SNAP. The department shall use appropriate technology to:

(1) confirm the identity of applicants for benefits under the supplemental nutrition assistance program; and

(2) prevent duplicate participation in the program by a person.

(c) Section 531.109, Government Code, is amended by adding Subsection (d) to read as follows:

(d) Absent an allegation of fraud, waste, or abuse, the commission may conduct an annual review of claims under this section only after the commission has completed the prior year's annual review of claims.

(d) Section 31.0325, Human Resources Code, is repealed.

SECTION 6. PROVISIONS RELATING TO CONVALESCENT AND NURSING HOMES. (a) Section 242.033, Health and Safety Code, is amended by amending Subsection (d) and adding Subsection (g) to read as follows:

(d) Except as provided by Subsection (f), a license is renewable every three [~~two~~] years after:

(1) an inspection, unless an inspection is not required as provided by Section 242.047;

(2) payment of the license fee; and

(3) department approval of the report filed every three [~~two~~] years by the licensee.

(g) The executive commissioner by rule shall adopt a system under which an appropriate number of licenses issued by the department under this chapter expire on staggered dates occurring in each three-year period. If the expiration date of a license changes as a result of this subsection, the department shall prorate the licensing fee relating to that license as appropriate.

(b) Subsection (e-1), Section 242.159, Health and Safety Code, is amended to read as follows:

(e-1) An institution is not required to comply with Subsections (a) and (e) until September 1, 2014 [~~2012~~]. This subsection expires January 1, 2015 [~~2013~~].

(c) The executive commissioner of the Health and Human Services Commission shall adopt the rules required under Section 242.033(g), Health and Safety Code, as added by this section, as soon as practicable after the effective date of this Act, but not later than December 1, 2012.

SECTION 7. STREAMLINING OF AND UTILIZATION MANAGEMENT IN MEDICAID LONG-TERM CARE WAIVER PROGRAMS. (a) Section 161.077, Human Resources Code, as added by Chapter 759 (S.B. 705), Acts of the 81st Legislature, Regular Session, 2009, is redesignated as Section 161.081, Human Resources Code, and amended to read as follows:

Sec. 161.081 [461.077]. LONG-TERM CARE MEDICAID WAIVER PROGRAMS: STREAMLINING AND UNIFORMITY. (a) In this section, "Section 1915(c) waiver program" has the meaning assigned by Section 531.001, Government Code.

(b) The department, in consultation with the commission, shall streamline the administration of and delivery of services through Section 1915(c) waiver programs. In implementing this subsection, the department, subject to Subsection (c), may consider implementing the following streamlining initiatives:

(1) reducing the number of forms used in administering the programs;  
(2) revising program provider manuals and training curricula;  
(3) consolidating service authorization systems;  
(4) eliminating any physician signature requirements the department considers unnecessary;

(5) standardizing individual service plan processes across the programs;  
[and]

(6) if feasible:

(A) concurrently conducting program certification and billing audit and review processes and other related audit and review processes;

(B) streamlining other billing and auditing requirements;

(C) eliminating duplicative responsibilities with respect to the coordination and oversight of individual care plans for persons receiving waiver services; and

(D) streamlining cost reports and other cost reporting processes; and

(7) any other initiatives that will increase efficiencies in the programs.

(c) The department shall ensure that actions taken under Subsection (b) [this section] do not conflict with any requirements of the commission under Section 531.0218, Government Code.

(d) The department and the commission shall jointly explore the development of uniform licensing and contracting standards that would:

(1) apply to all contracts for the delivery of Section 1915(c) waiver program services;

(2) promote competition among providers of those program services; and

(3) integrate with other department and commission efforts to streamline and unify the administration and delivery of the program services, including those required by this section or Section 531.0218, Government Code.

(b) Subchapter D, Chapter 161, Human Resources Code, is amended by adding Section 161.082 to read as follows:

Sec. 161.082. LONG-TERM CARE MEDICAID WAIVER PROGRAMS: UTILIZATION REVIEW. (a) In this section, "Section 1915(c) waiver program" has the meaning assigned by Section 531.001, Government Code.

(b) The department shall perform a utilization review of services in all Section 1915(c) waiver programs. The utilization review must include, at a minimum, reviewing program recipients' levels of care and any plans of care for those recipients that exceed service level thresholds established in the applicable waiver program guidelines.

SECTION 8. ELECTRONIC VISIT VERIFICATION SYSTEM FOR MEDICAID PROGRAM. Subchapter D, Chapter 161, Human Resources Code, is amended by adding Section 161.086 to read as follows:

Sec. 161.086. ELECTRONIC VISIT VERIFICATION SYSTEM. If it is cost-effective, the department shall implement an electronic visit verification system under appropriate programs administered by the department under the Medicaid program that allows providers to electronically verify and document basic information relating to the delivery of services, including:

- (1) the provider's name;
- (2) the recipient's name;
- (3) the date and time the provider begins and ends the delivery of services;

and

- (4) the location of service delivery.

SECTION 9. REPORT ON MEDICAID LONG-TERM CARE SERVICES.

(a) In this section:

(1) "Long-term care services" has the meaning assigned by Section 22.0011, Human Resources Code.

(2) "Medical assistance program" means the medical assistance program administered under Chapter 32, Human Resources Code.

(3) "Nursing facility" means a convalescent or nursing home or related institution licensed under Chapter 242, Health and Safety Code.

(b) The Health and Human Services Commission, in cooperation with the Department of Aging and Disability Services, shall prepare a written report regarding individuals who receive long-term care services in nursing facilities under the medical assistance program. The report must be based on existing data and information, and must use that data and information to identify:

(1) the reasons medical assistance recipients of long-term care services are placed in nursing facilities as opposed to being provided long-term care services in home or community-based settings;

(2) the types of medical assistance services recipients residing in nursing facilities typically receive and where and from whom those services are typically provided;

(3) the community-based services and supports available under a Medicaid state plan program, including the primary home care and community attendant services programs, or under a medical assistance waiver granted in accordance with Section 1915(c) of the federal Social Security Act (42 U.S.C. Section 1396n(c)) for which recipients residing in nursing facilities may be eligible; and

(4) ways to expedite recipients' access to community-based services and supports identified under Subdivision (3) of this subsection for which interest lists or other waiting lists exist.

(c) Not later than September 1, 2012, the Health and Human Services Commission shall submit the report described by Subsection (b) of this section, together with the commission's recommendations, to the governor, the Legislative Budget Board, the Senate Committee on Finance, the Senate Committee on Health and Human Services, the House Appropriations Committee, and the House Human

Services Committee. The recommendations must address options for expediting access to community-based services and supports by recipients described by Subsection (b)(3) of this section.

SECTION 10. PROVISIONS RELATING TO ASSISTED LIVING FACILITIES. (a) Subdivision (1), Section 247.002, Health and Safety Code, is amended to read as follows:

(1) "Assisted living facility" means an establishment that:

(A) furnishes, in one or more facilities, food and shelter to four or more persons who are unrelated to the proprietor of the establishment;

(B) provides:

(i) personal care services; or

(ii) administration of medication by a person licensed or otherwise authorized in this state to administer the medication; ~~and~~

(C) may provide assistance with or supervision of the administration of medication; and

(D) may provide skilled nursing services for a limited duration or to facilitate the provision of hospice services.

(b) Section 247.004, Health and Safety Code, is amended to read as follows:

Sec. 247.004. EXEMPTIONS. This chapter does not apply to:

(1) a boarding home facility as defined by Section 254.001, as added by Chapter 1106 (H.B. 216), Acts of the 81st Legislature, Regular Session, 2009;

(2) an establishment conducted by or for the adherents of the Church of Christ, Scientist, for the purpose of providing facilities for the care or treatment of the sick who depend exclusively on prayer or spiritual means for healing without the use of any drug or material remedy if the establishment complies with local safety, sanitary, and quarantine ordinances and regulations;

(3) a facility conducted by or for the adherents of a qualified religious society classified as a tax-exempt organization under an Internal Revenue Service group exemption ruling for the purpose of providing personal care services without charge solely for the society's professed members or ministers in retirement, if the facility complies with local safety, sanitation, and quarantine ordinances and regulations; or

(4) a facility that provides personal care services only to persons enrolled in a program that:

(A) is funded in whole or in part by the department and that is monitored by the department or its designated local mental retardation authority in accordance with standards set by the department; or

(B) is funded in whole or in part by the Department of State Health Services and that is monitored by that department, or by its designated local mental health authority in accordance with standards set by the department.

(c) Subsection (b), Section 247.067, Health and Safety Code, is amended to read as follows:

(b) Unless otherwise prohibited by law, a [A] health care professional may be employed by an assisted living facility to provide at the facility to the facility's residents services that are authorized by this chapter and that are within the professional's scope of practice [to a resident of an assisted living facility at the

facility]. This subsection does not authorize a facility to provide ongoing services comparable to the services available in an institution licensed under Chapter 242. A health care professional providing services under this subsection shall maintain medical records of those services in accordance with the licensing, certification, or other regulatory standards applicable to the health care professional under law.

SECTION 11. PHYSICIAN INCENTIVE PROGRAMS. (a) Subchapter B, Chapter 531, Government Code, is amended by adding Sections 531.086 and 531.0861 to read as follows:

Sec. 531.086. STUDY REGARDING PHYSICIAN INCENTIVE PROGRAMS TO REDUCE HOSPITAL EMERGENCY ROOM USE FOR NON-EMERGENT CONDITIONS. (a) The commission shall conduct a study to evaluate physician incentive programs that attempt to reduce hospital emergency room use for non-emergent conditions by recipients under the medical assistance program. Each physician incentive program evaluated in the study must:

(1) be administered by a health maintenance organization participating in the STAR or STAR + PLUS Medicaid managed care program; and

(2) provide incentives to primary care providers who attempt to reduce emergency room use for non-emergent conditions by recipients.

(b) The study conducted under Subsection (a) must evaluate:

(1) the cost-effectiveness of each component included in a physician incentive program; and

(2) any change in statute required to implement each component within the Medicaid fee-for-service payment model.

(c) Not later than August 31, 2013, the executive commissioner shall submit to the governor and the Legislative Budget Board a report summarizing the findings of the study required by this section.

(d) This section expires September 1, 2014.

Sec. 531.0861. PHYSICIAN INCENTIVE PROGRAM TO REDUCE HOSPITAL EMERGENCY ROOM USE FOR NON-EMERGENT CONDITIONS.

(a) If cost-effective, the executive commissioner by rule shall establish a physician incentive program designed to reduce the use of hospital emergency room services for non-emergent conditions by recipients under the medical assistance program.

(b) In establishing the physician incentive program under Subsection (a), the executive commissioner may include only the program components identified as cost-effective in the study conducted under Section 531.086.

(c) If the physician incentive program includes the payment of an enhanced reimbursement rate for routine after-hours appointments, the executive commissioner shall implement controls to ensure that the after-hours services billed are actually being provided outside of normal business hours.

(b) Section 32.0641, Human Resources Code, is amended to read as follows:

Sec. 32.0641. RECIPIENT ACCOUNTABILITY PROVISIONS; COST-SHARING REQUIREMENT TO IMPROVE APPROPRIATE UTILIZATION OF [COST SHARING FOR CERTAIN HIGH-COST MEDICAL] SERVICES.

(a) To [If the department determines that it is feasible and cost-effective, and to] the extent permitted under and in a manner that is consistent with Title XIX, Social Security Act (42 U.S.C. Section 1396 et seq.) and any other applicable law or



regulation or under a federal waiver or other authorization, the executive commissioner of the Health and Human Services Commission shall adopt, after consulting with the Medicaid and CHIP Quality-Based Payment Advisory Committee established under Section 536.002, Government Code, cost-sharing provisions that encourage personal accountability and appropriate utilization of health care services, including a cost-sharing provision applicable to [require] a recipient who chooses to receive a nonemergency [a high-cost] medical service [provided] through a hospital emergency room [to pay a copayment, premium payment, or other cost sharing payment for the high cost medical service if:

~~[(1) the hospital from which the recipient seeks service:~~

~~[(A) performs an appropriate medical screening and determines that the recipient does not have a condition requiring emergency medical services;~~

~~[(B) informs the recipient:~~

~~[(i) that the recipient does not have a condition requiring emergency medical services;~~

~~[(ii) that, if the hospital provides the nonemergency service, the hospital may require payment of a copayment, premium payment, or other cost-sharing payment by the recipient in advance; and~~

~~[(iii) of the name and address of a nonemergency Medicaid provider who can provide the appropriate medical service without imposing a cost sharing payment; and~~

~~[(C) offers to provide the recipient with a referral to the nonemergency provider to facilitate scheduling of the service; and~~

~~[(2) after receiving the information and assistance described by Subdivision (1) from the hospital, the recipient chooses to obtain emergency medical services despite having access to medically acceptable, lower cost medical services].~~

(b) The department may not seek a federal waiver or other authorization under this section ~~[Subsection (a)]~~ that would:

(1) prevent a Medicaid recipient who has a condition requiring emergency medical services from receiving care through a hospital emergency room; or

(2) waive any provision under Section 1867, Social Security Act (42 U.S.C. Section 1395dd).

~~[(c) If the executive commissioner of the Health and Human Services Commission adopts a copayment or other cost sharing payment under Subsection (a), the commission may not reduce hospital payments to reflect the potential receipt of a copayment or other payment from a recipient receiving medical services provided through a hospital emergency room.]~~

SECTION 12. BILLING COORDINATION AND INFORMATION COLLECTION. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.024131 to read as follows:

Sec. 531.024131. EXPANSION OF BILLING COORDINATION AND INFORMATION COLLECTION ACTIVITIES. (a) If cost-effective, the commission may:

(1) contract to expand all or part of the billing coordination system established under Section 531.02413 to process claims for services provided through other benefits programs administered by the commission or a health and human services agency;

(2) expand any other billing coordination tools and resources used to process claims for health care services provided through the Medicaid program to process claims for services provided through other benefits programs administered by the commission or a health and human services agency; and

(3) expand the scope of persons about whom information is collected under Section 32.042, Human Resources Code, to include recipients of services provided through other benefits programs administered by the commission or a health and human services agency.

(b) Notwithstanding any other state law, each health and human services agency shall provide the commission with any information necessary to allow the commission or the commission's designee to perform the billing coordination and information collection activities authorized by this section.

SECTION 13. TEXAS HEALTH OPPORTUNITY POOL TRUST FUND. (a) Subsections (b), (c), and (d), Section 531.502, Government Code, are amended to read as follows:

(b) The executive commissioner may include the following federal money in the waiver:

(1) ~~all~~ money provided under the disproportionate share hospitals or ~~and~~ upper payment limit supplemental payment program, or both ~~programs~~;

(2) money provided by the federal government in lieu of some or all of the payments under one or both of those programs;

(3) any combination of funds authorized to be pooled by Subdivisions (1) and (2); and

(4) any other money available for that purpose, including:

(A) federal money and money identified under Subsection (c);

(B) gifts, grants, or donations for that purpose;

(C) local funds received by this state through intergovernmental transfers; and

(D) if approved in the waiver, federal money obtained through the use of certified public expenditures.

(c) The commission shall seek to optimize federal funding by:

(1) identifying health care related state and local funds and program expenditures that, before September 1, 2011 ~~2007~~, are not being matched with federal money; and

(2) exploring the feasibility of:

(A) certifying or otherwise using those funds and expenditures as state expenditures for which this state may receive federal matching money; and

(B) depositing federal matching money received as provided by Paragraph (A) with other federal money deposited as provided by Section 531.504, or substituting that federal matching money for federal money that otherwise would be

received under the disproportionate share hospitals and upper payment limit supplemental payment programs as a match for local funds received by this state through intergovernmental transfers.

(d) The terms of a waiver approved under this section must:

(1) include safeguards to ensure that the total amount of federal money provided under the disproportionate share hospitals or ~~and~~ upper payment limit supplemental payment ~~program~~ ~~programs~~ that is deposited as provided by Section 531.504 is, for a particular state fiscal year, at least equal to the greater of the annualized amount provided to this state under those supplemental payment programs during state fiscal year 2011 ~~2007~~, excluding amounts provided during that state fiscal year that are retroactive payments, or the state fiscal years during which the waiver is in effect; and

(2) allow for the development by this state of a methodology for allocating money in the fund to:

(A) be used to supplement Medicaid hospital reimbursements under a waiver that includes terms that are consistent with, or that produce revenues consistent with, disproportionate share hospital and upper payment limit principles ~~offset, in part, the uncompensated health care costs incurred by hospitals~~;

(B) reduce the number of persons in this state who do not have health benefits coverage; and

(C) maintain and enhance the community public health infrastructure provided by hospitals.

(b) Section 531.504, Government Code, is amended to read as follows:

Sec. 531.504. DEPOSITS TO FUND. (a) The comptroller shall deposit in the fund:

(1) ~~all~~ federal money provided to this state under the disproportionate share hospitals supplemental payment program or ~~and~~ the hospital upper payment limit supplemental payment program, or both, other than money provided under those programs to state-owned and operated hospitals, and all other non-supplemental payment program federal money provided to this state that is included in the waiver authorized by Section 531.502; and

(2) state money appropriated to the fund.

(b) The commission and comptroller may accept gifts, grants, and donations from any source, and receive intergovernmental transfers, for purposes consistent with this subchapter and the terms of the waiver. The comptroller shall deposit a gift, grant, or donation made for those purposes in the fund. Any intergovernmental transfer received, including associated federal matching funds, shall be used, if feasible, for the purposes intended by the transferring entity and in accordance with the terms of the waiver.

(c) Section 531.508, Government Code, is amended by adding Subsection (d) to read as follows:

(d) Money from the fund may not be used to finance the construction, improvement, or renovation of a building or land unless the construction, improvement, or renovation is approved by the commission, according to rules adopted by the executive commissioner for that purpose.

(d) Subsection (g), Section 531.502, Government Code, is repealed.

SECTION 14. QUALITY-BASED OUTCOME AND PAYMENT INITIATIVES. (a) Subtitle I, Title 4, Government Code, is amended by adding Chapter 536, and Section 531.913, Government Code, is transferred to Subchapter D, Chapter 536, Government Code, redesignated as Section 536.151, Government Code, and amended to read as follows:

CHAPTER 536. MEDICAID AND CHILD HEALTH PLAN PROGRAMS:

QUALITY-BASED OUTCOMES AND PAYMENTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 536.001. DEFINITIONS. In this chapter:

(1) "Advisory committee" means the Medicaid and CHIP Quality-Based Payment Advisory Committee established under Section 536.002.

(2) "Alternative payment system" includes:

(A) a global payment system;

(B) an episode-based bundled payment system; and

(C) a blended payment system.

(3) "Blended payment system" means a system for compensating a physician or other health care provider that includes at least one or more features of a global payment system and an episode-based bundled payment system, but that may also include a system under which a portion of the compensation paid to a physician or other health care provider is based on a fee-for-service payment arrangement.

(4) "Child health plan program," "commission," "executive commissioner," and "health and human services agencies" have the meanings assigned by Section 531.001.

(5) "Episode-based bundled payment system" means a system for compensating a physician or other health care provider for arranging for or providing health care services to child health plan program enrollees or Medicaid recipients that is based on a flat payment for all services provided in connection with a single episode of medical care.

(6) "Exclusive provider benefit plan" means a managed care plan subject to 28 T.A.C. Part 1, Chapter 3, Subchapter KK.

(7) "Freestanding emergency medical care facility" means a facility licensed under Chapter 254, Health and Safety Code.

(8) "Global payment system" means a system for compensating a physician or other health care provider for arranging for or providing a defined set of covered health care services to child health plan program enrollees or Medicaid recipients for a specified period that is based on a predetermined payment per enrollee or recipient, as applicable, for the specified period, without regard to the quantity of services actually provided.

(9) "Health care provider" means any person, partnership, professional association, corporation, facility, or institution licensed, certified, registered, or chartered by this state to provide health care. The term includes an employee, independent contractor, or agent of a health care provider acting in the course and scope of the employment or contractual relationship.

(10) "Hospital" means a public or private institution licensed under Chapter 241 or 577, Health and Safety Code, including a general or special hospital as defined by Section 241.003, Health and Safety Code.

(11) "Managed care organization" means a person that is authorized or otherwise permitted by law to arrange for or provide a managed care plan. The term includes health maintenance organizations and exclusive provider organizations.

(12) "Managed care plan" means a plan, including an exclusive provider benefit plan, under which a person undertakes to provide, arrange for, pay for, or reimburse any part of the cost of any health care services. A part of the plan must consist of arranging for or providing health care services as distinguished from indemnification against the cost of those services on a prepaid basis through insurance or otherwise. The term does not include a plan that indemnifies a person for the cost of health care services through insurance.

(13) "Medicaid program" means the medical assistance program established under Chapter 32, Human Resources Code.

(14) "Physician" means a person licensed to practice medicine in this state under Subtitle B, Title 3, Occupations Code.

(15) "Potentially preventable admission" means an admission of a person to a hospital or long-term care facility that may have reasonably been prevented with adequate access to ambulatory care or health care coordination.

(16) "Potentially preventable ancillary service" means a health care service provided or ordered by a physician or other health care provider to supplement or support the evaluation or treatment of a patient, including a diagnostic test, laboratory test, therapy service, or radiology service, that may not be reasonably necessary for the provision of quality health care or treatment.

(17) "Potentially preventable complication" means a harmful event or negative outcome with respect to a person, including an infection or surgical complication, that:

(A) occurs after the person's admission to a hospital or long-term care facility; and

(B) may have resulted from the care, lack of care, or treatment provided during the hospital or long-term care facility stay rather than from a natural progression of an underlying disease.

(18) "Potentially preventable event" means a potentially preventable admission, a potentially preventable ancillary service, a potentially preventable complication, a potentially preventable emergency room visit, a potentially preventable readmission, or a combination of those events.

(19) "Potentially preventable emergency room visit" means treatment of a person in a hospital emergency room or freestanding emergency medical care facility for a condition that may not require emergency medical attention because the condition could be, or could have been, treated or prevented by a physician or other health care provider in a nonemergency setting.

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

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

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

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

(D) another condition or procedure of a similar nature, as determined by the executive commissioner after consulting with the advisory committee.

(21) "Quality-based payment system" means a system for compensating a physician or other health care provider, including an alternative payment system, that provides incentives to the physician or other health care provider for providing high-quality, cost-effective care and bases some portion of the payment made to the physician or other health care provider on quality of care outcomes, which may include the extent to which the physician or other health care provider reduces potentially preventable events.

Sec. 536.002. MEDICAID AND CHIP QUALITY-BASED PAYMENT ADVISORY COMMITTEE. (a) The Medicaid and CHIP Quality-Based Payment Advisory Committee is established to advise the commission on establishing, for purposes of the child health plan and Medicaid programs administered by the commission or a health and human services agency:

(1) reimbursement systems used to compensate physicians or other health care providers under those programs that reward the provision of high-quality, cost-effective health care and quality performance and quality of care outcomes with respect to health care services;

(2) standards and benchmarks for quality performance, quality of care outcomes, efficiency, and accountability by managed care organizations and physicians and other health care providers;

(3) programs and reimbursement policies that encourage high-quality, cost-effective health care delivery models that increase appropriate provider collaboration, promote wellness and prevention, and improve health outcomes; and

(4) outcome and process measures under Section 536.003.

(b) The executive commissioner shall appoint the members of the advisory committee. The committee must consist of physicians and other health care providers, representatives of health care facilities, representatives of managed care organizations, and other stakeholders interested in health care services provided in this state, including:

(1) at least one member who is a physician with clinical practice experience in obstetrics and gynecology;

(2) at least one member who is a physician with clinical practice experience in pediatrics;

(3) at least one member who is a physician with clinical practice experience in internal medicine or family medicine;

(4) at least one member who is a physician with clinical practice experience in geriatric medicine;

(5) at least one member who is or who represents a health care provider that primarily provides long-term care services;

(6) at least one member who is a consumer representative; and

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

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

Sec. 536.003. DEVELOPMENT OF QUALITY-BASED OUTCOME AND PROCESS MEASURES. (a) The commission, in consultation with the advisory committee, shall develop quality-based outcome and process measures that promote the provision of efficient, quality health care and that can be used in the child health plan and Medicaid programs to implement quality-based payments for acute and long-term care services across all delivery models and payment systems, including fee-for-service and managed care payment systems. The commission, in developing outcome measures under this section, must consider measures addressing potentially preventable events.

(b) To the extent feasible, the commission shall develop outcome and process measures:

(1) consistently across all child health plan and Medicaid program delivery models and payment systems;

(2) in a manner that takes into account appropriate patient risk factors, including the burden of chronic illness on a patient and the severity of a patient's illness;

(3) that will have the greatest effect on improving quality of care and the efficient use of services; and

(4) that are similar to outcome and process measures used in the private sector, as appropriate.

(c) The commission shall, to the extent feasible, align outcome and process measures developed under this section with measures required or recommended under reporting guidelines established by the federal Centers for Medicare and Medicaid Services, the Agency for Healthcare Research and Quality, or another federal agency.

(d) The executive commissioner by rule may require managed care organizations and physicians and other health care providers participating in the child health plan and Medicaid programs to report to the commission in a format specified by the executive commissioner information necessary to develop outcome and process measures under this section.

(e) If the commission increases physician and other health care provider reimbursement rates under the child health plan or Medicaid program as a result of an increase in the amounts appropriated for the programs for a state fiscal biennium as compared to the preceding state fiscal biennium, the commission shall, to the extent permitted under federal law and to the extent otherwise possible considering other relevant factors, correlate the increased reimbursement rates with the quality-based outcome and process measures developed under this section.

Sec. 536.004. DEVELOPMENT OF QUALITY-BASED PAYMENT SYSTEMS. (a) Using quality-based outcome and process measures developed under Section 536.003 and subject to this section, the commission, after consulting with the advisory committee, shall develop quality-based payment systems for compensating a physician or other health care provider participating in the child health plan or Medicaid program that:

- (1) align payment incentives with high-quality, cost-effective health care;
- (2) reward the use of evidence-based best practices;
- (3) promote the coordination of health care;
- (4) encourage appropriate physician and other health care provider

collaboration;

- (5) promote effective health care delivery models; and

(6) take into account the specific needs of the child health plan program enrollee and Medicaid recipient populations.

(b) The commission shall develop quality-based payment systems in the manner specified by this chapter. To the extent necessary, the commission shall coordinate the timeline for the development and implementation of a payment system with the implementation of other initiatives such as the Medicaid Information Technology Architecture (MITA) initiative of the Center for Medicaid and State Operations, the ICD-10 code sets initiative, or the ongoing Enterprise Data Warehouse (EDW) planning process in order to maximize the receipt of federal funds or reduce any administrative burden.

(c) In developing quality-based payment systems under this chapter, the commission shall examine and consider implementing:

- (1) an alternative payment system;

(2) any existing performance-based payment system used under the Medicare program that meets the requirements of this chapter, modified as necessary to account for programmatic differences, if implementing the system would:

- (A) reduce unnecessary administrative burdens; and

(B) align quality-based payment incentives for physicians and other health care providers with the Medicare program; and

(3) alternative payment methodologies within the system that are used in the Medicare program, modified as necessary to account for programmatic differences, and that will achieve cost savings and improve quality of care in the child health plan and Medicaid programs.

(d) In developing quality-based payment systems under this chapter, the commission shall ensure that a managed care organization or physician or other health care provider will not be rewarded by the system for withholding or delaying the provision of medically necessary care.

(e) The commission may modify a quality-based payment system developed under this chapter to account for programmatic differences between the child health plan and Medicaid programs and delivery systems under those programs.



Sec. 536.005. CONVERSION OF PAYMENT METHODOLOGY. (a) To the extent possible, the commission shall convert hospital reimbursement systems under the child health plan and Medicaid programs to a diagnosis-related groups (DRG) methodology that will allow the commission to more accurately classify specific patient populations and account for severity of patient illness and mortality risk.

(b) Subsection (a) does not authorize the commission to direct a managed care organization to compensate physicians and other health care providers providing services under the organization's managed care plan based on a diagnosis-related groups (DRG) methodology.

Sec. 536.006. TRANSPARENCY. The commission and the advisory committee shall:

(1) ensure transparency in the development and establishment of:

(A) quality-based payment and reimbursement systems under Section 536.004 and Subchapters B, C, and D, including the development of outcome and process measures under Section 536.003; and

(B) quality-based payment initiatives under Subchapter E, including the development of quality of care and cost-efficiency benchmarks under Section 536.204(a) and efficiency performance standards under Section 536.204(b);

(2) develop guidelines establishing procedures for providing notice and information to, and receiving input from, managed care organizations, health care providers, including physicians and experts in the various medical specialty fields, and other stakeholders, as appropriate, for purposes of developing and establishing the quality-based payment and reimbursement systems and initiatives described under Subdivision (1); and

(3) in developing and establishing the quality-based payment and reimbursement systems and initiatives described under Subdivision (1), consider that as the performance of a managed care organization or physician or other health care provider improves with respect to an outcome or process measure, quality of care and cost-efficiency benchmark, or efficiency performance standard, as applicable, there will be a diminishing rate of improved performance over time.

Sec. 536.007. PERIODIC EVALUATION. (a) At least once each two-year period, the commission shall evaluate the outcomes and cost-effectiveness of any quality-based payment system or other payment initiative implemented under this chapter.

(b) The commission shall:

(1) present the results of its evaluation under Subsection (a) to the advisory committee for the committee's input and recommendations; and

(2) provide a process by which managed care organizations and physicians and other health care providers may comment and provide input into the committee's recommendations under Subdivision (1).

Sec. 536.008. ANNUAL REPORT. (a) The commission shall submit an annual report to the legislature regarding:

(1) the quality-based outcome and process measures developed under Section 536.003; and

(2) the progress of the implementation of quality-based payment systems and other payment initiatives implemented under this chapter.

(b) The commission shall report outcome and process measures under Subsection (a)(1) by health care service region and service delivery model.

[Sections 536.009-536.050 reserved for expansion]

#### SUBCHAPTER B. QUALITY-BASED PAYMENTS RELATING TO MANAGED CARE ORGANIZATIONS

Sec. 536.051. DEVELOPMENT OF QUALITY-BASED PREMIUM PAYMENTS; PERFORMANCE REPORTING. (a) Subject to Section 1903(m)(2)(A), Social Security Act (42 U.S.C. Section 1396b(m)(2)(A)), and other applicable federal law, the commission shall base a percentage of the premiums paid to a managed care organization participating in the child health plan or Medicaid program on the organization's performance with respect to outcome and process measures developed under Section 536.003, including outcome measures addressing potentially preventable events.

(b) The commission shall make available information relating to the performance of a managed care organization with respect to outcome and process measures under this subchapter to child health plan program enrollees and Medicaid recipients before those enrollees and recipients choose their managed care plans.

Sec. 536.052. PAYMENT AND CONTRACT AWARD INCENTIVES FOR MANAGED CARE ORGANIZATIONS. (a) The commission may allow a managed care organization participating in the child health plan or Medicaid program increased flexibility to implement quality initiatives in a managed care plan offered by the organization, including flexibility with respect to financial arrangements, in order to:

- (1) achieve high-quality, cost-effective health care;
- (2) increase the use of high-quality, cost-effective delivery models; and
- (3) reduce potentially preventable events.

(b) The commission, after consulting with the advisory committee, shall develop quality of care and cost-efficiency benchmarks, including benchmarks based on a managed care organization's performance with respect to reducing potentially preventable events and containing the growth rate of health care costs.

(c) The commission may include in a contract between a managed care organization and the commission financial incentives that are based on the organization's successful implementation of quality initiatives under Subsection (a) or success in achieving quality of care and cost-efficiency benchmarks under Subsection (b).

(d) In awarding contracts to managed care organizations under the child health plan and Medicaid programs, the commission shall, in addition to considerations under Section 533.003 of this code and Section 62.155, Health and Safety Code, give preference to an organization that offers a managed care plan that successfully implements quality initiatives under Subsection (a) as determined by the commission based on data or other evidence provided by the organization or meets quality of care and cost-efficiency benchmarks under Subsection (b).

(e) The commission may implement financial incentives under this section only if implementing the incentives would be cost-effective.

[Sections 536.053-536.100 reserved for expansion]

#### SUBCHAPTER C. QUALITY-BASED HEALTH HOME PAYMENT SYSTEMS

Sec. 536.101. DEFINITIONS. In this subchapter:

(1) "Health home" means a primary care provider practice or, if appropriate, a specialty care provider practice, incorporating several features, including comprehensive care coordination, family-centered care, and data management, that are focused on improving outcome-based quality of care and increasing patient and provider satisfaction under the child health plan and Medicaid programs.

(2) "Participating enrollee" means a child health plan program enrollee or Medicaid recipient who has a health home.

Sec. 536.102. QUALITY-BASED HEALTH HOME PAYMENTS. (a) Subject to this subchapter, the commission, after consulting with the advisory committee, may develop and implement quality-based payment systems for health homes designed to improve quality of care and reduce the provision of unnecessary medical services. A quality-based payment system developed under this section must:

(1) base payments made to a participating enrollee's health home on quality and efficiency measures that may include measurable wellness and prevention criteria and use of evidence-based best practices, sharing a portion of any realized cost savings achieved by the health home, and ensuring quality of care outcomes, including a reduction in potentially preventable events; and

(2) allow for the examination of measurable wellness and prevention criteria, use of evidence-based best practices, and quality of care outcomes based on the type of primary or specialty care provider practice.

(b) The commission may develop a quality-based payment system for health homes under this subchapter only if implementing the system would be feasible and cost-effective.

Sec. 536.103. PROVIDER ELIGIBILITY. To be eligible to receive reimbursement under a quality-based payment system under this subchapter, a health home provider must:

(1) provide participating enrollees, directly or indirectly, with access to health care services outside of regular business hours;

(2) educate participating enrollees about the availability of health care services outside of regular business hours; and

(3) provide evidence satisfactory to the commission that the provider meets the requirement of Subdivision (1).

[Sections 536.104-536.150 reserved for expansion]

#### SUBCHAPTER D. QUALITY-BASED HOSPITAL REIMBURSEMENT SYSTEM

Sec. 536.151 ~~[531.913]~~. COLLECTION AND REPORTING OF CERTAIN ~~[HOSPITAL HEALTH]~~ INFORMATION ~~[EXCHANGE]~~. (a) ~~[In this section, "potentially preventable readmission" means a return hospitalization of a person within a period specified by the commission that results from deficiencies in the care or treatment provided to the person during a previous hospital stay or from deficiencies in post hospital discharge follow up. The term does not include a hospital readmission necessitated by the occurrence of unrelated events after the discharge. The term includes the readmission of a person to a hospital for:~~

~~[(1) the same condition or procedure for which the person was previously admitted;~~

~~[(2) an infection or other complication resulting from care previously provided;~~

~~[(3) a condition or procedure that indicates that a surgical intervention performed during a previous admission was unsuccessful in achieving the anticipated outcome; or~~

~~[(4) another condition or procedure of a similar nature, as determined by the executive commissioner.~~

~~[(b)]~~ The executive commissioner shall adopt rules for identifying potentially preventable readmissions of child health plan program enrollees and Medicaid recipients and potentially preventable complications experienced by child health plan program enrollees and Medicaid recipients. The ~~[and the]~~ commission shall collect [exchange] data from [with] hospitals on present-on-admission indicators for purposes of this section.

~~[(c)]~~ The commission shall establish a ~~[health information exchange]~~ program to provide a [exchange] confidential report to [information with] each hospital in this state that participates in the child health plan or Medicaid program regarding the hospital's performance with respect to potentially preventable readmissions and potentially preventable complications. To the extent possible, a report provided under this section should include potentially preventable readmissions and potentially preventable complications information across all child health plan and Medicaid program payment systems. A hospital shall distribute the information contained in the report ~~[received from the commission]~~ to physicians and other health care providers providing services at the hospital.

(c) A report provided to a hospital under this section is confidential and is not subject to Chapter 552.

Sec. 536.152. REIMBURSEMENT ADJUSTMENTS. (a) Subject to Subsection (b), using the data collected under Section 536.151 and the diagnosis-related groups (DRG) methodology implemented under Section 536.005, the commission, after consulting with the advisory committee, shall to the extent feasible adjust child health plan and Medicaid reimbursements to hospitals, including payments made under the disproportionate share hospitals and upper payment limit supplemental payment programs, in a manner that may reward or penalize a hospital based on the hospital's performance with respect to exceeding, or failing to achieve, outcome and process measures developed under Section 536.003 that address the rates of potentially preventable readmissions and potentially preventable complications.

(b) The commission must provide the report required under Section 536.151(b) to a hospital at least one year before the commission adjusts child health plan and Medicaid reimbursements to the hospital under this section.

[Sections 536.153-536.200 reserved for expansion]

#### SUBCHAPTER E. QUALITY-BASED PAYMENT INITIATIVES

Sec. 536.201. DEFINITION. In this subchapter, "payment initiative" means a quality-based payment initiative established under this subchapter.

Sec. 536.202. PAYMENT INITIATIVES; DETERMINATION OF BENEFIT TO STATE. (a) The commission shall, after consulting with the advisory committee, establish payment initiatives to test the effectiveness of quality-based payment systems, alternative payment methodologies, and high-quality, cost-effective health

care delivery models that provide incentives to physicians and other health care providers to develop health care interventions for child health plan program enrollees or Medicaid recipients, or both, that will:

- (1) improve the quality of health care provided to the enrollees or recipients;
- (2) reduce potentially preventable events;
- (3) promote prevention and wellness;
- (4) increase the use of evidence-based best practices;
- (5) increase appropriate physician and other health care provider

collaboration; and

- (6) contain costs.

(b) The commission shall:

(1) establish a process by which managed care organizations and physicians and other health care providers may submit proposals for payment initiatives described by Subsection (a); and

(2) determine whether it is feasible and cost-effective to implement one or more of the proposed payment initiatives.

Sec. 536.203. PURPOSE AND IMPLEMENTATION OF PAYMENT INITIATIVES. (a) If the commission determines under Section 536.202 that implementation of one or more payment initiatives is feasible and cost-effective for this state, the commission shall establish one or more payment initiatives as provided by this subchapter.

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

(c) The commission may limit a payment initiative to:

- (1) one or more regions in this state;
- (2) one or more organized networks of physicians and other health care providers; or

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

(d) A payment initiative implemented under this subchapter must be operated for at least one calendar year.

Sec. 536.204. STANDARDS; PROTOCOLS. (a) The executive commissioner shall:

(1) consult with the advisory committee to develop quality of care and cost-efficiency benchmarks and measurable goals that a payment initiative must meet to ensure high-quality and cost-effective health care services and healthy outcomes; and

- (2) approve benchmarks and goals developed as provided by Subdivision

(1).

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

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

Sec. 536.205. PAYMENT RATES UNDER PAYMENT INITIATIVES. The executive commissioner may contract with appropriate entities, including qualified actuaries, to assist in determining appropriate payment rates for a payment initiative implemented under this subchapter.

(b) The Health and Human Services Commission shall convert the hospital reimbursement systems used under the child health plan program under Chapter 62, Health and Safety Code, and medical assistance program under Chapter 32, Human Resources Code, to the diagnosis-related groups (DRG) methodology to the extent possible as required by Section 536.005, Government Code, as added by this section, as soon as practicable after the effective date of this Act, but not later than:

(1) September 1, 2013, for reimbursements paid to children's hospitals; and

(2) September 1, 2012, for reimbursements paid to other hospitals under those programs.

(c) Not later than September 1, 2012, the Health and Human Services Commission shall begin providing performance reports to hospitals regarding the hospitals' performances with respect to potentially preventable complications as required by Section 536.151, Government Code, as designated and amended by this section.

(d) Subject to Section 536.004(b), Government Code, as added by this section, the Health and Human Services Commission shall begin making adjustments to child health plan and Medicaid reimbursements to hospitals as required by Section 536.152, Government Code, as added by this section:

(1) not later than September 1, 2012, based on the hospitals' performances with respect to reducing potentially preventable readmissions; and

(2) not later than September 1, 2013, based on the hospitals' performances with respect to reducing potentially preventable complications.

#### SECTION 15. LONG-TERM CARE PAYMENT INCENTIVE INITIATIVES.

(a) The heading to Section 531.912, Government Code, is amended to read as follows:

Sec. 531.912. COMMON PERFORMANCE MEASUREMENTS AND PAY-FOR-PERFORMANCE INCENTIVES FOR ~~[QUALITY OF CARE HEALTH INFORMATION EXCHANGE WITH]~~ CERTAIN NURSING FACILITIES.

(b) Subsections (b), (c), and (f), Section 531.912, Government Code, are amended to read as follows:

(b) If feasible, the executive commissioner by rule may ~~[shall]~~ establish an incentive payment program for [a quality of care health information exchange with] ~~[a quality of care health information exchange with]~~ nursing facilities that choose to participate. The [in a] program must be designed to improve the quality of care and services provided to medical assistance recipients. Subject to Subsection (f), the program may provide incentive payments in accordance with this section to encourage facilities to participate in the program.

(c) In establishing an incentive payment ~~[a quality of care health information exchange]~~ program under this section, the executive commissioner shall, subject to Subsection (d), adopt common ~~[exchange information with participating nursing~~

facilities regarding] performance measures to be used in evaluating nursing facilities that are related to structure, process, and outcomes that positively correlate to nursing facility quality and improvement. The common performance measures:

(1) must be:

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

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

(2) may include measures of:

(A) quality of care, as determined by clinical performance ratings published by the federal Centers for Medicare and Medicaid Services, the Agency for Healthcare Research and Quality, or another federal agency [life];

(B) direct-care staff retention and turnover;

(C) recipient satisfaction, including the satisfaction of recipients who are short-term and long-term residents of facilities, and family satisfaction, as determined by the Nursing Home Consumer Assessment of Health Providers and Systems survey relied upon by the federal Centers for Medicare and Medicaid Services;

(D) employee satisfaction and engagement;

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

(F) regulatory compliance;

(G) level of person-centered care; and

(H) direct-care staff training, including a facility's [level of occupancy or of facility] utilization of independent distance learning programs for the continuous training of direct-care staff.

(f) The commission may make incentive payments under the program only if money is ~~[specifically]~~ appropriated for that purpose.

(c) The Department of Aging and Disability Services shall conduct a study to evaluate the feasibility of expanding any incentive payment program established for nursing facilities under Section 531.912, Government Code, as amended by this section, by providing incentive payments for the following types of providers of long-term care services, as defined by Section 22.0011, Human Resources Code, under the medical assistance program:

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

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

(d) Not later than September 1, 2012, the Department of Aging and Disability Services shall submit to the legislature a written report containing the findings of the study conducted under Subsection (c) of this section and the department's recommendations.

SECTION 16. USE OF TRAUMA AND EMERGENCY MEDICAL SERVICES ACCOUNT TO FUND MEDICAID. Section 780.004, Health and Safety Code, is amended by amending Subsection (a) and adding Subsection (j) to read as follows:

(a) The commissioner:

(1) [7] with advice and counsel from the chairpersons of the trauma service area regional advisory councils, shall use money appropriated from the account established under this chapter to fund designated trauma facilities, county and regional emergency medical services, and trauma care systems in accordance with this section; and

(2) after consulting with the executive commissioner of the Health and Human Services Commission, may transfer to an account in the general revenue fund money appropriated from the account established under this chapter to maximize the receipt of federal funds under the medical assistance program established under Chapter 32, Human Resources Code, and to fund provider reimbursement payments as provided by Subsection (j).

(j) Money in the account described by Subsection (a)(2) may be appropriated only to the Health and Human Services Commission to fund provider reimbursement payments under the medical assistance program established under Chapter 32, Human Resources Code, including reimbursement enhancements to the statewide dollar amount (SDA) rate used to reimburse designated trauma hospitals under the program.

SECTION 17. COMMUNICATIONS REGARDING PRESCRIPTION DRUG BENEFITS. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.0697 to read as follows:

Sec. 531.0697. PRIOR APPROVAL AND PROVIDER ACCESS TO CERTAIN COMMUNICATIONS WITH CERTAIN RECIPIENTS. (a) This section applies to:

(1) the vendor drug program for the Medicaid and child health plan programs;

(2) the kidney health care program;

(3) the children with special health care needs program; and

(4) any other state program administered by the commission that provides prescription drug benefits.

(b) A managed care organization, including a health maintenance organization, or a pharmacy benefit manager, that administers claims for prescription drug benefits under a program to which this section applies shall, at least 10 days before the date the organization or pharmacy benefit manager intends to deliver a communication to recipients collectively under a program:

(1) submit a copy of the communication to the commission for approval; and

(2) if applicable, allow the pharmacy providers of recipients who are to receive the communication access to the communication.

SECTION 18. REIMBURSEMENT FOR INDIGENT HEALTH CARE SERVICES. (a) Subchapter A, Chapter 61, Health and Safety Code, is amended by adding Section 61.012 to read as follows:



Sec. 61.012. REIMBURSEMENT FOR SERVICES. (a) In this section, "sponsored alien" means a person who has been lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act (8 U.S.C. Section 1101 et seq.) and who, as a condition of admission, was sponsored by a person who executed an affidavit of support on behalf of the person.

(b) A public hospital or hospital district that provides health care services to a sponsored alien under this chapter may recover from a person who executed an affidavit of support on behalf of the alien the costs of the health care services provided to the alien.

(c) A public hospital or hospital district described by Subsection (b) must notify a sponsored alien and a person who executed an affidavit of support on behalf of the alien, at the time the alien applies for health care services, that a person who executed an affidavit of support on behalf of a sponsored alien is liable for the cost of health care services provided to the alien.

(b) Section 61.012, Health and Safety Code, as added by this section, applies only to health care services provided by a public hospital or hospital district on or after the effective date of this Act.

SECTION 19. PROVISIONS RELATING TO CERTAIN IMMIGRANTS APPLYING FOR OR RECEIVING CERTAIN PUBLIC BENEFITS. Subchapter B, Chapter 531, Government Code, is amended by adding Sections 531.024181 and 531.024182 to read as follows:

Sec. 531.024181. VERIFICATION OF IMMIGRATION STATUS OF APPLICANTS FOR CERTAIN BENEFITS WHO ARE QUALIFIED ALIENS. (a) This section applies only with respect to the following benefits programs:

(1) the child health plan program under Chapter 62, Health and Safety Code;

(2) the financial assistance program under Chapter 31, Human Resources Code;

(3) the medical assistance program under Chapter 32, Human Resources Code; and

(4) the nutritional assistance program under Chapter 33, Human Resources Code.

(b) If, at the time of application for benefits under a program to which this section applies, a person states that the person is a qualified alien, as that term is defined by 8 U.S.C. Section 1641(b), the commission shall, to the extent allowed by federal law, verify information regarding the immigration status of the person using an automated system or systems where available.

(c) The executive commissioner shall adopt rules necessary to implement this section.

(d) Nothing in this section adds to or changes the eligibility requirements for any of the benefits programs to which this section applies.

Sec. 531.024182. VERIFICATION OF SPONSORSHIP INFORMATION FOR CERTAIN BENEFITS RECIPIENTS; REIMBURSEMENT. (a) In this section, "sponsored alien" means a person who has been lawfully admitted to the United States

for permanent residence under the Immigration and Nationality Act (8 U.S.C. Section 1101 et seq.) and who, as a condition of admission, was sponsored by a person who executed an affidavit of support on behalf of the person.

(b) If, at the time of application for benefits, a person stated that the person is a sponsored alien, the commission may, to the extent allowed by federal law, verify information relating to the sponsorship, using an automated system or systems where available, after the person is determined eligible for and begins receiving benefits under any of the following benefits programs:

(1) the child health plan program under Chapter 62, Health and Safety

Code;

(2) the financial assistance program under Chapter 31, Human Resources

Code;

(3) the medical assistance program under Chapter 32, Human Resources

Code; or

(4) the nutritional assistance program under Chapter 33, Human Resources

Code.

(c) If the commission verifies that a person who receives benefits under a program listed in Subsection (b) is a sponsored alien, the commission may seek reimbursement from the person's sponsor for benefits provided to the person under those programs to the extent allowed by federal law, provided the commission determines that seeking reimbursement is cost-effective.

(d) If, at the time a person applies for benefits under a program listed in Subsection (b), the person states that the person is a sponsored alien, the commission shall make a reasonable effort to notify the person that the commission may seek reimbursement from the person's sponsor for any benefits the person receives under those programs.

(e) The executive commissioner shall adopt rules necessary to implement this section, including rules that specify the most cost-effective procedures by which the commission may seek reimbursement under Subsection (c).

(f) Nothing in this section adds to or changes the eligibility requirements for any of the benefits programs listed in Subsection (b).

SECTION 20. ELECTRONIC SUBMISSION OF CLAIMS FOR MEDICAL ASSISTANCE REIMBURSEMENT FOR DURABLE MEDICAL EQUIPMENT AND SUPPLIES. Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.0314 to read as follows:

Sec. 32.0314. REIMBURSEMENT FOR DURABLE MEDICAL EQUIPMENT AND SUPPLIES. The executive commissioner of the Health and Human Services Commission shall adopt rules requiring the electronic submission of any claim for reimbursement for durable medical equipment and supplies under the medical assistance program.

SECTION 21. GRANTS FOR FAMILY PLANNING SERVICE PROVIDERS.

(a) Subchapter A, Chapter 531, Government Code, is amended by adding Section 531.0025 to read as follows:

Sec. 531.0025. RESTRICTIONS ON AWARDS TO FAMILY PLANNING SERVICE PROVIDERS. (a) Notwithstanding any other law, money appropriated to the Department of State Health Services for the purpose of providing family planning services must be awarded:

(1) to eligible entities in the following order of descending priority:

(A) public entities that provide family planning services, including state, county, and local community health clinics;

(B) nonpublic entities that provide comprehensive primary and preventive care services in addition to family planning services; and

(C) nonpublic entities that provide family planning services but do not provide comprehensive primary and preventive care services; or

(2) as otherwise directed by the legislature in the General Appropriations Act.

(b) Notwithstanding Subsection (a), the Department of State Health Services may award money to eligible entities in medically underserved areas of the state out of the order of priority required by that subsection.

(b) Section 32.024, Human Resources Code, is amended by adding Subsection (c-1) to read as follows:

(c-1) The department shall ensure that money spent for purposes of the demonstration project for women's health care services under former Section 32.0248, Human Resources Code, or a similar successor program is not used to perform or promote elective abortions, or to contract with entities that perform or promote elective abortions or affiliate with entities that perform or promote elective abortions.

SECTION 22. FEDERAL AUTHORIZATION. 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 23. EFFECTIVE DATE. This Act takes effect September 1, 2011.

The Conference Committee Report on **SB 23** was filed with the Secretary of the Senate.

### **CONFERENCE COMMITTEE REPORT ON SENATE BILL 1010**

Senator Huffman submitted the following Conference Committee Report:

Austin, Texas

May 28, 2011

Honorable David Dewhurst  
President of the Senate

Honorable Joe Straus  
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 1010** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

HUFFMAN

HEGAR

PATRICK

NELSON

WHITMIRE

On the part of the Senate

WORKMAN

CARTER

GALLEGO

LUCIO

MADDEN

On the part of the House

A BILL TO BE ENTITLED  
AN ACT

relating to providing a victim, guardian of a victim, or close relative of a deceased victim with notice of a plea bargain agreement in certain criminal cases.

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

SECTION 1. Subsections (a) and (e), Article 26.13, Code of Criminal Procedure, are amended to read as follows:

(a) Prior to accepting a plea of guilty or a plea of nolo contendere, the court shall admonish the defendant of:

(1) the range of the punishment attached to the offense;

(2) the fact that the recommendation of the prosecuting attorney as to punishment is not binding on the court. Provided that the court shall inquire as to the existence of a ~~[any]~~ plea bargain agreement ~~[bargaining agreements]~~ between the state and the defendant and, if ~~[in the event that such]~~ an agreement exists, the court shall inform the defendant whether it will follow or reject the ~~[such]~~ agreement in open court and before any finding on the plea. Should the court reject the ~~[any such]~~ agreement, the defendant shall be permitted to withdraw the defendant's ~~[his]~~ plea of guilty or nolo contendere;

(3) the fact that if the punishment assessed does not exceed the punishment recommended by the prosecutor and agreed to by the defendant and the defendant's ~~[his]~~ attorney, the trial court must give its permission to the defendant before the defendant ~~[he]~~ may prosecute an appeal on any matter in the case except for those matters raised by written motions filed prior to trial;

(4) the fact that if the defendant is not a citizen of the United States of America, a plea of guilty or nolo contendere for the offense charged may result in deportation, the exclusion from admission to this country, or the denial of naturalization under federal law; and

(5) the fact that the defendant will be required to meet the registration requirements of Chapter 62, if the defendant is convicted of or placed on deferred adjudication for an offense for which a person is subject to registration under that chapter.

(e) Before accepting a plea of guilty or a plea of nolo contendere, the court shall, as applicable in the case:

(1) inquire as to whether a victim impact statement has been returned to the attorney representing the state and ask for a copy of the statement if one has been returned; and

(2) 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 of a victim, or close relative of a deceased victim, as those terms are defined by Article 56.01.

SECTION 2. Article 56.08, Code of Criminal Procedure, is amended by amending Subsections (b) and (e) and adding Subsection (b-1) to read as follows:

(b) If requested by the victim, the attorney representing the state, as far as reasonably practical, shall give to the victim notice of any scheduled court proceedings, changes in that schedule, and the filing of a request for continuance of a trial setting[, and any plea agreements to be presented to the court].

(b-1) The attorney representing the state, as far as reasonably practical, shall give to the victim, guardian of a victim, or close relative of a deceased victim notice of the existence and terms of any plea bargain agreement to be presented to the court.

(e) The brief general statement describing the plea bargaining stage in a criminal trial required by Subsection (a)(1) shall include a statement that:

(1) the victim impact statement provided by the victim, guardian of a victim, or close relative of a deceased victim will be considered by the attorney representing the state in entering into the plea bargain agreement; and

(2) the judge before accepting the plea bargain agreement is required under Article [Section] 26.13(e) to ask:

(A) whether a victim impact statement has been returned to the attorney; ~~and~~

(B) if a victim impact statement has been returned, for a copy of the statement; and

(C) whether the attorney representing the state has given the victim, guardian of a victim, or close relative of a deceased victim notice of the existence and terms of the plea bargain agreement.

SECTION 3. (a) The change in law made by this Act applies only to a plea bargain agreement that is presented to a court on or after the effective date of this Act.

(b) A 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 agreement was presented, and the former law is continued in effect for that purpose.

SECTION 4. This Act takes effect September 1, 2011.

The corrected Conference Committee Report on **SB 1010** was filed with the Secretary of the Senate.

### **CONFERENCE COMMITTEE REPORT ON SENATE BILL 694**

Senator West submitted the following Conference Committee Report:

Austin, Texas  
May 28, 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 694** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

WEST  
DUNCAN  
FRASER  
HARRIS  
URESTI

On the part of the Senate

W. SMITH  
COOK  
DUTTON  
FLETCHER

On the part of the House

A BILL TO BE ENTITLED  
AN ACT

relating to the regulation of metal recycling entities; providing penalties.

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

SECTION 1. Subdivision (10), Section 1956.001, Occupations Code, is amended to read as follows:

(10) "Regulated metal" means:

- (A) manhole covers;
- (B) guardrails;
- (C) metal cylinders designed to contain compressed air, oxygen, gases,

or liquids;

- (D) beer kegs made from metal other than aluminum;
- (E) historical markers or cemetery vases, receptacles, or memorials  
made from metal other than aluminum;

- (F) unused rebar;
- (G) street signs;
- (H) drain gates;
- (I) safes;

(J) communication, transmission, and service wire or cable;

(K) condensing or evaporator coils for central heating or air  
conditioning units;

- (L) utility structures, including the fixtures and hardware;

(M) aluminum or stainless steel containers designed to hold propane for  
fueling forklifts; ~~and~~

(N) metal railroad equipment, including tie plates, signal houses,  
control boxes, signs, signals, traffic devices, traffic control devices, traffic control  
signals, switch plates, e-clips, and rail tie functions;

- (O) catalytic converters not attached to a vehicle;

- (P) fire hydrants;

(Q) metal bleachers or other seating facilities used in recreational areas or sporting arenas;

(R) any metal item clearly and conspicuously marked with any form of the name, initials, or logo of a governmental entity, utility, cemetery, or railroad;

(S) insulated utility, communications, or electrical wire that has been burned in whole or in part to remove the insulation;

(T) backflow valves; and

(U) metal in the form of commonly recognized products of the industrial metals recycling process, including bales, briquettes, billets, sows, ingots, pucks, and chopped or shredded metals.

SECTION 2. The heading to Section 1956.003, Occupations Code, is amended to read as follows:

Sec. 1956.003. LOCAL LAW; CRIMINAL PENALTY.

SECTION 3. Section 1956.003, Occupations Code, is amended by adding Subsections (a-1), (a-2), (f), (f-1), (f-2), and (g) to read as follows:

(a-1) A county, municipality, or other political subdivision may require the record of purchase described under Section 1956.033 to contain a clear and legible thumbprint of a seller of regulated material.

(a-2) A county, municipality, or other political subdivision that, as authorized under Subsection (a), requires a metal recycling entity to report to the county, municipality, or political subdivision information relating to a sale of regulated material shall:

(1) include in any contract entered into by the county, municipality, or political subdivision relating to the reporting of the information a provision that:

(A) requires any contractor, subcontractor, or third party that has access to, comes into possession of, or otherwise obtains information relating to a sale of regulated material to maintain the confidentiality of all information received, including the name of the seller, the price paid for a purchase of regulated material, and the quantity of regulated material purchased; and

(B) allows the county, municipality, or political subdivision to terminate the contract of any contractor, subcontractor, or third party that violates the confidentiality provision required by Paragraph (A); and

(2) investigate a complaint alleging that a contractor, subcontractor, or third party has failed to maintain the confidentiality of information relating to a sale of regulated material.

(f) A person commits an offense if the person owns or operates a metal recycling entity and does not hold a license or permit required by a county, municipality, or other political subdivision as authorized under Subsection (b). An offense under this subsection is a Class B misdemeanor unless it is shown on the trial of the offense that the person has been previously convicted under this subsection, in which event the offense is a Class A misdemeanor.

(f-1) It is an exception to the application of Subsection (f) that:

(1) the person held a license or permit issued by the appropriate county, municipality, or other political subdivision at one point during the 12-month period preceding the date of the alleged offense; and

(2) the person obtains or submits an application for the appropriate license or permit not later than the 15th day after the date the person receives notice from the appropriate county, municipality, or other political subdivision informing the person that the metal recycling entity is operating without the required license or permit.

(f-2) This subsection and Subsection (f-1) expire March 1, 2013.

(g) Notwithstanding any other law, a county, municipality, or other political subdivision must provide a minimum 30-day notice followed by a public hearing prior to enacting a prohibition on the sale or use of a recyclable product.

SECTION 4. Subchapter A, Chapter 1956, Occupations Code, is amended by adding Section 1956.004 to read as follows:

Sec. 1956.004. CIVIL PENALTY. (a) A person who owns or operates a metal recycling entity and does not hold a license or permit required by a county, municipality, or other political subdivision as authorized under Section 1956.003(b) is subject to a civil penalty of not more than \$1,000 for each violation. In determining the amount of the civil penalty, the court shall consider:

(1) any other violations by the person; and

(2) the amount necessary to deter future violations.

(b) A district attorney, county attorney, or municipal attorney may institute an action to collect the civil penalty provided by this section.

(c) Each day a violation occurs or continues to occur is a separate violation.

(d) The district attorney, county attorney, or municipal attorney may recover reasonable expenses incurred in obtaining a civil penalty under this section, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition expenses.

(e) It is an exception to the application of this section that:

(1) the person held a license or permit issued by the appropriate county, municipality, or other political subdivision at one point during the 12-month period preceding the date of the alleged violation; and

(2) the person obtains or submits an application for the appropriate license or permit not later than the 15th day after the date the person receives notice from the appropriate county, municipality, or other political subdivision informing the person that the metal recycling entity is operating without the required license or permit.

(f) This subsection and Subsection (e) expire March 1, 2013.

SECTION 5. Section 1956.015, Occupations Code, is amended by amending Subsection (d) and adding Subsections (e) and (f) to read as follows:

(d) Information provided under this section is not subject to disclosure under Chapter 552, Government Code. The department may use information provided under this section for law enforcement purposes. Except as provided by this subsection, the department shall maintain the confidentiality of all information provided under this section, including the name of the seller, the price paid for a purchase of regulated material, and the quantity of regulated material purchased [that relates to the financial condition or business affairs of a metal recycling entity or that is otherwise commercially sensitive. The confidential information is not subject to disclosure under Chapter 552, Government Code].



(e) The department may enter into contracts relating to the operation of the statewide electronic reporting system established by this section. A contract under this subsection must:

(1) require that any contractor, subcontractor, or third party that has access to, comes into possession of, or otherwise obtains information provided under this section maintain the confidentiality of all information provided under this section, including the name of the seller, the price paid for a purchase of regulated material, and the quantity of regulated material purchased; and

(2) provide that the department may terminate the contract of any contractor, subcontractor, or third party that violates the confidentiality provision required by Subdivision (1).

(f) The department shall investigate a complaint alleging that a contractor, subcontractor, or third party has failed to maintain the confidentiality of information relating to a sale of regulated material.

SECTION 6. Subchapter A-1, Chapter 1956, Occupations Code, is amended by adding Sections 1956.016 and 1956.017 to read as follows:

Sec. 1956.016. REGISTRATION DATABASE. The department shall make available on its Internet website a publicly accessible list of all registered metal recycling entities. The list must contain the following for each registered metal recycling entity:

(1) the entity's name;

(2) the entity's physical address; and

(3) the name of and contact information for a representative of the entity.

Sec. 1956.017. ADVISORY COMMITTEE. (a) The department shall establish an advisory committee to advise the department on matters related to the department's regulation of metal recycling entities under this chapter.

(b) The advisory committee consists of 12 members appointed by the director as follows:

(1) one representative of the department;

(2) two representatives of local law enforcement agencies located in different municipalities, each with a population of 500,000 or more;

(3) two representatives of local law enforcement agencies located in different municipalities, each with a population of 200,000 or more but less than 500,000;

(4) one representative of a local law enforcement agency located in a municipality with a population of less than 200,000;

(5) four representatives of metal recycling entities; and

(6) two members who represent industries that are impacted by theft of regulated material.

(c) The director shall ensure that the members of the advisory committee reflect the diverse geographic regions of this state.

(d) The advisory committee shall elect a presiding officer from among its members to serve a two-year term. A member may serve more than one term as presiding officer.

(e) The advisory committee shall meet annually and at the call of the presiding officer or the director.

(f) An advisory committee member is not entitled to compensation or reimbursement of expenses.

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

SECTION 7. The heading to Section 1956.032, Occupations Code, is amended to read as follows:

Sec. 1956.032. INFORMATION REGARDING ~~PROVIDED BY~~ SELLER.

SECTION 8. Section 1956.032, Occupations Code, is amended by amending Subsection (a) and adding Subsections (g) and (h) to read as follows:

(a) Except as provided by Subsection (f), a person attempting to sell regulated material to a metal recycling entity shall:

(1) display to the metal recycling entity the person's personal identification document;

(2) provide to the metal recycling entity the make, model, color, and license plate number of the motor vehicle used to transport the regulated material and the name of the state issuing the license plate; ~~and~~

(3) either:

(A) present written documentation evidencing that the person is the legal owner or is lawfully entitled to sell the regulated material; or

(B) sign a written statement provided by the metal recycling entity that the person is the legal owner of or is lawfully entitled to sell the regulated material offered for sale;

(4) if the regulated material includes condensing or evaporator coils for central heating or air conditioning units, display to the metal recycling entity:

(A) the person's air conditioning and refrigeration contractor license issued under Subchapter F or G, Chapter 1302;

(B) the person's air conditioning and refrigeration technician registration issued under Subchapter K, Chapter 1302;

(C) a receipt, bill of sale, or other documentation showing that the seller purchased the coils the seller is attempting to sell; or

(D) a receipt, bill of sale, or other documentation showing that the seller has purchased a replacement central heating or air conditioning unit; and

(5) if the regulated material includes insulated communications wire that has been burned wholly or partly to remove the insulation, display to the metal recycling entity documentation acceptable under the rules adopted under Subsection (h) that states that the material was salvaged from a fire.

(g) Notwithstanding Section 1956.002, the metal recycling entity shall verify the registration of a person attempting to sell regulated material who represents that the person is a metal recycling entity as follows:

(1) by using the database described by Section 1956.016; or

(2) by obtaining from the person a copy of the person's certificate of registration issued under Section 1956.022 in addition to the information required under Subsection (a).

(h) The commission shall adopt rules establishing the type of documentation that a seller of insulated communications wire described by Subsection (a)(5) must provide to a metal recycling entity to establish that the wire was salvaged from a fire.

SECTION 9. Section 1956.033, Occupations Code, is amended to read as follows:

Sec. 1956.033. RECORD OF PURCHASE. (a) Each metal recycling entity in this state shall keep an accurate electronic record or an accurate and legible written record of each purchase of regulated material made in the course of the entity's business from an individual ~~of:~~

~~[(1) copper or brass material;~~

~~[(2) bronze material;~~

~~[(3) aluminum material; or~~

~~[(4) regulated metal].~~

(b) The record must be in English and include:

(1) the place and date of the purchase;

(2) the name and address of the seller in possession of ~~[each individual from whom]~~ the regulated material ~~[is]~~ purchased ~~[or obtained];~~

(3) the identifying number of the seller's personal identification document;

(4) a description made in accordance with the custom of the trade of the commodity type and quantity of regulated material purchased; ~~[and]~~

(5) the information required by Sections 1956.032(a)(2) and (3);

(6) as applicable:

(A) the identifying number of the seller's air conditioning and refrigeration contractor license displayed under Section 1956.032(a)(4)(A);

(B) a copy of the seller's air conditioning and refrigeration technician registration displayed under Section 1956.032(a)(4)(B);

(C) a copy of the documentation described by Section 1956.032(a)(4)(C); or

(D) a copy of the documentation described by Section 1956.032(a)(4)(D);

(7) if applicable, a copy of the documentation described by Section 1956.032(a)(5); and

(8) a copy of the documentation described by Section 1956.032(g) ~~[Section 1956.032(a)(3)].~~

SECTION 10. Subchapter A-3, Chapter 1956, Occupations Code, is amended by adding Section 1956.0331 to read as follows:

Sec. 1956.0331. PHOTOGRAPH OR RECORDING REQUIREMENT FOR REGULATED METAL TRANSACTION. (a) In addition to the requirements of Sections 1956.032 and 1956.033, for each purchase by a metal recycling entity of an item of regulated metal, the entity shall obtain a digital photograph or video recording that accurately depicts the seller's entire face and each type of regulated metal purchased.

(b) A metal recycling entity shall preserve a photograph or recording required under Subsection (a) as follows:

(1) for a video recording, until the 91st day after the date of the transaction; and

(2) for a digital photograph, until the 181st day after the date of the transaction.

(c) The photograph or recording must be made available for inspection as provided by Section 1956.035 not later than 72 hours after the time of purchase.

SECTION 11. Section 1956.034, Occupations Code, is amended to read as follows:

Sec. 1956.034. PRESERVATION OF RECORDS. A metal recycling entity shall preserve each record required by Sections 1956.032 and 1956.033 until the second ~~third~~ anniversary of the date the record was made. The records must be kept in an easily retrievable format and must be available for inspection as provided by Section 1956.035 not later than 72 hours after the time of purchase.

SECTION 12. Section 1956.035, Occupations Code, is amended to read as follows:

Sec. 1956.035. INSPECTION OF RECORDS ~~[BY PEACE OFFICER]~~. (a) On request, a metal recycling entity shall permit a peace officer of this state, a representative of the department, or a representative of a county, municipality, or other political subdivision that issues a license or permit under Section 1956.003(b) to inspect, during the entity's usual business hours:

- (1) a record required by Section 1956.033; ~~or~~
- (2) a digital photograph or video recording required by Section 1956.0331;

or

- (3) regulated material in the entity's possession.

(b) The person seeking to inspect a record or material ~~[inspecting officer]~~ shall:

- (1) inform the entity of the officer's status as a peace officer; or
- (2) if the person is a representative of the department or a representative of a

county, municipality, or other political subdivision, inform the entity of the person's status and display to the entity an identification document or other appropriate documentation establishing the person's status as a representative of the department or of the appropriate county, municipality, or political subdivision.

SECTION 13. Section 1956.036, Occupations Code, is amended by amending Subsections (a) and (b) and adding Subsections (d) and (e) to read as follows:

(a) Except as provided by Subsections ~~[Subsection]~~ (b) and (d), not later than the close of business on a metal recycling entity's second working ~~[seventh]~~ day after the date of the purchase or other acquisition of material for which a record is required under Section 1956.033, the ~~[a metal recycling]~~ entity shall send an electronic transaction report to the department via the department's Internet website. The ~~[by facsimile or electronic mail to or file with the department a]~~ report must contain ~~[containing]~~ the information required to be recorded under Section 1956.033 ~~[that section]~~.

(b) If a metal recycling entity purchases bronze material that is a cemetery vase, receptacle, memorial, or statuary or a pipe that can reasonably be identified as aluminum irrigation pipe, the entity shall:

(1) not later than the close of business on the entity's first working day after the purchase date, notify the department by telephone, by e-mail, or via the department's Internet website; and

(2) not later than the close of business on the entity's second working ~~[fifth]~~ day after the purchase date, submit to the department electronically via the department's Internet website ~~[mail to]~~ or file with the department a report containing the information required to be recorded under Section 1956.033.

(d) A metal recycling entity may submit the transaction report required under Subsection (a) by facsimile if:

(1) the entity submits to the department annually:

(A) an application requesting an exception to the electronic reporting requirement; and

(B) an affidavit stating that the entity does not have an available and reliable means of submitting the transaction report electronically; and

(2) the department approves the entity's application under this subsection.

(e) The department, after notice and an opportunity for a hearing, may prohibit a metal recycling entity from paying cash for a purchase of regulated material for a period determined by the department if the department finds that the entity has failed to comply with this section.

SECTION 14. Subsection (a), Section 1956.037, Occupations Code, is amended to read as follows:

(a) A metal recycling entity may not dispose of, process, sell, or remove from the premises an item of regulated metal unless:

(1) the entity acquired the item more than:

(A) eight days, excluding weekends and holidays, before the disposal, processing, sale, or removal, if the item is a cemetery vase, receptacle, or memorial made from a regulated material other than aluminum material; or

(B) 72 hours, excluding weekends and holidays, before the disposal, processing, sale, or removal, if the item is not an item described by Paragraph (A); or

(2) the entity purchased the item from a manufacturing, industrial, commercial, retail, or other seller that sells regulated material in the ordinary course of its business.

SECTION 15. Section 1956.038, Occupations Code, is amended to read as follows:

Sec. 1956.038. PROHIBITED ACTS. (a) A person may not, with the intent to deceive:

(1) display to a metal recycling entity a false or invalid personal identification document in connection with the person's attempted sale of regulated material;

(2) make a false, material statement or representation to a metal recycling entity in connection with:

(A) that person's execution of a written statement required by Section 1956.032(a)(3); or

(B) the entity's efforts to obtain the information required under Section 1956.033(b); ~~[or]~~

(3) display or provide to a metal recycling entity any information required under Section 1956.032 that the person knows is false or invalid; or

(4) display another individual's personal identification document in connection with the sale of regulated material.

(b) A metal recycling entity may not pay for a purchase of regulated material in cash if:

(1) the entity does not hold a certificate of registration under Subchapter A-2 and, if applicable, a license or permit required by a county, municipality, or other political subdivision as authorized under Section 1956.003(b); or

(2) the entity has been prohibited by the department from paying cash under Section 1956.036(e).

(c) Notwithstanding Section 1956.003(a) or any other law, a county, municipality, or other political subdivision may not adopt or enforce a rule, charter, or ordinance or issue an order or impose standards that limit the use of cash by a metal recycling entity in a manner more restrictive than that provided by Subsection (b).

(d) Subsection (c) does not apply to a rule, charter, ordinance, or order of a county, municipality, or other political subdivision in effect on January 1, 2011.

(d-1) Not later than January 1, 2012, the department shall issue a notice to each known owner or operator of a metal recycling entity in this state informing the owner or operator of the requirement to obtain a certificate of registration under Subchapter A-2 and, if applicable, to obtain a license or permit required by a county, municipality, or other political subdivision under Section 1956.003. The notice must also state:

(1) that the owner or operator shall submit an application for a certificate of registration and the appropriate license or permit required by a county, municipality, or other political subdivision on or before March 1, 2012; and

(2) the penalties under this chapter for failure to comply with Subdivision (1).

(d-2) This subsection and Subsection (d-1) expire March 1, 2012.

(e) The department or a county, municipality, or other political subdivision may bring an action in the county in which a metal recycling entity is located to enjoin the business operations of the owner or operator of the metal recycling entity for a period of not less than 30 days and not more than 90 days if the owner or operator has not submitted an application for a certificate of registration or the appropriate license or permit required by a county, municipality, or other political subdivision.

(f) An action under Subsection (e) must be brought in the name of the state. If judgment is in favor of the state, the court shall:

(1) enjoin the owner or operator from maintaining or participating in the business of a metal recycling entity for a definite period of not less than 30 days and not more than 90 days, as determined by the court; and

(2) order that the place of business of the owner or operator be closed for the same period.

SECTION 16. Section 1956.040, Occupations Code, is amended by adding Subsections (a-1), (a-2), (a-3), (a-4), and (b-1) and amending Subsection (b) to read as follows:

(a-1) A person commits an offense if the person knowingly violates Section 1956.021, 1956.023(d), 1956.036(a), or 1956.039.

(a-2) An offense under Subsection (a-1) is a misdemeanor punishable by a fine not to exceed \$10,000, unless it is shown on trial of the offense that the person has previously been convicted of a violation of Subsection (a-1), in which event the offense is a state jail felony.

(a-3) It is an affirmative defense to prosecution of a violation of Section 1956.021 or 1956.023(d) that the person made a diligent effort to obtain or renew a certificate of registration at the time of the violation.

(a-4) A municipality or county may retain 10 percent of the money collected from a fine for a conviction of an offense under Subsection (a-1) as a service fee for that collection and the clerk of the court shall remit the remainder of the fine collected for conviction of an offense under Subsection (a-1) to the comptroller in the manner provided for the remission of fees to the comptroller under Subchapter B, Chapter 133, Local Government Code. The comptroller shall deposit proceeds received under this subsection to the credit of an account in the general revenue fund, and those proceeds may be appropriated only to the department and used to:

(1) finance the department's administration of Subchapters A, A-1, A-2, and A-3; and

(2) fund grants distributed under the prevention of scrap metal theft grant program established under Subchapter N, Chapter 411, Government Code.

(b) A person commits an offense if the person knowingly buys:

(1) stolen regulated material; or

(2) insulated communications wire that has been burned wholly or partly to remove the insulation, unless the wire is accompanied by documentation acceptable under the rules adopted under Section 1956.032(h) that states that the material was salvaged from a fire.

(b-1) An offense under Subsection (b) [~~this subsection~~] is a Class A misdemeanor unless it is shown on trial of the offense that the person has previously been convicted under Subsection (b) [~~this subsection~~], in which event the offense is a state jail felony.

SECTION 17. Subsection (a), Section 1956.103, Occupations Code, is amended to read as follows:

(a) A person may not sell or otherwise transfer to a metal recycling entity:

(1) a lead-acid battery, fuel tank, or PCB-containing capacitor that is included with another type of scrap, used, or obsolete metal without first obtaining from the metal recycling entity a written and signed acknowledgment that the scrap, used, or obsolete metal includes one or more lead-acid batteries, fuel tanks, or PCB-containing capacitors;

(2) any of the following items that contain or enclose a lead-acid battery, fuel tank, or PCB-containing capacitor or of which a lead-acid battery, fuel tank, or PCB-containing capacitor is a part:

(A) a motor vehicle;

(B) a motor vehicle that has been junked, flattened, dismantled, or changed so that it has lost its character as a motor vehicle;

(C) an appliance; or

(D) any other item of scrap, used, or obsolete metal; [~~or~~]

(3) a motor vehicle or a motor vehicle that has been junked, flattened, dismantled, or changed so that it has lost its character as a motor vehicle if the motor vehicle includes, contains, or encloses a tire or scrap tire; or

(4) a metal alcoholic beverage keg, regardless of condition, unless the seller is the manufacturer of the keg, the brewer or distiller of the beverage that was contained in the keg, or an authorized representative of the manufacturer, brewer, or distiller.

SECTION 18. Section 1956.151, Occupations Code, is amended to read as follows:

Sec. 1956.151. DENIAL OF CERTIFICATE; DISCIPLINARY ACTION. The department shall deny an application for a certificate of registration, suspend or revoke a certificate of registration, or reprimand a person who is registered under this chapter if the person:

(1) obtains a certificate of registration by means of fraud, misrepresentation, or concealment of a material fact;

(2) sells, barter, or offers to sell or barter a certificate of registration;

(3) violates a provision of this chapter or a rule adopted under this chapter;  
or

(4) violates Section 1956.021.

SECTION 19. Subsection (d), Section 1956.202, Occupations Code, is amended to read as follows:

(d) A civil penalty may not be assessed under this section for conduct described by Section 1956.021, 1956.023(d), 1956.036(a), 1956.038, or 1956.039.

SECTION 20. Chapter 411, Government Code, is amended by adding Subchapter N to read as follows:

SUBCHAPTER N. PREVENTION OF SCRAP METAL THEFT GRANT PROGRAM

Sec. 411.421. DEFINITION. In this subchapter, "regulated material" has the meaning assigned by Section 1956.001, Occupations Code.

Sec. 411.422. GRANTS TO FUND SCRAP METAL THEFT PREVENTION.  
(a) From fines collected and distributed to the department under Sections 1956.040(a-2) and (a-4), Occupations Code, the commission by rule shall establish and implement a grant program to provide funding to assist local law enforcement agencies in preventing the theft of regulated material.

(b) To be eligible for a grant, a recipient must be a local law enforcement agency that has established a program designed to prevent the theft of regulated material.

(c) Rules adopted under this section must:

(1) include accountability measures for grant recipients and provisions for loss of eligibility for grant recipients that fail to comply with the measures; and

(2) require grant recipients to provide to the department information on program outcomes.

SECTION 21. Subsection (e), Section 31.03, Penal Code, is amended to read as follows:

(e) Except as provided by Subsection (f), an offense under this section is:

(1) a Class C misdemeanor if the value of the property stolen is less than:

(A) \$50; or

(B) \$20 and the defendant obtained the property by issuing or passing a check or similar sight order in a manner described by Section 31.06;

(2) a Class B misdemeanor if:



(A) the value of the property stolen is:  
(i) \$50 or more but less than \$500; or  
(ii) \$20 or more but less than \$500 and the defendant obtained the property by issuing or passing a check or similar sight order in a manner described by Section 31.06;

(B) the value of the property stolen is less than:  
(i) \$50 and the defendant has previously been convicted of any grade of theft; or  
(ii) \$20, the defendant has previously been convicted of any grade of theft, and the defendant obtained the property by issuing or passing a check or similar sight order in a manner described by Section 31.06; or

(C) the property stolen is a driver's license, commercial driver's license, or personal identification certificate issued by this state or another state;

(3) a Class A misdemeanor if the value of the property stolen is \$500 or more but less than \$1,500;

(4) a state jail felony if:

(A) the value of the property stolen is \$1,500 or more but less than \$20,000, or the property is less than 10 head of sheep, swine, or goats or any part thereof under the value of \$20,000;

(B) regardless of value, the property is stolen from the person of another or from a human corpse or grave, including property that is a military grave marker;

(C) the property stolen is a firearm, as defined by Section 46.01;

(D) the value of the property stolen is less than \$1,500 and the defendant has been previously convicted two or more times of any grade of theft;

(E) the property stolen is an official ballot or official carrier envelope for an election; or

(F) the value of the property stolen is less than \$20,000 and the property stolen is ~~insulated or noninsulated tubing, rods, water gate stems, wire, or cable that consists of at least 50 percent~~:

- (i) aluminum;
- (ii) bronze; ~~[or]~~
- (iii) copper; or
- (iv) brass;

(5) a felony of the third degree if the value of the property stolen is \$20,000 or more but less than \$100,000, or the property is:

(A) cattle, horses, or exotic livestock or exotic fowl as defined by Section 142.001, Agriculture Code, stolen during a single transaction and having an aggregate value of less than \$100,000; or

(B) 10 or more head of sheep, swine, or goats stolen during a single transaction and having an aggregate value of less than \$100,000;

(6) a felony of the second degree if the value of the property stolen is \$100,000 or more but less than \$200,000; or

(7) a felony of the first degree if the value of the property stolen is \$200,000 or more.

SECTION 22. (a) Except as provided by Subsection (b) of this section, the change in law made by this Act applies only to an offense committed on or after September 1, 2011. An offense committed before September 1, 2011, is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose.

(b) Subdivision (2), Subsection (b), Section 1956.040, Occupations Code, as added by this Act, applies only to an offense committed on or after January 1, 2012. An offense committed before January 1, 2012, is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose.

(c) For purposes of this section, an offense was committed before the applicable date if any element of the offense occurred before that date.

(d) The enhancement of the punishment of an offense provided under Subsection (a-2), Section 1956.040, Occupations Code, as added by this Act, applies only to an offense committed on or after January 1, 2012. For purposes of this subsection, an offense is committed before January 1, 2012, if any element of the offense occurs before that date. An offense committed before January 1, 2012, is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

(e) Not later than January 1, 2012, the public safety director of the Department of Public Safety of the State of Texas shall appoint the members of the advisory committee established under Section 1956.017, Occupations Code, as added by this Act, and designate the time and place of the committee's first meeting.

(f) Not later than December 1, 2011, the Public Safety Commission shall adopt rules to implement Subsection (h), Section 1956.032, Occupations Code, as added by this Act.

SECTION 23. (a) Except as provided by Subsections (b) and (c) of this section, this Act takes effect September 1, 2011.

(b) Subsection (f), Section 1956.003, Section 1956.004, and Subsections (b) and (e), Section 1956.038, Occupations Code, as added by this Act, take effect March 1, 2012.

(c) Subdivision (5), Subsection (a), Section 1956.032, and Subdivision (2), Subsection (b), Section 1956.040, Occupations Code, as added by this Act, take effect January 1, 2012.

The Conference Committee Report on **SB 694** was filed with the Secretary of the Senate.

### **CONFERENCE COMMITTEE REPORT ON SENATE BILL 635**

Senator Nichols submitted the following Conference Committee Report:

Austin, Texas  
May 28, 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 635** 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.

NICHOLS  
FRASER  
HEGAR  
GALLEGOS  
PATRICK

On the part of the Senate

LARSON  
PRICE  
COOK  
T. KING  
RITTER

On the part of the House

A BILL TO BE ENTITLED  
AN ACT

relating to the authority of the Texas Commission on Environmental Quality.

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

ARTICLE 1. GENERAL AUTHORITY OF TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

SECTION 1.01. Subsections (h) and (i), Section 13.043, Water Code, are amended to read as follows:

(h) The utility commission or the executive director of the utility commission may~~[on a motion by the executive director or by the appellant under Subsection (a), (b), or (f) of this section,]~~ establish interim rates to be in effect until a final decision is made in an appeal filed under Subsection (a), (b), or (f).

(i) The governing body of a municipally owned utility or a political subdivision, within 60 [30] days after the date of a final decision on a rate change, shall provide individual written notice to each ratepayer eligible to appeal who resides outside the boundaries of the municipality or the political subdivision. The notice must include, at a minimum, the effective date of the new rates, the new rates, and the location where additional information on rates can be obtained. The governing body of a municipally owned utility or a political subdivision may provide the notice electronically if the utility or political subdivision has access to a ratepayer's e-mail address.

SECTION 1.02. Subsections (b) and (l), Section 13.187, Water Code, are amended to read as follows:

(b) A copy of the statement of intent shall be mailed, sent by e-mail, or delivered to the appropriate offices of each affected municipality, to the executive director of the utility commission, and to any ~~[other]~~ affected persons as required by the regulatory authority's rules.

(l) At any time during the pendency of the rate proceeding the regulatory authority or, if the regulatory authority is the utility commission, the executive director of the utility commission may fix interim rates to remain in effect until a final determination is made on the proposed rate.

SECTION 1.03. Subsection (c), Section 13.242, Water Code, is amended to read as follows:

(c) The utility commission may by rule allow a municipality or utility or water supply corporation to render retail water or sewer service without a certificate of public convenience and necessity if the municipality has given notice under Section 13.255 ~~[of this code]~~ that it intends to provide retail water or sewer service to an area or if the utility or water supply corporation has less than 15 potential connections and is not within the certificated area of another retail public utility.

SECTION 1.04. Section 49.321, Water Code, is amended to read as follows:

Sec. 49.321. DISSOLUTION AUTHORITY. After notice ~~[and hearing]~~, the commission or executive director may dissolve any district that is inactive for a period of five consecutive years and has no outstanding bonded indebtedness.

SECTION 1.05. Section 49.324, Water Code, is amended to read as follows:

Sec. 49.324. ORDER OF DISSOLUTION. The commission or the executive director may enter an order dissolving the district ~~[at the conclusion of the hearing]~~ if the commission or executive director ~~[#]~~ finds that the district has performed none of the functions for which it was created for a period of five consecutive years ~~[before the day of the proceeding]~~ and that the district has no outstanding bonded indebtedness.

SECTION 1.06. Subsection (a), Section 49.326, Water Code, is amended to read as follows:

(a) Appeals from an ~~[a commission]~~ order dissolving a district shall be filed and heard in the district court of any of the counties in which the land is located.

SECTION 1.07. Subsection (b), Section 54.030, Water Code, is amended to read as follows:

(b) The governing body of a district which desires to convert into a district operating under this chapter shall adopt and enter in the minutes of the governing body a resolution declaring that in its judgment, conversion into a municipal utility district operating under this chapter and under Article XVI, Section 59, of the Texas Constitution, would serve the best interest of the district and would be a benefit to the land and property included in the district. The resolution shall also request that the commission approve ~~[to hold a hearing on the question of]~~ the conversion of the district.

SECTION 1.08. Section 54.032, Water Code, is amended to read as follows:

Sec. 54.032. CONVERSION OF DISTRICT: NOTICE. (a) Notice of the conversion ~~[hearing]~~ shall be given by publishing notice in a newspaper with general circulation in the county or counties in which the district is located.

(b) The notice shall be published once a week for two consecutive weeks ~~[with the first publication to be made not less than 14 full days before the time set for the hearing]~~.

(c) The notice shall:

(1) ~~[state the time and place of the hearing;~~

~~[(2)]~~ set out the resolution adopted by the district in full; and

~~[(2)] [(3)]~~ notify all interested persons how they may offer comments ~~[to appear and offer testimony]~~ for or against the proposal contained in the resolution.

SECTION 1.09. Section 54.033, Water Code, is amended to read as follows:

Sec. 54.033. CONVERSION OF DISTRICT; FINDINGS. (a) ~~If [After a hearing, if]~~ the commission or the executive director finds that conversion of the district into one operating under this chapter would serve the best interest of the district and would be a benefit to the land and property included in the district, the commission or executive director ~~[#]~~ shall enter an order making this finding and the district shall become a district operating under this chapter and no confirmation election shall be required.

(b) If the commission or the executive director finds that the conversion of the district would not serve the best interest of the district and would not be a benefit to the land and property included in the district, the commission or executive director ~~[#]~~ shall enter an order against conversion of the district into one operating under this chapter.

(c) The findings of the commission or the executive director entered under this section shall be subject to appeal or review within 30 days after entry of the order ~~[of the commission]~~ granting or denying the conversion.

(d) A copy of the ~~[commission]~~ order converting a district shall be filed in the deed records of the county or counties in which the district is located.

SECTION 1.10. Sections 49.322 and 54.031, Water Code, are repealed.

## ARTICLE 2. WATER AND SEWER UTILITIES

SECTION 2.01. Section 13.002, Water Code, is amended by amending Subdivisions (2) and (18) and adding Subdivision (22-a) to read as follows:

(2) "Affiliated interest" or "affiliate" means:

(A) any person or corporation owning or holding directly or indirectly five percent or more of the voting securities of a utility;

(B) any person or corporation in any chain of successive ownership of five percent or more of the voting securities of a utility;

(C) any corporation five percent or more of the voting securities of which is owned or controlled directly or indirectly by a utility;

(D) any corporation five percent or more of the voting securities of which is owned or controlled directly or indirectly by any person or corporation that owns or controls directly or indirectly five percent or more of the voting securities of any utility or by any person or corporation in any chain of successive ownership of five percent of those utility securities;

(E) any person who is an officer or director of a utility or of any corporation in any chain of successive ownership of five percent or more of voting securities of a public utility;

(F) any person or corporation that the utility commission, after notice and hearing, determines actually exercises any substantial influence or control over the policies and actions of a utility or over which a utility exercises such control or that is under common control with a utility, such control being the possession directly or indirectly of the power to direct or cause the direction of the management and policies of another, whether that power is established through ownership or voting of securities or by any other direct or indirect means; or

(G) any person or corporation that the utility commission, after notice and hearing, determines is exercising substantial influence over the policies and actions of the utility in conjunction with one or more persons or corporations with

which they are related by ownership or blood relationship, or by action in concert, that together they are affiliated within the meaning of this section, even though no one of them alone is so affiliated.

(18) "Regulatory authority" means, in accordance with the context in which it is found, either the commission, the utility commission, or the governing body of a municipality.

(22-a) "Utility commission" means the Public Utility Commission of Texas.

SECTION 2.02. Section 13.004, Water Code, is amended to read as follows:

Sec. 13.004. JURISDICTION OF UTILITY COMMISSION OVER CERTAIN WATER SUPPLY OR SEWER SERVICE CORPORATIONS. (a) Notwithstanding any other law, the utility commission has the same jurisdiction over a water supply or sewer service corporation that the utility commission has under this chapter over a water and sewer utility if the utility commission finds that the water supply or sewer service corporation:

(1) is failing to conduct annual or special meetings in compliance with Section 67.007; or

(2) is operating in a manner that does not comply with the requirements for classifications as a nonprofit water supply or sewer service corporation prescribed by Sections 13.002(11) and (24).

(b) If the water supply or sewer service corporation voluntarily converts to a special utility district operating under Chapter 65, the utility commission's jurisdiction provided by this section ends.

SECTION 2.03. Section 13.011, Water Code, is amended to read as follows:

Sec. 13.011. EMPLOYEES. (a) The executive director of the utility commission and the executive director of the commission, subject to approval, as applicable, by the utility commission or the commission, shall employ any engineering, accounting, and administrative personnel necessary to carry out each agency's powers and duties under this chapter.

(b) The executive director and the commission's staff are responsible for the gathering of information relating to all matters within the jurisdiction of the commission under this subchapter. The executive director of the utility commission and the utility commission's staff are responsible for the gathering of information relating to all matters within the jurisdiction of the utility commission under this subchapter. The duties of the respective executive directors and staffs ~~[director and the staff]~~ include:

(1) accumulation of evidence and other information from water and sewer utilities, ~~[and]~~ from the agency and governing body, ~~[commission and the board]~~ and from other sources for the purposes specified by this chapter;

(2) preparation and presentation of evidence before the agency ~~[commission]~~ or its appointed examiner in proceedings;

(3) conducting investigations of water and sewer utilities under the jurisdiction of the agency ~~[commission]~~;

(4) preparation of recommendations that the agency ~~[commission]~~ undertake an investigation of any matter within its jurisdiction;

(5) preparation of recommendations and a report for inclusion in the annual report of the agency ~~[commission]~~;

(6) protection and representation of the public interest~~[, together with the public interest advocate,]~~ before the agency ~~[commission]~~; and

(7) other activities that are reasonably necessary to enable the executive director and the staff to perform their duties.

SECTION 2.04. Section 13.014, Water Code, is amended to read as follows:

Sec. 13.014. ATTORNEY GENERAL TO REPRESENT COMMISSION OR UTILITY COMMISSION. The attorney general shall represent the commission or the utility commission under this chapter in all matters before the state courts and any court of the United States.

SECTION 2.05. Subchapter B, Chapter 13, Water Code, is amended by adding Section 13.017 to read as follows:

Sec. 13.017. OFFICE OF PUBLIC UTILITY COUNSEL; POWERS AND DUTIES. (a) In this section, "counsellor" and "office" have the meanings assigned by Section 11.003, Utilities Code.

(b) The office represents the interests of residential and small commercial consumers under this chapter. The office:

(1) shall assess the effect of utility rate changes and other regulatory actions on residential consumers in this state;

(2) shall advocate in the office's own name a position determined by the counsellor to be most advantageous to a substantial number of residential consumers;

(3) may appear or intervene, as a party or otherwise, as a matter of right on behalf of:

(A) residential consumers, as a class, in any proceeding before the utility commission, including an alternative dispute resolution proceeding; and

(B) small commercial consumers, as a class, in any proceeding in which the counsellor determines that small commercial consumers are in need of representation, including an alternative dispute resolution proceeding;

(4) may initiate or intervene as a matter of right or otherwise appear in a judicial proceeding:

(A) that involves an action taken by an administrative agency in a proceeding, including an alternative dispute resolution proceeding, in which the counsellor is authorized to appear; or

(B) in which the counsellor determines that residential consumers or small commercial consumers are in need of representation;

(5) is entitled to the same access as a party, other than utility commission staff, to records gathered by the utility commission under Section 13.133;

(6) is entitled to discovery of any nonprivileged matter that is relevant to the subject matter of a proceeding or petition before the utility commission;

(7) may represent an individual residential or small commercial consumer with respect to the consumer's disputed complaint concerning retail utility services that is unresolved before the utility commission; and

(8) may recommend legislation to the legislature that the office determines would positively affect the interests of residential and small commercial consumers.

(c) This section does not limit the authority of the utility commission to represent residential or small commercial consumers.

(d) The appearance of the counsellor in a proceeding does not preclude the appearance of other parties on behalf of residential or small commercial consumers. The counsellor may not be grouped with any other party.

SECTION 2.06. Section 13.041, Water Code, is amended to read as follows:

Sec. 13.041. GENERAL POWERS OF UTILITY COMMISSION AND COMMISSION ~~[POWER]~~; RULES; HEARINGS. (a) The utility commission may regulate and supervise the business of each ~~[every]~~ water and sewer utility within its jurisdiction, including ratemaking and other economic regulation. The commission shall regulate water and sewer utilities within its jurisdiction to ensure safe drinking water and environmental protection. The utility commission and the commission ~~[and]~~ may do all things, whether specifically designated in this chapter or implied in this chapter, necessary and convenient to the exercise of these powers ~~[this power]~~ and jurisdiction. The utility commission may consult with the commission as necessary in carrying out its duties related to the regulation of water and sewer utilities.

(b) The commission and the utility commission shall adopt and enforce rules reasonably required in the exercise of ~~[its]~~ powers and jurisdiction of each agency, including rules governing practice and procedure before the commission and the utility commission.

(c) The commission and the utility commission may call and hold hearings, administer oaths, receive evidence at hearings, issue subpoenas to compel the attendance of witnesses and the production of papers and documents, and make findings of fact and decisions with respect to administering this chapter or the rules, orders, or other actions of the commission or the utility commission.

(d) The utility commission may issue emergency orders, with or without a hearing:

(1) to compel a water or sewer service provider that has obtained or is required to obtain a certificate of public convenience and necessity to provide continuous and adequate water service, sewer service, or both, if the discontinuance of the service is imminent or has occurred because of the service provider's actions or failure to act; and

(2) to compel a retail public utility to provide an emergency interconnection with a neighboring retail public utility for the provision of temporary water or sewer service, or both, for not more than 90 days if service discontinuance or serious impairment in service is imminent or has occurred.

(e) The utility commission may establish reasonable compensation for the temporary service required under Subsection (d)(2) ~~[of this section]~~ and may allow the retail public utility receiving the service to make a temporary adjustment to its rate structure to ensure proper payment.

(f) If an order is issued under Subsection (d) without a hearing, the order shall fix a time, as soon after the emergency order is issued as is practicable, and place for a hearing to be held before the utility commission.

(g) The regulatory assessment required by Section 5.701(n) ~~[5.235(n) of this code]~~ is not a rate and is not reviewable by the utility commission under Section 13.043 ~~[of this code]~~. The commission has the authority to enforce payment and collection of the regulatory assessment.

SECTION 2.07. Section 13.042, Water Code, is amended to read as follows:



Sec. 13.042. JURISDICTION OF MUNICIPALITY; ORIGINAL AND APPELLATE JURISDICTION OF UTILITY COMMISSION. (a) Subject to the limitations imposed in this chapter and for the purpose of regulating rates and services so that those rates may be fair, just, and reasonable and the services adequate and efficient, the governing body of each municipality has exclusive original jurisdiction over all water and sewer utility rates, operations, and services provided by a water and sewer utility within its corporate limits.

(b) The governing body of a municipality by ordinance may elect to have the utility commission exercise exclusive original jurisdiction over the utility rates, operation, and services of utilities, within the incorporated limits of the municipality.

(c) The governing body of a municipality that surrenders its jurisdiction to the utility commission may reinstate its jurisdiction by ordinance at any time after the second anniversary of the date on which the municipality surrendered its jurisdiction to the utility commission, except that the municipality may not reinstate its jurisdiction during the pendency of a rate proceeding before the utility commission. The municipality may not surrender its jurisdiction again until the second anniversary of the date on which the municipality reinstates jurisdiction.

(d) The utility commission shall have exclusive appellate jurisdiction to review orders or ordinances of those municipalities as provided in this chapter.

(e) The utility commission shall have exclusive original jurisdiction over water and sewer utility rates, operations, and services not within the incorporated limits of a municipality exercising exclusive original jurisdiction over those rates, operations, and services as provided in this chapter.

(f) This subchapter does not give the utility commission power or jurisdiction to regulate or supervise the rates or service of a utility owned and operated by a municipality, directly or through a municipally owned corporation, within its corporate limits or to affect or limit the power, jurisdiction, or duties of a municipality that regulates land and supervises water and sewer utilities within its corporate limits, except as provided by this code.

SECTION 2.08. Subsections (a), (b), (c), (e), (f), (g), and (j), Section 13.043, Water Code, are amended to read as follows:

(a) Any party to a rate proceeding before the governing body of a municipality may appeal the decision of the governing body to the utility commission. This subsection does not apply to a municipally owned utility. An appeal under this subsection must be initiated within 90 days after the date of notice of the final decision by the governing body by filing a petition for review with the utility commission and by serving copies on all parties to the original rate proceeding. The utility commission shall hear the appeal de novo and shall fix in its final order the rates the governing body should have fixed in the action from which the appeal was taken and may include reasonable expenses incurred in the appeal proceedings. The utility commission may establish the effective date for the utility commission's rates at the original effective date as proposed by the utility provider and may order refunds or allow a surcharge to recover lost revenues. The utility commission may consider only the information that was available to the governing body at the time the governing body made its decision and evidence of reasonable expenses incurred in the appeal proceedings.

(b) Ratepayers of the following entities may appeal the decision of the governing body of the entity affecting their water, drainage, or sewer rates to the utility commission:

(1) a nonprofit water supply or sewer service corporation created and operating under Chapter 67;

(2) a utility under the jurisdiction of a municipality inside the corporate limits of the municipality;

(3) a municipally owned utility, if the ratepayers reside outside the corporate limits of the municipality;

(4) a district or authority created under Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution that provides water or sewer service to household users; and

(5) a utility owned by an affected county, if the ratepayer's rates are actually or may be adversely affected. For the purposes of this section ratepayers who reside outside the boundaries of the district or authority shall be considered a separate class from ratepayers who reside inside those boundaries.

(c) An appeal under Subsection (b) ~~[of this section]~~ must be initiated by filing a petition for review with the utility commission and the entity providing service within 90 days after the effective day of the rate change or, if appealing under Subdivision (b)(2) or (5) ~~[of this section]~~, within 90 days after the date on which the governing body of the municipality or affected county makes a final decision. The petition must be signed by the lesser of 10,000 or 10 percent of those ratepayers whose rates have been changed and who are eligible to appeal under Subsection (b) ~~[of this section]~~.

(e) In an appeal under Subsection (b) ~~[of this section]~~, the utility commission shall hear the appeal de novo and shall fix in its final order the rates the governing body should have fixed in the action from which the appeal was taken. The utility commission may establish the effective date for the utility commission's rates at the original effective date as proposed by the service provider, may order refunds or allow a surcharge to recover lost revenues, and may allow recovery of reasonable expenses incurred by the retail public utility in the appeal proceedings. The utility commission may consider only the information that was available to the governing body at the time the governing body made its decision and evidence of reasonable expenses incurred by the retail public utility in the appeal proceedings. The rates established by the utility commission in an appeal under Subsection (b) ~~[of this section]~~ remain in effect until the first anniversary of the effective date proposed by the retail public utility for the rates being appealed or until changed by the service provider, whichever date is later, unless the utility commission determines that a financial hardship exists.

(f) A retail public utility that receives water or sewer service from another retail public utility or political subdivision of the state, including an affected county, may appeal to the utility commission a decision of the provider of water or sewer service affecting the amount paid for water or sewer service. An appeal under this subsection must be initiated within 90 days after the date of notice of the decision is received from the provider of water or sewer service by the filing of a petition by the retail public utility.

(g) An applicant for service from an affected county or a water supply or sewer service corporation may appeal to the utility commission a decision of the county or water supply or sewer service corporation affecting the amount to be paid to obtain service other than the regular membership or tap fees. In addition to the factors specified under Subsection (j), in an appeal brought under this subsection the utility commission shall determine whether the amount paid by the applicant is consistent with the tariff of the water supply or sewer service corporation and is reasonably related to the cost of installing on-site and off-site facilities to provide service to that applicant. If the utility commission finds the amount charged to be clearly unreasonable, it shall establish the fee to be paid for that applicant. An appeal under this subsection must be initiated within 90 days after the date written notice is provided to the applicant or member of the decision of an affected county or water supply or sewer service corporation relating to the applicant's initial request for that service. A determination made by the utility commission on an appeal under this subsection is binding on all similarly situated applicants for service, and the utility commission may not consider other appeals on the same issue until the applicable provisions of the tariff of the water supply or sewer service corporation are amended.

(j) In an appeal under this section, the utility commission shall ensure that every rate made, demanded, or received by any retail public utility or by any two or more retail public utilities jointly shall be just and reasonable. Rates shall not be unreasonably preferential, prejudicial, or discriminatory but shall be sufficient, equitable, and consistent in application to each class of customers. The utility commission shall use a methodology that preserves the financial integrity of the retail public utility. For agreements between municipalities the utility commission shall consider the terms of any wholesale water or sewer service agreement in an appellate rate proceeding.

SECTION 2.09. Subsection (b), Section 13.044, Water Code, is amended to read as follows:

(b) Notwithstanding the provisions of any resolution, ordinance, or agreement, a district may appeal the rates imposed by the municipality by filing a petition with the utility commission. The utility commission shall hear the appeal de novo and the municipality shall have the burden of proof to establish that the rates are just and reasonable. The utility commission shall fix the rates to be charged by the municipality and the municipality may not increase such rates without the approval of the utility commission.

SECTION 2.10. Section 13.046, Water Code, is amended to read as follows:

Sec. 13.046. TEMPORARY RATES FOR SERVICES PROVIDED FOR NONFUNCTIONING SYSTEM; SANCTIONS FOR NONCOMPLIANCE. (a) The utility commission by rule shall establish a procedure that allows a retail public utility that takes over the provision of services for a nonfunctioning retail water or sewer utility service provider to charge a reasonable rate for the services provided to the customers of the nonfunctioning system and to bill the customers for the services at that rate immediately to recover service costs.

(b) The rules must provide a streamlined process that the retail public utility that takes over the nonfunctioning system may use to apply to the utility commission for a ruling on the reasonableness of the rates the utility is charging under Subsection (a).

The process must allow for adequate consideration of costs for interconnection or other costs incurred in making services available and of the costs that may necessarily be incurred to bring the nonfunctioning system into compliance with utility commission and commission rules.

(c) The utility commission shall provide a reasonable period for the retail public utility that takes over the nonfunctioning system to bring the nonfunctioning system into compliance with utility commission and commission rules during which the utility commission or the commission may not impose a penalty for any deficiency in the system that is present at the time the utility takes over the nonfunctioning system. The utility commission must consult with the utility before determining the period and may grant an extension of the period for good cause.

SECTION 2.11. Section 13.081, Water Code, is amended to read as follows:

Sec. 13.081. FRANCHISES. This chapter may not be construed as in any way limiting the rights and powers of a municipality to grant or refuse franchises to use the streets and alleys within its limits and to make the statutory charges for their use, but no provision of any franchise agreement may limit or interfere with any power conferred on the utility commission by this chapter. If a municipality performs regulatory functions under this chapter, it may make such other charges as may be provided in the applicable franchise agreement, together with any other charges permitted by this chapter.

SECTION 2.12. Section 13.082, Water Code, is amended to read as follows:

Sec. 13.082. LOCAL UTILITY SERVICE; EXEMPT AND NONEXEMPT AREAS. (a) Notwithstanding any other provision of this section, municipalities shall continue to regulate each kind of local utility service inside their boundaries until the utility commission has assumed jurisdiction over the respective utility pursuant to this chapter.

(b) If a municipality does not surrender its jurisdiction, local utility service within the boundaries of the municipality shall be exempt from regulation by the utility commission under this chapter to the extent that this chapter applies to local service, and the municipality shall have, regarding service within its boundaries, the right to exercise the same regulatory powers under the same standards and rules as the utility commission or other standards and rules not inconsistent with them. The utility commission's rules relating to service and response to requests for service for utilities operating within a municipality's corporate limits apply unless the municipality adopts its own rules.

(c) Notwithstanding any election, the utility commission may consider water and sewer utilities' revenues and return on investment in exempt areas in fixing rates and charges in nonexempt areas and may also exercise the powers conferred necessary to give effect to orders under this chapter for the benefit of nonexempt areas. Likewise, in fixing rates and charges in the exempt area, the governing body may consider water and sewer utilities' revenues and return on investment in nonexempt areas.

(d) Utilities serving exempt areas are subject to the reporting requirements of this chapter. Those reports and tariffs shall be filed with the governing body of the municipality as well as with the utility commission.

(e) This section does not limit the duty and power of the utility commission to regulate service and rates of municipally regulated water and sewer utilities for service provided to other areas in Texas.

SECTION 2.13. Section 13.085, Water Code, is amended to read as follows:

Sec. 13.085. ASSISTANCE BY UTILITY COMMISSION. On request, the utility commission may advise and assist municipalities and affected counties in connection with questions and proceedings arising under this chapter. This assistance may include aid to municipalities or an affected county in connection with matters pending before the utility commission, the courts, the governing body of any municipality, or the commissioners court of an affected county, including making members of the staff available to them as witnesses and otherwise providing evidence.

SECTION 2.14. Subsection (c), Section 13.087, Water Code, is amended to read as follows:

(c) Notwithstanding any other provision of this chapter, the utility commission has jurisdiction to enforce this section.

SECTION 2.15. Subsections (a), (b), (c), and (e), Section 13.131, Water Code, are amended to read as follows:

(a) Every water and sewer utility shall keep and render to the regulatory authority in the manner and form prescribed by the utility commission uniform accounts of all business transacted. The utility commission may also prescribe forms of books, accounts, records, and memoranda to be kept by those utilities, including the books, accounts, records, and memoranda of the rendition of and capacity for service as well as the receipts and expenditures of money, and any other forms, records, and memoranda that in the judgment of the utility commission may be necessary to carry out this chapter.

(b) In the case of a utility subject to regulation by a federal regulatory agency, compliance with the system of accounts prescribed for the particular class of utilities by that agency may be considered a sufficient compliance with the system prescribed by the utility commission. However, the utility commission may prescribe forms of books, accounts, records, and memoranda covering information in addition to that required by the federal agency. The system of accounts and the forms of books, accounts, records, and memoranda prescribed by the utility commission for a utility or class of utilities may not conflict or be inconsistent with the systems and forms established by a federal agency for that utility or class of utilities.

(c) The utility commission shall fix proper and adequate rates and methods of depreciation, amortization, or depletion of the several classes of property of each utility and shall require every utility to carry a proper and adequate depreciation account in accordance with those rates and methods and with any other rules the utility commission prescribes. Rules adopted under this subsection must require the book cost less net salvage of depreciable utility plant retired to be charged in its entirety to the accumulated depreciation account in a manner consistent with accounting treatment of regulated electric and gas utilities in this state. Those rates, methods, and accounts shall be utilized uniformly and consistently throughout the rate-setting and appeal proceedings.

(e) Every utility is required to keep and render its books, accounts, records, and memoranda accurately and faithfully in the manner and form prescribed by the utility commission and to comply with all directions of the regulatory authority relating to those books, accounts, records, and memoranda. The regulatory authority may require the examination and audit of all accounts.

SECTION 2.16. Section 13.132, Water Code, is amended to read as follows:

Sec. 13.132. POWERS OF UTILITY COMMISSION. (a) The utility commission may:

- (1) require that water and sewer utilities report to it any information relating to themselves and affiliated interests both inside and outside this state that it considers useful in the administration of this chapter;
- (2) establish forms for all reports;
- (3) determine the time for reports and the frequency with which any reports are to be made;
- (4) require that any reports be made under oath;
- (5) require that a copy of any contract or arrangement between any utility and any affiliated interest be filed with it and require that such a contract or arrangement that is not in writing be reduced to writing;
- (6) require that a copy of any report filed with any federal agency or any governmental agency or body of any other state be filed with it; and
- (7) require that a copy of annual reports showing all payments of compensation, other than salary or wages subject to the withholding of federal income tax, made to residents of Texas, or with respect to legal, administrative, or legislative matters in Texas, or for representation before the Texas Legislature or any governmental agency or body be filed with it.

(b) On the request of the governing body of any municipality, the utility commission may provide sufficient staff members to advise and consult with the municipality on any pending matter.

SECTION 2.17. Subsection (b), Section 13.133, Water Code, is amended to read as follows:

(b) The regulatory authority may require, by order or subpoena served on any utility, the production within this state at the time and place it may designate of any books, accounts, papers, or records kept by that utility outside the state or verified copies of them if the regulatory authority ~~[commission]~~ so orders. A utility failing or refusing to comply with such an order or subpoena violates this chapter.

SECTION 2.18. Subsections (b) and (c), Section 13.136, Water Code, are amended to read as follows:

(b) Each utility annually shall file a service and financial report in a form and at times specified by utility commission rule.

(c) Every water supply or sewer service corporation shall file with the utility commission tariffs showing all rates that are subject to the appellate jurisdiction of the utility commission and that are in force at the time for any utility service, product, or commodity offered. Every water supply or sewer service corporation shall file with and as a part of those tariffs all rules and regulations relating to or affecting the rates, utility service, product, or commodity furnished. The filing required under this subsection shall be for informational purposes only.

SECTION 2.19. Section 13.137, Water Code, is amended to read as follows:

Sec. 13.137. OFFICE AND OTHER BUSINESS LOCATIONS OF UTILITY; RECORDS; REMOVAL FROM STATE. (a) Every utility shall:

(1) make available and notify its customers of a business location where its customers may make payments to prevent disconnection of or to restore service:

(A) in each county in which the utility provides service; or

(B) not more than 20 miles from the residence of any residential customer if there is no location to receive payments in the county; and

(2) have an office in a county of this state or in the immediate area in which its property or some part of its property is located in which it shall keep all books, accounts, records, and memoranda required by the utility commission to be kept in this state.

(b) The utility commission by rule may provide for waiving the requirements of Subsection (a)(1) for a utility for which meeting those requirements would cause a rate increase or otherwise harm or inconvenience customers. The rules must provide for an additional 14 days to be given for a customer to pay before a utility that is granted a waiver may disconnect service for late payment.

(c) Books, accounts, records, or memoranda required by the regulatory authority to be kept in the state may not be removed from the state, except on conditions prescribed by the utility commission.

SECTION 2.20. Subsection (b), Section 13.139, Water Code, is amended to read as follows:

(b) The governing body of a municipality, as the regulatory authority for public utilities operating within its corporate limits, and the utility commission or the commission as the regulatory authority for public utilities operating outside the corporate limits of any municipality, after reasonable notice and hearing on its own motion, may:

(1) ascertain and fix just and reasonable standards, classifications, regulations, service rules, minimum service standards or practices to be observed and followed with respect to the service to be furnished;

(2) ascertain and fix adequate and reasonable standards for the measurement of the quantity, quality, pressure, or other condition pertaining to the supply of the service;

(3) prescribe reasonable regulations for the examination and testing of the service and for the measurement of service; and

(4) establish or approve reasonable rules, regulations, specifications, and standards to secure the accuracy of all meters, instruments, and equipment used for the measurement of any utility service.

SECTION 2.21. Section 13.1395, Water Code, is amended by adding Subsection (m) to read as follows:

(m) The commission shall coordinate with the utility commission in the administration of this section.

SECTION 2.22. Subsection (b), Section 13.142, Water Code, is amended to read as follows:

(b) The utility commission shall adopt rules concerning payment of utility bills that are consistent with Chapter 2251, Government Code.

SECTION 2.23. Section 13.144, Water Code, is amended to read as follows:

Sec. 13.144. NOTICE OF WHOLESALE WATER SUPPLY CONTRACT. A district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, a retail public utility, a wholesale water service, or other person providing a retail public utility with a wholesale water supply shall provide the utility commission and the commission with a certified copy of any wholesale water supply contract with a retail public utility within 30 days after the date of the execution of the contract. The submission must include the amount of water being supplied, term of the contract, consideration being given for the water, purpose of use, location of use, source of supply, point of delivery, limitations on the reuse of water, a disclosure of any affiliated interest between the parties to the contract, and any other condition or agreement relating to the contract.

SECTION 2.24. Subsection (a), Section 13.147, Water Code, is amended to read as follows:

(a) A retail public utility providing water service may contract with a retail public utility providing sewer service to bill and collect the sewer service provider's fees and payments as part of a consolidated process with the billing and collection of the water service provider's fees and payments. The water service provider may provide that service only for customers who are served by both providers in an area covered by both providers' certificates of public convenience and necessity. If the water service provider refuses to enter into a contract under this section or if the water service provider and sewer service provider cannot agree on the terms of a contract, the sewer service provider may petition the utility commission to issue an order requiring the water service provider to provide that service.

SECTION 2.25. Subsection (b), Section 13.181, Water Code, is amended to read as follows:

(b) Subject to this chapter, the utility commission has all authority and power of the state to ensure compliance with the obligations of utilities under this chapter. For this purpose the regulatory authority may fix and regulate rates of utilities, including rules and regulations for determining the classification of customers and services and for determining the applicability of rates. A rule or order of the regulatory authority may not conflict with the rulings of any federal regulatory body. The utility commission may adopt rules which authorize a utility which is permitted under Section 13.242(c) to provide service without a certificate of public convenience and necessity to request or implement a rate increase and operate according to rules, regulations, and standards of service other than those otherwise required under this chapter provided that rates are just and reasonable for customers and the utility and that service is safe, adequate, efficient, and reasonable.

SECTION 2.26. Subsections (c) and (d), Section 13.182, Water Code, are amended to read as follows:

(c) For ratemaking purposes, the utility commission may treat two or more municipalities served by a utility as a single class wherever the utility commission considers that treatment to be appropriate.

(d) The utility commission by rule shall establish a preference that rates under a consolidated tariff be consolidated by region. The regions under consolidated tariffs must be determined on a case-by-case basis.



SECTION 2.27. Subsection (d), Section 13.183, Water Code, is amended to read as follows:

(d) A regulatory authority other than the utility commission may not approve an acquisition adjustment for a system purchased before the effective date of an ordinance authorizing acquisition adjustments.

SECTION 2.28. Subsection (a), Section 13.184, Water Code, is amended to read as follows:

(a) Unless the utility commission establishes alternate rate methodologies in accordance with Section 13.183(c), the utility commission may not prescribe any rate that will yield more than a fair return on the invested capital used and useful in rendering service to the public. The governing body of a municipality exercising its original jurisdiction over rates and services may use alternate ratemaking methodologies established by ordinance or by utility commission rule in accordance with Section 13.183(c). Unless the municipal regulatory authority uses alternate ratemaking methodologies established by ordinance or by utility commission rule in accordance with Section 13.183(c), it may not prescribe any rate that will yield more than a fair return on the invested capital used and useful in rendering service to the public.

SECTION 2.29. Subsections (d), (k), and (o), Section 13.187, Water Code, are amended to read as follows:

(d) Except as provided by Subsection (d-1), if the application or the statement of intent is not substantially complete or does not comply with the regulatory authority's rules, it may be rejected and the effective date of the rate change may be suspended until a properly completed application is accepted by the regulatory authority and a proper statement of intent is provided. The utility commission may also suspend the effective date of any rate change if the utility does not have a certificate of public convenience and necessity or a completed application for a certificate or to transfer a certificate pending before the utility commission or if the utility is delinquent in paying the assessment and any applicable penalties or interest required by Section 5.701(n) [~~of this code~~].

(k) If the regulatory authority receives at least the number of complaints from ratepayers required for the regulatory authority to set a hearing under Subsection (e), the regulatory authority may, pending the hearing and a decision, suspend the date the rate change would otherwise be effective. Except as provided by Subsection (d-1), the proposed rate may not be suspended for longer than:

- (1) 90 days by a local regulatory authority; or
- (2) 150 days by the utility commission.

(o) If a regulatory authority other than the utility commission establishes interim rates or an escrow account, the regulatory authority must make a final determination on the rates not later than the first anniversary of the effective date of the interim rates or escrowed rates or the rates are automatically approved as requested by the utility.

SECTION 2.30. Subsection (a), Section 13.188, Water Code, is amended to read as follows:

(a) Notwithstanding any other provision in this chapter, the utility commission by rule shall adopt a procedure allowing a utility to file with the utility commission an application to timely adjust the utility's rates to reflect an increase or decrease in

documented energy costs in a pass through clause. The utility commission, by rule, shall require the pass through of documented decreases in energy costs within a reasonable time. The pass through, whether a decrease or increase, shall be implemented on no later than an annual basis, unless the utility commission determines a special circumstance applies.

SECTION 2.31. Subsections (a) and (d), Section 13.241, Water Code, are amended to read as follows:

(a) In determining whether to grant or amend a certificate of public convenience and necessity, the utility commission shall ensure that the applicant possesses the financial, managerial, and technical capability to provide continuous and adequate service.

(d) Before the utility commission grants a new certificate of convenience and necessity for an area which would require construction of a physically separate water or sewer system, the applicant must demonstrate to the utility commission that regionalization or consolidation with another retail public utility is not economically feasible.

SECTION 2.32. Subsection (a), Section 13.242, Water Code, is amended to read as follows:

(a) Unless otherwise specified, a utility, a utility operated by an affected county, or a water supply or sewer service corporation may not in any way render retail water or sewer utility service directly or indirectly to the public without first having obtained from the utility commission a certificate that the present or future public convenience and necessity will require that installation, operation, or extension, and except as otherwise provided by this subchapter, a retail public utility may not furnish, make available, render, or extend retail water or sewer utility service to any area to which retail water or sewer utility service is being lawfully furnished by another retail public utility without first having obtained a certificate of public convenience and necessity that includes the area in which the consuming facility is located.

SECTION 2.33. Section 13.244, Water Code, is amended to read as follows:

Sec. 13.244. APPLICATION; MAPS AND OTHER INFORMATION; EVIDENCE AND CONSENT. (a) To obtain a certificate of public convenience and necessity or an amendment to a certificate, a public utility or water supply or sewer service corporation shall submit to the utility commission an application for a certificate or for an amendment as provided by this section.

(b) Each public utility and water supply or sewer service corporation shall file with the utility commission a map or maps showing all its facilities and illustrating separately facilities for production, transmission, and distribution of its services, and each certificated retail public utility shall file with the utility commission a map or maps showing any facilities, customers, or area currently being served outside its certificated areas.

(c) Each applicant for a certificate or for an amendment shall file with the utility commission evidence required by the commission to show that the applicant has received the required consent, franchise, or permit of the proper municipality or other public authority.

(d) An application for a certificate of public convenience and necessity or for an amendment to a certificate must contain:

- (1) a description of the proposed service area by:
  - (A) a metes and bounds survey certified by a licensed state land surveyor or a registered professional land surveyor;
  - (B) the Texas State Plane Coordinate System;
  - (C) verifiable landmarks, including a road, creek, or railroad line; or
  - (D) if a recorded plat of the area exists, lot and block number;
- (2) a description of any requests for service in the proposed service area;
- (3) a capital improvements plan, including a budget and estimated timeline for construction of all facilities necessary to provide full service to the entire proposed service area;
- (4) a description of the sources of funding for all facilities;
- (5) to the extent known, a description of current and projected land uses, including densities;
- (6) a current financial statement of the applicant;
- (7) according to the tax roll of the central appraisal district for each county in which the proposed service area is located, a list of the owners of each tract of land that is:
  - (A) at least 50 acres; and
  - (B) wholly or partially located within the proposed service area; and
- (8) any other item required by the utility commission.

SECTION 2.34. Subsections (b), (c), and (e), Section 13.245, Water Code, are amended to read as follows:

(b) Except as provided by Subsection (c), the utility commission may not grant to a retail public utility a certificate of public convenience and necessity for a service area within the boundaries or extraterritorial jurisdiction of a municipality without the consent of the municipality. The municipality may not unreasonably withhold the consent. As a condition of the consent, a municipality may require that all water and sewer facilities be designed and constructed in accordance with the municipality's standards for facilities.

(c) If a municipality has not consented under Subsection (b) before the 180th day after the date the municipality receives the retail public utility's application, the utility commission shall grant the certificate of public convenience and necessity without the consent of the municipality if the utility commission finds that the municipality:

- (1) does not have the ability to provide service; or
- (2) has failed to make a good faith effort to provide service on reasonable terms and conditions.

(e) If the utility commission makes a decision under Subsection (d) regarding the grant of a certificate of public convenience and necessity without the consent of the municipality, the municipality or the retail public utility may appeal the decision to the appropriate state district court. The court shall hear the petition within 120 days after the date the petition is filed. On final disposition, the court may award reasonable fees to the prevailing party.

SECTION 2.35. Subsection (c), Section 13.2451, Water Code, is amended to read as follows:

(c) The utility commission, after notice to the municipality and an opportunity for a hearing, may decertify an area outside a municipality's extraterritorial jurisdiction if the municipality does not provide service to the area on or before the fifth anniversary of the date the certificate of public convenience and necessity was granted for the area. This subsection does not apply to a certificate of public convenience and necessity for an area:

(1) that was transferred to a municipality on approval of the utility commission; and

(2) in relation to which the municipality has spent public funds.

SECTION 2.36. Subsections (a), (a-1), (b), (c), (d), (f), (h), and (i), Section 13.246, Water Code, are amended to read as follows:

(a) If an application for a certificate of public convenience and necessity or for an amendment to a certificate is filed, the utility commission shall cause notice of the application to be given to affected parties and to each county and groundwater conservation district that is wholly or partly included in the area proposed to be certified. If requested, the utility commission shall fix a time and place for a hearing and give notice of the hearing. Any person affected by the application may intervene at the hearing.

(a-1) Except as otherwise provided by this subsection, in addition to the notice required by Subsection (a), the utility commission shall require notice to be mailed to each owner of a tract of land that is at least 25 acres and is wholly or partially included in the area proposed to be certified. Notice required under this subsection must be mailed by first class mail to the owner of the tract according to the most current tax appraisal rolls of the applicable central appraisal district at the time the utility commission received the application for the certificate or amendment. Good faith efforts to comply with the requirements of this subsection shall be considered adequate notice to landowners. Notice under this subsection is not required for a matter filed with the utility commission or the commission under:

(1) Section 13.248 or 13.255; or

(2) Chapter 65.

(b) The utility commission may grant applications and issue certificates and amendments to certificates only if the utility commission finds that a certificate or amendment is necessary for the service, accommodation, convenience, or safety of the public. The utility commission may issue a certificate or amendment as requested, or refuse to issue it, or issue it for the construction of only a portion of the contemplated system or facility or extension, or for the partial exercise only of the right or privilege and may impose special conditions necessary to ensure that continuous and adequate service is provided.

(c) Certificates of public convenience and necessity and amendments to certificates shall be granted by the utility commission on a nondiscriminatory basis after consideration by the utility commission of:

(1) the adequacy of service currently provided to the requested area;

(2) the need for additional service in the requested area, including whether any landowners, prospective landowners, tenants, or residents have requested service;

(3) the effect of the granting of a certificate or of an amendment on the recipient of the certificate or amendment, on the landowners in the area, and on any retail public utility of the same kind already serving the proximate area;

(4) the ability of the applicant to provide adequate service, including meeting the standards of the commission, taking into consideration the current and projected density and land use of the area;

(5) the feasibility of obtaining service from an adjacent retail public utility;

(6) the financial ability of the applicant to pay for the facilities necessary to provide continuous and adequate service and the financial stability of the applicant, including, if applicable, the adequacy of the applicant's debt-equity ratio;

(7) environmental integrity;

(8) the probable improvement of service or lowering of cost to consumers in that area resulting from the granting of the certificate or amendment; and

(9) the effect on the land to be included in the certificated area.

(d) The utility commission may require an applicant for a certificate or for an amendment to provide a bond or other financial assurance in a form and amount specified by the utility commission to ensure that continuous and adequate utility service is provided.

(f) If two or more retail public utilities or water supply or sewer service corporations apply for a certificate of public convenience and necessity to provide water or sewer utility service to an uncertificated area located in an economically distressed area and otherwise meet the requirements for obtaining a new certificate, the utility commission shall grant the certificate to the retail public utility or water supply or sewer service corporation that is more capable financially, managerially, and technically of providing continuous and adequate service.

(h) Except as provided by Subsection (i), a landowner who owns a tract of land that is at least 25 acres and that is wholly or partially located within the proposed service area may elect to exclude some or all of the landowner's property from the proposed service area by providing written notice to the utility commission before the 30th day after the date the landowner receives notice of a new application for a certificate of public convenience and necessity or for an amendment to an existing certificate of public convenience and necessity. The landowner's election is effective without a further hearing or other process by the utility commission. If a landowner makes an election under this subsection, the application shall be modified so that the electing landowner's property is not included in the proposed service area.

(i) A landowner is not entitled to make an election under Subsection (h) but is entitled to contest the inclusion of the landowner's property in the proposed service area at a hearing held by the utility commission regarding the application if the proposed service area is located within the boundaries or extraterritorial jurisdiction of a municipality with a population of more than 500,000 and the municipality or a utility owned by the municipality is the applicant.

SECTION 2.37. Subsection (a), Section 13.247, Water Code, is amended to read as follows:

(a) If an area is within the boundaries of a municipality, all retail public utilities certified or entitled to certification under this chapter to provide service or operate facilities in that area may continue and extend service in its area of public

convenience and necessity within the area pursuant to the rights granted by its certificate and this chapter, unless the municipality exercises its power of eminent domain to acquire the property of the retail public utility under Subsection (d). Except as provided by Section 13.255, a municipally owned or operated utility may not provide retail water and sewer utility service within the area certificated to another retail public utility without first having obtained from the utility commission a certificate of public convenience and necessity that includes the areas to be served.

SECTION 2.38. Section 13.248, Water Code, is amended to read as follows:

Sec. 13.248. **CONTRACTS VALID AND ENFORCEABLE.** Contracts between retail public utilities designating areas to be served and customers to be served by those retail public utilities, when approved by the utility commission or the executive director of the utility commission after public notice ~~[and hearing]~~, are valid and enforceable and are incorporated into the appropriate areas of public convenience and necessity.

SECTION 2.39. Subsections (b), (c), and (e), Section 13.250, Water Code, are amended to read as follows:

(b) Unless the utility commission issues a certificate that neither the present nor future convenience and necessity will be adversely affected, the holder of a certificate or a person who possesses facilities used to provide utility service shall not discontinue, reduce, or impair service to a certified service area or part of a certified service area except for:

(1) nonpayment of charges for services provided by the certificate holder or a person who possesses facilities used to provide utility service;

(2) nonpayment of charges for sewer service provided by another retail public utility under an agreement between the retail public utility and the certificate holder or a person who possesses facilities used to provide utility service or under a utility commission-ordered arrangement between the two service providers;

(3) nonuse; or

(4) other similar reasons in the usual course of business.

(c) Any discontinuance, reduction, or impairment of service, whether with or without approval of the utility commission, shall be in conformity with and subject to conditions, restrictions, and limitations that the utility commission prescribes.

(e) Not later than the 48th hour after the hour in which a utility files a bankruptcy petition, the utility shall report this fact to the utility commission and the commission in writing.

SECTION 2.40. Subsection (d), Section 13.2502, Water Code, is amended to read as follows:

(d) This section does not limit or extend the jurisdiction of the utility commission under Section 13.043(g).

SECTION 2.41. Section 13.251, Water Code, is amended to read as follows:

Sec. 13.251. **SALE, ASSIGNMENT, OR LEASE OF CERTIFICATE.** Except as provided by Section 13.255 ~~[of this code]~~, a utility or a water supply or sewer service corporation may not sell, assign, or lease a certificate of public convenience and necessity or any right obtained under a certificate unless the commission has determined that the purchaser, assignee, or lessee is capable of rendering adequate and

continuous service to every consumer within the certified area, after considering the factors under Section 13.246(c) ~~[of this code]~~. The sale, assignment, or lease shall be on the conditions prescribed by the utility commission.

SECTION 2.42. Section 13.252, Water Code, is amended to read as follows:

Sec. 13.252. INTERFERENCE WITH OTHER RETAIL PUBLIC UTILITY. If a retail public utility in constructing or extending a line, plant, or system interferes or attempts to interfere with the operation of a line, plant, or system of any other retail public utility, or furnishes, makes available, renders, or extends retail water or sewer utility service to any portion of the service area of another retail public utility that has been granted or is not required to possess a certificate of public convenience and necessity, the utility commission may issue an order prohibiting the construction, extension, or provision of service or prescribing terms and conditions for locating the line, plant, or system affected or for the provision of the service.

SECTION 2.43. Section 13.253, Water Code, is amended to read as follows:

Sec. 13.253. IMPROVEMENTS IN SERVICE; INTERCONNECTING SERVICE. (a) After notice and hearing, the utility commission or the commission may:

(1) order any retail public utility that is required by law to possess a certificate of public convenience and necessity or any retail public utility that possesses a certificate of public convenience and necessity and is located in an affected county as defined in Section 16.341 to:

(A) provide specified improvements in its service in a defined area if service in that area is inadequate or is substantially inferior to service in a comparable area and it is reasonable to require the retail public utility to provide the improved service; or

(B) develop, implement, and follow financial, managerial, and technical practices that are acceptable to the utility commission to ensure that continuous and adequate service is provided to any areas currently certificated to the retail public utility if the retail public utility has not provided continuous and adequate service to any of those areas and, for a utility, to provide financial assurance of the utility's ability to operate the system in accordance with applicable laws and rules, in the form of a bond or other financial assurance in a form and amount specified by the utility commission;

(2) order two or more public utilities or water supply or sewer service corporations to establish specified facilities for interconnecting service;

(3) order a public utility or water supply or sewer service corporation that has not demonstrated that it can provide continuous and adequate service from its drinking water source or sewer treatment facility to obtain service sufficient to meet its obligation to provide continuous and adequate service on at least a wholesale basis from another consenting utility service provider; or

(4) issue an emergency order, with or without a hearing, under Section 13.041.

(b) If the utility commission has reason to believe that improvements and repairs to a water or sewer service system are necessary to enable a retail public utility to provide continuous and adequate service in any portion of its service area and the retail public utility has provided financial assurance under Section 341.0355, Health

and Safety Code, or under this chapter, the utility commission, after providing to the retail public utility notice and an opportunity to be heard by the commissioners at a [~~commission~~] meeting of the utility commission, may immediately order specified improvements and repairs to the water or sewer system, the costs of which may be paid by the bond or other financial assurance in an amount determined by the utility commission not to exceed the amount of the bond or financial assurance. The order requiring the improvements may be an emergency order if it is issued after the retail public utility has had an opportunity to be heard [~~by the commissioners~~] at a [~~commission~~] meeting of the utility commission. After notice and hearing, the utility commission may require a retail public utility to obligate additional money to replace the financial assurance used for the improvements.

SECTION 2.44. Section 13.254, Water Code, is amended to read as follows:

Sec. 13.254. REVOCATION OR AMENDMENT OF CERTIFICATE. (a) The utility commission at any time after notice and hearing may~~[, on its own motion or on receipt of a petition described by Subsection (a-1),]~~ revoke or amend any certificate of public convenience and necessity with the written consent of the certificate holder or if the utility commission [~~it~~] finds that:

(1) the certificate holder has never provided, is no longer providing, is incapable of providing, or has failed to provide continuous and adequate service in the area, or part of the area, covered by the certificate;

(2) in an affected county as defined in Section 16.341, the cost of providing service by the certificate holder is so prohibitively expensive as to constitute denial of service, provided that, for commercial developments or for residential developments started after September 1, 1997, in an affected county as defined in Section 16.341, the fact that the cost of obtaining service from the currently certificated retail public utility makes the development economically unfeasible does not render such cost prohibitively expensive in the absence of other relevant factors;

(3) the certificate holder has agreed in writing to allow another retail public utility to provide service within its service area, except for an interim period, without amending its certificate; or

(4) the certificate holder has failed to file a cease and desist action pursuant to Section 13.252 within 180 days of the date that it became aware that another retail public utility was providing service within its service area, unless the certificate holder demonstrates good cause for its failure to file such action within the 180 days.

(a-1) As an alternative to decertification under Subsection (a), the owner of a tract of land that is at least 50 acres and that is not in a platted subdivision actually receiving water or sewer service may petition the utility commission under this subsection for expedited release of the area from a certificate of public convenience and necessity so that the area may receive service from another retail public utility. The petitioner shall deliver, via certified mail, a copy of the petition to the certificate holder, who may submit information to the utility commission to controvert information submitted by the petitioner. The petitioner must demonstrate that:

(1) a written request for service, other than a request for standard residential or commercial service, has been submitted to the certificate holder, identifying:

(A) the area for which service is sought;



(B) the timeframe within which service is needed for current and projected service demands in the area;

(C) the level and manner of service needed for current and projected service demands in the area; and

(D) any additional information requested by the certificate holder that is reasonably related to determination of the capacity or cost for providing the service;

(2) the certificate holder has been allowed at least 90 calendar days to review and respond to the written request and the information it contains;

(3) the certificate holder:

(A) has refused to provide the service;

(B) is not capable of providing the service on a continuous and adequate basis within the timeframe, at the level, or in the manner reasonably needed or requested by current and projected service demands in the area; or

(C) conditions the provision of service on the payment of costs not properly allocable directly to the petitioner's service request, as determined by the utility commission; and

(4) the alternate retail public utility from which the petitioner will be requesting service is capable of providing continuous and adequate service within the timeframe, at the level, and in the manner reasonably needed or requested by current and projected service demands in the area.

(a-2) A landowner is not entitled to make the election described in Subsection (a-1) or (a-5) but is entitled to contest under Subsection (a) the involuntary certification of its property in a hearing held by the utility commission if the landowner's property is located:

(1) within the boundaries of any municipality or the extraterritorial jurisdiction of a municipality with a population of more than 500,000 and the municipality or retail public utility owned by the municipality is the holder of the certificate; or

(2) in a platted subdivision actually receiving water or sewer service.

(a-3) Within 90 calendar days from the date the utility commission determines the petition filed pursuant to Subsection (a-1) to be administratively complete, the utility commission shall grant the petition unless the utility commission makes an express finding that the petitioner failed to satisfy the elements required in Subsection (a-1) and supports its finding with separate findings and conclusions for each element based solely on the information provided by the petitioner and the certificate holder. The utility commission may grant or deny a petition subject to terms and conditions specifically related to the service request of the petitioner and all relevant information submitted by the petitioner and the certificate holder. In addition, the utility commission may require an award of compensation as otherwise provided by this section.

(a-4) Chapter 2001, Government Code, does not apply to any petition filed under Subsection (a-1). The decision of the utility commission on the petition is final after any reconsideration authorized by the utility commission's rules and may not be appealed.

(a-5) As an alternative to decertification under Subsection (a) and expedited release under Subsection (a-1), the owner of a tract of land that is at least 25 acres and that is not receiving water or sewer service may petition for expedited release of the area from a certificate of public convenience and necessity and is entitled to that release if the landowner's property is located in a county with a population of at least one million, a county adjacent to a county with a population of at least one million, or a county with a population of more than 200,000 and less than 220,000.

(a-6) The utility commission shall grant a petition received under Subsection (a-5) not later than the 60th day after the date the landowner files the petition. The utility commission may not deny a petition received under Subsection (a-5) based on the fact that a certificate holder is a borrower under a federal loan program. The utility commission may require an award of compensation by the petitioner to a decertified retail public utility that is the subject of a petition filed under Subsection (a-5) as otherwise provided by this section.

(b) Upon written request from the certificate holder, the utility commission [~~executive director~~] may cancel the certificate of a utility or water supply corporation authorized by rule to operate without a certificate of public convenience and necessity under Section 13.242(c).

(c) If the certificate of any retail public utility is revoked or amended, the utility commission may require one or more retail public utilities with their consent to provide service in the area in question. The order of the utility commission shall not be effective to transfer property.

(d) A retail public utility may not in any way render retail water or sewer service directly or indirectly to the public in an area that has been decertified under this section without providing compensation for any property that the utility commission determines is rendered useless or valueless to the decertified retail public utility as a result of the decertification.

(e) The determination of the monetary amount of compensation, if any, shall be determined at the time another retail public utility seeks to provide service in the previously decertified area and before service is actually provided. The utility commission shall ensure that the monetary amount of compensation is determined not later than the 90th calendar day after the date on which a retail public utility notifies the utility commission of its intent to provide service to the decertified area.

(f) The monetary amount shall be determined by a qualified individual or firm serving as independent appraiser agreed upon by the decertified retail public utility and the retail public utility seeking to serve the area. The determination of compensation by the independent appraiser shall be binding on the utility commission. The costs of the independent appraiser shall be borne by the retail public utility seeking to serve the area.

(g) For the purpose of implementing this section, the value of real property owned and utilized by the retail public utility for its facilities shall be determined according to the standards set forth in Chapter 21, Property Code, governing actions in eminent domain and the value of personal property shall be determined according to the factors in this subsection. The factors ensuring that the compensation to a retail public utility is just and adequate shall include: the amount of the retail public utility's debt allocable for service to the area in question; the value of the service facilities of

the retail public utility located within the area in question; the amount of any expenditures for planning, design, or construction of service facilities that are allocable to service to the area in question; the amount of the retail public utility's contractual obligations allocable to the area in question; any demonstrated impairment of service or increase of cost to consumers of the retail public utility remaining after the decertification; the impact on future revenues lost from existing customers; necessary and reasonable legal expenses and professional fees; and other relevant factors. The utility commission shall adopt rules governing the evaluation of these factors.

(g-1) If the retail public utilities cannot agree on an independent appraiser within 10 calendar days after the date on which the retail public utility notifies the utility commission of its intent to provide service to the decertified area, each retail public utility shall engage its own appraiser at its own expense, and each appraisal shall be submitted to the utility commission within 60 calendar days. After receiving the appraisals, the utility commission shall appoint a third appraiser who shall make a determination of the compensation within 30 days. The determination may not be less than the lower appraisal or more than the higher appraisal. Each retail public utility shall pay half the cost of the third appraisal.

SECTION 2.45. Subsections (a), (b), (c), (d), (e), (g-1), (k), (l), and (m), Section 13.255, Water Code, are amended to read as follows:

(a) In the event that an area is incorporated or annexed by a municipality, either before or after the effective date of this section, the municipality and a retail public utility that provides water or sewer service to all or part of the area pursuant to a certificate of convenience and necessity may agree in writing that all or part of the area may be served by a municipally owned utility, by a franchised utility, or by the retail public utility. In this section, the phrase "franchised utility" shall mean a retail public utility that has been granted a franchise by a municipality to provide water or sewer service inside municipal boundaries. The agreement may provide for single or dual certification of all or part of the area, for the purchase of facilities or property, and for such other or additional terms that the parties may agree on. If a franchised utility is to serve the area, the franchised utility shall also be a party to the agreement. The executed agreement shall be filed with the utility commission, and the utility commission, on receipt of the agreement, shall incorporate the terms of the agreement into the respective certificates of convenience and necessity of the parties to the agreement.

(b) If an agreement is not executed within 180 days after the municipality, in writing, notifies the retail public utility of its intent to provide service to the incorporated or annexed area, and if the municipality desires and intends to provide retail utility service to the area, the municipality, prior to providing service to the area, shall file an application with the utility commission to grant single certification to the municipally owned water or sewer utility or to a franchised utility. If an application for single certification is filed, the utility commission shall fix a time and place for a hearing and give notice of the hearing to the municipality and franchised utility, if any, and notice of the application and hearing to the retail public utility.

(c) The utility commission shall grant single certification to the municipality. The utility commission shall also determine whether single certification as requested by the municipality would result in property of a retail public utility being rendered useless or valueless to the retail public utility, and shall determine in its order the monetary amount that is adequate and just to compensate the retail public utility for such property. If the municipality in its application has requested the transfer of specified property of the retail public utility to the municipality or to a franchised utility, the utility commission shall also determine in its order the adequate and just compensation to be paid for such property pursuant to the provisions of this section, including an award for damages to property remaining in the ownership of the retail public utility after single certification. The order of the utility commission shall not be effective to transfer property. A transfer of property may only be obtained under this section by a court judgment rendered pursuant to Subsection (d) or (e) ~~[of this section]~~. The grant of single certification by the utility commission shall go into effect on the date the municipality or franchised utility, as the case may be, pays adequate and just compensation pursuant to court order, or pays an amount into the registry of the court or to the retail public utility under Subsection (f). If the court judgment provides that the retail public utility is not entitled to any compensation, the grant of single certification shall go into effect when the court judgment becomes final. The municipality or franchised utility must provide to each customer of the retail public utility being acquired an individual written notice within 60 days after the effective date for the transfer specified in the court judgment. The notice must clearly advise the customer of the identity of the new service provider, the reason for the transfer, the rates to be charged by the new service provider, and the effective date of those rates.

(d) In the event the final order of the utility commission is not appealed within 30 days, the municipality may request the district court of Travis County to enter a judgment consistent with the order of the utility commission. In such event, the court shall render a judgment that:

(1) transfers to the municipally owned utility or franchised utility title to property to be transferred to the municipally owned utility or franchised utility as delineated by the utility commission's final order and property determined by the utility commission to be rendered useless or valueless by the granting of single certification; and

(2) orders payment to the retail public utility of adequate and just compensation for the property as determined by the utility commission in its final order.

(e) Any party that is aggrieved by a final order of the utility commission under this section may file an appeal with the district court of Travis County within 30 days after the order becomes final. The hearing in such an appeal before the district court shall be by trial de novo on all issues. After the hearing, if the court determines that the municipally owned utility or franchised utility is entitled to single certification under the provisions of this section, the court shall enter a judgment that:

(1) transfers to the municipally owned utility or franchised utility title to property requested by the municipality to be transferred to the municipally owned utility or franchised utility and located within the singly certificated area and property determined by the court or jury to be rendered useless or valueless by the granting of single certification; and

(2) orders payment in accordance with Subsection (g) [~~of this section~~] to the retail public utility of adequate and just compensation for the property transferred and for the property damaged as determined by the court or jury.

(g-1) The utility commission shall adopt rules governing the evaluation of the factors to be considered in determining the monetary compensation under Subsection (g). The utility commission by rule shall adopt procedures to ensure that the total compensation to be paid to a retail public utility under Subsection (g) is determined not later than the 90th calendar day after the date on which the utility commission determines that the municipality's application is administratively complete.

(k) The following conditions apply when a municipality or franchised utility makes an application to acquire the service area or facilities of a retail public utility described in Subsection (j)(2):

(1) the utility commission or court must determine that the service provided by the retail public utility is substandard or its rates are unreasonable in view of the reasonable expenses of the utility;

(2) if the municipality abandons its application, the court or the utility commission is authorized to award to the retail public utility its reasonable expenses related to the proceeding hereunder, including attorney fees; and

(3) unless otherwise agreed by the retail public utility, the municipality must take the entire utility property of the retail public utility in a proceeding hereunder.

(l) For an area incorporated by a municipality, the compensation provided under Subsection (g) shall be determined by a qualified individual or firm to serve as independent appraiser, who shall be selected by the affected retail public utility, and the costs of the appraiser shall be paid by the municipality. For an area annexed by a municipality, the compensation provided under Subsection (g) shall be determined by a qualified individual or firm to which the municipality and the retail public utility agree to serve as independent appraiser. If the retail public utility and the municipality are unable to agree on a single individual or firm to serve as the independent appraiser before the 11th day after the date the retail public utility or municipality notifies the other party of the impasse, the retail public utility and municipality each shall appoint a qualified individual or firm to serve as independent appraiser. On or before the 10th business day after the date of their appointment, the independent appraisers shall meet to reach an agreed determination of the amount of compensation. If the appraisers are unable to agree on a determination before the 16th business day after the date of their first meeting under this subsection, the retail public utility or municipality may petition the utility commission or a person the utility commission designates for the purpose to appoint a third qualified independent appraiser to reconcile the appraisals of the two originally appointed appraisers. The determination of the third appraiser may not be less than the lesser or more than the greater of the two original appraisals.

The costs of the independent appraisers for an annexed area shall be shared equally by the retail public utility and the municipality. The determination of compensation under this subsection is binding on the utility commission.

(m) The utility commission shall deny an application for single certification by a municipality that fails to demonstrate compliance with the commission's minimum requirements for public drinking water systems.

SECTION 2.46. Section 13.2551, Water Code, is amended to read as follows:

Sec. 13.2551. COMPLETION OF DECERTIFICATION. (a) As a condition to decertification or single certification under Section 13.254 or 13.255, and on request by an affected retail public utility, the utility commission may order:

(1) the retail public utility seeking to provide service to a decertified area to serve the entire service area of the retail public utility that is being decertified; and

(2) the transfer of the entire certificate of public convenience and necessity of a partially decertified retail public utility to the retail public utility seeking to provide service to the decertified area.

(b) The utility commission shall order service to the entire area under Subsection (a) if the utility commission finds that the decertified retail public utility will be unable to provide continuous and adequate service at an affordable cost to the remaining customers.

(c) The utility commission shall require the retail public utility seeking to provide service to the decertified area to provide continuous and adequate service to the remaining customers at a cost comparable to the cost of that service to its other customers and shall establish the terms under which the service must be provided. The terms may include:

- (1) transferring debt and other contract obligations;
- (2) transferring real and personal property;
- (3) establishing interim service rates for affected customers during specified times; and
- (4) other provisions necessary for the just and reasonable allocation of assets and liabilities.

(d) The retail public utility seeking decertification shall not charge the affected customers any transfer fee or other fee to obtain service other than the retail public utility's usual and customary rates for monthly service or the interim rates set by the utility commission, if applicable.

(e) The utility commission shall not order compensation to the decertified retail utility if service to the entire service area is ordered under this section.

SECTION 2.47. Subsections (e), (i), (r), and (s), Section 13.257, Water Code, are amended to read as follows:

(e) The notice must be given to the prospective purchaser before the execution of a binding contract of purchase and sale. The notice may be given separately or as an addendum to or paragraph of the contract. If the seller fails to provide the notice required by this section, the purchaser may terminate the contract. If the seller provides the notice at or before the closing of the purchase and sale contract and the purchaser elects to close even though the notice was not timely provided before the execution of the contract, it is conclusively presumed that the purchaser has waived all rights to terminate the contract and recover damages or pursue other remedies or

rights under this section. Notwithstanding any provision of this section to the contrary, a seller, title insurance company, real estate broker, or examining attorney, or an agent, representative, or person acting on behalf of the seller, company, broker, or attorney, is not liable for damages under Subsection (m) or (n) or liable for any other damages to any person for:

(1) failing to provide the notice required by this section to a purchaser before the execution of a binding contract of purchase and sale or at or before the closing of the purchase and sale contract if:

(A) the utility service provider did not file the map of the certificated service area in the real property records of the county in which the service area is located and with the utility commission depicting the boundaries of the service area of the utility service provider as shown in the real property records of the county in which the service area is located; and

(B) the utility commission did not maintain an accurate map of the certificated service area of the utility service provider as required by this chapter; or

(2) unintentionally providing a notice required by this section that is incorrect under the circumstances before the execution of a binding contract of purchase and sale or at or before the closing of the purchase and sale contract.

(i) If the notice is given at closing as provided by Subsection (g), a purchaser, or the purchaser's heirs, successors, or assigns, may not maintain an action for damages or maintain an action against a seller, title insurance company, real estate broker, or lienholder, or any agent, representative, or person acting on behalf of the seller, company, broker, or lienholder, by reason of the seller's use of the information filed with the utility commission by the utility service provider or the seller's use of the map of the certificated service area of the utility service provider filed in the real property records to determine whether the property to be purchased is within the certificated service area of the utility service provider. An action may not be maintained against a title insurance company for the failure to disclose that the described real property is included within the certificated service area of a utility service provider if the utility service provider did not file in the real property records or with the utility commission the map of the certificated service area.

(r) A utility service provider shall:

(1) record in the real property records of each county in which the service area or a portion of the service area is located a certified copy of the map of the certificate of public convenience and necessity and of any amendment to the certificate as contained in the utility commission's records, and a boundary description of the service area by:

(A) a metes and bounds survey certified by a licensed state land surveyor or a registered professional land surveyor;

(B) the Texas State Plane Coordinate System;

(C) verifiable landmarks, including a road, creek, or railroad line; or

(D) if a recorded plat of the area exists, lot and block number; and

(2) submit to the executive director of the utility commission evidence of the recording.

(s) Each county shall accept and file in its real property records a utility service provider's map presented to the county clerk under this section if the map meets filing requirements, does not exceed 11 inches by 17 inches in size, and is accompanied by the appropriate fee. The recording required by this section must be completed not later than the 31st day after the date a utility service provider receives a final order from the utility commission granting an application for a new certificate or for an amendment to a certificate that results in a change in the utility service provider's service area.

SECTION 2.48. Subsections (a) through (g), Section 13.301, Water Code, are amended to read as follows:

(a) A utility or a water supply or sewer service corporation, on or before the 120th day before the effective date of a sale, acquisition, lease, or rental of a water or sewer system that is required by law to possess a certificate of public convenience and necessity or the effective date of a merger or consolidation with such a utility or water supply or sewer service corporation, shall:

(1) file a written application with the utility commission; and

(2) unless public notice is waived by the executive director of the utility commission for good cause shown, give public notice of the action.

(b) The utility commission may require that the person purchasing or acquiring the water or sewer system demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and any areas currently certificated to the person.

(c) If the person purchasing or acquiring the water or sewer system cannot demonstrate adequate financial capability, the utility commission may require that the person provide a bond or other financial assurance in a form and amount specified by the utility commission to ensure continuous and adequate utility service is provided.

(d) The utility commission shall, with or without a public hearing, investigate the sale, acquisition, lease, or rental to determine whether the transaction will serve the public interest.

(e) Before the expiration of the 120-day notification period, the executive director of the utility commission shall notify all known parties to the transaction and the Office of Public Utility Counsel whether ~~of~~ the executive director of the utility commission will ~~director's decision whether to~~ request that the utility commission hold a public hearing to determine if the transaction will serve the public interest. The executive director of the utility commission may request a hearing if:

(1) the application filed with the utility commission or the public notice was improper;

(2) the person purchasing or acquiring the water or sewer system has not demonstrated adequate financial, managerial, and technical capability for providing continuous and adequate service to the service area being acquired and to any areas currently certificated to the person;

(3) the person or an affiliated interest of the person purchasing or acquiring the water or sewer system has a history of:

(A) noncompliance with the requirements of the utility commission, the commission, or the [Texas] Department of State Health Services; or

(B) continuing mismanagement or misuse of revenues as a utility service provider;



(4) the person purchasing or acquiring the water or sewer system cannot demonstrate the financial ability to provide the necessary capital investment to ensure the provision of continuous and adequate service to the customers of the water or sewer system; or

(5) there are concerns that the transaction may not serve the public interest, after the application of the considerations provided by Section 13.246(c) for determining whether to grant a certificate of convenience and necessity.

(f) Unless the executive director of the utility commission requests that a public hearing be held, the sale, acquisition, lease, or rental may be completed as proposed:

(1) at the end of the 120-day period; or

(2) at any time after the executive director of the utility commission notifies the utility or water supply or sewer service corporation that a hearing will not be requested.

(g) If a hearing is requested or if the utility or water supply or sewer service corporation fails to make the application as required or to provide public notice, the sale, acquisition, lease, or rental may not be completed unless the utility commission determines that the proposed transaction serves the public interest.

SECTION 2.49. Section 13.302, Water Code, is amended to read as follows:

Sec. 13.302. PURCHASE OF VOTING STOCK IN ANOTHER PUBLIC UTILITY: REPORT. (a) A utility may not purchase voting stock in another utility doing business in this state and a person may not acquire a controlling interest in a utility doing business in this state unless the person or utility files a written application with the utility commission not later than the 61st day before the date on which the transaction is to occur.

(b) The utility commission may require that a person acquiring a controlling interest in a utility demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and any areas currently certificated to the person.

(c) If the person acquiring a controlling interest cannot demonstrate adequate financial capability, the utility commission may require that the person provide a bond or other financial assurance in a form and amount specified by the utility commission to ensure continuous and adequate utility service is provided.

(d) The executive director of the utility commission may request that the utility commission hold a public hearing on the transaction if the executive director of the utility commission believes that a criterion prescribed by Section 13.301(e) applies.

(e) Unless the executive director of the utility commission requests that a public hearing be held, the purchase or acquisition may be completed as proposed:

(1) at the end of the 60-day period; or

(2) at any time after the executive director of the utility commission notifies the person or utility that a hearing will not be requested.

(f) If a hearing is requested or if the person or utility fails to make the application to the utility commission as required, the purchase or acquisition may not be completed unless the utility commission determines that the proposed transaction serves the public interest. A purchase or acquisition that is not completed in accordance with the provisions of this section is void.

SECTION 2.50. Section 13.303, Water Code, is amended to read as follows:

Sec. 13.303. LOANS TO STOCKHOLDERS: REPORT. A utility may not loan money, stocks, bonds, notes, or other evidences of indebtedness to any corporation or person owning or holding directly or indirectly any stock of the utility unless the utility reports the transaction to the utility commission within 60 days after the date of the transaction.

SECTION 2.51. Section 13.304, Water Code, is amended to read as follows:

Sec. 13.304. FORECLOSURE REPORT. (a) A utility that receives notice that all or a portion of the utility's facilities or property used to provide utility service are being posted for foreclosure shall notify the utility commission and the commission in writing of that fact not later than the 10th day after the date on which the utility receives the notice.

(b) A financial institution that forecloses on a utility or on any part of the utility's facilities or property that are used to provide utility service is not required to provide the 120-day notice prescribed by Section 13.301, but shall provide written notice to the utility commission and the commission before the 30th day preceding the date on which the foreclosure is completed.

(c) The financial institution may operate the utility for an interim period prescribed by utility commission rule before transferring or otherwise obtaining a certificate of convenience and necessity. A financial institution that operates a utility during an interim period under this subsection is subject to each utility commission rule to which the utility was subject and in the same manner.

SECTION 2.52. Section 13.341, Water Code, is amended to read as follows:

Sec. 13.341. JURISDICTION OVER AFFILIATED INTERESTS. The utility commission has jurisdiction over affiliated interests having transactions with utilities under the jurisdiction of the utility commission to the extent of access to all accounts and records of those affiliated interests relating to such transactions, including but in no way limited to accounts and records of joint or general expenses, any portion of which may be applicable to those transactions.

SECTION 2.53. Section 13.342, Water Code, is amended to read as follows:

Sec. 13.342. DISCLOSURE OF SUBSTANTIAL INTEREST IN VOTING SECURITIES. The utility commission may require the disclosure of the identity and respective interests of every owner of any substantial interest in the voting securities of any utility or its affiliated interest. One percent or more is a substantial interest within the meaning of this section.

SECTION 2.54. Subsection (a), Section 13.343, Water Code, is amended to read as follows:

(a) The owner of a utility that supplies retail water service may not contract to purchase from an affiliated supplier wholesale water service for any of that owner's systems unless:

(1) the wholesale service is provided for not more than 90 days to remedy an emergency condition, as defined by utility commission or commission rule; or

(2) the executive director of the utility commission determines that the utility cannot obtain wholesale water service from another source at a lower cost than from the affiliate.

SECTION 2.55. Section 13.381, Water Code, is amended to read as follows:

Sec. 13.381. RIGHT TO JUDICIAL REVIEW; EVIDENCE. Any party to a proceeding before the utility commission or the commission is entitled to judicial review under the substantial evidence rule.

SECTION 2.56. Subsection (a), Section 13.382, Water Code, is amended to read as follows:

(a) Any party represented by counsel who alleges that existing rates are excessive or that rates prescribed by the utility commission are excessive and who is a prevailing party in proceedings for review of a utility commission order or decision may in the same action recover against the regulation fund reasonable fees for attorneys and expert witnesses and other costs incurred by him before the utility commission and the court. The amount of the attorney's fees shall be fixed by the court.

SECTION 2.57. Section 13.411, Water Code, is amended to read as follows:

Sec. 13.411. ACTION TO ENJOIN OR REQUIRE COMPLIANCE. (a) If the utility commission or the commission has reason to believe that any retail public utility or any other person or corporation is engaged in or is about to engage in any act in violation of this chapter or of any order or rule of the utility commission or the commission entered or adopted under this chapter or that any retail public utility or any other person or corporation is failing to comply with this chapter or with any rule or order, the attorney general on request of the utility commission or the commission, in addition to any other remedies provided in this chapter, shall bring an action in a court of competent jurisdiction in the name of and on behalf of the utility commission or the commission against the retail public utility or other person or corporation to enjoin the commencement or continuation of any act or to require compliance with this chapter or the rule or order.

(b) If the executive director of the utility commission or the executive director of the commission has reason to believe that the failure of the owner or operator of a water utility to properly operate, maintain, or provide adequate facilities presents an imminent threat to human health or safety, the executive director of the utility commission or the executive director of the commission shall immediately:

- (1) notify the utility's representative; and
- (2) initiate enforcement action consistent with:

(A) this subchapter; and

(B) procedural rules adopted by the utility commission or the commission.

SECTION 2.58. Section 13.4115, Water Code, is amended to read as follows:

Sec. 13.4115. ACTION TO REQUIRE ADJUSTMENT TO CONSUMER CHARGE; PENALTY. In regard to a customer complaint arising out of a charge made by a public utility, if the utility commission [~~the executive director~~] finds that the utility has failed to make the proper adjustment to the customer's bill after the conclusion of the complaint process established by the utility commission, the utility commission may issue an order requiring the utility to make the adjustment. Failure to comply with the order within 30 days of receiving the order is a violation for which the utility commission may impose an administrative penalty under Section 13.4151.

SECTION 2.59. Subsections (a), (f), and (g), Section 13.412, Water Code, are amended to read as follows:

(a) At the request of the utility commission or the commission, the attorney general shall bring suit for the appointment of a receiver to collect the assets and carry on the business of a water or sewer utility that:

- (1) has abandoned operation of its facilities;
- (2) informs the utility commission or the commission that the owner is abandoning the system;
- (3) violates a final order of the utility commission or the commission; or
- (4) allows any property owned or controlled by it to be used in violation of a final order of the utility commission or the commission.

(f) For purposes of this section and Section 13.4132, abandonment may include but is not limited to:

- (1) failure to pay a bill or obligation owed to a retail public utility or to an electric or gas utility with the result that the utility service provider has issued a notice of discontinuance of necessary services;
- (2) failure to provide appropriate water or wastewater treatment so that a potential health hazard results;
- (3) failure to adequately maintain facilities, resulting in potential health hazards, extended outages, or repeated service interruptions;
- (4) failure to provide customers adequate notice of a health hazard or potential health hazard;
- (5) failure to secure an alternative available water supply during an outage;
- (6) displaying a pattern of hostility toward or repeatedly failing to respond to the utility commission or the commission or the utility's customers; and
- (7) failure to provide the utility commission or the commission with adequate information on how to contact the utility for normal business and emergency purposes.

(g) Notwithstanding Section 64.021, Civil Practice and Remedies Code, a receiver appointed under this section may seek ~~[commission]~~ approval from the utility commission and the commission to acquire the water or sewer utility's facilities and transfer the utility's certificate of convenience and necessity. The receiver must apply in accordance with Subchapter H.

SECTION 2.60. Section 13.413, Water Code, is amended to read as follows:

Sec. 13.413. PAYMENT OF COSTS OF RECEIVERSHIP. The receiver may, subject to the approval of the court and after giving notice to all interested parties, sell or otherwise dispose of all or part of the real or personal property of a water or sewer utility against which a proceeding has been brought under this subchapter to pay the costs incurred in the operation of the receivership. The costs include:

- (1) payment of fees to the receiver for his services;
- (2) payment of fees to attorneys, accountants, engineers, or any other person or entity that provides goods or services necessary to the operation of the receivership; and
- (3) payment of costs incurred in ensuring that any property owned or controlled by a water or sewer utility is not used in violation of a final order of the utility commission or the commission.

SECTION 2.61. Section 13.4131, Water Code, is amended to read as follows:

Sec. 13.4131. SUPERVISION OF CERTAIN UTILITIES. (a) The utility commission, after providing to the utility notice and an opportunity for a hearing, may place a utility under supervision for gross or continuing mismanagement, gross or continuing noncompliance with this chapter or a rule adopted under this chapter ~~[commission rules]~~, or noncompliance with an order issued under this chapter ~~[commission orders]~~.

(b) While supervising a utility, the utility commission may require the utility to abide by conditions and requirements prescribed by the utility commission, including:

- (1) management requirements;
- (2) additional reporting requirements;
- (3) restrictions on hiring, salary or benefit increases, capital investment, borrowing, stock issuance or dividend declarations, and liquidation of assets; and
- (4) a requirement that the utility place the utility's funds into an account in a financial institution approved by the utility commission and use of those funds shall be restricted to reasonable and necessary utility expenses.

(c) While supervising a utility, the utility commission may require that the utility obtain ~~[commission]~~ approval from the utility commission before taking any action that may be restricted under Subsection (b) ~~[of this section]~~. Any action or transaction which occurs without ~~[commission]~~ approval may be voided by the utility commission.

SECTION 2.62. Subsections (a) and (c), Section 13.4133, Water Code, are amended to read as follows:

(a) Notwithstanding the requirements of Section 13.187 ~~[of this code]~~, the utility commission may authorize an emergency rate increase for a utility for which a person has been appointed under Section 13.4132 ~~[of this code]~~ or for which a receiver has been appointed under Section 13.412 ~~[of this code]~~ if the increase is necessary to ensure the provision of continuous and adequate services to the utility's customers.

(c) The utility commission shall schedule a hearing to establish a final rate within 15 months after the date on which an emergency rate increase takes effect. The utility commission shall require the utility to provide notice of the hearing to each customer and to the Office of Public Utility Counsel. The additional revenues collected under an emergency rate increase are subject to refund if the utility commission finds that the rate increase was larger than necessary to ensure continuous and adequate service.

SECTION 2.63. Subsections (a) and (c), Section 13.414, Water Code, are amended to read as follows:

(a) Any retail public utility or affiliated interest that violates this chapter, fails to perform a duty imposed on it, or fails, neglects, or refuses to obey an order, rule, direction, or requirement of the utility commission or the commission or decree or judgment of a court is subject to a civil penalty of not less than \$100 nor more than \$5,000 for each violation.

(c) The attorney general shall institute suit on his own initiative or at the request of, in the name of, and on behalf of the utility commission or the commission in a court of competent jurisdiction to recover the penalty under this section.

SECTION 2.64. Subsections (a) through (k) and (m), Section 13.4151, Water Code, are amended to read as follows:

(a) If a person, affiliated interest, or entity subject to the jurisdiction of the utility commission or the commission violates this chapter or a rule or order adopted under this chapter, the utility commission or the commission, as applicable, may assess a penalty against that person, affiliated interest, or entity as provided by this section. The penalty may be in an amount not to exceed \$500 a day. Each day a violation continues may be considered a separate violation.

(b) In determining the amount of the penalty, the utility commission or the commission shall consider:

(1) the nature, circumstances, extent, duration, and gravity of the prohibited acts or omissions;

(2) with respect to the alleged violator:

(A) the history and extent of previous violations;

(B) the degree of culpability, including whether the violation was attributable to mechanical or electrical failures and whether the violation could have been reasonably anticipated and avoided;

(C) the demonstrated good faith, including actions taken by the person, affiliated interest, or entity to correct the cause of the violation;

(D) any economic benefit gained through the violation; and

(E) the amount necessary to deter future violations; and

(3) any other matters that justice requires.

(c) If, after examination of a possible violation and the facts surrounding that possible violation, the executive director of the utility commission or the executive director of the commission concludes that a violation has occurred, the executive director of the utility commission or the executive director of the commission may issue a preliminary report stating the facts on which that conclusion is based, recommending that a penalty under this section be imposed on the person, affiliated interest, or retail public utility charged, and recommending the amount of that proposed penalty. The executive director of the utility commission or the executive director of the commission shall base the recommended amount of the proposed penalty on the factors provided by Subsection (b) ~~[of this section]~~, and shall analyze each factor for the benefit of the agency ~~[commission]~~.

(d) Not later than the 10th day after the date on which the report is issued, the executive director of the utility commission or the executive director of the commission shall give written notice of the report to the person, affiliated interest, or retail public utility charged with the violation. The notice shall include a brief summary of the charges, a statement of the amount of the penalty recommended, and a statement of the right of the person, affiliated interest, or retail public utility charged to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(e) Not later than the 20th day after the date on which notice is received, the person, affiliated interest, or retail public utility charged may give the agency ~~[commission]~~ written consent to the ~~[executive director's]~~ report described by Subsection (c), including the recommended penalty, or may make a written request for a hearing.

(f) If the person, affiliated interest, or retail public utility charged with the violation consents to the penalty recommended in the report described by Subsection (c) ~~[by the executive director]~~ or fails to timely respond to the notice, the utility

commission or the commission by order shall assess that penalty or order a hearing to be held on the findings and recommendations in the [executive director's] report. If the utility commission or the commission assesses the penalty recommended by the report, the utility commission or the commission shall give written notice to the person, affiliated interest, or retail public utility charged of its decision.

(g) If the person, affiliated interest, or retail public utility charged requests or the utility commission or the commission orders a hearing, the agency ~~[commission]~~ shall call a hearing and give notice of the hearing. As a result of the hearing, the agency ~~[commission]~~ by order may find that a violation has occurred and may assess a civil penalty, may find that a violation has occurred but that no penalty should be assessed, or may find that no violation has occurred. All proceedings under this subsection are subject to Chapter 2001, Government Code. In making any penalty decision, the agency ~~[commission]~~ shall analyze each of the factors provided by Subsection (b) ~~[of this section]~~.

(h) The utility commission or the commission shall give notice of its decision to the person, affiliated interest, or retail public utility charged, and if the agency ~~[commission]~~ finds that a violation has occurred and has assessed a penalty, the agency ~~[commission]~~ shall give written notice to the person, affiliated interest, or retail public utility charged of its findings, of the amount of the penalty, and of the person's, affiliated interest's, or retail public utility's right to judicial review of the agency's ~~[commission's]~~ order. If the agency ~~[commission]~~ is required to give notice of a penalty under this subsection or Subsection (f) ~~[of this section]~~, the agency ~~[commission]~~ shall file notice of the agency's ~~[its]~~ decision in the Texas Register not later than the 10th day after the date on which the decision is adopted.

(i) Within the 30-day period immediately following the day on which the agency's ~~[commission's]~~ order is final, as provided by Subchapter F, Chapter 2001, Government Code, the person, affiliated interest, or retail public utility charged with the penalty shall:

(1) pay the penalty in full; or

(2) if the person, affiliated interest, or retail public utility seeks judicial review of the fact of the violation, the amount of the penalty, or both:

(A) forward the amount of the penalty to the agency ~~[commission]~~ for placement in an escrow account; or

(B) post with the agency ~~[commission]~~ a supersedeas bond in a form approved by the agency ~~[commission]~~ for the amount of the penalty to be effective until all judicial review of the order or decision is final.

(j) Failure to forward the money to or to post the bond with the agency ~~[commission]~~ within the time provided by Subsection (i) ~~[of this section]~~ constitutes a waiver of all legal rights to judicial review. If the person, affiliated interest, or retail public utility charged fails to forward the money or post the bond as provided by Subsection (i) ~~[of this section]~~, the agency ~~[commission]~~ or the executive director of the agency may forward the matter to the attorney general for enforcement.

(k) Judicial review of the order or decision of the agency ~~[commission]~~ assessing the penalty shall be under the substantial evidence rule and may be instituted by filing a petition with a district court in Travis County, as provided by Subchapter G, Chapter 2001, Government Code.

(m) Notwithstanding any other provision of law, the agency ~~[commission]~~ may compromise, modify, extend the time for payment of, or remit, with or without condition, any penalty imposed under this section.

SECTION 2.65. Section 13.417, Water Code, is amended to read as follows:

Sec. 13.417. CONTEMPT PROCEEDINGS. If any person or retail public utility fails to comply with any lawful order of the utility commission or the commission or with any subpoena or subpoena duces tecum or if any witness refuses to testify about any matter on which he may be lawfully interrogated, the utility commission or the commission may apply to any court of competent jurisdiction to compel obedience by proceedings for contempt.

SECTION 2.66. Section 13.418, Water Code, is amended to read as follows:

Sec. 13.418. DISPOSITION OF FINES AND PENALTIES; WATER UTILITY IMPROVEMENT ACCOUNT. (a) Fines and penalties collected under this chapter from a retail public utility that is not a public utility in other than criminal proceedings shall be ~~[paid to the commission and]~~ deposited in the general revenue fund.

(b) Fines and penalties collected from a public utility under this chapter in other than criminal proceedings shall be ~~[paid to the commission and]~~ deposited in the water utility improvement account as provided by Section 341.0485, Health and Safety Code.

SECTION 2.67. Subdivision (7), Section 13.501, Water Code, is amended to read as follows:

(7) "Multiple use facility" means commercial or industrial parks, office complexes, marinas, and others specifically identified in utility commission rules with five or more units.

SECTION 2.68. Subsection (e), Section 13.502, Water Code, is amended to read as follows:

(e) An owner of an apartment house, manufactured home rental community, or multiple use facility or a manager of a condominium may not change from submetered billing to allocated billing unless:

(1) the executive director of the utility commission approves of the change in writing after a demonstration of good cause, including meter reading or billing problems that could not feasibly be corrected or equipment failures; and

(2) the property owner meets rental agreement requirements established by the utility commission.

SECTION 2.69. Subsections (a), (b), and (e), Section 13.503, Water Code, are amended to read as follows:

(a) The utility commission shall encourage submetering of individual rental or dwelling units by master meter operators or building owners to enhance the conservation of water resources.

(b) Notwithstanding any other law, the utility commission shall adopt rules and standards under which an owner, operator, or manager of an apartment house, manufactured home rental community, or multiple use facility that is not individually metered for water for each rental or dwelling unit may install submetering equipment for each individual rental or dwelling unit for the purpose of fairly allocating the cost of each individual rental or dwelling unit's water consumption, including wastewater charges based on water consumption. In addition to other appropriate safeguards for



the tenant, the rules shall require that, except as provided by this section, an apartment house owner, manufactured home rental community owner, multiple use facility owner, or condominium manager may not impose on the tenant any extra charges, over and above the cost per gallon and any other applicable taxes and surcharges that are charged by the retail public utility to the owner or manager, and that the rental unit or apartment house owner or manager shall maintain adequate records regarding submetering and make the records available for inspection by the tenant during reasonable business hours. The rules shall allow an owner or manager to charge a tenant a fee for late payment of a submetered water bill if the amount of the fee does not exceed five percent of the bill paid late. All submetering equipment is subject to the rules and standards established by the utility commission for accuracy, testing, and record keeping of meters installed by utilities and to the meter-testing requirements of Section 13.140 ~~[of this code]~~.

(e) The utility commission may authorize a building owner to use submetering equipment that relies on integrated radio based meter reading systems and remote registration in a building plumbing system using submeters that comply with nationally recognized plumbing standards and are as accurate as utility water meters in single application conditions.

SECTION 2.70. Section 13.5031, Water Code, is amended to read as follows:

Sec. 13.5031. NONSUBMETERING RULES. Notwithstanding any other law, the utility commission shall adopt rules and standards governing billing systems or methods used by manufactured home rental community owners, apartment house owners, condominium managers, or owners of other multiple use facilities for prorating or allocating among tenants nonsubmetered master metered utility service costs. In addition to other appropriate safeguards for the tenant, those rules shall require that:

(1) the rental agreement contain a clear written description of the method of calculation of the allocation of nonsubmetered master metered utilities for the manufactured home rental community, apartment house, or multiple use facility;

(2) the rental agreement contain a statement of the average manufactured home, apartment, or multiple use facility unit monthly bill for all units for any allocation of those utilities for the previous calendar year;

(3) except as provided by this section, an owner or condominium manager may not impose additional charges on a tenant in excess of the actual charges imposed on the owner or condominium manager for utility consumption by the manufactured home rental community, apartment house, or multiple use facility;

(4) the owner or condominium manager shall maintain adequate records regarding the utility consumption of the manufactured home rental community, apartment house, or multiple use facility, the charges assessed by the retail public utility, and the allocation of the utility costs to the tenants;

(5) the owner or condominium manager shall maintain all necessary records concerning utility allocations, including the retail public utility's bills, and shall make the records available for inspection by the tenants during normal business hours; and

(6) the owner or condominium manager may charge a tenant a fee for late payment of an allocated water bill if the amount of the fee does not exceed five percent of the bill paid late.

SECTION 2.71. Section 13.505, Water Code, is amended to read as follows:

Sec. 13.505. ENFORCEMENT. In addition to the enforcement provisions contained in Subchapter K ~~[of this chapter]~~, if an apartment house owner, condominium manager, manufactured home rental community owner, or other multiple use facility owner violates a rule of the utility commission regarding submetering of utility service consumed exclusively within the tenant's dwelling unit or multiple use facility unit or nonsubmetered master metered utility costs, the tenant may recover three times the amount of any overcharge, a civil penalty equal to one month's rent, reasonable attorney's fees, and court costs from the owner or condominium manager. However, an owner of an apartment house, manufactured home rental community, or other multiple use facility or condominium manager is not liable for a civil penalty if the owner or condominium manager proves the violation was a good faith, unintentional mistake.

SECTION 2.72. Section 13.512, Water Code, is amended to read as follows:

Sec. 13.512. AUTHORITY TO ENTER INTO PRIVATIZATION CONTRACTS. Any eligible city is authorized to enter into privatization contracts if such action is recommended by the board of utility trustees and authorized by the governing body of the eligible city pursuant to an ordinance. Any privatization contract entered into prior to the effective date of this Act is validated, ratified, and approved. Each eligible city shall file a copy of its privatization contract with the utility commission, for information purposes only, within 60 days of execution or the effective date of this Act, whichever is later.

SECTION 2.73. Section 13.513, Water Code, is amended to read as follows:

Sec. 13.513. ELECTION BY ELIGIBLE CITY TO EXEMPT SERVICE PROVIDER FROM UTILITY COMMISSION JURISDICTION. A service provider shall not constitute a "water and sewer utility," a "public utility," a "utility," or a "retail public utility" within the meaning of this chapter ~~[Chapter 13]~~ as a result of entering into or performing a privatization contract, if the governing body of the eligible city shall so elect by ordinance and provide notice thereof in writing to the utility commission; provided, however, this provision shall not affect the application of this chapter ~~[Chapter 13]~~ to an eligible city itself. Notwithstanding anything contained in this section, any service provider who seeks to extend or render sewer service to any person or municipality other than, or in addition to, an eligible city may be a "public utility" for the purposes of this chapter ~~[Chapter 13]~~ with respect to such other person or municipality.

SECTION 2.74. Subsection (a), Section 5.013, Water Code, is amended to read as follows:

(a) The commission has general jurisdiction over:

(1) water and water rights including the issuance of water rights permits, water rights adjudication, cancellation of water rights, and enforcement of water rights;

(2) continuing supervision over districts created under Article III, Sections 52(b)(1) and (2), and Article XVI, Section 59, of the Texas Constitution;

(3) the state's water quality program including issuance of permits, enforcement of water quality rules, standards, orders, and permits, and water quality planning;

- (4) the determination of the feasibility of certain federal projects;
  - (5) the adoption and enforcement of rules and performance of other acts relating to the safe construction, maintenance, and removal of dams;
  - (6) conduct of the state's hazardous spill prevention and control program;
  - (7) the administration of the state's program relating to inactive hazardous substance, pollutant, and contaminant disposal facilities;
  - (8) the administration of a portion of the state's injection well program;
  - (9) the administration of the state's programs involving underground water and water wells and drilled and mined shafts;
  - (10) the state's responsibilities relating to regional waste disposal;
  - (11) the responsibilities assigned to the commission by Chapters 361, 363, 382, and 401, Health and Safety Code; and
  - (12) ~~administration of the state's water rate program under Chapter 13 of this code; and~~
- ~~[(13)]~~ any other areas assigned to the commission by this code and other laws of this state.

SECTION 2.75. (a) On June 1, 2012, the following are transferred from the Texas Commission on Environmental Quality to the Public Utility Commission of Texas:

(1) the powers, duties, functions, programs, and activities of the Texas Commission on Environmental Quality relating to the economic regulation of water and sewer utilities, including the issuance and transfer of certificates of convenience and necessity, the determination of rates, and the administration of hearings and proceedings involving those matters, under Chapter 13, Water Code, as provided by this article;

(2) any obligations and contracts of the Texas Commission on Environmental Quality that are directly related to implementing a power, duty, function, program, or activity transferred under this article; and

(3) all property and records in the custody of the Texas Commission on Environmental Quality that are related to a power, duty, function, program, or activity transferred under this article and all funds appropriated by the legislature for that power, duty, function, program, or activity.

(b) The Texas Commission on Environmental Quality and the Public Utility Commission of Texas shall enter into a memorandum of understanding that:

(1) identifies in detail the applicable powers and duties that are transferred by this article;

(2) establishes a plan for the identification and transfer of the records, personnel, property, and unspent appropriations of the Texas Commission on Environmental Quality that are used for purposes of the commission's powers and duties directly related to the regulation of water and sewer utilities under Chapter 13, Water Code, as amended by this article; and

(3) establishes a plan for the transfer of all pending applications, hearings, rulemaking proceedings, and orders relating to the economic regulation of water and sewer utilities under Chapter 13, Water Code, as amended by this article, from the Texas Commission on Environmental Quality to the Public Utility Commission of Texas.

(c) The memorandum of understanding described by this section is not required to be adopted by rule under Section 5.104, Water Code.

(d) The executive directors of the Texas Commission on Environmental Quality and the Public Utility Commission of Texas may agree in the memorandum of understanding under this section to transfer to the Public Utility Commission of Texas any personnel of the Texas Commission on Environmental Quality whose functions predominantly involve powers, duties, obligations, functions, and activities related to the regulation of water and sewer utilities under Chapter 13, Water Code, as amended by this article.

(e) The Texas Commission on Environmental Quality and the Public Utility Commission of Texas shall appoint a transition team to accomplish the purposes of this section. The transition team shall establish guidelines on how the two agencies will cooperate regarding:

- (1) meeting federal drinking water standards;
- (2) maintaining adequate supplies of water;
- (3) meeting established design criteria for wastewater treatment plants;
- (4) demonstrating the economic feasibility of regionalization; and
- (5) serving the needs of economically distressed areas.

(f) A rule, form, policy, procedure, or decision of the Texas Commission on Environmental Quality related to a power, duty, function, program, or activity transferred under this article continues in effect as a rule, form, policy, procedure, or decision of the Public Utility Commission of Texas and remains in effect until amended or replaced by that agency.

(g) The memorandum required by this section must be completed by April 1, 2012.

(h) The Public Utility Commission of Texas and the Texas Commission on Environmental Quality shall adopt rules to implement the changes in law made by this article to Chapter 13, Water Code, not later than November 1, 2012.

SECTION 2.76. (a) The Public Utility Commission of Texas shall conduct a comparative analysis of the ratemaking authority of the commission before the effective date of this Act and the ratemaking authority of the commission after the transition described in Section 2.75 of this article, to identify potential for procedural standardization. The Public Utility Commission of Texas shall issue a report of the analysis, with recommendations regarding rate standardization, for consideration by the 83rd Legislature.

(b) The Public Utility Commission of Texas shall prepare a report describing staffing changes related to the transition described in Section 2.75 of this article, including reductions in staff that the commission may realize as a result of consolidated functions. The Public Utility Commission of Texas shall submit the report to the Legislative Budget Board and the governor with the legislative appropriations request for the 2014-2015 biennium.

SECTION 2.77. (a) On June 1, 2012, the following are transferred from the office of public interest counsel of the Texas Commission on Environmental Quality to the Office of Public Utility Counsel:

(1) the powers, duties, functions, programs, and activities of the office of public interest counsel of the Texas Commission on Environmental Quality relating to the representation of the public interest in matters related to the regulation of water and sewer utilities under Chapter 13, Water Code, as amended by this article;

(2) any obligations and contracts of the office of public interest counsel of the Texas Commission on Environmental Quality that are directly related to implementing a power, duty, function, program, or activity transferred under this article; and

(3) all property and records in the custody of the office of public interest counsel of the Texas Commission on Environmental Quality that are related to a power, duty, function, program, or activity transferred under this article and all funds appropriated by the legislature for that power, duty, function, program, or activity.

(b) The office of public interest counsel of the Texas Commission on Environmental Quality and the Office of Public Utility Counsel shall enter into a memorandum of understanding that:

(1) identifies in detail the applicable powers and duties that are transferred by this article; and

(2) establishes a plan for the identification and transfer of the records, personnel, property, and unspent appropriations of the Texas Commission on Environmental Quality that are used for purposes of the office of public interest counsel's powers and duties directly related to the representation of the public interest in matters relating to the regulation of water and sewer utilities under Chapter 13, Water Code, as amended by this article.

(c) The memorandum of understanding described by this section is not required to be adopted by rule under Section 5.104, Water Code.

(d) The office of public interest counsel of the Texas Commission on Environmental Quality and the Office of Public Utility Counsel may agree in the memorandum of understanding under this section to transfer to the Office of Public Utility Counsel any personnel of the office of public interest counsel whose functions predominantly involve powers, duties, obligations, functions, and activities related to the representation of the public interest in matters relating to the regulation of water and sewer utilities under Chapter 13, Water Code, as amended by this article.

(e) The office of public interest counsel of the Texas Commission on Environmental Quality and the Office of Public Utility Counsel shall appoint a transition team to accomplish the purposes of this section.

(f) A rule, form, policy, procedure, or decision of the office of public interest counsel of the Texas Commission on Environmental Quality related to a power, duty, function, program, or activity transferred under this article continues in effect as a rule, form, policy, procedure, or decision of the Office of Public Utility Counsel and remains in effect until amended or replaced by that agency.

(g) The memorandum required by this section must be completed by April 1, 2012.

(h) The Office of Public Utility Counsel and the office of public interest counsel of the Texas Commission on Environmental Quality shall adopt rules to implement the changes in law made by this article to Chapter 13, Water Code, not later than November 1, 2012.

ARTICLE 3. OTHER WATER AND SEWER DUTIES OF PUBLIC UTILITY  
COMMISSION OF TEXAS

SECTION 3.01. Section 11.002, Water Code, is amended by adding Subdivision (21) to read as follows:

(21) "Utility commission" means the Public Utility Commission of Texas.

SECTION 3.02. Section 11.041, Water Code, is amended to read as follows:

Sec. 11.041. DENIAL OF WATER: COMPLAINT. (a) Any person entitled to receive or use water from any canal, ditch, flume, lateral, dam, reservoir, or lake or from any conserved or stored supply may present to the utility commission a written petition showing:

(1) that the person ~~[he]~~ is entitled to receive or use the water;

(2) that the person ~~[he]~~ is willing and able to pay a just and reasonable price for the water;

(3) that the party owning or controlling the water supply has water not contracted to others and available for the petitioner's use; and

(4) that the party owning or controlling the water supply fails or refuses to supply the available water to the petitioner, or that the price or rental demanded for the available water is not reasonable and just or is discriminatory.

(b) If the petition is accompanied by a deposit of \$25, the executive director of the utility commission shall have a preliminary investigation of the complaint made and determine whether or not there are probable grounds for the complaint.

(c) If, after preliminary investigation, the executive director of the utility commission determines that probable grounds exist for the complaint, the utility commission shall enter an order setting a time and place for a hearing on the petition.

(d) The utility commission may require the complainant to make an additional deposit or execute a bond satisfactory to the utility commission in an amount fixed by the utility commission conditioned on the payment of all costs of the proceeding.

(e) At least 20 days before the date set for the hearing, the utility commission shall transmit by registered mail a certified copy of the petition and a certified copy of the hearing order to the person against whom the complaint is made.

(f) The utility commission shall hold a hearing on the complaint at the time and place stated in the order. It may hear evidence orally or by affidavit in support of or against the complaint, and it may hear arguments. The commission may participate in the hearing for the purpose of presenting evidence on the availability of the water requested by the petitioner. On completion of the hearing, the utility commission shall render a written decision.

(g) If, after the preliminary investigation, the executive director of the utility commission determines that no probable grounds exist for the complaint, the executive director of the utility commission shall dismiss the complaint. The utility commission may either return the deposit or pay it into the State Treasury.

SECTION 3.03. Section 12.013, Water Code, is amended to read as follows:

Sec. 12.013. RATE-FIXING POWER. (a) The utility commission shall fix reasonable rates for the furnishing of raw or treated water for any purpose mentioned in Chapter 11 or 12 of this code.

(b) In this section, [The term] "political subdivision" [when used in this section] means incorporated cities, towns or villages, counties, river authorities, water districts, and other special purpose districts.

(c) The utility commission in reviewing and fixing reasonable rates for furnishing water under this section may use any reasonable basis for fixing rates as may be determined by the utility commission to be appropriate under the circumstances of the case being reviewed; provided, however, the utility commission may not fix a rate which a political subdivision may charge for furnishing water which is less than the amount required to meet the debt service and bond coverage requirements of that political subdivision's outstanding debt.

(d) The utility commission's jurisdiction under this section relating to incorporated cities, towns, or villages shall be limited to water furnished by such city, town, or village to another political subdivision on a wholesale basis.

(e) The utility commission may establish interim rates and compel continuing service during the pendency of any rate proceeding.

(f) The utility commission may order a refund or assess additional charges from the date a petition for rate review is received by the utility commission of the difference between the rate actually charged and the rate fixed by the utility commission, plus interest at the statutory rate.

~~[(g) No action or proceeding commenced prior to January 1, 1977, before the Texas Water Rights Commission shall be affected by the enactment of this section.~~

~~[(h) Nothing herein contained shall affect the jurisdiction of the Public Utility Commission.]~~

#### ARTICLE 4. REGULATION OF HAZARDOUS SUBSTANCES

SECTION 4.01. Subchapter B, Chapter 501, Health and Safety Code, is amended by adding Section 501.0234 to read as follows:

Sec. 501.0234. DENATONIUM BENZOATE ADDITIVE REQUIREMENT FOR CERTAIN PRODUCTS CONTAINING ETHYLENE GLYCOL. (a) This section applies to a product to be sold as antifreeze or engine coolant that:

(1) contains an ethylene glycol concentration greater than 10 percent by volume; and

(2) is manufactured after January 1, 2013.

(b) A manufacturer of a product described by Subsection (a) may not distribute the product for sale in this state unless the product includes denatonium benzoate in an amount of not less than 30 parts per million and not more than 50 parts per million by weight.

(c) A manufacturer of a product described by Subsection (a) shall:

(1) maintain a record of the trade name, scientific name, and active ingredients of the denatonium benzoate additive used to comply with Subsection (b); and

(2) on request, make the record available to the public.

(d) Subject to Subsection (e), a manufacturer, processor, distributor, recycler, or seller of a product described by Subsection (a) that includes denatonium benzoate in the concentrations required by Subsection (b) is not liable to any person for any

personal injury, death, property damage, damage to the environment, including natural resources, or economic loss that results from the inclusion of denatonium benzoate in the product.

(e) The limitation on liability provided by Subsection (d) does not apply to the extent that the cause of the liability is unrelated to the inclusion of denatonium benzoate in a product described by Subsection (a).

(f) This section does not exempt a manufacturer of denatonium benzoate from liability under other law.

(g) A political subdivision of this state may not adopt or enforce an ordinance, regulation, or policy that is inconsistent with or more restrictive than this section.

(h) This section does not apply to the sale of:

(1) a motor vehicle that contains a product described by Subsection (a); or

(2) a container sold at wholesale that contains 55 gallons or more of antifreeze or engine coolant.

SECTION 4.02. A manufacturer is required to comply with Section 501.0234, Health and Safety Code, as added by this article, only after January 1, 2013.

#### ARTICLE 5. GENERAL PROVISIONS

SECTION 5.01. Except as otherwise provided by this Act, this Act applies only to a statement of intent filed on or after the effective date of this Act. A rate change to which a statement of intent filed before the effective date of this Act applies is governed by the law in effect on the date the statement was filed, and that law is continued in effect for that purpose.

SECTION 5.02. This Act takes effect September 1, 2011.

The Conference Committee Report on **SB 635** was filed with the Secretary of the Senate.

#### CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2900

Senator Harris submitted the following Conference Committee Report:

Austin, Texas  
May 28, 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 2900** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

HARRIS  
RODRIGUEZ  
HUFFMAN  
LUCIO  
WATSON  
On the part of the Senate

HARTNETT  
LEWIS  
MADDEN  
RAYMOND  
THOMPSON  
On the part of the House



The Conference Committee Report on **HB 2900** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 1320**

Senator Lucio submitted the following Conference Committee Report:

Austin, Texas  
May 28, 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 1320** 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.

LUCIO  
CARONA  
ESTES  
ELTIFE  
VAN DE PUTTE  
On the part of the Senate

V. GONZALES  
R. ANDERSON  
DESHOTEL  
KLEINSCHMIDT  
RAYMOND  
On the part of the House

**A BILL TO BE ENTITLED  
AN ACT**

relating to the execution of written instruments relating to residential real estate transactions and deeds conveying residential real estate in connection with certain transactions involving residential real estate; providing a civil penalty.

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

SECTION 1. Title 2, Business & Commerce Code, is amended by adding Chapter 21 to read as follows:

**CHAPTER 21. EXECUTION OF DEEDS IN CERTAIN TRANSACTIONS  
INVOLVING RESIDENTIAL REAL ESTATE**

Sec. 21.001. **DEFINITION.** In this chapter, "residential real estate" means real property on which a dwelling designed for occupancy for one to four families is constructed or intended to be constructed.

Sec. 21.002. **PROHIBITION OF EXECUTION OF DEEDS CONVEYING RESIDENTIAL REAL ESTATE IN CERTAIN TRANSACTIONS.** (a) A seller of residential real estate or a person who makes an extension of credit and takes a security interest or mortgage against residential real estate may not, before or at the time of the conveyance of the residential real estate to the purchaser or the extension of credit to the borrower, request or require the purchaser or borrower to execute and deliver to the seller or person making the extension of credit a deed conveying the residential real estate to the seller or person making the extension of credit.

(b) A deed executed in violation of this section is voidable unless a subsequent purchaser of the residential real estate, for valuable consideration, obtains an interest in the property after the deed was recorded without notice of the violation, including notice provided by actual possession of the property by the grantor of the deed. The residential real estate continues to be subject to the security interest of a creditor who, without notice of the violation, granted an extension of credit to a borrower based on the deed executed in violation of this section.

(c) A purchaser or borrower must bring an action to void a deed executed in violation of this section not later than the fourth anniversary of the date the deed was recorded.

(d) A purchaser or borrower who is a prevailing party in an action to void a deed under this section may recover reasonable and necessary attorney's fees.

Sec. 21.003. ACTION BY ATTORNEY GENERAL. (a) The attorney general may bring an action on behalf of the state:

- (1) for injunctive relief to require compliance with this chapter;
- (2) to recover a civil penalty of \$500 for each violation of this chapter; or
- (3) for both injunctive relief and to recover the civil penalty.

(b) The attorney general is entitled to recover reasonable expenses incurred in obtaining injunctive relief or a civil penalty, or both, under this section, including court costs and reasonable attorney's fees.

(c) The court may make such additional orders or judgments as are necessary to return to the purchaser a deed conveying residential real estate that the court finds was acquired by means of any violation of this chapter.

(d) In bringing or participating in an action under this chapter, the attorney general acts in the name of the state and does not establish an attorney-client relationship with another person, including a person to whom the attorney general requests that the court award relief.

(e) An action by the attorney general must be brought not later than the fourth anniversary of the date the deed was recorded.

SECTION 2. Section 121.005(a), Civil Practice and Remedies Code, is amended to read as follows:

(a) An officer may not take the acknowledgment of a written instrument unless the officer knows or has satisfactory evidence that the acknowledging person is the person who executed the instrument and is described in it. An officer may accept, as satisfactory evidence of the identity of an acknowledging person, only:

- (1) the oath of a credible witness personally known to the officer; ~~(or)~~
- (2) a current identification card or other document issued by the federal government or any state government that contains the photograph and signature of the acknowledging person; or
- (3) with respect to a deed or other instrument relating to a residential real estate transaction, a current passport issued by a foreign country.

SECTION 3. Section 24.004, Property Code, is amended to read as follows:

Sec. 24.004. JURISDICTION; DISMISSAL. (a) Except as provided by Subsection (b), a ~~[A]~~ justice court in the precinct in which the real property is located has jurisdiction in eviction suits. Eviction suits include forcible entry and detainer and forcible detainer suits.

(b) A justice court does not have jurisdiction in a forcible entry and detainer or forcible detainer suit and shall dismiss the suit if the defendant files a sworn statement alleging the suit is based on a deed executed in violation of Chapter 21, Business & Commerce Code.

SECTION 4. This Act takes effect September 1, 2011.

The Conference Committee Report on **SB 1320** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 3328**

Senator Fraser submitted the following Conference Committee Report:

Austin, Texas  
May 28, 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 3328** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

FRASER  
ELTIFE  
HEGAR  
HINOJOSA  
NELSON

On the part of the Senate

KEFFER  
CROWNOVER  
PARKER  
STRAMA  
BURNAM

On the part of the House

The Conference Committee Report on **HB 3328** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 3025**

Senator Zaffirini submitted the following Conference Committee Report:

Austin, Texas  
May 28, 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 3025** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

ZAFFIRINI  
WATSON  
WENTWORTH

BRANCH  
BONNEN  
D. HOWARD  
JOHNSON  
RITTER

On the part of the Senate

On the part of the House

The Conference Committee Report on **HB 3025** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 1198**

Senator Rodriguez submitted the following Conference Committee Report:

Austin, Texas  
May 27, 2011

Honorable David Dewhurst  
President of the Senate

Honorable Joe Straus  
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 1198** 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  
CARONA  
HARRIS  
URESTI  
WENTWORTH  
On the part of the Senate

HARTNETT  
MUNOZ  
MADDEN  
BOHAC  
THOMPSON  
On the part of the House

**A BILL TO BE ENTITLED  
AN ACT**

relating to decedents' estates.

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

**ARTICLE 1. CHANGES TO TEXAS PROBATE CODE**

SECTION 1.01. Section 4D, Texas Probate Code, is amended by adding Subsection (b-1) and amending Subsections (e) and (g) to read as follows:

(b-1) If a judge of a county court requests the assignment of a statutory probate court judge to hear a contested matter in a probate proceeding on the judge's own motion or on the motion of a party to the proceeding as provided by this section, the judge may request that the statutory probate court judge be assigned to the entire proceeding on the judge's own motion or on the motion of a party.

(e) A statutory probate court judge assigned to a contested matter in a probate proceeding or to the entire proceeding under this section has the jurisdiction and authority granted to a statutory probate court by this code. A statutory probate court judge assigned to hear only the contested matter in a probate proceeding shall, on [On] resolution of the [a contested] matter [for which a statutory probate court judge is assigned under this section], including any appeal of the matter, [the statutory probate court judge shall] return the matter to the county court for further proceedings not inconsistent with the orders of the statutory probate court or court of appeals, as applicable. A statutory probate court judge assigned to the entire probate proceeding as provided by Subsection (b-1) of this section shall, on resolution of the contested matter in the proceeding, including any appeal of the matter, return the entire proceeding to the county court for further proceedings not inconsistent with the orders of the statutory probate court or court of appeals, as applicable.

(g) If only the contested matter in a probate proceeding is assigned to a statutory probate court judge under this section, or if the contested matter in a probate proceeding is transferred to a district court under this section, the [The] county court shall continue to exercise jurisdiction over the management of the estate, other than a contested matter, until final disposition of the contested matter is made in accordance with this section. Any [After a contested matter is transferred to a district court, any] matter related to a [the] probate proceeding in which a contested matter is transferred to a district court may be brought in the district court. The district court in which a matter related to the [probate] proceeding is filed may, on its own motion or on the motion of any party, find that the matter is not a contested matter and transfer the matter to the county court with jurisdiction of the management of the estate.

SECTION 1.02. Section 4H, Texas Probate Code, is amended to read as follows:

Sec. 4H. CONCURRENT JURISDICTION WITH DISTRICT COURT. A statutory probate court has concurrent jurisdiction with the district court in:

- (1) a personal injury, survival, or wrongful death action by or against a person in the person's capacity as a personal representative;
- (2) an action by or against a trustee;
- (3) an action involving an inter vivos trust, testamentary trust, or charitable trust, including a charitable trust as defined by Section 123.001, Property Code;
- (4) an action involving a personal representative of an estate in which each other party aligned with the personal representative is not an interested person in that estate;
- (5) an action against an agent or former agent under a power of attorney arising out of the agent's performance of the duties of an agent; and
- (6) an action to determine the validity of a power of attorney or to determine an agent's rights, powers, or duties under a power of attorney.

SECTION 1.03. The heading to Section 5B, Texas Probate Code, is amended to read as follows:

Sec. 5B. TRANSFER TO STATUTORY PROBATE COURT OF PROCEEDING RELATED TO PROBATE PROCEEDING.

SECTION 1.04. Section 6, Texas Probate Code, is amended to read as follows:

Sec. 6. VENUE: ~~[FOR]~~ PROBATE OF WILLS AND GRANTING OF LETTERS TESTAMENTARY AND OF ADMINISTRATION [OF ESTATES OF DECEDENTS]. Wills shall be admitted to probate, and letters testamentary or of administration shall be granted:

(1) in ~~[(e) In]~~ the county where the decedent ~~[deceased]~~ resided, if the decedent ~~[he]~~ had a domicile or fixed place of residence in this State; [-]

(2) if ~~[(b) If]~~ the decedent ~~[deceased]~~ had no domicile or fixed place of residence in this State but died in this State, then either in the county where the decedent's ~~[his]~~ principal estate ~~[property]~~ was at the time of the decedent's ~~[his]~~ death, or in the county where the decedent ~~[he]~~ died; or [-]

(3) if the decedent ~~[(c) If he]~~ had no domicile or fixed place of residence in this State, and died outside the limits of this State:

(A) ~~[-, then]~~ in any county in this State where the decedent's ~~[his]~~ nearest of kin reside; or [-]

(B) ~~[(d) But]~~ if there are ~~[he had]~~ no kindred of the decedent in this State, then in the county where the decedent's ~~[his]~~ principal estate was situated at the time of the decedent's ~~[his]~~ death.

~~[(e) In the county where the applicant resides, when administration is for the purpose only of receiving funds or money due to a deceased person or his estate from any governmental source or agency; provided, that unless the mother or father or spouse or adult child of the deceased is applicant, citation shall be served personally on the living parents and spouses and adult children, if any, of the deceased person, or upon those who are alive and whose addresses are known to the applicant.]~~

SECTION 1.05. Chapter I, Texas Probate Code, is amended by adding Sections 6A, 6B, 6C, and 6D to read as follows:

Sec. 6A. VENUE: ACTION RELATED TO PROBATE PROCEEDING IN STATUTORY PROBATE COURT. Except as provided by Section 6B of this code, venue for any cause of action related to a probate proceeding pending in a statutory probate court is proper in the statutory probate court in which the decedent's estate is pending.

Sec. 6B. VENUE: CERTAIN ACTIONS INVOLVING PERSONAL REPRESENTATIVE. Notwithstanding any other provision of this chapter, the proper venue for an action by or against a personal representative for personal injury, death, or property damages is determined under Section 15.007, Civil Practice and Remedies Code.

Sec. 6C. VENUE: HEIRSHIP PROCEEDINGS. (a) Venue for a proceeding to determine a decedent's heirs is in:

(1) the court of the county in which a proceeding admitting the decedent's will to probate or administering the decedent's estate was most recently pending; or

(2) the court of the county in which venue would be proper for commencement of an administration of the decedent's estate under Section 6 of this code if:

(A) no will of the decedent has been admitted to probate in this state and no administration of the decedent's estate has been granted in this state; or

(B) the proceeding is commenced by the trustee of a trust holding assets for the benefit of the decedent.

(b) Notwithstanding Subsection (a) of this section and Section 6 of this code, if there is no administration pending of the estate of a deceased ward who died intestate, venue for a proceeding to determine the deceased ward's heirs is in the probate court in which the guardianship proceedings with respect to the ward's estate were pending on the date of the ward's death. A proceeding described by this subsection may not be brought as part of the guardianship proceedings with respect to the ward's estate, but rather must be filed as a separate cause in which the court may determine the heirs' respective shares and interests in the estate as provided by the laws of this state.

Sec. 6D. VENUE: CERTAIN ACTIONS INVOLVING BREACH OF FIDUCIARY DUTY. Notwithstanding any other provision of this chapter, venue for a proceeding brought by the attorney general alleging breach of a fiduciary duty by a charitable entity or a fiduciary or managerial agent of a charitable trust is determined under Section 123.005, Property Code.

SECTION 1.06. Chapter I, Texas Probate Code, is amended by amending Section 8 and adding Sections 8A and 8B to read as follows:

Sec. 8. CONCURRENT VENUE IN PROBATE PROCEEDING ~~[AND TRANSFER OF PROCEEDINGS]~~. (a) Concurrent Venue. When two or more courts have concurrent venue of ~~[an estate or]~~ a probate proceeding ~~[to declare heirship under Section 48(a) of this code]~~, the court in which the application for the ~~[a]~~ proceeding ~~[in probate or determination of heirship]~~ is first filed shall have and retain jurisdiction of the ~~[estate or heirship]~~ proceeding~~[-as appropriate,]~~ to the exclusion of the other court or courts. The proceeding shall be deemed commenced by the filing of an application averring facts sufficient to confer venue; and the proceeding first legally commenced shall extend to all of the property of the decedent or the decedent's estate. Provided, however, that a bona fide purchaser of real property in reliance on any such subsequent proceeding, without knowledge of its invalidity, shall be protected in such purchase unless before the purchase the decree admitting the will to probate, determining heirship, or granting administration in the prior proceeding is ~~[shall be]~~ recorded in the office of the county clerk of the county in which such property is located.

(b) Probate Proceedings in More Than One County. If probate proceedings involving the same estate are ~~[a proceeding in probate or to declare heirship under Section 48(a) of this code is]~~ commenced in more than one county, each ~~[the]~~ proceeding commenced in a county other than the county in which a proceeding was first commenced is ~~[shall be]~~ stayed ~~[except in the county where first commenced]~~ until final determination of venue by the court in the county where first commenced. If the proper venue is finally determined to be in another county, the clerk, after making and retaining a true copy of the entire file in the case, shall transmit the

original file to the proper county, and the proceeding shall thereupon be had in the proper county in the same manner as if the proceeding had originally been instituted therein.

(c) Jurisdiction to Determine Venue. Subject to Subsections (a) and (b) of this section, a court in which an application for a probate proceeding is filed has jurisdiction to determine venue for the proceeding and for any matter related to the proceeding. A court's determination under this subsection is not subject to collateral attack.

Sec. 8A. TRANSFER OF VENUE IN PROBATE PROCEEDING [~~Transfer of Proceeding~~]. (a) ~~[(4)]~~ Transfer for Want of Venue. If it appears to the court at any time before the final decree in a probate proceeding that the proceeding was commenced in a court which did not have priority of venue over such proceeding, the court shall, on the application of any interested person, transfer the proceeding to the proper county by transmitting to the proper court in such county the original file in such case, together with certified copies of all entries in the judge's probate docket theretofore made, and the proceeding [~~probate of the will, determination of heirship, or administration of the estate~~] in such county shall be completed in the same manner as if the proceeding had originally been instituted therein; but, if the question as to priority of venue is not raised before final decree in the proceedings is announced, the finality of such decree shall not be affected by any error in venue.

(b) ~~[(2)]~~ Transfer for Convenience [~~of the Estate~~]. If it appears to the court at any time before a probate proceeding [~~the estate is closed or, if there is no administration of the estate, when the proceeding in probate or to declare heirship~~] is concluded that it would be in the best interest of the estate or, if there is no administration of the estate, that it would be in the best interest of the heirs or beneficiaries of the decedent's will, the court, in its discretion, may order the proceeding transferred to the proper court in any other county in this State. The clerk of the court from which the proceeding is transferred shall transmit to the court to which the proceeding is transferred the original file in the proceeding and a certified copy of the index.

Sec. 8B. VALIDATION OF PRIOR PROCEEDINGS [~~(d) Validation of Prior Proceedings~~]. When a probate proceeding is transferred to another county under any provision of ~~this~~ Section 8 or 8A of this Code, all orders entered in connection with the proceeding shall be valid and shall be recognized in the second court, provided such orders were made and entered in conformance with the procedure prescribed by this Code.

~~[(e) Jurisdiction to Determine Venue. Any court in which there has been filed an application for a proceeding in probate or determination of heirship shall have full jurisdiction to determine the venue of the proceeding in probate or heirship proceeding, and of any proceeding relating thereto, and its determination shall not be subject to collateral attack.]~~

SECTION 1.07. Section 15, Texas Probate Code, is amended to read as follows:

Sec. 15. CASE FILES. The county clerk shall maintain a case file for each decedent's estate in which a probate proceeding has been filed. The case file must contain all orders, judgments, and proceedings of the court and any other probate filing with the court, including all:



(1) applications for the probate of wills and for the granting of administration;

(2) citations and notices, whether published or posted, with the returns thereon;

(3) wills and the testimony upon which the same are admitted to probate, provided that the substance only of depositions shall be recorded;

(4) bonds and official oaths;

(5) inventories, appraisements, and lists of claims;

(5-a) affidavits in lieu of inventories, appraisements, and lists of claims;

(6) exhibits and accounts;

(7) reports of hiring, renting, or sale;

(8) applications for sale or partition of real estate and reports of sale and of commissioners of partition;

(9) applications for authority to execute leases for mineral development, or for pooling or unitization of lands, royalty, or other interest in minerals, or to lend or invest money; and

(10) reports of lending or investing money.

SECTION 1.08. Section 34A, Texas Probate Code, is amended to read as follows:

Sec. 34A. ATTORNEYS AD LITEM. (a) Except as provided by Section 53(c) of this code, the judge of a probate court may appoint an attorney ad litem in any probate proceeding to represent the interests of:

(1) a person having a legal disability;

(2) [;] a nonresident;

(3) [;] an unborn or unascertained person;

(4) [~~or~~] an unknown or missing heir; or

(5) an unknown or missing person entitled to property deposited in an account in the court's registry under Section 408(b) of this code [~~in any probate proceeding~~].

(b) Subject to Subsection (c) of this section, an [~~Each~~] attorney ad litem appointed under this section is entitled to reasonable compensation for services in the amount set by the court. The court shall:

(1) tax the compensation [~~and to be taxed~~] as costs in the probate proceeding; or

(2) for an attorney ad litem appointed to represent the interests of an unknown or missing person described by Subsection (a)(5) of this section, order that the compensation be paid from money in the account described by that subdivision.

(c) The court order appointing an attorney ad litem to represent the interests of an unknown or missing person described by Subsection (a)(5) of this section must require the attorney ad litem to conduct a search for the person. Compensation paid under Subsection (b) of this section to the attorney ad litem may not exceed 10 percent of the amount on deposit in the account described by Subsection (a)(5) of this section on the date:

(1) the attorney ad litem reports to the court the location of the previously unknown or missing person; or

(2) the money in the account is paid to the comptroller as provided by Section 427 of this code.

SECTION 1.09. Section 37A, Texas Probate Code, is amended by amending Subsections (h) and (i) and adding Subsections (h-1) and (p) to read as follows:

(h) Time for Filing of Disclaimer. Unless the beneficiary is a charitable organization or governmental agency of the state, a written memorandum of disclaimer disclaiming a present interest shall be filed not later than nine months after the death of the decedent and a written memorandum of disclaimer disclaiming a future interest may be filed not later than nine months after the event determining that the taker of the property or interest is finally ascertained and his interest is indefeasibly vested. If the beneficiary is a charitable organization or a governmental agency of the state, a written memorandum of disclaimer disclaiming a present or future interest shall be filed not later than the later of:

(1) the first anniversary of the date the beneficiary receives the notice required by Section 128A of this code;~~7]~~ or

(2) the expiration of the six-month period following the date the personal representative files:

(A) the inventory, appraisalment, and list of claims due or owing to the estate; or

(B) the affidavit in lieu of the inventory, appraisalment, and list of claims~~-, whichever occurs later].~~

(h-1) Filing of Disclaimer. The written memorandum of disclaimer shall be filed in the probate court in which the decedent's will has been probated or in which proceedings have been commenced for the administration of the decedent's estate or which has before it an application for either of the same; provided, however, if the administration of the decedent's estate is closed, or after the expiration of one year following the date of the issuance of letters testamentary in an independent administration, or if there has been no will of the decedent probated or filed for probate, or if no administration of the decedent's estate has been commenced, or if no application for administration of the decedent's estate has been filed, the written memorandum of disclaimer shall be filed with the county clerk of the county of the decedent's residence, or, if the decedent is not a resident of this state but real property or an interest therein located in this state is disclaimed, a written memorandum of disclaimer shall be filed with the county clerk of the county in which such real property or interest therein is located, and recorded by such county clerk in the deed records of that county.

(i) Notice of Disclaimer. Unless the beneficiary is a charitable organization or governmental agency of the state, copies of any written memorandum of disclaimer shall be delivered in person to, or shall be mailed by registered or certified mail to and received by, the legal representative of the transferor of the interest or the holder of legal title to the property to which the disclaimer relates not later than nine months after the death of the decedent or, if the interest is a future interest, not later than nine months after the date the person who will receive the property or interest is finally ascertained and the person's interest is indefeasibly vested. If the beneficiary is a charitable organization or government agency of the state, the notices required by this section shall be filed not later than the later of:

(1) the first anniversary of the date the beneficiary receives the notice required by Section 128A of this code;<sup>[7]</sup> or

(2) the expiration of the six-month period following the date the personal representative files:

(A) the inventory, appraisalment, and list of claims due or owing to the estate; or

(B) the affidavit in lieu of the inventory, appraisalment, and list of claims~~[, which ever occurs later]~~.

(p) Extension of Time for Certain Disclaimers. Notwithstanding the periods prescribed by Subsections (h) and (i) of this section, a disclaimer with respect to an interest in property passing by reason of the death of a decedent dying after December 31, 2009, but before December 17, 2010, may be executed and filed, and notice of the disclaimer may be given, not later than nine months after December 17, 2010. A disclaimer filed and for which notice is given during this extended period is valid and shall be treated as if the disclaimer had been filed and notice had been given within the periods prescribed by Subsections (h) and (i) of this section. This subsection does not apply to a disclaimer made by a beneficiary that is a charitable organization or governmental agency of the state.

SECTION 1.10. The heading to Section 48, Texas Probate Code, is amended to read as follows:

Sec. 48. PROCEEDINGS TO DECLARE HEIRSHIP. ~~[WHEN AND WHERE INSTITUTED.]~~

SECTION 1.11. Section 48, Texas Probate Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) When a person dies intestate owning or entitled to real or personal property in Texas, and there shall have been no administration in this State upon the person's ~~[his]~~ estate; or when it is necessary for the trustee of a trust holding assets for the benefit of a decedent to determine the heirs of the decedent; or when there has been a will probated in this State or elsewhere, or an administration in this State upon the estate of such decedent, and any real or personal property in this State has been omitted from such will or from such administration, or no final disposition thereof has been made in such administration, the court of the county in which ~~[such proceedings were last pending, or in the event no will of such decedent has been admitted to probate in this State, and no administration has been granted in this State upon the estate of such decedent, then the court of the county in which]~~ venue would be proper ~~[for commencement of an administration of the decedent's estate]~~ under Section 6C ~~[6]~~ of this code<sup>[7]</sup> may determine and declare in the manner hereinafter provided who are the heirs and only heirs of such decedent, and their respective shares and interests, under the laws of this State, in the estate of such decedent or, if applicable, in the trust, and proceedings therefor shall be known as proceedings to declare heirship.

(d) Notwithstanding Section 16.051, Civil Practice and Remedies Code, a proceeding to declare heirship of a decedent may be brought at any time after the decedent's death.

SECTION 1.12. Subsection (a), Section 49, Texas Probate Code, is amended to read as follows:

(a) Such proceedings may be instituted and maintained under a circumstance specified in Section 48(a) of this code ~~[in any of the instances enumerated above]~~ by the qualified personal representative of the estate of such decedent, by a party seeking the appointment of an independent administrator under Section 145 of this code, by the trustee of a trust holding assets for the benefit of the decedent, by any person or persons claiming to be a secured or unsecured creditor or the owner of the whole or a part of the estate of such decedent, or by the guardian of the estate of a ward, if the proceedings are instituted and maintained in the probate court in which the proceedings for the guardianship of the estate were pending at the time of the death of the ward. In such a case an application shall be filed in a proper court stating the following information:

- (1) the name of the decedent and the time and place of death;
- (2) the names and residences of the decedent's heirs, the relationship of each heir to the decedent, and the true interest of the applicant and each of the heirs in the estate of the decedent or in the trust, as applicable;
- (3) all the material facts and circumstances within the knowledge and information of the applicant that might reasonably tend to show the time or place of death or the names or residences of all heirs, if the time or place of death or the names or residences of all the heirs are not definitely known to the applicant;
- (4) a statement that all children born to or adopted by the decedent have been listed;
- (5) a statement that each marriage of the decedent has been listed with the date of the marriage, the name of the spouse, and if the marriage was terminated, the date and place of termination, and other facts to show whether a spouse has had an interest in the property of the decedent;
- (6) whether the decedent died testate and if so, what disposition has been made of the will;
- (7) a general description of all the real and personal property belonging to the estate of the decedent or held in trust for the benefit of the decedent, as applicable; and
- (8) an explanation for the omission of any of the foregoing information that is omitted from the application.

SECTION 1.13. Subsections (a) and (b), Section 53C, Texas Probate Code, are amended to read as follows:

(a) This section applies in a proceeding to declare heirship of a decedent only with respect to an individual who[~~;~~

~~[(1) petitions the court for a determination of right of inheritance as authorized by Section 42(b) of this code; and~~

~~[(2)] claims to be a biological child of the decedent[~~;~~ but with respect to whom a parent child relationship with the decedent was not established as provided by Section 160.201, Family Code,] or [who] claims inheritance through a biological child of the decedent[~~;~~ if a parent child relationship between the individual through whom the inheritance is claimed and the decedent was not established as provided by Section 160.201, Family Code].~~

(b) The presumption under Section 160.505, Family Code, that applies in establishing a parent-child relationship also applies in determining heirship in the probate court using the results of genetic testing ordered with respect to an individual described by Subsection (a) of this section, and the presumption may be rebutted in the same manner provided by Section 160.505, Family Code. ~~Unless the results of genetic testing of another individual who is an heir of the decedent are admitted as rebuttal evidence, the court shall find that the individual described by Subsection (a) of this section is an heir of the decedent if the results of genetic testing ordered under Section 53A of this chapter identify a tested individual who is an heir of the decedent as the ancestor of the individual described by Subsection (a) of this section.]~~

SECTION 1.14. Section 59, Texas Probate Code, is amended by amending Subsections (a) and (b) and adding Subsection (a-1) to read as follows:

(a) Every last will and testament, except where otherwise provided by law, shall be in writing and signed by the testator in person or by another person for him by his direction and in his presence, and shall, if not wholly in the handwriting of the testator, be attested by two or more credible witnesses above the age of fourteen years who shall subscribe their names thereto in their own handwriting in the presence of the testator. Such a will or testament may, at the time of its execution or at any subsequent date during the lifetime of the testator and the witnesses, be made self-proved, and the testimony of the witnesses in the probate thereof may be made unnecessary, by the affidavits of the testator and the attesting witnesses, made before an officer authorized to administer oaths ~~[under the laws of this State]~~. Provided that nothing shall require an affidavit or certificate of any testator or testatrix as a prerequisite to self-proof of a will or testament other than the certificate set out below. The affidavits shall be evidenced by a certificate, with official seal affixed, of such officer attached or annexed to such will or testament in form and contents substantially as follows:

THE STATE OF TEXAS

COUNTY OF \_\_\_\_\_

Before me, the undersigned authority, on this day personally appeared \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_, known to me to be the testator and the witnesses, respectively, whose names are subscribed to the annexed or foregoing instrument in their respective capacities, and, all of said persons being by me duly sworn, the said \_\_\_\_\_, testator, declared to me and to the said witnesses in my presence that said instrument is his last will and testament, and that he had willingly made and executed it as his free act and deed; and the said witnesses, each on his oath stated to me, in the presence and hearing of the said testator, that the said testator had declared to them that said instrument is his last will and testament, and that he executed same as such and wanted each of them to sign it as a witness; and upon their oaths each witness stated further that they did sign the same as witnesses in the presence of the said testator and at his request; that he was at that time eighteen years of age or over (or being under such age, was or had been lawfully married, or was then a member of the armed forces of the United States or of an auxiliary thereof or of the Maritime Service) and was of sound mind; and that each of said witnesses was then at least fourteen years of age.

\_\_\_\_\_  
Testator

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

Subscribed and sworn to before me by the said \_\_\_\_\_, testator, and by the said \_\_\_\_\_ and \_\_\_\_\_, witnesses, this \_\_\_\_\_ day of \_\_\_\_\_ A.D. \_\_\_\_\_.

(SEAL)

(Signed) \_\_\_\_\_  
(Official Capacity of Officer)

(a-1) As an alternative to the self-proving of a will by the affidavits of the testator and the attesting witnesses under Subsection (a) of this section, a will may be simultaneously executed, attested, and made self-proved before an officer authorized to administer oaths, and the testimony of the witnesses in the probate of the will may be made unnecessary, with the inclusion in the will of the following in form and contents substantially as follows:

I, \_\_\_\_\_, as testator, after being duly sworn, declare to the undersigned witnesses and to the undersigned authority that this instrument is my will, that I have willingly made and executed it in the presence of the undersigned witnesses, all of whom were present at the same time, as my free act and deed, and that I have requested each of the undersigned witnesses to sign this will in my presence and in the presence of each other. I now sign this will in the presence of the attesting witnesses and the undersigned authority on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Testator

The undersigned, \_\_\_\_\_ and \_\_\_\_\_, each being above fourteen years of age, after being duly sworn, declare to the testator and to the undersigned authority that the testator declared to us that this instrument is the testator's will and that the testator requested us to act as witnesses to the testator's will and signature. The testator then signed this will in our presence, all of us being present at the same time. The testator is eighteen years of age or over (or being under such age, is or has been lawfully married, or is a member of the armed forces of the United States or of an auxiliary thereof or of the Maritime Service), and we believe the testator to be of sound mind. We now sign our names as attesting witnesses in the presence of the testator, each other, and the undersigned authority on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

Subscribed and sworn to before me by the said \_\_\_\_\_, testator, and by the said \_\_\_\_\_ and \_\_\_\_\_, witnesses, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

(SEAL)

(Signed)  
(Official Capacity of Officer)

(b) An affidavit in form and content substantially as provided by Subsection (a) of this section is a "self-proving affidavit." A will with a self-proving affidavit subscribed and sworn to by the testator and witnesses attached or annexed to the will, or a will simultaneously executed, attested, and made self-proved as provided by Subsection (a-1) of this section, is a "self-proved will." Substantial compliance with the form provided by Subsection (a) or (a-1) of this section ~~[form of such affidavit]~~ shall suffice to cause the will to be self-proved. For this purpose, an affidavit that is subscribed and acknowledged by the testator and subscribed and sworn to by the witnesses would suffice as being in substantial compliance. A signature on a self-proving affidavit as provided by Subsection (a) of this section is considered a signature to the will if necessary to prove that the will was signed by the testator or witnesses, or both, but in that case, the will may not be considered a self-proved will.

SECTION 1.15. Section 64, Texas Probate Code, is amended to read as follows:

Sec. 64. FORFEITURE CLAUSE. A provision in a will that would cause a forfeiture of ~~a devise~~ or void a devise or provision in favor of a person for bringing any court action, including contesting a will, is unenforceable if:

- (1) just [probable] cause existed [exists] for bringing the action; and
- (2) the action was brought and maintained in good faith.

SECTION 1.16. Section 67, Texas Probate Code, is amended by amending Subsections (a) and (b) and adding Subsection (e) to read as follows:

(a) Whenever a pretermitted child is not mentioned in the testator's will, provided for in the testator's will, or otherwise provided for by the testator, the pretermitted child shall succeed to a portion of the testator's estate as provided by Subsection (a)(1) or (a)(2) of this section, except as limited by Subsection (e) of this section.

(1) If the testator has one or more children living when he executes his last will, and:

(A) No provision is made therein for any such child, a pretermitted child succeeds to the portion of the testator's separate and community estate to which the pretermitted child would have been entitled pursuant to Section 38(a) of this code had the testator died intestate without a surviving spouse owning only that portion of his estate not devised or bequeathed to the other parent of the pretermitted child.

(B) Provision, whether vested or contingent, is made therein for one or more of such children, a pretermitted child is entitled to share in the testator's estate as follows:

(i) The portion of the testator's estate to which the pretermitted child is entitled is limited to the disposition made to children under the will.

(ii) The pretermitted child shall receive such share of the testator's estate, as limited in Subparagraph (i), as he would have received had the testator included all pretermitted children with the children upon whom benefits were conferred under the will, and given an equal share of such benefits to each such child.

(iii) To the extent that it is feasible, the interest of the pretermitted child in the testator's estate shall be of the same character, whether an equitable or legal life estate or in fee, as the interest that the testator conferred upon his children under the will.

(2) If the testator has no child living when he executes his last will, the pretermitted child succeeds to the portion of the testator's separate and community estate to which the pretermitted child would have been entitled pursuant to Section 38(a) of this code had the testator died intestate without a surviving spouse owning only that portion of his estate not devised or bequeathed to the other parent of the pretermitted child.

(b) The pretermitted child may recover the share of the testator's estate to which he is entitled either from the other children under Subsection (a)(1)(B) or the testamentary beneficiaries under Subsections (a)(1)(A) and (a)(2) other than the other parent of the pretermitted child, ratably, out of the portions of such estate passing to such persons under the will. In abating the interests of such beneficiaries, the character of the testamentary plan adopted by the testator shall be preserved to the maximum extent possible.

(e) If a pretermitted child's other parent is not the surviving spouse of the testator, the portion of the testator's estate to which the pretermitted child is entitled under Subsection (a)(1)(A) or (a)(2) of this section may not reduce the portion of the testator's estate passing to the testator's surviving spouse by more than one-half.

SECTION 1.17. Section 77, Texas Probate Code, is amended to read as follows:

Sec. 77. ORDER OF PERSONS QUALIFIED TO SERVE. Letters testamentary or of administration shall be granted to persons who are qualified to act, in the following order:

- (a) To the person named as executor in the will of the deceased.
- (b) To the surviving husband or wife.
- (c) To the principal devisee or legatee of the testator.
- (d) To any devisee or legatee of the testator.
- (e) To the next of kin of the deceased, the nearest in order of descent first, and so on, and next of kin includes a person and his descendants who legally adopted the deceased or who have been legally adopted by the deceased.

(f) To a creditor of the deceased.

(g) To any person of good character residing in the county who applies therefor.

(h) To any other person not disqualified under the following ~~section~~ Section.  
When persons ~~[applicants]~~ are equally entitled, letters shall be granted to the person ~~[applicant]~~ who, in the judgment of the court, is most likely to administer the estate advantageously, or letters ~~[they]~~ may be granted to ~~[any]~~ two or more of those persons ~~[such applicants]~~.

SECTION 1.18. Subsection (a), Section 81, Texas Probate Code, is amended to read as follows:

(a) For Probate of a Written Will. A written will shall, if within the control of the applicant, be filed with the application for its probate, and shall remain in the custody of the county clerk unless removed therefrom by order of a proper court. An application for probate of a written will shall state:

- (1) The name and domicile of each applicant.



(2) The name, age if known, and domicile of the decedent, and the fact, time, and place of death.

(3) Facts showing that the court has venue.

(4) That the decedent owned real or personal property, or both, describing the same generally, and stating its probable value.

(5) The date of the will, the name and residence of the executor named therein, if any, and if none be named, then the name and residence of the person to whom it is desired that letters be issued, and also the names and residences of the subscribing witnesses, if any.

(6) Whether a child or children born or adopted after the making of such will survived the decedent, and the name of each such survivor, if any.

(7) That such executor or applicant, or other person to whom it is desired that letters be issued, is not disqualified by law from accepting letters.

(8) Whether a marriage of the decedent was ever dissolved after the will was made[~~whether by divorce, annulment, or a declaration that the marriage was void,~~] and if so, when and from whom.

(9) Whether the state, a governmental agency of the state, or a charitable organization is named by the will as a devisee.

The foregoing matters shall be stated and averred in the application to the extent that they are known to the applicant, or can with reasonable diligence be ascertained by him, and if any of such matters is not stated or averred in the application, the application shall set forth the reason why such matter is not so stated and averred.

SECTION 1.19. Subsection (a), Section 83, 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.

SECTION 1.20. Subsection (a), Section 84, Texas Probate Code, is amended to read as follows:

(a) Self-Proved Will. (1) If a will is self-proved as provided in Section 59 of this Code or, if executed in another state or a foreign country, is self-proved in accordance with the laws of the state or foreign country of the testator's domicile at the time of the execution, no further proof of its execution with the formalities and solemnities and under the circumstances required to make it a valid will shall be necessary.

(2) For purposes of Subdivision (1) of this subsection, a will is considered self-proved if the will, or an affidavit of the testator and attesting witnesses attached or annexed to the will, provides that:

(A) the testator declared that the testator signed the instrument as the testator's will, the testator signed it willingly or willingly directed another to sign for the testator, the testator executed the will as the testator's free and voluntary act for the purposes expressed in the instrument, the testator is of sound mind and under no

constraint or undue influence, and the testator is eighteen years of age or over or, if under that age, was or had been lawfully married, or was then a member of the armed forces of the United States, an auxiliary of the armed forces of the United States, or the United States Maritime Service; and

(B) the witnesses declared that the testator signed the instrument as the testator's will, the testator signed it willingly or willingly directed another to sign for the testator, each of the witnesses, in the presence and hearing of the testator, signed the will as witness to the testator's signing, and to the best of their knowledge the testator was of sound mind and under no constraint or undue influence, and the testator was eighteen years of age or over or, if under that age, was or had been lawfully married, or was then a member of the armed forces of the United States, an auxiliary of the armed forces of the United States, or the United States Maritime Service.

SECTION 1.21. Subsection (a), Section 89A, Texas Probate Code, is amended to read as follows:

(a) A written will shall, if within the control of the applicant, be filed with the application for probate as a muniment of title, and shall remain in the custody of the county clerk unless removed from the custody of the clerk by order of a proper court. An application for probate of a will as a muniment of title shall state:

- (1) The name and domicile of each applicant.
- (2) The name, age if known, and domicile of the decedent, and the fact, time, and place of death.
- (3) Facts showing that the court has venue.
- (4) That the decedent owned real or personal property, or both, describing the property generally, and stating its probable value.
- (5) The date of the will, the name and residence of the executor named in the will, if any, and the names and residences of the subscribing witnesses, if any.
- (6) Whether a child or children born or adopted after the making of such will survived the decedent, and the name of each such survivor, if any.
- (7) That there are no unpaid debts owing by the estate of the testator, excluding debts secured by liens on real estate.
- (8) Whether a marriage of the decedent was ever dissolved after the will was made~~[whether by divorce, annulment, or a declaration that the marriage was void,]~~ and if so, when and from whom.
- (9) Whether the state, a governmental agency of the state, or a charitable organization is named by the will as a devisee.

The foregoing matters shall be stated and averred in the application to the extent that they are known to the applicant, or can with reasonable diligence be ascertained by the applicant, and if any of such matters is not stated or averred in the application, the application shall set forth the reason why such matter is not so stated and averred.

SECTION 1.22. Section 128A, Texas Probate Code, as amended by Chapters 801 (S.B. 593) and 1170 (H.B. 391), Acts of the 80th Legislature, Regular Session, 2007, is reenacted and amended to read as follows:

Sec. 128A. NOTICE TO CERTAIN BENEFICIARIES AFTER PROBATE OF WILL. (a) In this section, "beneficiary" means a person, entity, state, governmental agency of the state, charitable organization, or trustee of a trust entitled to receive ~~[real~~

~~or personal~~] property under the terms of a decedent's will, to be determined for purposes of this section with the assumption that each person who is alive on the date of the decedent's death survives any period required to receive the bequest as specified by the terms of the will. The term does not include a person, entity, state, governmental agency of the state, charitable organization, or trustee of a trust that would be entitled to receive property under the terms of a decedent's will on the occurrence of a contingency that has not occurred as of the date of the decedent's death.

(a-1) This section does not apply to the probate of a will as a muniment of title.

(b) Except as provided by Subsection (d) of this section, not later than the 60th day after the date of an order admitting a decedent's will to probate, the personal representative of the decedent's estate, including an independent executor or independent administrator, shall give notice that complies with Subsection (e) of this section to each beneficiary named in the will whose identity and address are known to the personal representative or, through reasonable diligence, can be ascertained. If, after the 60th day after the date of the order, the personal representative becomes aware of the identity and address of a beneficiary who was not given notice on or before the 60th day, the personal representative shall give the notice as soon as possible after becoming aware of that information.

(c) Notwithstanding the requirement under Subsection (b) of this section that the personal representative give the notice to the beneficiary, the personal representative shall give the notice with respect to a beneficiary described by this subsection as follows:

(1) if the beneficiary is a trustee of a trust, to the trustee, unless the personal representative is the trustee, in which case the personal representative shall, except as provided by Subsection (c-1) of this section, give the notice to the person or class of persons first eligible to receive the trust income, to be determined for purposes of this subdivision as if the trust were in existence on the date of the decedent's death;

(2) if the beneficiary has a court-appointed guardian or conservator, to that guardian or conservator;

(3) if the beneficiary is a minor for whom no guardian or conservator has been appointed, to a parent of the minor; and

(4) if the beneficiary is a charity that for any reason cannot be notified, to the attorney general.

(c-1) The personal representative is not required to give the notice otherwise required by Subsection (c)(1) of this section to a person eligible to receive trust income at the sole discretion of the trustee of a trust if:

(1) the personal representative has given the notice to an ancestor of the person who has a similar interest in the trust; and

(2) no apparent conflict exists between the ancestor and the person eligible to receive trust income.

(d) A personal representative is not required to give the notice otherwise required by this section to a beneficiary who:

(1) has made an appearance in the proceeding with respect to the decedent's estate before the will was admitted to probate; ~~[or]~~

(2) is entitled to receive aggregate gifts under the will with an estimated value of \$2,000 or less;

(3) has received all gifts to which the beneficiary is entitled under the will not later than the 60th day after the date of the order admitting the decedent's will to probate; or

(4) has received a copy of the will that was admitted to probate or a written summary of the gifts to the beneficiary under the will and has waived the right to receive the notice in an instrument that:

(A) either acknowledges the receipt of the copy of the will or includes the written summary of the gifts to the beneficiary under the will;

(B) is signed by the beneficiary; and

(C) is filed with the court.

(e) The notice required by this section must include:

(1) ~~[state:~~

~~[(A)]~~ the name and address of the beneficiary to whom the notice is given or, for a beneficiary described by Subsection (c) of this section, the name and address of the beneficiary for whom the notice is given and of the person to whom the notice is given;

~~(2) [(B)]~~ the decedent's name;

~~(3) [(C)]~~ a statement ~~[(C)]~~ that the decedent's will has been admitted to probate;

~~(4) [(D)]~~ a statement ~~[(D)]~~ that the beneficiary to whom or for whom the notice is given is named as a beneficiary in the will; ~~and]~~

~~(5) [(E)]~~ the personal representative's name and contact information; and

~~(6) either:~~

~~(A) [(2) contain as attachments]~~ a copy of the will that was admitted to probate and the order admitting the will to probate; or

(B) a summary of the gifts to the beneficiary under the will, the court in which the will was admitted to probate, the docket number assigned to the estate, the date the will was admitted to probate, and, if different, the date the court appointed the personal representative.

(f) The notice required by this section must be sent by registered or certified mail, return receipt requested.

(g) Not later than the 90th day after the date of an order admitting a will to probate, the personal representative shall file with the clerk of the court in which the decedent's estate is pending a sworn affidavit of the personal representative, or a certificate signed by the personal representative's attorney, stating:

(1) for each beneficiary to whom notice was required to be given under this section, the name and address of the beneficiary to whom the personal representative gave the notice or, for a beneficiary described by Subsection (c) of this section, the name and address of the beneficiary and of the person to whom the notice was given;

(2) the name and address of each beneficiary to whom notice was not required to be given under Subsection (d)(2), (3), or (4) of this section [who filed a waiver of the notice];

(3) the name of each beneficiary whose identity or address could not be ascertained despite the personal representative's exercise of reasonable diligence; and

(4) any other information necessary to explain the personal representative's inability to give the notice to or for any beneficiary as required by this section.

(h) The affidavit or certificate required by Subsection (g) of this section may be included with any pleading or other document filed with the clerk of the court, including the inventory, appraisal, and list of claims, an affidavit in lieu of the inventory, appraisal, and list of claims, or an application for an extension of the deadline to file the inventory, appraisal, and list of claims or an affidavit in lieu of the inventory, appraisal, and list of claims, provided that the pleading or other document with which the affidavit or certificate is included is filed not later than the date the affidavit or certificate is required to be filed as provided by Subsection (g) of this section.

SECTION 1.23. Section 143, Texas Probate Code, is amended to read as follows:

Sec. 143. SUMMARY PROCEEDINGS FOR SMALL ESTATES AFTER PERSONAL REPRESENTATIVE APPOINTED. Whenever, after the inventory, appraisal, and list of claims or the affidavit in lieu of the inventory, appraisal, and list of claims has been filed by a personal representative, it is established that the estate of a decedent, exclusive of the homestead and exempt property and family allowance to the surviving spouse and minor children, does not exceed the amount sufficient to pay the claims of Classes One to Four, inclusive, as claims are hereinafter classified, the personal representative shall, upon order of the court, pay the claims in the order provided and to the extent permitted by the assets of the estate subject to the payment of such claims, and thereafter present his account with an application for the settlement and allowance thereof. Thereupon the court, with or without notice, may adjust, correct, settle, allow or disallow such account, and, if the account is settled and allowed, may decree final distribution, discharge the personal representative, and close the administration.

SECTION 1.24. Subsections (g) through (j), Section 145, Texas Probate Code, are amended to read as follows:

(g) The court may not appoint an independent administrator to serve in an intestate administration unless and until the parties seeking appointment of the independent administrator have been determined, through a proceeding to declare heirship under Chapter III of this code, to constitute all of the decedent's heirs ~~[In no case shall any independent administrator be appointed by any court to serve in any intestate administration until those parties seeking the appointment of said independent administrator offer clear and convincing evidence to the court that they constitute all of the said decedent's heirs].~~

(h) When an independent administration has been created, and the order appointing an independent executor has been entered by the county court, and the inventory, appraisal, and list aforesaid has been filed by the executor and approved by the county court or an affidavit in lieu of the inventory, appraisal, and list of claims has been filed by the executor, as long as the estate is represented by an independent executor, further action of any nature shall not be had in the county court except where this Code specifically and explicitly provides for some action in the county court.

(i) If a distributee described in Subsections (c) through (e) of this section is an incapacitated person, the guardian of the person of the distributee may sign the application on behalf of the distributee. If the county court finds that either the granting of independent administration or the appointment of the person, firm, or corporation designated in the application as independent executor would not be in the best interests of the incapacitated person, then, notwithstanding anything to the contrary in Subsections (c) through (e) of this section, the county court shall not enter an order granting independent administration of the estate. If such distributee who is an incapacitated person has no guardian of the person, the county court may appoint a guardian ad litem to make application on behalf of the incapacitated person if the county court considers such an appointment necessary to protect the interest of the distributees. Alternatively, if the distributee who is an incapacitated person is a minor and has no guardian of the person, the natural guardian or guardians of the minor may consent on the minor's behalf if there is no conflict of interest between the minor and the natural guardian or guardians.

(j) If a trust is created in the decedent's will, the person or class of persons first eligible to receive the income from the trust, when determined as if the trust were to be in existence on the date of the decedent's death, shall, for the purposes of Subsections (c) and (d) of this section, be deemed to be the distributee or distributees on behalf of such trust, and any other trust or trusts coming into existence upon the termination of such trust, and are authorized to apply for independent administration on behalf of the trusts without the consent or agreement of the trustee or any other beneficiary of the trust, or the trustee or any beneficiary of any other trust which may come into existence upon the termination of such trust. If a trust beneficiary who is considered to be a distributee under this subsection is an incapacitated person, the trustee or cotrustee may file the application or give the consent, provided that the trustee or cotrustee is not the person proposed to serve as the independent executor.

SECTION 1.25. Part 4, Chapter VI, Texas Probate Code, is amended by adding Sections 145A, 145B, and 145C to read as follows:

Sec. 145A. GRANTING POWER OF SALE BY AGREEMENT. In a situation in which a decedent does not have a will or a decedent's will does not contain language authorizing the personal representative to sell real property or contains language that is not sufficient to grant the representative that authority, the court may include in an order appointing an independent executor under Section 145 of this code any general or specific authority regarding the power of the independent executor to sell real property that may be consented to by the beneficiaries who are to receive any interest in the real property in the application for independent administration or in their consents to the independent administration. The independent executor, in such event, may sell the real property under the authority granted in the court order without the further consent of those beneficiaries.

Sec. 145B. INDEPENDENT EXECUTORS MAY ACT WITHOUT COURT APPROVAL. Unless this code specifically provides otherwise, any action that a personal representative subject to court supervision may take with or without a court order may be taken by an independent executor without a court order. The other

provisions of this part are designed to provide additional guidance regarding independent administrations in specified situations, and are not designed to limit by omission or otherwise the application of the general principles set forth in this part.

Sec. 145C. POWER OF SALE OF ESTATE PROPERTY. (a) Definition. In this section, "independent executor" does not include an independent administrator.

(b) General. Unless limited by the terms of a will, an independent executor, in addition to any power of sale of estate property given in the will, and an independent administrator have the same power of sale for the same purposes as a personal representative has in a supervised administration, but without the requirement of court approval. The procedural requirements applicable to a supervised administration do not apply.

(c) Protection of Person Purchasing Estate Property. (1) A person who is not a devisee or heir is not required to inquire into the power of sale of estate property of the independent executor or independent administrator or the propriety of the exercise of the power of sale if the person deals with the independent executor or independent administrator in good faith and:

(A) a power of sale is granted to the independent executor in the will;

(B) a power of sale is granted under Section 145A of this code in the court order appointing the independent executor or independent administrator; or

(C) the independent executor or independent administrator provides an affidavit, executed and sworn to under oath and recorded in the deed records of the county where the property is located, that the sale is necessary or advisable for any of the purposes described in Section 341(1) of this code.

(2) As to acts undertaken in good faith reliance, the affidavit described by Subsection (c)(1)(C) of this section is conclusive proof, as between a purchaser of property from an estate, and the personal representative of the estate or the heirs and distributees of the estate, with respect to the authority of the independent executor or independent administrator to sell the property. The signature or joinder of a devisee or heir who has an interest in the property being sold as described in this section is not necessary for the purchaser to obtain all right, title, and interest of the estate in the property being sold.

(3) This section does not relieve the independent executor or independent administrator from any duty owed to a devisee or heir in relation, directly or indirectly, to the sale.

(d) No Limitations. This section does not limit the authority of an independent executor or independent administrator to take any other action without court supervision or approval with respect to estate assets that may take place in a supervised administration, for purposes and within the scope otherwise authorized by this code, including the authority to enter into a lease and to borrow money.

SECTION 1.26. Section 146, Texas Probate Code, is amended by adding Subsections (a-1) and (b-1) through (b-7) and amending Subsection (b) to read as follows:

(a-1) Statement in Notice of Claim. To be effective, the notice provided under Subsection (a)(2) of this section must include, in addition to the other information required by Section 294(d) of this code, a statement that a claim may be effectively presented by only one of the methods prescribed by this section.

(b) Secured Claims for Money. Within six months after the date letters are granted or within four months after the date notice is received under Section 295 of this code, whichever is later, a creditor with a claim for money secured by real or personal property of the estate must give notice to the independent executor of the creditor's election to have the creditor's claim approved as a matured secured claim to be paid in due course of administration. In addition to giving the notice within this period, a creditor whose claim is secured by real property shall record a notice of the creditor's election under this subsection in the deed records of the county in which the real property is located. If no ~~the~~ election to be a matured secured creditor is made, or the election is made, but not within the prescribed period, or is made within the prescribed period but the creditor has a lien against real property and fails to record notice of the claim in the deed records as required within the prescribed period ~~is not made~~, the claim shall be ~~is~~ a preferred debt and lien against the specific property securing the indebtedness and shall be paid according to the terms of the contract that secured the lien, and the claim may not be asserted against other assets of the estate. The independent executor may pay the claim before the claim matures if paying the claim before maturity is in the best interest of the estate.

(b-1) Matured Secured Claims. (1) A claim approved as a matured secured claim under Subsection (b) of this section remains secured by any lien or security interest against the specific property securing payment of the claim but subordinated to the payment from the property of claims having a higher classification under Section 322 of this code. However, the secured creditor:

(A) is not entitled to exercise any remedies in a manner that prevents the payment of the higher priority claims and allowances; and

(B) during the administration of the estate, is not entitled to exercise any contractual collection rights, including the power to foreclose, without either the prior written approval of the independent executor or court approval.

(2) Subdivision (1) of this subsection may not be construed to suspend or otherwise prevent a creditor with a matured secured claim from seeking judicial relief of any kind or from executing any judgment against an independent executor. Except with respect to real property, any third party acting in good faith may obtain good title with respect to an estate asset acquired through a secured creditor's extrajudicial collection rights, without regard to whether the creditor had the right to collect the asset or whether the creditor acted improperly in exercising those rights during an estate administration due to having elected matured secured status.

(3) If a claim approved or established by suit as a matured secured claim is secured by property passing to one or more devisees in accordance with Section 71A of this code, the independent executor shall collect from the devisees the amount of the debt and pay that amount to the claimant or shall sell the property and pay out of the sale proceeds the claim and associated expenses of sale consistent with the provisions of Section 306(c-1) of this code applicable to court supervised administrations.

(b-2) Preferred Debt and Lien Claims. During an independent administration, a secured creditor whose claim is a preferred debt and lien against property securing the indebtedness under Subsection (b) of this section is free to exercise any judicial or



extrajudicial collection rights, including the right to foreclosure and execution; provided, however, that the creditor does not have the right to conduct a nonjudicial foreclosure sale within six months after letters are granted.

(b-3) Certain Unsecured Claims; Barring of Claims. An unsecured creditor who has a claim for money against an estate and who receives a notice under Section 294(d) of this code shall give to the independent executor notice of the nature and amount of the claim not later than the 120th day after the date the notice is received or the claim is barred.

(b-4) Notices Required by Creditors. Notice to the independent executor required by Subsections (b) and (b-3) of this section must be contained in:

(1) a written instrument that is hand-delivered with proof of receipt, or mailed by certified mail, return receipt requested with proof of receipt, to the independent executor or the executor's attorney;

(2) a pleading filed in a lawsuit with respect to the claim; or

(3) a written instrument or pleading filed in the court in which the administration of the estate is pending.

(b-5) Filing Requirements Applicable. Subsection (b-4) of this section does not exempt a creditor who elects matured secured status from the filing requirements of Subsection (b) of this section, to the extent those requirements are applicable.

(b-6) Statute of Limitations. Except as otherwise provided by Section 16.062, Civil Practice and Remedies Code, the running of the statute of limitations shall be tolled only by a written approval of a claim signed by an independent executor, a pleading filed in a suit pending at the time of the decedent's death, or a suit brought by the creditor against the independent executor. In particular, the presentation of a statement or claim, or a notice with respect to a claim, to an independent executor does not toll the running of the statute of limitations with respect to that claim.

(b-7) Other Claim Procedures of Code Generally Do Not Apply. Except as otherwise provided by this section, the procedural provisions of this code governing creditor claims in supervised administrations do not apply to independent administrations. By way of example, but not as a limitation:

(1) Section 313 of this code does not apply to independent administrations, and consequently a creditor's claim may not be barred solely because the creditor failed to file a suit not later than the 90th day after the date an independent executor rejected the claim or with respect to a claim for which the independent executor takes no action; and

(2) Sections 306(f)-(k) of this code do not apply to independent administrations.

SECTION 1.27. Subsection (a), Section 149B, Texas Probate Code, is amended to read as follows:

(a) In addition to or in lieu of the right to an accounting provided by Section 149A of this code, at any time after the expiration of two years from the date the court clerk first issues letters testamentary or of administration to any personal representative of an estate ~~[that an independent administration was created and the order appointing an independent executor was entered]~~, a person interested in the estate then subject to independent administration may petition the county court, as that term is defined by Section 3 of this code, for an accounting and distribution. The

court may order an accounting to be made with the court by the independent executor at such time as the court deems proper. The accounting shall include the information that the court deems necessary to determine whether any part of the estate should be distributed.

SECTION 1.28. Section 149C, Texas Probate Code, is amended by amending Subsection (a) and adding Subsections (a-1) and (a-2) to read as follows:

(a) The ~~[county]~~ court, ~~[as that term is defined by Section 3 of this code,]~~ on its own motion or on motion of any interested person, after the independent executor has been cited by personal service to answer at a time and place fixed in the notice, may remove an independent executor when:

(1) the independent executor fails to return within ninety days after qualification, unless such time is extended by order of the court, either an inventory of the property of the estate and list of claims that have come to the independent executor's knowledge or an affidavit in lieu of the inventory, appraisalment, and list of claims;

(2) sufficient grounds appear to support belief that the independent executor has misapplied or embezzled, or that the independent executor is about to misapply or embezzle, all or any part of the property committed to the independent executor's care;

(3) the independent executor fails to make an accounting which is required by law to be made;

(4) the independent executor fails to timely file the affidavit or certificate required by Section 128A of this code;

(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 incapable of ~~[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.

(a-1) The court, on its own motion or on the motion of any interested person, and after the independent executor has been cited by certified mail, return receipt requested, to answer at a time and place stated in the citation, may remove an independent executor who is appointed under the provisions of this code if the independent executor:

(1) subject to Subsection (a-2)(1) of this section, fails to qualify in the manner and period required by law;

(2) subject to Subsection (a-2)(2) of this section, fails to return not later than the 90th day after the date the independent executor qualifies an inventory of the estate property and a list of claims that have come to the independent executor's knowledge or an affidavit in lieu of the inventory, appraisalment, and list of claims, unless the period is extended by court order;

(3) cannot be served with notices or other processes because the:

(A) independent executor's location is unknown;

(B) independent executor is eluding service; or

(C) independent executor is a nonresident of this state who does not have a resident agent to accept service of process in a probate proceeding or other action relating to the estate; or

(4) subject to Subsection (a-2)(3) of this section, 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 independent executor's care.

(a-2) The court may remove an independent executor:

(1) under Subsection (a-1)(1) of this section only if the independent executor fails to qualify on or before the 30th day after the date the court sends a notice by certified mail, return receipt requested, to the independent executor's last known address and to the last known address of the independent executor's attorney, notifying the independent executor and attorney of the court's intent to remove the independent executor for failure to qualify in the manner and period required by law;

(2) under Subsection (a-1)(2) of this section only if the independent executor fails to file an inventory and list of claims or an affidavit in lieu of the inventory, appraisal, and list of claims as required by law on or before the 30th day after the date the court sends a notice by certified mail, return receipt requested, to the independent executor's last known address and to the last known address of the independent executor's attorney, notifying the independent executor and attorney of the court's intent to remove the independent executor for failure to file the inventory and list of claims or affidavit; and

(3) under Subsection (a-1)(4) of this section only on presentation of clear and convincing evidence given under oath of the misapplication, embezzlement, or removal from this state of property as described by that subdivision.

SECTION 1.29. Section 151, Texas Probate Code, is amended to read as follows:

Sec. 151. CLOSING INDEPENDENT ADMINISTRATION BY CLOSING REPORT OR NOTICE OF CLOSING ESTATE [AFFIDAVIT]. (a) Filing of Closing Report or Notice of Closing Estate [Affidavit]. When all of the debts known to exist against the estate have been paid, or when they have been paid so far as the assets in the hands of the independent executor will permit, when there is no pending litigation, and when the independent executor has distributed to the persons entitled thereto all assets of the estate, if any, remaining after payment of debts, the independent executor may file with the court a closing report or a notice of closing of the estate.

(a-1) Closing Report. An independent executor may file[=

(+) a closing report verified by affidavit that:

(1) shows:

(A) the [(+) The] property of the estate which came into the possession [hands] of the independent executor;

(B) the [(ii) The] debts that have been paid;

(C) the [(iii) The] debts, if any, still owing by the estate;

(D) the [(iv) The] property of the estate, if any, remaining on hand after payment of debts; and

(E) the ~~[(v) The]~~ names and residences of the persons to whom the property of the estate, if any, remaining on hand after payment of debts has been distributed; and

(2) includes signed receipts or other proof of delivery of property to the distributees named in the closing report if the closing report reflects that there was property remaining on hand after payment of debts.

(b) Notice of Closing Estate. (1) Instead of filing a closing report under Subsection (a-1) of this section, an independent executor may file a notice of closing estate verified by affidavit that states:

(A) that all debts known to exist against the estate have been paid or have been paid to the extent permitted by the assets in the independent executor's possession;

(B) that all remaining assets of the estate, if any, have been distributed;  
and

(C) the names and addresses of the distributees to whom the property of the estate, if any, remaining on hand after payment of debts has been distributed.

(2) Before filing the notice, the independent executor shall provide to each distributee of the estate a copy of the notice of closing estate. The notice of closing estate filed by the independent executor must include signed receipts or other proof that all distributees have received a copy of the notice of closing estate.

(c) Effect of Filing Closing Report or Notice of Closing Estate [the Affidavit]. (1) The independent administration of an estate is considered closed 30 days after the date of the filing of a closing report or notice of closing estate unless an interested person files an objection with the court within that time. If an interested person files an objection within the 30-day period, the independent administration of the estate is closed when the objection has been disposed of or the court signs an order closing the estate.

(2) The closing of an [filing of such an affidavit and proof of delivery, if required, shall terminate the] independent administration by filing of a closing report or notice of closing estate terminates [and] the power and authority of the independent executor, but shall not relieve the independent executor from liability for any mismanagement of the estate or from liability for any false statements contained in the report or notice [affidavit].

(3) When a closing report or notice of closing estate [such an affidavit] has been filed, persons dealing with properties of the estate, or with claims against the estate, shall deal directly with the distributees of the estate; and the acts of the [such] distributees with respect to the [such] properties or claims shall in all ways be valid and binding as regards the persons with whom they deal, notwithstanding any false statements made by the independent executor in the report or notice [such affidavit].

(4) [(2)] If the independent executor is required to give bond, the independent executor's filing of the closing report [affidavit] and proof of delivery, if required, automatically releases the sureties on the bond from all liability for the future acts of the principal. The filing of a notice of closing estate does not release the sureties on the bond of an independent executor.

(d) ~~(e)~~ Authority to Transfer Property of a Decedent After Filing the Closing Report or Notice of Closing Estate Affidavit. An independent executor's closing report or notice of closing estate ~~affidavit closing the independent administration~~ shall constitute sufficient legal authority to all persons owing any money, having custody of any property, or acting as registrar or transfer agent or trustee of any evidence of interest, indebtedness, property, or right that belongs to the estate, for payment or transfer without additional administration to the distributees ~~persons~~ described in the will as entitled to receive the particular asset or who as heirs at law are entitled to receive the asset. The distributees ~~persons~~ described in the will as entitled to receive the particular asset or the heirs at law entitled to receive the asset may enforce their right to the payment or transfer by suit.

(e) ~~(d)~~ Delivery Subject to Receipt or Proof of Delivery. An independent executor may not be required to deliver tangible or intangible personal property to a distributee unless the independent executor receives ~~shall receive~~, at or before the time of delivery of the property, a signed receipt or other proof of delivery of the property to the distributee. An independent executor may ~~shall~~ not require a waiver or release from the distributee as a condition of delivery of property to a distributee.

SECTION 1.30. Section 227, Texas Probate Code, is amended to read as follows:

Sec. 227. SUCCESSORS RETURN OF INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS OR AFFIDAVIT IN LIEU OF INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS. An appointee who has been qualified to succeed to a prior personal representative shall make and return to the court an inventory, appraisement, and list of claims of the estate or, if the appointee is an independent executor, shall make and return to the court that document or file an affidavit in lieu of the inventory, appraisement, and list of claims, within ninety days after being qualified, in like manner as is provided for ~~required of~~ original appointees; and he shall also in like manner return additional inventories, appraisements, and lists of claims or file additional affidavits. In all orders appointing successor representatives of estates, the court shall appoint appraisers as in original appointments upon the application of any person interested in the estate.

SECTION 1.31. Section 250, Texas Probate Code, is amended to read as follows:

Sec. 250. INVENTORY AND APPRAISEMENT; AFFIDAVIT IN LIEU OF INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS. (a) Within ninety days after the representative's ~~his~~ qualification, unless a longer time shall be granted by the court, the representative shall prepare and file with the clerk of court a verified, full, and detailed inventory, in one written instrument, of all the property of such estate which has come to the representative's ~~his~~ possession or knowledge, which inventory shall include:

- (1) ~~(a)~~ all real property of the estate situated in the State of Texas; and
- (2) ~~(b)~~ all personal property of the estate wherever situated.

(b) The representative shall set out in the inventory the representative's ~~his~~ appraisement of the fair market value of each item thereof as of the date of death in the case of grant of letters testamentary or of administration, as the case may be; provided that if the court shall appoint an appraiser or appraisers of the estate, the

representative shall determine the fair market value of each item of the inventory with the assistance of such appraiser or appraisers and shall set out in the inventory such appraisement. The inventory shall specify what portion of the property, if any, is separate property and what portion, if any, is community property. ~~[If any property is owned in common with others, the interest owned by the estate shall be shown, together with the names and relationship, if known, of co-owners.]~~ Such inventory, when approved by the court and duly filed with the clerk of court, shall constitute for all purposes the inventory and appraisement of the estate referred to in this Code. The court for good cause shown may require the filing of the inventory and appraisement at a time prior to ninety days after the qualification of the representative.

(c) Notwithstanding Subsection (a) of this section, if there are no unpaid debts, except for secured debts, taxes, and administration expenses, at the time the inventory is due, including any extensions, an independent executor may file with the court clerk, in lieu of the inventory, appraisement, and list of claims, an affidavit stating that all debts, except for secured debts, taxes, and administration expenses, are paid and that all beneficiaries have received a verified, full, and detailed inventory. The affidavit in lieu of the inventory, appraisement, and list of claims must be filed within the 90-day period prescribed by Subsection (a) of this section, unless the court grants an extension.

(d) In this section, "beneficiary" means a person, entity, state, governmental agency of the state, charitable organization, or trust entitled to receive real or personal property:

(1) under the terms of a decedent's will, to be determined for purposes of this subsection with the assumption that each person who is alive on the date of the decedent's death survives any period required to receive the bequest as specified by the terms of the will; or

(2) as an heir of the decedent.

(e) If the independent executor files an affidavit in lieu of filing an inventory, appraisement, and list of claims as authorized under Subsection (c) of this section:

(1) any person interested in the estate, including a possible heir of the decedent or a beneficiary under a prior will of the decedent, is entitled to receive a copy of the inventory, appraisement, and list of claims from the independent executor on written request;

(2) the independent executor may provide a copy of the inventory, appraisement, and list of claims to any person the independent executor believes in good faith may be a person interested in the estate without liability to the estate or its beneficiaries; and

(3) a person interested in the estate may apply to the court for an order compelling compliance with Subdivision (1) of this subsection and the court, in its discretion, may compel the independent executor to provide a copy of the inventory, appraisement, and list of claims to the interested person or may deny the application.

SECTION 1.32. Part 1, Chapter VIII, Texas Probate Code, is amended by adding Section 254 to read as follows:

Sec. 254. PENALTY FOR FAILURE TO TIMELY FILE INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS OR AFFIDAVIT IN LIEU OF. (a) This section applies only to a personal representative, including an independent executor or

administrator, who does not file an inventory, appraisalment, and list of claims or affidavit in lieu of the inventory, appraisalment, and list of claims, as applicable, within the period prescribed by Section 250 of this code or any extension granted by the court.

(b) Any person interested in the estate on written complaint, or the court on the court's own motion, may have a personal representative to whom this section applies cited to file the inventory, appraisalment, and list of claims or affidavit in lieu of the inventory, appraisalment, and list of claims, as applicable, and show cause for the failure to timely file.

(c) If the personal representative does not file the inventory, appraisalment, and list of claims or affidavit in lieu of the inventory, appraisalment, and list of claims, as applicable, after being cited or does not show good cause for the failure to timely file, the court on hearing may fine the representative in an amount not to exceed \$1,000.

(d) The personal representative and the representative's sureties, if any, are liable for any fine imposed under this section and for all damages and costs sustained by the representative's failure. The fine, damages, and costs may be recovered in any court of competent jurisdiction.

SECTION 1.33. Section 256, Texas Probate Code, is amended to read as follows:

Sec. 256. DISCOVERY OF ADDITIONAL PROPERTY. (a) If, after the filing of the inventory and appraisalment, property or claims not included in the inventory shall come to the possession or knowledge of the representative, the representative [he] shall forthwith file with the clerk of court a verified, full, and detailed supplemental inventory and appraisalment.

(b) If, after the filing of an affidavit in lieu of the inventory and appraisalment, property or claims not included in the inventory given to the beneficiaries shall come to the possession or knowledge of the representative, the representative shall forthwith file with the clerk of court a supplemental affidavit in lieu of the inventory and appraisalment stating that all beneficiaries have received a verified, full, and detailed supplemental inventory and appraisalment.

SECTION 1.34. Section 260, Texas Probate Code, is amended to read as follows:

Sec. 260. FAILURE OF JOINT PERSONAL REPRESENTATIVES TO RETURN AN INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS OR AFFIDAVIT IN LIEU OF INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS. If there be more than one representative qualified as such, any one or more of them, on the neglect of the others, may make and return an inventory and appraisalment and list of claims or file an affidavit in lieu of an inventory, appraisalment, and list of claims; and the representative so neglecting shall not thereafter interfere with the estate or have any power over same; but the representative so returning the inventory, appraisalment, and list of claims or filing the affidavit in lieu of an inventory, appraisalment, and list of claims shall have the whole administration, unless, within sixty days after the return or the filing, the delinquent or delinquents shall assign to the court in writing and under oath a reasonable excuse

which the court may deem satisfactory; and if no excuse is filed or if the excuse filed is not deemed sufficient, the court shall enter an order removing any and all such delinquents and revoking their letters.

SECTION 1.35. Subsections (a) and (b), Section 271, Texas Probate Code, are amended to read as follows:

(a) Unless an affidavit is filed under Subsection (b) of this section, immediately after the inventory, appraisalment, and list of claims have been approved or after the affidavit in lieu of the inventory, appraisalment, and list of claims has been filed, the court shall, by order, set apart:

(1) the homestead for the use and benefit of the surviving spouse and minor children; and

(2) all other property of the estate that is exempt from execution or forced sale by the constitution and laws of this state for the use and benefit of the surviving spouse and minor children and unmarried children remaining with the family of the deceased.

(b) Before the approval of the inventory, appraisalment, and list of claims or, if applicable, before the filing of the affidavit in lieu of the inventory, appraisalment, and list of claims:

(1) a surviving spouse or any person who is authorized to act on behalf of minor children of the deceased may apply to the court to have exempt property, including the homestead, set aside by filing an application and a verified affidavit listing all of the property that the applicant claims is exempt; and

(2) any unmarried children remaining with the family of the deceased may apply to the court to have all exempt property other than the homestead set aside by filing an application and a verified affidavit listing all of the other property that the applicant claims is exempt.

SECTION 1.36. Section 286, Texas Probate Code, is amended to read as follows:

Sec. 286. FAMILY ALLOWANCE TO SURVIVING SPOUSES AND MINORS. (a) Unless an affidavit is filed under Subsection (b) of this section, immediately after the inventory, appraisalment, and list of claims have been approved or the affidavit in lieu of the inventory, appraisalment, and list of claims has been filed, the court shall fix a family allowance for the support of the surviving spouse and minor children of the deceased.

(b) Before the approval of the inventory, appraisalment, and list of claims or, if applicable, before the filing of the affidavit in lieu of the inventory, appraisalment, and list of claims, a surviving spouse or any person who is authorized to act on behalf of minor children of the deceased may apply to the court to have the court fix the family allowance by filing an application and a verified affidavit describing the amount necessary for the maintenance of the surviving spouse and minor children for one year after the date of the death of the decedent and describing the spouse's separate property and any property that minor children have in their own right. The applicant bears the burden of proof by a preponderance of the evidence at any hearing on the application. The court shall fix a family allowance for the support of the surviving spouse and minor children of the deceased.



SECTION 1.37. Section 293, Texas Probate Code, is amended to read as follows:

Sec. 293. SALE TO RAISE FUNDS FOR FAMILY ALLOWANCE. If there be no personal property of the deceased that the surviving spouse or guardian is willing to take for such allowance, or not a sufficiency of them, and if there be no funds or not sufficient funds in the hands of such executor or administrator to pay such allowance, or any part thereof, then the court, as soon as the inventory, appraisalment, and list of claims are returned and approved or, if applicable, the affidavit in lieu of the inventory, appraisalment, and list of claims is filed, shall order a sale of so much of the estate for cash as will be sufficient to raise the amount of such allowance, or a part thereof, as the case requires.

SECTION 1.38. The heading to Section 322, Texas Probate Code, is amended to read as follows:

Sec. 322. CLASSIFICATION OF CLAIMS AGAINST ESTATE ~~[ESTATES]~~ OF DECEDENT.

SECTION 1.39. Subsection (a), Section 385, Texas Probate Code, is amended to read as follows:

(a) Application for Partition. When a husband or wife shall die leaving any community property, the survivor may, at any time after letters testamentary or of administration have been granted, and an inventory, appraisalment, and list of the claims of the estate have been returned or an affidavit in lieu of the inventory, appraisalment, and list of claims has been filed, make application in writing to the court which granted such letters for a partition of such community property.

SECTION 1.40. Section 407, Texas Probate Code, is amended to read as follows:

Sec. 407. CITATION AND NOTICE UPON PRESENTATION OF ACCOUNT FOR FINAL SETTLEMENT. Upon the filing of an account for final settlement by temporary or permanent personal representatives of the estates of decedents, citation shall contain a statement that such final account has been filed, the time and place when it will be considered by the court, and a statement requiring the person or persons cited to appear and contest the same if they see proper. Such citation shall be issued by the county clerk to the persons and in the manner set out below.

1. Citation ~~[In case of the estates of deceased persons, notice]~~ shall be given ~~[by the personal representative]~~ to each heir or beneficiary of the decedent by certified mail, return receipt requested, unless another method of service ~~[type of notice]~~ is directed by the court by written order. The citation ~~[notice]~~ must include a copy of the account for final settlement.

2. If the court deems further additional notice necessary, it shall require the same by written order. In its discretion, the court may allow the waiver of citation ~~[notice]~~ of an account for final settlement in a proceeding concerning a decedent's estate.

SECTION 1.41. Subsections (b), (c), and (d), Section 408, Texas Probate Code, are amended to read as follows:

(b) Distribution of Remaining Property. Upon final settlement of an estate, if there be any of such estate remaining in the hands of the personal representative, the court shall order that a partition and distribution be made among the persons entitled

to receive such estate. The court shall order the representative to deposit in an account in the court's registry any remaining estate property that is money and to which a person who is unknown or missing is entitled. In addition, the court shall order the representative to sell, on terms the court determines are best, remaining estate property that is not money and to which a person who is unknown or missing is entitled. The court shall order the representative to deposit the sale proceeds in an account in the court's registry. The court shall hold money deposited in an account under this subsection until the court renders:

(1) an order requiring money in the account to be paid to the previously unknown or missing person who is entitled to the money; or

(2) another order regarding the disposition of the money.

(c) Discharge of Representative When No Property Remains. If, upon such settlement, there be none of the estate remaining in the hands of the representative, the representative [he] shall be discharged from the representative's [his] trust and the estate ordered closed.

(d) Discharge When Estate Fully Administered. Whenever the representative of an estate has fully administered the same in accordance with this code [~~Code~~] and the orders of the court, and the representative's [his] final account has been approved, and the representative [he] has delivered all of said estate remaining in the representative's [his] hands to the person or persons entitled to receive the same, it shall be the duty of the court to enter an order discharging such representative from the representative's [his] trust, and declaring the estate closed.

SECTION 1.42. Section 427, Texas Probate Code, is amended to read as follows:

Sec. 427. WHEN ESTATES TO BE PAID INTO STATE TREASURY. If any person entitled to a portion of an estate, except a resident minor without a guardian, does [shall] not demand the person's [his] portion, including any portion deposited in an account in the court's registry under Section 408(b) of this code, from the executor or administrator within six months after an order of court approving the report of commissioners of partition, or within six months after the settlement of the final account of an executor or administrator, as the case may be, the court by written order shall require the executor or administrator to pay so much of said portion as is in money to the comptroller; and such portion as is in other property the court [he] shall order the executor or administrator to sell on such terms as the court thinks best, and, when the proceeds of such sale are collected, the court shall order the same to be paid to the comptroller, in all such cases allowing the executor or administrator reasonable compensation for the executor's or administrator's [his] services. A suit to recover proceeds of the sale is governed by Section 433 of this code [~~Code~~].

SECTION 1.43. Section 436, Texas Probate Code, is amended by adding Subdivision (2-a) and amending Subdivisions (7) and (11) to read as follows:

(2-a) "Charitable organization" means any corporation, community chest, fund, or foundation that is exempt from federal income tax under Section 501(a) of the Internal Revenue Code of 1986 by being listed as an exempt organization in Section 501(c)(3) of that code.

(7) "Party" means a person who, by the terms of the account, has a present right, subject to request, to payment from a multiple-party account. A P.O.D. payee, including a charitable organization, or beneficiary of a trust account is a party only after the account becomes payable to the P.O.D payee or beneficiary [him] by reason of the P.O.D payee or beneficiary [his] surviving the original payee or trustee. Unless the context otherwise requires, it includes a guardian, personal representative, or assignee, including an attaching creditor, of a party. It also includes a person identified as a trustee of an account for another whether or not a beneficiary is named, but it does not include a named beneficiary unless the beneficiary has a present right of withdrawal.

(11) "P.O.D. payee" means a person or charitable organization designated on a P.O.D. account as one to whom the account is payable on request after the death of one or more persons.

SECTION 1.44. Subsection (a), Section 439, Texas Probate Code, is amended to read as follows:

(a) Sums remaining on deposit at the death of a party to a joint account belong to the surviving party or parties against the estate of the decedent if, by a written agreement signed by the party who dies, the interest of such deceased party is made to survive to the surviving party or parties. Notwithstanding any other law, an agreement is sufficient to confer an absolute right of survivorship on parties to a joint account under this subsection if the agreement states in substantially the following form: "On the death of one party to a joint account, all sums in the account on the date of the death vest in and belong to the surviving party as his or her separate property and estate." A survivorship agreement will not be inferred from the mere fact that the account is a joint account or that the account is designated as JT TEN, Joint Tenancy, or joint, or with other similar language. If there are two or more surviving parties, their respective ownerships during lifetime shall be in proportion to their previous ownership interests under Section 438 of this code augmented by an equal share for each survivor of any interest the decedent may have owned in the account immediately before his death, and the right of survivorship continues between the surviving parties if a written agreement signed by a party who dies so provides.

SECTION 1.45. Section 452, Texas Probate Code, is amended to read as follows:

Sec. 452. FORMALITIES. (a) An agreement between spouses creating a right of survivorship in community property must be in writing and signed by both spouses. If an agreement in writing is signed by both spouses, the agreement shall be sufficient to create a right of survivorship in the community property described in the agreement if it includes any of the following phrases:

- (1) "with right of survivorship";
- (2) "will become the property of the survivor";
- (3) "will vest in and belong to the surviving spouse"; or
- (4) "shall pass to the surviving spouse."

(b) An agreement that otherwise meets the requirements of this part, however, shall be effective without including any of those phrases.

(c) A survivorship agreement will not be inferred from the mere fact that the account is a joint account or that the account is designated as JT TEN, Joint Tenancy, or joint, or with other similar language.

SECTION 1.46. Section 471, Texas Probate Code, is amended by amending Subdivision (2) and adding Subdivision (2-a) to read as follows:

(2) "Divorced individual" means an individual whose marriage has been dissolved, ~~regardless of~~ whether by divorce, ~~or~~ annulment, or a declaration that the marriage is void.

(2-a) "Relative" means an individual who is related to another individual by consanguinity or affinity, as determined under Sections 573.022 and 573.024, Government Code, respectively.

SECTION 1.47. Sections 472 and 473, Texas Probate Code, are amended to read as follows:

Sec. 472. REVOCATION OF CERTAIN NONTESTAMENTARY TRANSFERS ON DISSOLUTION OF MARRIAGE. (a) Except as otherwise provided by a court order, the express terms of a trust instrument executed by a divorced individual before the individual's marriage was dissolved, or an express provision of a contract relating to the division of the marital estate entered into between a divorced individual and the individual's former spouse before, during, or after the marriage, the dissolution of the marriage revokes the following:

(1) a revocable disposition or appointment of property made by a divorced individual to the individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual in a trust instrument executed before the dissolution of the marriage;

(2) a provision in a trust instrument executed by a divorced individual before the dissolution of the marriage that confers a general or special power of appointment on the individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual; and

(3) a nomination in a trust instrument executed by a divorced individual before the dissolution of the marriage that nominates the individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual to serve in a fiduciary or representative capacity, including as a personal representative, executor, trustee, conservator, agent, or guardian.

(b) After the dissolution of a marriage, an interest granted in a provision of a trust instrument that is revoked under Subsection (a)(1) or (2) of this section passes as if the former spouse of the divorced individual who executed the trust instrument and each relative of the former spouse who is not a relative of the divorced individual disclaimed the interest granted in the provision, and an interest granted in a provision of a trust instrument that is revoked under Subsection (a)(3) of this section passes as if the former spouse and each relative of the former spouse who is not a relative of the divorced individual died immediately before the dissolution of the marriage.

Sec. 473. LIABILITY FOR CERTAIN PAYMENTS, BENEFITS, AND PROPERTY. (a) A bona fide purchaser of property from a divorced individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual or a person who receives from a divorced individual's former

spouse or any relative of the former spouse who is not a relative of the divorced individual a payment, benefit, or property in partial or full satisfaction of an enforceable obligation:

(1) is not required by this chapter to return the payment, benefit, or property; and

(2) is not liable under this chapter for the amount of the payment or the value of the property or benefit.

(b) A divorced individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual who, not for value, receives a payment, benefit, or property to which the former spouse or the relative of the former spouse who is not a relative of the divorced individual is not entitled as a result of Section 472(a) of this code:

(1) shall return the payment, benefit, or property to the person who is otherwise entitled to the payment, benefit, or property as provided by this chapter; or

(2) is personally liable to the person described by Subdivision (1) of this subsection for the amount of the payment or the value of the benefit or property received.

SECTION 1.48. Subsection (i), Section 25.0022, Government Code, is amended to read as follows:

(i) A judge assigned under this section has the jurisdiction, powers, and duties given by Sections 4A, 4C, 4D, 4F, 4G, 4H, 5B, 606, 607, and 608, Texas Probate Code, to statutory probate court judges by general law.

SECTION 1.49. (a) Subsection (c), Section 48, Subsection (c), Section 53C, Section 70, and Subsection (f), Section 251, Texas Probate Code, are repealed.

(b) Notwithstanding the transfer of Section 5, Texas Probate Code, to the Estates Code and redesignation as Section 5 of that code effective January 1, 2014, by Section 2, Chapter 680 (H.B. 2502), Acts of the 81st Legislature, Regular Session, 2009, Section 5, Texas Probate Code, is repealed.

SECTION 1.50. (a) The changes in law made by Sections 4D, 4H, 6, 8, 48, and 49, Texas Probate Code, as amended by this article, and Sections 6A, 6B, 6C, 6D, 8A, and 8B, Texas Probate Code, as added by this article, apply only to an action filed or other proceeding commenced on or after the effective date of this Act. An action filed or other proceeding commenced before the effective date of this Act is governed by the law in effect on the date the action was filed or the proceeding was commenced, and the former law is continued in effect for that purpose.

(b) The changes in law made by Subsection (p), Section 37A, Texas Probate Code, as added by this article, apply to all disclaimers made after December 31, 2009, for decedents dying after December 31, 2009, but before December 17, 2010.

(c) The changes in law made by Sections 64, 67, 84, 128A, 143, 145, 146, 149C, 227, 250, 256, 260, 271, 286, 293, 385, 471, 472, and 473, Texas Probate Code, as amended by this article, and Sections 145A, 145B, and 145C, Texas Probate Code, as added by this article, apply only to the estate of a decedent who dies on or after the effective date of this Act. The estate of a decedent who dies before the effective date of this Act is governed by the law in effect on the date of the decedent's death, and the former law is continued in effect for that purpose.

(d) The changes in law made by this article to Section 59, Texas Probate Code, apply only to a will executed on or after the effective date of this Act. A will executed before the effective date of this Act is governed by the law in effect on the date the will was executed, and the former law is continued in effect for that purpose.

(e) The changes in law made by this article to Section 149B, Texas Probate Code, apply only to a petition for an accounting and distribution filed on or after the effective date of this Act. A petition for an accounting and distribution filed before the effective date of this Act is governed by the law in effect on the date the petition is filed, and the former law is continued in effect for that purpose.

(f) The changes in law made by this article to Section 151, Texas Probate Code, apply only to a closing report or notice of closing of an estate filed on or after the effective date of this Act. A closing report or notice of closing of an estate filed before the effective date of this Act is governed by the law in effect on the date the closing report or notice is filed, and the former law is continued in effect for that purpose.

(g) The changes in law made by this article to Sections 436 and 439, Texas Probate Code, apply only to multiple-party accounts created or existing on or after the effective date of this Act and are intended to clarify existing law.

(h) The changes in law made by this article to Section 452, Texas Probate Code, apply only to agreements created or existing on or after the effective date of this Act, and are intended to overturn the ruling of the Texas Supreme Court in *Holmes v. Beatty*, 290 S.W.3d 852 (Tex. 2009).

(i) Sections 34A, 407, 408, and 427, Texas Probate Code, as amended by this article, and Section 254, Texas Probate Code, as added by this article, apply to the estate of a decedent that is pending or commenced on or after September 1, 2011, regardless of the date of the decedent's death.

(j) The changes in law made by this article to Section 77, Texas Probate Code, apply only to an application for the grant of letters testamentary or of administration of a decedent's estate filed on or after September 1, 2011. An application for the grant of letters testamentary or of administration of a decedent's estate 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.

(k) The changes in law made by this article to Subsection (a), Section 83, 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 September 1, 2011.

(l) The changes in law made by this article to Subsections (a) and (b), Section 53C, Texas Probate Code, apply only to a proceeding to declare heirship commenced on or after September 1, 2011. A proceeding to declare heirship commenced before that date 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 1.51. Subsection (p), Section 37A, Texas Probate Code, as added by this article, takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, Subsection (p), Section 37A, Texas Probate Code, as added by this article, takes effect September 1, 2011.

## ARTICLE 2. CHANGES TO ESTATES CODE

SECTION 2.01. The heading to Subtitle A, Title 2, Estates Code, as effective January 1, 2014, is amended to read as follows:

## SUBTITLE A. SCOPE, JURISDICTION, VENUE, AND COURTS

SECTION 2.02. Section 32.003, Estates Code, as effective January 1, 2014, is amended by adding Subsection (b-1) and amending Subsections (e) and (g) to read as follows:

(b-1) If a judge of a county court requests the assignment of a statutory probate court judge to hear a contested matter in a probate proceeding on the judge's own motion or on the motion of a party to the proceeding as provided by this section, the judge may request that the statutory probate court judge be assigned to the entire proceeding on the judge's own motion or on the motion of a party.

(e) A statutory probate court judge assigned to a contested matter in a probate proceeding or to the entire proceeding under this section has the jurisdiction and authority granted to a statutory probate court by this subtitle. A statutory probate court judge assigned to hear only the contested matter in a probate proceeding shall, on ~~On~~ resolution of the ~~[a contested]~~ matter ~~[for which a statutory probate court judge is assigned under this section]~~, including any appeal of the matter, ~~[the statutory probate court judge shall]~~ return the matter to the county court for further proceedings not inconsistent with the orders of the statutory probate court or court of appeals, as applicable. A statutory probate court judge assigned to the entire probate proceeding as provided by Subsection (b-1) shall, on resolution of the contested matter in the proceeding, including any appeal of the matter, return the entire proceeding to the county court for further proceedings not inconsistent with the orders of the statutory probate court or court of appeals, as applicable.

(g) If only the contested matter in a probate proceeding is assigned to a statutory probate court judge under this section, or if the contested matter in a probate proceeding is transferred to a district court under this section, the ~~The~~ county court shall continue to exercise jurisdiction over the management of the estate, other than a contested matter, until final disposition of the contested matter is made in accordance with this section. Any ~~After a contested matter is transferred to a district court, any~~ matter related to a ~~the~~ probate proceeding in which a contested matter is transferred to a district court may be brought in the district court. The district court in which a matter related to the ~~probate~~ proceeding is filed may, on its own motion or on the motion of any party, find that the matter is not a contested matter and transfer the matter to the county court with jurisdiction of the management of the estate.

SECTION 2.03. Section 32.007, Estates Code, as effective January 1, 2014, is amended to read as follows:

Sec. 32.007. CONCURRENT JURISDICTION WITH DISTRICT COURT. A statutory probate court has concurrent jurisdiction with the district court in:

- (1) a personal injury, survival, or wrongful death action by or against a person in the person's capacity as a personal representative;
- (2) an action by or against a trustee;
- (3) an action involving an inter vivos trust, testamentary trust, or charitable trust, including a charitable trust as defined by Section 123.001, Property Code;

(4) an action involving a personal representative of an estate in which each other party aligned with the personal representative is not an interested person in that estate;

(5) an action against an agent or former agent under a power of attorney arising out of the agent's performance of the duties of an agent; and

(6) an action to determine the validity of a power of attorney or to determine an agent's rights, powers, or duties under a power of attorney.

SECTION 2.04. Subtitle A, Title 2, Estates Code, as effective January 1, 2014, is amended by adding Chapter 33 to read as follows:

#### CHAPTER 33. VENUE

##### SUBCHAPTER A. VENUE FOR CERTAIN PROCEEDINGS

Sec. 33.001. PROBATE OF WILLS AND GRANTING OF LETTERS TESTAMENTARY AND OF ADMINISTRATION. Venue for a probate proceeding to admit a will to probate or for the granting of letters testamentary or of administration is:

(1) in the county in which the decedent resided, if the decedent had a domicile or fixed place of residence in this state; or

(2) with respect to a decedent who did not have a domicile or fixed place of residence in this state:

(A) if the decedent died in this state, in the county in which:

(i) the decedent's principal estate was located at the time of the decedent's death; or

(ii) the decedent died; or

(B) if the decedent died outside of this state:

(i) in any county in this state in which the decedent's nearest of kin reside; or

(ii) if there is no next of kin of the decedent in this state, in the county in which the decedent's principal estate was located at the time of the decedent's death.

Sec. 33.002. ACTION RELATED TO PROBATE PROCEEDING IN STATUTORY PROBATE COURT. Except as provided by Section 33.003, venue for any cause of action related to a probate proceeding pending in a statutory probate court is proper in the statutory probate court in which the decedent's estate is pending.

Sec. 33.003. CERTAIN ACTIONS INVOLVING PERSONAL REPRESENTATIVE. Notwithstanding any other provision of this chapter, the proper venue for an action by or against a personal representative for personal injury, death, or property damages is determined under Section 15.007, Civil Practice and Remedies Code.

Sec. 33.004. HEIRSHIP PROCEEDINGS. (a) Venue for a proceeding to determine a decedent's heirs is in:

(1) the court of the county in which a proceeding admitting the decedent's will to probate or administering the decedent's estate was most recently pending; or

(2) the court of the county in which venue would be proper for commencement of an administration of the decedent's estate under Section 33.001 if:

(A) no will of the decedent has been admitted to probate in this state and no administration of the decedent's estate has been granted in this state; or



(B) the proceeding is commenced by the trustee of a trust holding assets for the benefit of the decedent.

(b) Notwithstanding Subsection (a) and Section 33.001, if there is no administration pending of the estate of a deceased ward who died intestate, venue for a proceeding to determine the deceased ward's heirs is in the probate court in which the guardianship proceedings with respect to the ward's estate were pending on the date of the ward's death. A proceeding described by this subsection may not be brought as part of the guardianship proceedings with respect to the ward's estate, but rather must be filed as a separate cause in which the court may determine the heirs' respective shares and interests in the estate as provided by the laws of this state.

Sec. 33.005. CERTAIN ACTIONS INVOLVING BREACH OF FIDUCIARY DUTY. Notwithstanding any other provision of this chapter, venue for a proceeding brought by the attorney general alleging breach of a fiduciary duty by a charitable entity or a fiduciary or managerial agent of a charitable trust is determined under Section 123.005, Property Code.

[Sections 33.006-33.050 reserved for expansion]

#### SUBCHAPTER B. DETERMINATION OF VENUE

Sec. 33.051. COMMENCEMENT OF PROCEEDING. For purposes of this subchapter, a probate proceeding is considered commenced on the filing of an application for the proceeding that avers facts sufficient to confer venue on the court in which the application is filed.

Sec. 33.052. CONCURRENT VENUE. (a) If applications for probate proceedings involving the same estate are filed in two or more courts having concurrent venue, the court in which a proceeding involving the estate was first commenced has and retains jurisdiction of the proceeding to the exclusion of the other court or courts in which a proceeding involving the same estate was commenced.

(b) The first commenced probate proceeding extends to all of the decedent's property, including the decedent's estate property.

Sec. 33.053. PROBATE PROCEEDINGS IN MORE THAN ONE COUNTY. If probate proceedings involving the same estate are commenced in more than one county, each proceeding commenced in a county other than the county in which a proceeding was first commenced is stayed until the court in which the proceeding was first commenced makes a final determination of venue.

Sec. 33.054. JURISDICTION TO DETERMINE VENUE. (a) Subject to Sections 33.052 and 33.053, a court in which an application for a probate proceeding is filed has jurisdiction to determine venue for the proceeding and for any matter related to the proceeding.

(b) A court's determination under this section is not subject to collateral attack.

Sec. 33.055. PROTECTION FOR CERTAIN PURCHASERS. Notwithstanding Section 33.052, a bona fide purchaser of real property who relied on a probate proceeding that was not the first commenced proceeding, without knowledge that the proceeding was not the first commenced proceeding, shall be protected with respect to the purchase unless before the purchase an order rendered in the first commenced proceeding admitting the decedent's will to probate, determining the decedent's heirs, or granting administration of the decedent's estate was recorded in the office of the county clerk of the county in which the purchased property is located.

[Sections 33.056-33.100 reserved for expansion]

SUBCHAPTER C. TRANSFER OF PROBATE PROCEEDING

Sec. 33.101. TRANSFER TO OTHER COUNTY IN WHICH VENUE IS PROPER. If probate proceedings involving the same estate are commenced in more than one county and the court making a determination of venue as provided by Section 33.053 determines that venue is proper in another county, the court clerk shall make and retain a copy of the entire file in the case and transmit the original file to the court in the county in which venue is proper. The court to which the file is transmitted shall conduct the proceeding in the same manner as if the proceeding had originally been commenced in that county.

Sec. 33.102. TRANSFER FOR WANT OF VENUE. (a) If it appears to the court at any time before the final order in a probate proceeding is rendered that the court does not have priority of venue over the proceeding, the court shall, on the application of an interested person, transfer the proceeding to the proper county by transmitting to the proper court in that county:

(1) the original file in the case; and

(2) certified copies of all entries that have been made in the judge's probate docket in the proceeding.

(b) The court of the county to which a probate proceeding is transferred under Subsection (a) shall complete the proceeding in the same manner as if the proceeding had originally been commenced in that county.

(c) If the question as to priority of venue is not raised before a final order in a probate proceeding is announced, the finality of the order is not affected by any error in venue.

Sec. 33.103. TRANSFER FOR CONVENIENCE. (a) The court may order that a probate proceeding be transferred to the proper court in another county in this state if it appears to the court at any time before the proceeding is concluded that the transfer would be in the best interest of:

(1) the estate; or

(2) if there is no administration of the estate, the decedent's heirs or beneficiaries under the decedent's will.

(b) The clerk of the court from which the probate proceeding described by Subsection (a) is transferred shall transmit to the court to which the proceeding is transferred:

(1) the original file in the proceeding; and

(2) a certified copy of the index.

Sec. 33.104. VALIDATION OF PREVIOUS PROCEEDINGS. All orders entered in connection with a probate proceeding that is transferred to another county under a provision of this subchapter are valid and shall be recognized in the court to which the proceeding is transferred if the orders were made and entered in conformance with the procedure prescribed by this code.

SECTION 2.05. Subsection (b), Section 52.052, Estates Code, as effective January 1, 2014, is amended to read as follows:

(b) Each case file must contain each order, judgment, and proceeding of the court and any other probate filing with the court, including each:

(1) application for the probate of a will;

- (2) application for the granting of administration;
- (3) citation and notice, whether published or posted, including the return on the citation or notice;
- (4) will and the testimony on which the will is admitted to probate;
- (5) bond and official oath;
- (6) inventory, appraisement, and list of claims;
- (6-a) affidavit in lieu of the inventory, appraisement, and list of claims;
- (7) exhibit and account;
- (8) report of renting;
- (9) application for sale or partition of real estate;
- (10) report of sale;
- (11) report of the commissioners of partition;
- (12) application for authority to execute a lease for mineral development, or for pooling or unitization of lands, royalty, or other interest in minerals, or to lend or invest money; and
- (13) report of lending or investing money.

SECTION 2.06. Section 53.104, Estates Code, as effective January 1, 2014, is amended to read as follows:

Sec. 53.104. APPOINTMENT OF ATTORNEYS AD LITEM. (a) Except as provided by Section 202.009(b), the judge of a probate court may appoint an attorney ad litem in any probate proceeding to represent the interests of:

- (1) a person who has a legal disability;
- (2) a nonresident;
- (3) an unborn or unascertained person; ~~[or]~~
- (4) an unknown or missing heir; or
- (5) an unknown or missing person entitled to property deposited in an account in the court's registry under Section 362.011(b).

(b) Subject to Subsection (c), an ~~[An]~~ attorney ad litem appointed under this section is entitled to reasonable compensation for services provided in the amount set by the court. The court shall:

- (1) tax the compensation~~[-to be taxed]~~ as costs in the probate proceeding; or
- (2) for an attorney ad litem appointed to represent the interests of an unknown or missing person described by Subsection (a)(5), order that the compensation be paid from money in the account described by that subdivision.

(c) The court order appointing an attorney ad litem to represent the interests of an unknown or missing person described by Subsection (a)(5) must require the attorney ad litem to conduct a search for the person. Compensation paid under Subsection (b) to the attorney ad litem may not exceed 10 percent of the amount on deposit in the account described by Subsection (a)(5) on the date:

- (1) the attorney ad litem reports to the court the location of the previously unknown or missing person; or
- (2) the money in the account is paid to the comptroller as provided by Section 551.001.

SECTION 2.07. Section 112.052, Estates Code, as effective January 1, 2014, is amended by adding Subsection (d) to read as follows:

(d) A survivorship agreement may not be inferred from the mere fact that an account is a joint account or that an account is designated as JT TEN, Joint Tenancy, or joint, or with other similar language.

SECTION 2.08. Section 113.001, Estates Code, as effective January 1, 2014, is amended by adding Subdivision (2-a) and amending Subdivision (5) to read as follows:

(2-a) "Charitable organization" means any corporation, community chest, fund, or foundation that is exempt from federal income tax under Section 501(a) of the Internal Revenue Code of 1986 by being listed as an exempt organization in Section 501(c)(3) of that code.

(5) "P.O.D. payee" means a person or charitable organization designated on a P.O.D. account as a person to whom the account is payable on request after the death of one or more persons.

SECTION 2.09. Subsection (b), Section 113.002, Estates Code, as effective January 1, 2014, is amended to read as follows:

(b) A P.O.D. payee, including a charitable organization, or beneficiary of a trust account is a party only after the account becomes payable to the P.O.D. payee or beneficiary by reason of the P.O.D. payee or beneficiary surviving the original payee or trustee.

SECTION 2.10. Subsection (c), Section 113.151, Estates Code, as effective January 1, 2014, is amended to read as follows:

(c) A survivorship agreement may not be inferred from the mere fact that the account is a joint account or that the account is designated as JT TEN, Joint Tenancy, or joint, or with other similar language.

SECTION 2.11. Subsection (c), Section 122.055, Estates Code, as effective January 1, 2014, is amended to read as follows:

(c) If the beneficiary is a charitable organization or a governmental agency of the state, a written memorandum of disclaimer of a present or future interest must be filed not later than the later of:

(1) the first anniversary of the date the beneficiary receives the notice required by Subchapter A, Chapter 308; or

(2) the expiration of the six-month period following the date the personal representative files:

(A) the inventory, appraisalment, and list of claims due or owing to the estate; or

(B) the affidavit in lieu of the inventory, appraisalment, and list of claims.

SECTION 2.12. Subsection (b), Section 122.056, Estates Code, as effective January 1, 2014, is amended to read as follows:

(b) If the beneficiary is a charitable organization or a governmental agency of this state, notice of a disclaimer required by Subsection (a) must be filed not later than the later of:

(1) the first anniversary of the date the beneficiary receives the notice required by Subchapter A, Chapter 308; or

(2) the expiration of the six-month period following the date the personal representative files:

(A) the inventory, appraisalment, and list of claims due or owing to the estate; or

(B) the affidavit in lieu of the inventory, appraisalment, and list of claims.

SECTION 2.13. Subchapter B, Chapter 122, Estates Code, as effective January 1, 2014, is amended by adding Section 122.057 to read as follows:

Sec. 122.057. EXTENSION OF TIME FOR CERTAIN DISCLAIMERS.

(a) This section does not apply to a disclaimer made by a beneficiary that is a charitable organization or governmental agency of the state.

(b) Notwithstanding the periods prescribed by Sections 122.055 and 122.056, a disclaimer with respect to an interest in property passing by reason of the death of a decedent dying after December 31, 2009, but before December 17, 2010, may be executed and filed, and notice of the disclaimer may be given, not later than nine months after December 17, 2010.

(c) A disclaimer filed and for which notice is given during the extended period described by Subsection (b) is valid and shall be treated as if the disclaimer had been filed and notice had been given within the periods prescribed by Sections 122.055 and 122.056.

SECTION 2.14. Section 123.051, Estates Code, as effective January 1, 2014, is amended by amending Subdivision (2) and adding Subdivision (2-a) to read as follows:

(2) "Divorced individual" means an individual whose marriage has been dissolved by divorce, ~~or~~ annulment, or a declaration that the marriage is void.

(2-a) "Relative" means an individual who is related to another individual by consanguinity or affinity, as determined under Sections 573.022 and 573.024, Government Code, respectively.

SECTION 2.15. Subsection (a), Section 123.052, Estates Code, as effective January 1, 2014, is amended to read as follows:

(a) The dissolution of the marriage revokes a provision in a trust instrument that was executed by a divorced individual before the divorced individual's marriage was dissolved and that:

(1) is a revocable disposition or appointment of property made to the divorced individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual;

(2) confers a general or special power of appointment on the divorced individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual; or

(3) nominates the divorced individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual to serve:

(A) as a personal representative, trustee, conservator, agent, or guardian; or

(B) in another fiduciary or representative capacity.

SECTION 2.16. Section 123.053, Estates Code, as effective January 1, 2014, is amended to read as follows:

Sec. 123.053. EFFECT OF REVOCATION. (a) An interest granted in a provision of a trust instrument that is revoked under Section 123.052(a)(1) or (2) passes as if the former spouse of the divorced individual who executed the trust instrument and each relative of the former spouse who is not a relative of the divorced individual disclaimed the interest granted in the provision.

(b) An interest granted in a provision of a trust instrument that is revoked under Section 123.052(a)(3) passes as if the former spouse and each relative of the former spouse who is not a relative of the divorced individual died immediately before the dissolution of the marriage.

SECTION 2.17. Section 123.054, Estates Code, as effective January 1, 2014, is amended to read as follows:

Sec. 123.054. LIABILITY OF CERTAIN PURCHASERS OR RECIPIENTS OF CERTAIN PAYMENTS, BENEFITS, OR PROPERTY. A bona fide purchaser of property from a divorced individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual or a person who receives from the former spouse or any relative of the former spouse who is not a relative of the divorced individual a payment, benefit, or property in partial or full satisfaction of an enforceable obligation:

(1) is not required by this subchapter to return the payment, benefit, or property; and

(2) is not liable under this subchapter for the amount of the payment or the value of the property or benefit.

SECTION 2.18. Section 123.055, Estates Code, as effective January 1, 2014, is amended to read as follows:

Sec. 123.055. LIABILITY OF FORMER SPOUSE FOR CERTAIN PAYMENTS, BENEFITS, OR PROPERTY. A divorced individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual who, not for value, receives a payment, benefit, or property to which the former spouse or the relative of the former spouse who is not a relative of the divorced individual is not entitled as a result of Sections 123.052(a) and (b):

(1) shall return the payment, benefit, or property to the person who is entitled to the payment, benefit, or property under this subchapter; or

(2) is personally liable to the person described by Subdivision (1) for the amount of the payment or the value of the benefit or property received, as applicable.

SECTION 2.19. Section 202.001, Estates Code, as effective January 1, 2014, is amended to read as follows:

Sec. 202.001. GENERAL AUTHORIZATION FOR AND NATURE OF PROCEEDING TO DECLARE HEIRSHIP. In the manner provided by this chapter, a court may determine through a proceeding to declare heirship:

(1) the persons who are a decedent's heirs and only heirs; and

(2) the heirs' respective shares and interests under the laws of this state in the decedent's estate or, if applicable, in the trust.

SECTION 2.20. Section 202.002, Estates Code, as effective January 1, 2014, is amended to read as follows:

Sec. 202.002. CIRCUMSTANCES UNDER WHICH PROCEEDING TO DECLARE HEIRSHIP IS AUTHORIZED. A court may conduct a proceeding to declare heirship when:

(1) a person dies intestate owning or entitled to property in this state and there has been no administration in this state of the person's estate; ~~or~~

(2) there has been a will probated in this state or elsewhere or an administration in this state of a ~~the~~ decedent's estate, but:

(A) property in this state was omitted from the will or administration; or

(B) no final disposition of property in this state has been made in the administration; or

(3) it is necessary for the trustee of a trust holding assets for the benefit of a decedent to determine the heirs of the decedent.

SECTION 2.21. Subchapter A, Chapter 202, Estates Code, as effective January 1, 2014, is amended by adding Section 202.0025 to read as follows:

Sec. 202.0025. ACTION BROUGHT AFTER DECEDENT'S DEATH. Notwithstanding Section 16.051, Civil Practice and Remedies Code, a proceeding to declare heirship of a decedent may be brought at any time after the decedent's death.

SECTION 2.22. Section 202.004, Estates Code, as effective January 1, 2014, is amended to read as follows:

Sec. 202.004. PERSONS WHO MAY COMMENCE PROCEEDING TO DECLARE HEIRSHIP. A proceeding to declare heirship of a decedent may be commenced and maintained under a circumstance specified by Section 202.002 by:

(1) the personal representative of the decedent's estate;

(2) a person claiming to be a secured or unsecured creditor or the owner of all or part of the decedent's estate; ~~or~~

(3) if the decedent was a ward with respect to whom a guardian of the estate had been appointed, the guardian of the estate, provided that the proceeding is commenced and maintained in the probate court in which the proceedings for the guardianship of the estate were pending at the time of the decedent's death;

(4) a party seeking the appointment of an independent administrator under Section 401.003; or

(5) the trustee of a trust holding assets for the benefit of a decedent.

SECTION 2.23. Section 202.005, Estates Code, as effective January 1, 2014, is amended to read as follows:

Sec. 202.005. APPLICATION FOR PROCEEDING TO DECLARE HEIRSHIP. A person authorized by Section 202.004 to commence a proceeding to declare heirship must file an application in a court specified by Section 33.004 ~~[202.003]~~ to commence the proceeding. The application must state:

(1) the decedent's name and time and place of death;

(2) the names and residences of the decedent's heirs, the relationship of each heir to the decedent, and the true interest of the applicant and each of the heirs in the decedent's estate or in the trust, as applicable;

(3) if the time or place of the decedent's death or the name or residence of an heir is not definitely known to the applicant, all the material facts and circumstances with respect to which the applicant has knowledge and information that might reasonably tend to show the time or place of the decedent's death or the name or residence of the heir;

(4) that all children born to or adopted by the decedent have been listed;

(5) that each of the decedent's marriages has been listed with:

(A) the date of the marriage;

(B) the name of the spouse;

(C) the date and place of termination if the marriage was terminated;

and

(D) other facts to show whether a spouse has had an interest in the decedent's property;

(6) whether the decedent died testate and, if so, what disposition has been made of the will;

(7) a general description of all property belonging to the decedent's estate or held in trust for the benefit of the decedent, as applicable; and

(8) an explanation for the omission from the application of any of the information required by this section.

SECTION 2.24. Sections 204.151 and 204.152, Estates Code, as effective January 1, 2014, are amended to read as follows:

Sec. 204.151. APPLICABILITY OF SUBCHAPTER. This subchapter applies in a proceeding to declare heirship of a decedent only with respect to an individual who[~~±~~

~~[(1)] petitions the court for a determination of right of inheritance as authorized by Section 201.052(e); and~~

~~[(2)] claims[~~±~~~~

~~[(A)] to be a biological child of the decedent or claims[~~±~~, but with respect to whom a parent-child relationship with the decedent was not established as provided by Section 160.201, Family Code; or~~

~~[(B)] to inherit through a biological child of the decedent[~~±~~, if a parent-child relationship between the individual through whom the inheritance is claimed and the decedent was not established as provided by Section 160.201, Family Code].~~

Sec. 204.152. PRESUMPTION; [REQUIRED FINDINGS IN ABSENCE OF] REBUTTAL [EVIDENCE]. The presumption under Section 160.505, Family Code, that applies in establishing a parent-child relationship also applies in determining heirship in the probate court using the results of genetic testing ordered with respect to an individual described by Section 204.151, and the presumption may be rebutted in the same manner provided by Section 160.505, Family Code. ~~[Unless the results of genetic testing of another individual who is an heir of the decedent who is the subject of a proceeding to declare heirship to which this subchapter applies are admitted as rebuttal evidence, the court shall find that the individual described by Section 204.151;~~



~~[(1) is an heir of the decedent, if the results of genetic testing ordered under Subchapter B identify a tested individual who is an heir of the decedent as the ancestor of the individual described by Section 204.151; or~~

~~[(2) is not an heir of the decedent, if the results of genetic testing ordered under Subchapter B exclude a tested individual who is an heir of the decedent as the ancestor of the individual described by Section 204.151.]~~

SECTION 2.25. Section 251.101, Estates Code, as effective January 1, 2014, is amended to read as follows:

Sec. 251.101. SELF-PROVED WILL. A self-proved will is a will:

(1) to which a self-proving affidavit subscribed and sworn to by the testator and witnesses is attached or annexed; or

(2) that is simultaneously executed, attested, and made self-proved as provided by Section 251.1045 [is a self-proved will].

SECTION 2.26. Subsection (a), Section 251.102, Estates Code, as effective January 1, 2014, is amended to read as follows:

(a) A self-proved will may be admitted to probate without the testimony of any subscribing witnesses if:

(1) the testator and witnesses execute a self-proving affidavit; or

(2) the will is simultaneously executed, attested, and made self-proved as provided by Section 251.1045.

SECTION 2.27. Subsection (b), Section 251.104, Estates Code, as effective January 1, 2014, is amended to read as follows:

(b) A self-proving affidavit must be made by the testator and by the attesting witnesses before an officer authorized to administer oaths ~~[under the laws of this state]~~. The officer shall affix the officer's official seal to the self-proving affidavit.

SECTION 2.28. Subchapter C, Chapter 251, Estates Code, as effective January 1, 2014, is amended by adding Section 251.1045 to read as follows:

Sec. 251.1045. SIMULTANEOUS EXECUTION, ATTESTATION, AND SELF-PROVING. (a) As an alternative to the self-proving of a will by the affidavits of the testator and the attesting witnesses as provided by Section 251.104, a will may be simultaneously executed, attested, and made self-proved before an officer authorized to administer oaths, and the testimony of the witnesses in the probate of the will may be made unnecessary, with the inclusion in the will of the following in form and contents substantially as follows:

I, \_\_\_\_\_, as testator, after being duly sworn, declare to the undersigned witnesses and to the undersigned authority that this instrument is my will, that I have willingly made and executed it in the presence of the undersigned witnesses, all of whom were present at the same time, as my free act and deed, and that I have requested each of the undersigned witnesses to sign this will in my presence and in the presence of each other. I now sign this will in the presence of the attesting witnesses and the undersigned authority on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Testator

The undersigned, \_\_\_\_\_ and \_\_\_\_\_, each being at least fourteen years of age, after being duly sworn, declare to the testator and to the undersigned authority that the testator declared to us that this instrument is the testator's will and that the testator requested us to act as witnesses to the testator's will and signature. The testator then signed this will in our presence, all of us being present at the same time. The testator is eighteen years of age or over (or being under such age, is or has been lawfully married, or is a member of the armed forces of the United States or of an auxiliary of the armed forces of the United States or of the United States Maritime Service), and we believe the testator to be of sound mind. We now sign our names as attesting witnesses in the presence of the testator, each other, and the undersigned authority on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Witness

Witness

Subscribed and sworn to before me by the said \_\_\_\_\_, testator, and by the said \_\_\_\_\_ and \_\_\_\_\_, witnesses, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

(SEAL)

(Signed)

(Official Capacity of Officer)

(b) A will that is in substantial compliance with the form provided by Subsection (a) is sufficient to self-prove a will.

SECTION 2.29. Chapter 254, Estates Code, as effective January 1, 2014, is amended by adding Section 254.005 to read as follows:

Sec. 254.005. FORFEITURE CLAUSE. A provision in a will that would cause a forfeiture of or void a devise or provision in favor of a person for bringing any court action, including contesting a will, is unenforceable if:

(1) just cause existed for bringing the action; and

(2) the action was brought and maintained in good faith.

SECTION 2.30. Subsection (a), Section 255.053, Estates Code, as effective January 1, 2014, is amended to read as follows:

(a) If no provision is made in the testator's last will for any child of the testator who is living when the testator executes the will, a pretermitted child succeeds to the portion of the testator's separate and community estate, other than any portion of the estate devised to the pretermitted child's other parent, to which the pretermitted child would have been entitled under Section 201.001 if the testator had died intestate without a surviving spouse, except as limited by Section 255.056.

SECTION 2.31. Section 255.054, Estates Code, as effective January 1, 2014, is amended to read as follows:

Sec. 255.054. SUCCESSION BY PRETERMITTED CHILD IF TESTATOR HAS NO LIVING CHILD AT WILL'S EXECUTION. If a testator has no child living when the testator executes the testator's last will, a pretermitted child succeeds to the portion of the testator's separate and community estate, other than any portion

of the estate devised to the pretermitted child's other parent, to which the pretermitted child would have been entitled under Section 201.001 if the testator had died intestate without a surviving spouse, except as limited by Section 255.056.

SECTION 2.32. Subchapter B, Chapter 255, Estates Code, as effective January 1, 2014, is amended by adding Section 255.056 to read as follows:

Sec. 255.056. LIMITATION ON REDUCTION OF ESTATE PASSING TO SURVIVING SPOUSE. If a pretermitted child's other parent is not the surviving spouse of the testator, the portion of the testator's estate to which the pretermitted child is entitled under Section 255.053(a) or 255.054 may not reduce the portion of the testator's estate passing to the testator's surviving spouse by more than one-half.

SECTION 2.33. (a) Subsection (a), Section 256.052, Estates Code, as effective January 1, 2014, is amended to read as follows:

(a) An application for the probate of a written will must state and aver the following to the extent each is known to the applicant or can, with reasonable diligence, be ascertained by the applicant:

(1) each applicant's name and domicile;

(2) the testator's name, domicile, and, if known, age, on the date of the testator's death;

(3) the fact, time, and place of the testator's death;

(4) facts showing that the court with which the application is filed has venue;

(5) that the testator owned property, including a statement generally describing the property and the property's probable value;

(6) the date of the will;

(7) the name and residence of:

(A) any executor named in the will or, if no executor is named, of the person to whom the applicant desires that letters be issued; and

(B) each subscribing witness to the will, if any;

(8) whether one or more children born to or adopted by the testator after the testator executed the will survived the testator and, if so, the name of each of those children;

(9) whether a marriage of the testator was ever dissolved after the will was made ~~divorced~~ and, if so, when and from whom;

(10) whether the state, a governmental agency of the state, or a charitable organization is named in the will as a devisee; and

(11) that the executor named in the will, the applicant, or another person to whom the applicant desires that letters be issued is not disqualified by law from accepting the letters.

(b) If the amendment to Subsection (a), Section 256.052, Estates Code, made by this section conflicts with an amendment to Subsection (a), Section 256.052, Estates Code, made by another Act of the 82nd Legislature, Regular Session, 2011, relating to nonsubstantive additions to and corrections in enacted codes, the amendment made by this section controls, and the amendment made by the other Act has no effect.

SECTION 2.34. 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).

SECTION 2.35. Section 256.152, Estates Code, as effective January 1, 2014, is amended to read as follows:

Sec. 256.152. ADDITIONAL PROOF REQUIRED FOR PROBATE OF WILL.

(a) An applicant for the probate of a will must prove the following to the court's satisfaction, in addition to the proof required by Section 256.151, to obtain the probate:

(1) the testator did not revoke the will; and

(2) if the will is not self-proved ~~[as provided by this title]~~, the testator:

(A) executed the will with the formalities and solemnities and under the circumstances required by law to make the will valid; and

(B) at the time of executing the will, was of sound mind and:

(i) was 18 years of age or older;

(ii) was or had been married; or

(iii) was a member of the armed forces of the United States, an auxiliary of the armed forces of the United States, or the United States Maritime Service.

(b) A will that is self-proved as provided by Subchapter C, Chapter 251, or, if executed in another state or a foreign country, is self-proved in accordance with the laws of the state or foreign country of the testator's domicile at the time of the execution ~~[this title]~~ is not required to have any additional proof that the will was executed with the formalities and solemnities and under the circumstances required to make the will valid.

(c) For purposes of Subsection (b), a will is considered self-proved if the will, or an affidavit of the testator and attesting witnesses attached or annexed to the will, provides that:

(1) the testator declared that the testator signed the instrument as the testator's will, the testator signed it willingly or willingly directed another to sign for the testator, the testator executed the will as the testator's free and voluntary act for the purposes expressed in the instrument, the testator is of sound mind and under no constraint or undue influence, and the testator is eighteen years of age or over or, if

under that age, was or had been lawfully married, or was then a member of the armed forces of the United States, an auxiliary of the armed forces of the United States, or the United States Maritime Service; and

(2) the witnesses declared that the testator signed the instrument as the testator's will, the testator signed it willingly or willingly directed another to sign for the testator, each of the witnesses, in the presence and hearing of the testator, signed the will as witness to the testator's signing, and to the best of their knowledge the testator was of sound mind and under no constraint or undue influence, and the testator was eighteen years of age or over or, if under that age, was or had been lawfully married, or was then a member of the armed forces of the United States, an auxiliary of the armed forces of the United States, or the United States Maritime Service.

SECTION 2.36. (a) Subsection (a), Section 257.051, Estates Code, as effective January 1, 2014, is amended to read as follows:

(a) An application for the probate of a will as a muniment of title must state and aver the following to the extent each is known to the applicant or can, with reasonable diligence, be ascertained by the applicant:

- (1) each applicant's name and domicile;
- (2) the testator's name, domicile, and, if known, age, on the date of the testator's death;
- (3) the fact, time, and place of the testator's death;
- (4) facts showing that the court with which the application is filed has venue;
- (5) that the testator owned property, including a statement generally describing the property and the property's probable value;
- (6) the date of the will;
- (7) the name and residence of:
  - (A) any executor named in the will; and
  - (B) each subscribing witness to the will, if any;
- (8) whether one or more children born to or adopted by the testator after the testator executed the will survived the testator and, if so, the name of each of those children;
- (9) that the testator's estate does not owe an unpaid debt, other than any debt secured by a lien on real estate;
- (10) whether a marriage of the testator was ever dissolved after the will was made ~~divorced~~ and, if so, when and from whom; and
- (11) whether the state, a governmental agency of the state, or a charitable organization is named in the will as a devisee.

(b) If the amendment to Subsection (a), Section 257.051, Estates Code, made by this section conflicts with an amendment to Subsection (a), Section 257.051, Estates Code, made by another Act of the 82nd Legislature, Regular Session, 2011, relating to nonsubstantive additions to and corrections in enacted codes, the amendment made by this section controls, and the amendment made by the other Act has no effect.

SECTION 2.37. Subsection (c), Section 304.001, Estates Code, as effective January 1, 2014, is amended to read as follows:

(c) If ~~persons [applicants for letters testamentary or of administration]~~ are equally entitled to letters testamentary or of administration ~~[the letters]~~, the court:

(1) shall grant the letters to the person [applicant] who, in the judgment of the court, is most likely to administer the estate advantageously; or

(2) may grant the letters to two or more of those persons [applicants].

SECTION 2.38. Section 308.001, Estates Code, as effective January 1, 2014, is amended to read as follows:

Sec. 308.001. DEFINITION. In this subchapter, "beneficiary" means a person, entity, state, governmental agency of the state, charitable organization, or trustee of a trust entitled to receive property under the terms of a decedent's will, to be determined for purposes of this subchapter with the assumption that each person who is alive on the date of the decedent's death survives any period required to receive the bequest as specified by the terms of the will. The term does not include a person, entity, state, governmental agency of the state, charitable organization, or trustee of a trust that would be entitled to receive property under the terms of a decedent's will on the occurrence of a contingency that has not occurred as of the date of the decedent's death.

SECTION 2.39. Subchapter A, Chapter 308, Estates Code, as effective January 1, 2014, is amended by adding Section 308.0015 to read as follows:

Sec. 308.0015. APPLICATION. This subchapter does not apply to the probate of a will as a muniment of title.

SECTION 2.40. Section 308.002, Estates Code, as effective January 1, 2014, is amended by amending Subsections (b) and (c) and adding Subsection (b-1) to read as follows:

(b) Notwithstanding the requirement under Subsection (a) that the personal representative give the notice to the beneficiary, the representative shall give the notice with respect to a beneficiary described by this subsection as follows:

(1) if the beneficiary is a trustee of a trust, to the trustee, unless the representative is the trustee, in which case the representative shall, except as provided by Subsection (b-1), give the notice to the person or class of persons first eligible to receive the trust income, to be determined for purposes of this subdivision as if the trust were in existence on the date of the decedent's death;

(2) if the beneficiary has a court-appointed guardian or conservator, to that guardian or conservator;

(3) if the beneficiary is a minor for whom no guardian or conservator has been appointed, to a parent of the minor; and

(4) if the beneficiary is a charity that for any reason cannot be notified, to the attorney general.

(b-1) The personal representative is not required to give the notice otherwise required by Subsection (b)(1) to a person eligible to receive trust income at the sole discretion of the trustee of a trust if:

(1) the representative has given the notice to an ancestor of the person who has a similar interest in the trust; and

(2) no apparent conflict exists between the ancestor and the person eligible to receive trust income.

(c) A personal representative is not required to give the notice otherwise required by this section to a beneficiary who:

(1) has made an appearance in the proceeding with respect to the decedent's estate before the will was admitted to probate; ~~or~~

(2) is entitled to receive aggregate gifts under the will with an estimated value of \$2,000 or less;

(3) has received all gifts to which the beneficiary is entitled under the will not later than the 60th day after the date of the order admitting the decedent's will to probate; or

(4) has received a copy of the will that was admitted to probate or a written summary of the gifts to the beneficiary under the will and has waived the right to receive the notice in an instrument that:

(A) either acknowledges the receipt of the copy of the will or includes the written summary of the gifts to the beneficiary under the will;

(B) is signed by the beneficiary; and

(C) is filed with the court.

SECTION 2.41. Section 308.003, Estates Code, as effective January 1, 2014, is amended to read as follows:

Sec. 308.003. CONTENTS OF NOTICE. The notice required by Section 308.002 must include:

(1) ~~[state:~~

~~[(A)]~~ the name and address of the beneficiary to whom the notice is given or, for a beneficiary described by Section 308.002(b), the name and address of the beneficiary for whom the notice is given and of the person to whom the notice is given;

(2) ~~[(B)]~~ the decedent's name;

(3) a statement ~~[(C)]~~ that the decedent's will has been admitted to probate;

(4) a statement ~~[(D)]~~ that the beneficiary to whom or for whom the notice is given is named as a beneficiary in the will; ~~[and]~~

(5) ~~[(E)]~~ the personal representative's name and contact information; and

(6) either:

(A) ~~[(2) contain as attachments]~~ a copy of the will that was admitted to probate and of the order admitting the will to probate; or

(B) a summary of the gifts to the beneficiary under the will, the court in which the will was admitted to probate, the docket number assigned to the estate, the date the will was admitted to probate, and, if different, the date the court appointed the personal representative.

SECTION 2.42. Section 308.004, Estates Code, as effective January 1, 2014, is amended to read as follows:

Sec. 308.004. AFFIDAVIT OR CERTIFICATE. (a) Not later than the 90th day after the date of an order admitting a will to probate, the personal representative shall file with the clerk of the court in which the decedent's estate is pending a sworn affidavit of the representative or a certificate signed by the representative's attorney stating:

(1) for each beneficiary to whom notice was required to be given under this subchapter, the name and address of the beneficiary to whom the representative gave the notice or, for a beneficiary described by Section 308.002(b), the name and address of the beneficiary and of the person to whom the notice was given;

(2) the name and address of each beneficiary to whom notice was not required to be given under Section 308.002(c)(2), (3), or (4) ~~[who filed a waiver of the notice]~~;

(3) the name of each beneficiary whose identity or address could not be ascertained despite the representative's exercise of reasonable diligence; and

(4) any other information necessary to explain the representative's inability to give the notice to or for any beneficiary as required by this subchapter.

(b) The affidavit or certificate required by Subsection (a) may be included with any pleading or other document filed with the court clerk, including the inventory, appraisal, and list of claims, an affidavit in lieu of the inventory, appraisal, and list of claims, or an application for an extension of the deadline to file the inventory, appraisal, and list of claims or an affidavit in lieu of the inventory, appraisal, and list of claims, provided that the pleading or other document is filed not later than the date the affidavit or certificate is required to be filed under Subsection (a).

SECTION 2.43. The heading to Subchapter B, Chapter 309, Estates Code, as effective January 1, 2014, is amended to read as follows:

SUBCHAPTER B. REQUIREMENTS FOR INVENTORY, APPRAISEMENT,  
AND LIST OF CLAIMS; AFFIDAVIT IN LIEU OF INVENTORY,  
APPRAISEMENT, AND LIST OF CLAIMS

SECTION 2.44. Subsection (a), Section 309.051, Estates Code, as effective January 1, 2014, is amended to read as follows:

(a) Except as provided by Subsection (c) or unless a longer period is granted by the court, before the 91st day after the date the personal representative qualifies, the representative shall prepare and file with the court clerk a single written instrument that contains a verified, full, and detailed inventory of all estate property that has come into the representative's possession or of which the representative has knowledge. The inventory must:

(1) include:

(A) all estate real property located in this state; and

(B) all estate personal property regardless of where the property is located; and

(2) specify[=

~~[(A)]~~ which portion of the property, if any, is separate property and which, if any, is community property~~[-and~~

~~[(B) if estate property is owned in common with others, the interest of the estate in that property and the names and relationship, if known, of the co-owners].~~

SECTION 2.45. Section 309.052, Estates Code, as effective January 1, 2014, is amended to read as follows:



Sec. 309.052. LIST OF CLAIMS. A complete list of claims due or owing to the estate must be attached to the inventory and appraisal required by Section 309.051. The list of claims must state:

(1) the name and, if known, address of each person indebted to the estate; and

(2) regarding each claim:

(A) the nature of the debt, whether by note, bill, bond, or other written obligation, or by account or verbal contract;

(B) the date the debt was incurred;

(C) the date the debt was or is due;

(D) the amount of the claim, the rate of interest on the claim, and the period for which the claim bears interest; and

(E) whether the claim is separate property or community property[; and

~~[(F) if any portion of the claim is held in common with others, the interest of the estate in the claim and the names and relationships, if any, of the other part owners].~~

SECTION 2.46. Section 309.055, Estates Code, as effective January 1, 2014, is amended to read as follows:

Sec. 309.055. FAILURE OF JOINT PERSONAL REPRESENTATIVES TO FILE INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS OR AFFIDAVIT IN LIEU OF INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS. (a) If more than one personal representative qualifies to serve, any one or more of the representatives, on the neglect of the other representatives, may make and file an inventory, appraisal, and list of claims or an affidavit in lieu of an inventory, appraisal, and list of claims.

(b) A personal representative who neglects to make or file an inventory, appraisal, and list of claims or an affidavit in lieu of an inventory, appraisal, and list of claims may not interfere with and does not have any power over the estate after another representative makes and files an inventory, appraisal, and list of claims or an affidavit in lieu of an inventory, appraisal, and list of claims.

(c) The personal representative who files the inventory, appraisal, and list of claims or the affidavit in lieu of an inventory, appraisal, and list of claims is entitled to the whole administration unless, before the 61st day after the date the representative files the inventory, appraisal, and list of claims or the affidavit in lieu of an inventory, appraisal, and list of claims, one or more delinquent representatives file with the court a written, sworn, and reasonable excuse that the court considers satisfactory. The court shall enter an order removing one or more delinquent representatives and revoking those representatives' letters if:

(1) an excuse is not filed; or

(2) the court does not consider the filed excuse sufficient.

SECTION 2.47. Subchapter B, Chapter 309, Estates Code, as effective January 1, 2014, is amended by adding Sections 309.056 and 309.057 to read as follows:

Sec. 309.056. AFFIDAVIT IN LIEU OF INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS. (a) In this section, "beneficiary" means a person, entity, state, governmental agency of the state, charitable organization, or trust entitled to receive property:

(1) under the terms of a decedent's will, to be determined for purposes of this section with the assumption that each person who is alive on the date of the decedent's death survives any period required to receive the bequest as specified by the terms of the will; or

(2) as an heir of the decedent.

(b) Notwithstanding Sections 309.051 and 309.052, if there are no unpaid debts, except for secured debts, taxes, and administration expenses, at the time the inventory is due, including any extensions, an independent executor may file with the court clerk, in lieu of the inventory, appraisement, and list of claims, an affidavit stating that all debts, except for secured debts, taxes, and administration expenses, are paid and that all beneficiaries have received a verified, full, and detailed inventory and appraisement. The affidavit in lieu of the inventory, appraisement, and list of claims must be filed within the 90-day period prescribed by Section 309.051(a), unless the court grants an extension.

(c) If the independent executor files an affidavit in lieu of the inventory, appraisement, and list of claims as authorized under Subsection (b):

(1) any person interested in the estate, including a possible heir of the decedent or a beneficiary under a prior will of the decedent, is entitled to receive a copy of the inventory, appraisement, and list of claims from the independent executor on written request;

(2) the independent executor may provide a copy of the inventory, appraisement, and list of claims to any person the independent executor believes in good faith may be a person interested in the estate without liability to the estate or its beneficiaries; and

(3) a person interested in the estate may apply to the court for an order compelling compliance with Subdivision (1), and the court, in its discretion, may compel the independent executor to provide a copy of the inventory, appraisement, and list of claims to the interested person or may deny the application.

Sec. 309.057. PENALTY FOR FAILURE TO TIMELY FILE INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS OR AFFIDAVIT IN LIEU OF. (a) This section applies only to a personal representative, including an independent executor or administrator, who does not file an inventory, appraisement, and list of claims or affidavit in lieu of the inventory, appraisement, and list of claims, as applicable, within the period prescribed by Section 309.051 or any extension granted by the court.

(b) Any person interested in the estate on written complaint, or the court on the court's own motion, may have a personal representative to whom this section applies cited to file the inventory, appraisement, and list of claims or affidavit in lieu of the inventory, appraisement, and list of claims, as applicable, and show cause for the failure to timely file.

(c) If the personal representative does not file the inventory, appraisement, and list of claims or affidavit in lieu of the inventory, appraisement, and list of claims, as applicable, after being cited or does not show good cause for the failure to timely file, the court on hearing may fine the representative in an amount not to exceed \$1,000.

(d) The personal representative and the representative's sureties, if any, are liable for any fine imposed under this section and for all damages and costs sustained by the representative's failure. The fine, damages, and costs may be recovered in any court of competent jurisdiction.

SECTION 2.48. Section 309.101, Estates Code, as effective January 1, 2014, is amended to read as follows:

Sec. 309.101. DISCOVERY OF ADDITIONAL PROPERTY OR CLAIMS.

(a) If after the filing of the inventory, appraisalment, and list of claims the personal representative acquires possession or knowledge of property or claims of the estate not included in the inventory, appraisalment, and list of claims the representative shall promptly file with the court clerk a verified, full, and detailed supplemental inventory, appraisalment, and list of claims.

(b) If after the filing of the affidavit in lieu of the inventory, appraisalment, and list of claims the personal representative acquires possession or knowledge of property or claims of the estate not included in the inventory and appraisalment given to the beneficiaries, the representative shall promptly file with the court clerk a supplemental affidavit in lieu of the inventory, appraisalment, and list of claims stating that all beneficiaries have received a verified, full, and detailed supplemental inventory and appraisalment.

SECTION 2.49. Section 352.004, Estates Code, as effective January 1, 2014, is amended to read as follows:

Sec. 352.004. DENIAL OF COMPENSATION. The court may, on application of an interested person or on the court's own motion, wholly or partly deny a commission allowed by this subchapter if:

(1) the court finds that the executor or administrator has not taken care of and managed estate property prudently; or

(2) the executor or administrator has been removed under Section 404.003 [~~149C~~] or Subchapter B, Chapter 361.

SECTION 2.50. Subsections (a) and (b), Section 353.051, Estates Code, as effective January 1, 2014, are amended to read as follows:

(a) Unless an application and verified affidavit are filed as provided by Subsection (b), immediately after the inventory, appraisalment, and list of claims of an estate are approved or after the affidavit in lieu of the inventory, appraisalment, and list of claims is filed, the court by order shall set aside:

(1) the homestead for the use and benefit of the decedent's surviving spouse and minor children; and

(2) all other estate property that is exempt from execution or forced sale by the constitution and laws of this state for the use and benefit of the decedent's:

(A) surviving spouse and minor children; and

(B) unmarried children remaining with the decedent's family.

(b) Before the inventory, appraisalment, and list of claims of an estate are approved or, if applicable, before the affidavit in lieu of the inventory, appraisalment, and list of claims is filed:

(1) the decedent's surviving spouse or any other person authorized to act on behalf of the decedent's minor children may apply to the court to have exempt property, including the homestead, set aside by filing an application and a verified affidavit listing all property that the applicant claims is exempt; and

(2) any of the decedent's unmarried children remaining with the decedent's family may apply to the court to have all exempt property, other than the homestead, set aside by filing an application and a verified affidavit listing all property, other than the homestead, that the applicant claims is exempt.

SECTION 2.51. Subsections (a) and (b), Section 353.101, Estates Code, as effective January 1, 2014, are amended to read as follows:

(a) Unless an application and verified affidavit are filed as provided by Subsection (b), immediately after the inventory, appraisalment, and list of claims of an estate are approved or after the affidavit in lieu of the inventory, appraisalment, and list of claims is filed, the court shall fix a family allowance for the support of the decedent's surviving spouse and minor children.

(b) Before the inventory, appraisalment, and list of claims of an estate are approved or, if applicable, before the affidavit in lieu of the inventory, appraisalment, and list of claims is filed, the decedent's surviving spouse or any other person authorized to act on behalf of the decedent's minor children may apply to the court to have the court fix the family allowance by filing an application and a verified affidavit describing:

(1) the amount necessary for the maintenance of the surviving spouse and the decedent's minor children for one year after the date of the decedent's death; and

(2) the surviving spouse's separate property and any property that the decedent's minor children have in their own right.

SECTION 2.52. Subsection (a), Section 353.107, Estates Code, as effective January 1, 2014, is amended to read as follows:

(a) The court shall, as soon as the inventory, appraisalment, and list of claims are returned and approved or the affidavit in lieu of the inventory, appraisalment, and list of claims is filed, order the sale of estate property for cash in an amount that will be sufficient to raise the amount of the family allowance, or a portion of that amount, as necessary, if:

(1) the decedent had no personal property that the surviving spouse or the guardian of the decedent's minor children is willing to take for the family allowance or the decedent had insufficient personal property; and

(2) there are not sufficient estate funds in the executor's or administrator's possession to pay the amount of the family allowance or a portion of that amount, as applicable.

SECTION 2.53. Subsection (a), Section 354.001, Estates Code, as effective January 1, 2014, is amended to read as follows:

(a) If, after a personal representative of an estate has filed the inventory, appraisalment, and list of claims or the affidavit in lieu of the inventory, appraisalment, and list of claims as provided ~~required~~ by Chapter 309, it is established that the decedent's estate, excluding any homestead, exempt property, and family allowance to

the decedent's surviving spouse and minor children, does not exceed the amount sufficient to pay the claims against the estate classified as Classes 1 through 4 under Section 355.102, the representative shall:

(1) on order of the court, pay those claims in the order provided and to the extent permitted by the assets of the estate subject to the payment of those claims; and

(2) after paying the claims in accordance with Subdivision (1), present to the court the representative's account with an application for the settlement and allowance of the account.

SECTION 2.54. Subsection (a), Section 360.253, Estates Code, as effective January 1, 2014, is amended to read as follows:

(a) If a spouse dies leaving community property, the surviving spouse, at any time after letters testamentary or of administration have been granted and an inventory, appraisalment, and list of claims of the estate have been returned or an affidavit in lieu of the inventory, appraisalment, and list of claims has been filed, may apply in writing to the court that granted the letters for a partition of the community property.

SECTION 2.55. The heading to Section 361.155, Estates Code, as effective January 1, 2014, is amended to read as follows:

Sec. 361.155. SUCCESSOR REPRESENTATIVE TO RETURN INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS OR AFFIDAVIT IN LIEU OF INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS.

SECTION 2.56. Subsection (a), Section 361.155, Estates Code, as effective January 1, 2014, is amended to read as follows:

(a) An appointee who has qualified to succeed a former personal representative, before the 91st day after the date the personal representative qualifies, shall make and return to the court an inventory, appraisalment, and list of claims of the estate or, if the appointee is an independent executor, shall make and return to the court that document or file an affidavit in lieu of the inventory, appraisalment, and list of claims ~~[before the 91st day after the date the personal representative qualifies]~~, in the manner provided for ~~[required of]~~ an original appointee, and shall also return additional inventories, appraisalments, and lists of claims and additional affidavits in the manner provided for ~~[required of]~~ an original appointee.

SECTION 2.57. Section 362.005, Estates Code, as effective January 1, 2014, is amended to read as follows:

Sec. 362.005. CITATION AND NOTICE ON PRESENTATION OF ACCOUNT. (a) On the presentation of an account for final settlement by a temporary or permanent personal representative, the county clerk shall issue citation to the persons and in the manner provided by Subsection (b) ~~[Subsections (c) and (d)]~~.

(b) Citation issued under Subsection (a) must:

(1) contain:

(A) ~~(1)~~ a statement that an account for final settlement has been presented;

(B) ~~(2)~~ the time and place the court will consider the account; ~~and~~

(C) ~~(3)~~ a statement requiring the person cited to appear and contest the account, if the person wishes to contest the account; and

(D) a copy of the account for final settlement; and

(2) be given[~~:-~~

~~[(e) The personal representative shall give notice]~~ to each heir or beneficiary of the decedent by certified mail, return receipt requested, unless the court by written order directs another method of service ~~[type of notice]~~ to be given~~[- The notice must include a copy of the account for final settlement].~~

~~(c) [(d)]~~ The court by written order shall require additional notice if the court considers the additional notice necessary.

~~(d) [(e)]~~ The court may allow the waiver of citation ~~[notice]~~ of an account for final settlement in a proceeding concerning a decedent's estate.

SECTION 2.58. Section 362.011, Estates Code, as effective January 1, 2014, is amended to read as follows:

Sec. 362.011. PARTITION AND DISTRIBUTION OF ESTATE; DEPOSIT IN COURT'S REGISTRY. (a) If, on final settlement of an estate, any of the estate remains in the personal representative's possession, the court shall order that a partition and distribution be made among the persons entitled to receive that part of the estate.

(b) The court shall order the personal representative to deposit in an account in the court's registry any remaining estate property that is money and to which a person who is unknown or missing is entitled. In addition, the court shall order the representative to sell, on terms the court determines are best, remaining estate property that is not money and to which a person who is unknown or missing is entitled. The court shall order the representative to deposit the sale proceeds in an account in the court's registry. The court shall hold money deposited in an account under this subsection until the court renders:

(1) an order requiring money in the account to be paid to the previously unknown or missing person who is entitled to the money; or

(2) another order regarding the disposition of the money.

SECTION 2.59. Subtitle I, Title 2, Estates Code, as effective January 1, 2014, is amended by adding Chapters 401, 402, 403, 404, and 405 to read as follows:

#### CHAPTER 401. CREATION

Sec. 401.001. EXPRESSION OF TESTATOR'S INTENT IN WILL. (a) Any person capable of making a will may provide in the person's will that no other action shall be had in the probate court in relation to the settlement of the person's estate than the probating and recording of the will and the return of an inventory, appraisalment, and list of claims of the person's estate.

(b) Any person capable of making a will may provide in the person's will that no independent administration of his or her estate may be allowed. In such case the person's estate, if administered, shall be administered and settled under the direction of the probate court as other estates are required to be settled and not as an independent administration.

Sec. 401.002. CREATION IN TESTATE ESTATE BY AGREEMENT. (a) Except as provided in Section 401.001(b), if a decedent's will names an executor but the will does not provide for independent administration as provided in Section 401.001(a), all of the distributees of the decedent may agree on the advisability of having an independent administration and collectively designate in the application for probate of the decedent's will the executor named in the will to serve as independent

executor and request in the application that no other action shall be had in the probate court in relation to the settlement of the decedent's estate other than the probating and recording of the decedent's will and the return of an inventory, appraisement, and list of claims of the decedent's estate. In such case the probate court shall enter an order granting independent administration and appointing the person, firm, or corporation designated in the application as independent executor, unless the court finds that it would not be in the best interest of the estate to do so.

(b) Except as provided in Section 401.001(b), in situations where no executor is named in the decedent's will, or in situations where each executor named in the will is deceased or is disqualified to serve as executor or indicates by affidavit filed with the application for administration of the decedent's estate the executor's inability or unwillingness to serve as executor, all of the distributees of the decedent may agree on the advisability of having an independent administration and collectively designate in the application for probate of the decedent's will a qualified person, firm, or corporation to serve as independent administrator and request in the application that no other action shall be had in the probate court in relation to the settlement of the decedent's estate other than the probating and recording of the decedent's will and the return of an inventory, appraisement, and list of claims of the decedent's estate. In such case the probate court shall enter an order granting independent administration and appointing the person, firm, or corporation designated in the application as independent administrator, unless the court finds that it would not be in the best interest of the estate to do so.

#### Sec. 401.003. CREATION IN INTESTATE ESTATE BY AGREEMENT.

(a) All of the distributees of a decedent dying intestate may agree on the advisability of having an independent administration and collectively designate in the application for administration of the decedent's estate a qualified person, firm, or corporation to serve as independent administrator and request in the application that no other action shall be had in the probate court in relation to the settlement of the decedent's estate other than the return of an inventory, appraisement, and list of claims of the decedent's estate. In such case the probate court shall enter an order granting independent administration and appointing the person, firm, or corporation designated in the application as independent administrator, unless the court finds that it would not be in the best interest of the estate to do so.

(b) The court may not appoint an independent administrator to serve in an intestate administration unless and until the parties seeking appointment of the independent administrator have been determined, through a proceeding to declare heirship under Chapter 202, to constitute all of the decedent's heirs.

#### Sec. 401.004. MEANS OF ESTABLISHING DISTRIBUTEES CONSENT.

(a) This section applies to the creation of an independent administration under Section 401.002 or 401.003.

(b) All distributees shall be served with citation and notice of the application for independent administration unless the distributee waives the issuance or service of citation or enters an appearance in court.

(c) If a distributee is an incapacitated person, the guardian of the person of the distributee may sign the application on behalf of the distributee. If the probate court finds that either the granting of independent administration or the appointment of the

person, firm, or corporation designated in the application as independent executor would not be in the best interest of the incapacitated person, then, notwithstanding anything to the contrary in Section 401.002 or 401.003, the court may not enter an order granting independent administration of the estate. If a distributee who is an incapacitated person has no guardian of the person, the probate court may appoint a guardian ad litem to make application on behalf of the incapacitated person if the court considers such an appointment necessary to protect the interest of the distributees. Alternatively, if the distributee who is an incapacitated person is a minor and has no guardian of the person, the natural guardian or guardians of the minor may consent on the minor's behalf if there is no conflict of interest between the minor and the natural guardian or guardians.

(d) If a trust is created in the decedent's will, the person or class of persons first eligible to receive the income from the trust, when determined as if the trust were to be in existence on the date of the decedent's death, shall, for the purposes of Section 401.002, be considered to be the distributee or distributees on behalf of the trust, and any other trust or trusts coming into existence on the termination of the trust, and are authorized to apply for independent administration on behalf of the trusts without the consent or agreement of the trustee or any other beneficiary of the trust, or the trustee or any beneficiary of any other trust which may come into existence on the termination of the trust. If a trust beneficiary who is considered to be a distributee under this subsection is an incapacitated person, the trustee or cotrustee may file the application or give the consent, provided that the trustee or cotrustee is not the person proposed to serve as the independent executor.

(e) If a life estate is created either in the decedent's will or by law, the life tenant or life tenants, when determined as if the life estate were to commence on the date of the decedent's death, shall, for the purposes of Section 401.002 or 401.003, be considered to be the distributee or distributees on behalf of the entire estate created, and are authorized to apply for independent administration on behalf of the estate without the consent or approval of any remainderman.

(f) If a decedent's will contains a provision that a distributee must survive the decedent by a prescribed period of time in order to take under the decedent's will, then, for the purposes of determining who shall be the distributee under Section 401.002 and under Subsection (c), it shall be presumed that the distributees living at the time of the filing of the application for probate of the decedent's will survived the decedent by the prescribed period.

(g) In the case of all decedents, whether dying testate or intestate, for the purposes of determining who shall be the distributees under Section 401.002 or 401.003 and under Subsection (c), it shall be presumed that no distributee living at the time the application for independent administration is filed shall subsequently disclaim any portion of the distributee's interest in the decedent's estate.

(h) If a distributee of a decedent's estate dies and if by virtue of the distributee's death the distributee's share of the decedent's estate becomes payable to the distributee's estate, the deceased distributee's personal representative may sign the application for independent administration of the decedent's estate under Section 401.002 or 401.003 and under Subsection (c).



Sec. 401.005. BOND; WAIVER OF BOND. (a) If an independent administration of a decedent's estate is created under Section 401.002 or 401.003, then, unless the probate court waives bond on application for waiver, the independent executor shall be required to enter into bond payable to and to be approved by the judge and the judge's successors in a sum that is found by the judge to be adequate under all circumstances, or a bond with one surety in a sum that is found by the judge to be adequate under all circumstances, if the surety is an authorized corporate surety.

(b) This section does not repeal any other section of this title.

Sec. 401.006. GRANTING POWER OF SALE BY AGREEMENT. In a situation in which a decedent does not have a will, or a decedent's will does not contain language authorizing the personal representative to sell real property or contains language that is not sufficient to grant the representative that authority, the court may include in an order appointing an independent executor under Section 401.002 or 401.003 any general or specific authority regarding the power of the independent executor to sell real property that may be consented to by the beneficiaries who are to receive any interest in the real property in the application for independent administration or in their consents to the independent administration. The independent executor, in such event, may sell the real property under the authority granted in the court order without the further consent of those beneficiaries.

Sec. 401.007. NO LIABILITY OF JUDGE. Absent proof of fraud or collusion on the part of a judge, no judge may be held civilly liable for the commission of misdeeds or the omission of any required act of any person, firm, or corporation designated as an independent executor under Section 401.002 or 401.003. Section 351.354 does not apply to the appointment of an independent executor under Section 401.002 or 401.003.

Sec. 401.008. PERSON DECLINING TO SERVE. A person who declines to serve or resigns as independent executor of a decedent's estate may be appointed an executor or administrator of the estate if the estate will be administered and settled under the direction of the court.

## CHAPTER 402. ADMINISTRATION

### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 402.001. GENERAL SCOPE AND EXERCISE OF POWERS. When an independent administration has been created, and the order appointing an independent executor has been entered by the probate court, and the inventory, appraisal, and list of claims has been filed by the independent executor and approved by the court or an affidavit in lieu of the inventory, appraisal, and list of claims has been filed by the independent executor, as long as the estate is represented by an independent executor, further action of any nature may not be had in the probate court except where this title specifically and explicitly provides for some action in the court.

Sec. 402.002. INDEPENDENT EXECUTORS MAY ACT WITHOUT COURT APPROVAL. Unless this title specifically provides otherwise, any action that a personal representative subject to court supervision may take with or without a court order may be taken by an independent executor without a court order. The other provisions of this subtitle are designed to provide additional guidance regarding independent administrations in specified situations, and are not designed to limit by omission or otherwise the application of the general principles set forth in this chapter.

[Sections 402.003-402.050 reserved for expansion]

SUBCHAPTER B. POWER OF SALE

Sec. 402.051. DEFINITION OF INDEPENDENT EXECUTOR. In this subchapter, "independent executor" does not include an independent administrator.

Sec. 402.052. POWER OF SALE OF ESTATE PROPERTY GENERALLY. Unless limited by the terms of a will, an independent executor, in addition to any power of sale of estate property given in the will, and an independent administrator have the same power of sale for the same purposes as a personal representative has in a supervised administration, but without the requirement of court approval. The procedural requirements applicable to a supervised administration do not apply.

Sec. 402.053. PROTECTION OF PERSON PURCHASING ESTATE PROPERTY. (a) A person who is not a devisee or heir is not required to inquire into the power of sale of estate property of the independent executor or independent administrator or the propriety of the exercise of the power of sale if the person deals with the independent executor or independent administrator in good faith and:

(1) a power of sale is granted to the independent executor in the will;

(2) a power of sale is granted under Section 401.006 in the court order appointing the independent executor or independent administrator; or

(3) the independent executor or independent administrator provides an affidavit, executed and sworn to under oath and recorded in the deed records of the county where the property is located, that the sale is necessary or advisable for any of the purposes described in Section 356.251(1).

(b) As to acts undertaken in good faith reliance, the affidavit described by Subsection (a)(3) is conclusive proof, as between a purchaser of property from the estate, and the personal representative of an estate or the heirs and distributees of the estate, with respect to the authority of the independent executor or independent administrator to sell the property. The signature or joinder of a devisee or heir who has an interest in the property being sold as described in this section is not necessary for the purchaser to obtain all right, title, and interest of the estate in the property being sold.

(c) This subchapter does not relieve the independent executor or independent administrator from any duty owed to a devisee or heir in relation, directly or indirectly, to the sale.

Sec. 402.054. NO LIMITATION ON OTHER ACTION. This subchapter does not limit the authority of an independent executor to take any other action without court supervision or approval with respect to estate assets that may take place in a supervised administration, for purposes and within the scope otherwise authorized by this title, including the authority to enter into a lease and to borrow money.

CHAPTER 403. EXEMPTIONS AND ALLOWANCES; CLAIMS

SUBCHAPTER A. EXEMPTIONS AND ALLOWANCES

Sec. 403.001. SETTING ASIDE EXEMPT PROPERTY AND ALLOWANCES. The independent executor shall set aside and deliver to those entitled exempt property and allowances for support, and allowances in lieu of exempt property, as prescribed in this title, to the same extent and result as if the independent executor's actions had been accomplished in, and under orders of, the court.

[Sections 403.002-403.050 reserved for expansion]

SUBCHAPTER B. CLAIMS

Sec. 403.051. DUTY OF INDEPENDENT EXECUTOR. (a) An independent executor, in the administration of an estate, independently of and without application to, or any action in or by the court:

(1) shall give the notices required under Sections 308.051 and 308.053;

(2) may give the notice to an unsecured creditor with a claim for money permitted under Section 308.054 and bar a claim under Section 403.055; and

(3) may approve or reject any claim, or take no action on a claim, and shall classify and pay claims approved or established by suit against the estate in the same order of priority, classification, and proration prescribed in this title.

(b) To be effective, the notice prescribed under Subsection (a)(2) must include, in addition to the other information required by Section 308.054, a statement that a claim may be effectively presented by only one of the methods prescribed by this subchapter.

Sec. 403.052. SECURED CLAIMS FOR MONEY. Within six months after the date letters are granted or within four months after the date notice is received under Section 308.053, whichever is later, a creditor with a claim for money secured by property of the estate must give notice to the independent executor of the creditor's election to have the creditor's claim approved as a matured secured claim to be paid in due course of administration. In addition to giving the notice within this period, a creditor whose claim is secured by real property shall record a notice of the creditor's election under this section in the deed records of the county in which the real property is located. If no election to be a matured secured creditor is made, or the election is made, but not within the prescribed period, or is made within the prescribed period but the creditor has a lien against real property and fails to record notice of the claim in the deed records as required within the prescribed period, the claim shall be a preferred debt and lien against the specific property securing the indebtedness and shall be paid according to the terms of the contract that secured the lien, and the claim may not be asserted against other assets of the estate. The independent executor may pay the claim before maturity if it is determined to be in the best interest of the estate to do so.

Sec. 403.053. MATURED SECURED CLAIMS. (a) A claim approved as a matured secured claim under Section 403.052 remains secured by any lien or security interest against the specific property securing payment of the claim but subordinated to the payment from the property of claims having a higher classification under Section 355.102. However, the secured creditor:

(1) is not entitled to exercise any remedies in a manner that prevents the payment of the higher priority claims and allowances; and

(2) during the administration of the estate, is not entitled to exercise any contractual collection rights, including the power to foreclose, without either the prior written approval of the independent executor or court approval.

(b) Subsection (a) may not be construed to suspend or otherwise prevent a creditor with a matured secured claim from seeking judicial relief of any kind or from executing any judgment against an independent executor. Except with respect to real property, any third party acting in good faith may obtain good title with respect to an

estate asset acquired through a secured creditor's extrajudicial collection rights, without regard to whether the creditor had the right to collect the asset or whether the creditor acted improperly in exercising those rights during an estate administration due to having elected matured secured status.

(c) If a claim approved or established by suit as a matured secured claim is secured by property passing to one or more devisees in accordance with Subchapter G, Chapter 255, the independent executor shall collect from the devisees the amount of the debt and pay that amount to the claimant or shall sell the property and pay out of the sale proceeds the claim and associated expenses of sale consistent with the provisions of Sections 355.153(b), (c), (d), and (e) applicable to court supervised administrations.

Sec. 403.054. PREFERRED DEBT AND LIEN CLAIMS. During an independent administration, a secured creditor whose claim is a preferred debt and lien against property securing the indebtedness under Section 403.052 is free to exercise any judicial or extrajudicial collection rights, including the right to foreclosure and execution; provided, however, that the creditor does not have the right to conduct a nonjudicial foreclosure sale within six months after letters are granted.

Sec. 403.055. CERTAIN UNSECURED CLAIMS; BARRING OF CLAIMS. An unsecured creditor who has a claim for money against an estate and who receives a notice under Section 308.054 shall give to the independent executor notice of the nature and amount of the claim not later than the 120th day after the date the notice is received or the claim is barred.

Sec. 403.056. NOTICES REQUIRED BY CREDITORS. (a) Notice to the independent executor required by Sections 403.052 and 403.055 must be contained in:

(1) a written instrument that is hand-delivered with proof of receipt, or mailed by certified mail, return receipt requested with proof of receipt, to the independent executor or the executor's attorney;

(2) a pleading filed in a lawsuit with respect to the claim; or

(3) a written instrument or pleading filed in the court in which the administration of the estate is pending.

(b) This section does not exempt a creditor who elects matured secured status from the filing requirements of Section 403.052, to the extent those requirements are applicable.

Sec. 403.057. STATUTE OF LIMITATIONS. Except as otherwise provided by Section 16.062, Civil Practice and Remedies Code, the running of the statute of limitations shall be tolled only by a written approval of a claim signed by an independent executor, a pleading filed in a suit pending at the time of the decedent's death, or a suit brought by the creditor against the independent executor. In particular, the presentation of a statement or claim, or a notice with respect to a claim, to an independent executor does not toll the running of the statute of limitations with respect to that claim.

Sec. 403.058. OTHER CLAIM PROCEDURES GENERALLY DO NOT APPLY. Except as otherwise provided by this subchapter, the procedural provisions of this title governing creditor claims in supervised administrations do not apply to independent administrations. By way of example, but not as a limitation:

(1) Sections 355.064 and 355.066 do not apply to independent administrations, and consequently a creditor's claim may not be barred solely because the creditor failed to file a suit not later than the 90th day after the date an independent executor rejected the claim or with respect to a claim for which the independent executor takes no action; and

(2) Sections 355.156, 355.157, 355.158, 355.159, and 355.160 do not apply to independent administrations.

Sec. 403.0585. LIABILITY OF INDEPENDENT EXECUTOR FOR PAYMENT OF A CLAIM. An independent executor, in the administration of an estate, may pay at any time and without personal liability a claim for money against the estate to the extent approved and classified by the independent executor if:

(1) the claim is not barred by limitations; and

(2) at the time of payment, the independent executor reasonably believes the estate will have sufficient assets to pay all claims against the estate.

Sec. 403.059. ENFORCEMENT OF CLAIMS BY SUIT. Any person having a debt or claim against the estate may enforce the payment of the same by suit against the independent executor; and, when judgment is recovered against the independent executor, the execution shall run against the estate of the decedent in the possession of the independent executor that is subject to the debt. The independent executor shall not be required to plead to any suit brought against the executor for money until after six months after the date that an independent administration was created and the order appointing the executor was entered by the probate court.

Sec. 403.060. REQUIRING HEIRS TO GIVE BOND. When an independent administration is created and the order appointing an independent executor is entered by the probate court, any person having a debt against the estate may, by written complaint filed in the probate court in which the order was entered, cause all distributees of the estate, heirs at law, and other persons entitled to any portion of the estate under the will, if any, to be cited by personal service to appear before the court and execute a bond for an amount equal to the amount of the creditor's claim or the full value of the estate, as shown by the inventory and list of claims, whichever is smaller. The bond must be payable to the judge, and the judge's successors, and be approved by the judge, and conditioned that all obligors shall pay all debts that shall be established against the estate in the manner provided by law. On the return of the citation served, unless a person so entitled to any portion of the estate, or some of them, or some other person for them, shall execute the bond to the satisfaction of the probate court, the estate shall be administered and settled under the direction of the probate court as other estates are required to be settled. If the bond is executed and approved, the independent administration shall proceed. Creditors of the estate may sue on the bond, and shall be entitled to judgment on the bond for the amount of their debt, or they may have their action against those in possession of the estate.

#### CHAPTER 404. ACCOUNTINGS, SUCCESSORS, AND OTHER REMEDIES

Sec. 404.001. ACCOUNTING. (a) At any time after the expiration of 15 months after the date that an independent administration was created and the order appointing an independent executor was entered by the probate court, any person interested in the estate may demand an accounting from the independent executor.

The independent executor shall furnish to the person or persons making the demand an exhibit in writing, sworn and subscribed by the independent executor, setting forth in detail:

(1) the property belonging to the estate that has come into the executor's possession as executor;

(2) the disposition that has been made of the property described by Subdivision (1);

(3) the debts that have been paid;

(4) the debts and expenses, if any, still owing by the estate;

(5) the property of the estate, if any, still remaining in the executor's possession;

(6) other facts as may be necessary to a full and definite understanding of the exact condition of the estate; and

(7) the facts, if any, that show why the administration should not be closed and the estate distributed.

(a-1) Any other interested person shall, on demand, be entitled to a copy of any exhibit or accounting that has been made by an independent executor in compliance with this section.

(b) Should the independent executor not comply with a demand for an accounting authorized by this section within 60 days after receipt of the demand, the person making the demand may compel compliance by an action in the probate court. After a hearing, the court shall enter an order requiring the accounting to be made at such time as it considers proper under the circumstances.

(c) After an initial accounting has been given by an independent executor, any person interested in an estate may demand subsequent periodic accountings at intervals of not less than 12 months, and such subsequent demands may be enforced in the same manner as an initial demand.

(d) The right to an accounting accorded by this section is cumulative of any other remedies which persons interested in an estate may have against the independent executor of the estate.

Sec. 404.002. REQUIRING INDEPENDENT EXECUTOR TO GIVE BOND. When it has been provided by will, regularly probated, that an independent executor appointed by the will shall not be required to give bond for the management of the estate devised by the will, or the independent executor is not required to give bond because bond has been waived by court order as authorized under Section 401.005, then the independent executor may be required to give bond, on proper proceedings had for that purpose as in the case of personal representatives in a supervised administration, if it be made to appear at any time that the independent executor is mismanaging the property, or has betrayed or is about to betray the independent executor's trust, or has in some other way become disqualified.

Sec. 404.003. REMOVAL OF INDEPENDENT EXECUTOR. (a) The probate court, on its own motion or on motion of any interested person, after the independent executor has been cited by personal service to answer at a time and place fixed in the notice, may remove an independent executor when:

(1) the independent executor fails to return within 90 days after qualification, unless such time is extended by order of the court, either an inventory of the property of the estate and list of claims that have come to the independent executor's knowledge or an affidavit in lieu of the inventory, appraisal, and list of claims;

(2) sufficient grounds appear to support belief that the independent executor has misapplied or embezzled, or that the independent executor is about to misapply or embezzle, all or any part of the property committed to the independent executor's care;

(3) the independent executor fails to make an accounting which is required by law to be made;

(4) the independent executor fails to timely file the affidavit or certificate required by Section 308.004;

(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 incapable of 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.

(b) The probate court, on its own motion or on the motion of any interested person, and after the independent executor has been cited by certified mail, return receipt requested, to answer at a time and place stated in the citation, may remove an independent executor who is appointed under the provisions of this code if the independent executor:

(1) subject to Subsection (c)(1), fails to qualify in the manner and period required by law;

(2) subject to Subsection (c)(2), fails to return not later than the 90th day after the date the independent executor qualifies an inventory of the estate property and a list of claims that have come to the independent executor's knowledge or an affidavit in lieu of the inventory, appraisal, and list of claims, unless the period is extended by court order;

(3) cannot be served with notices or other processes because the:

(A) independent executor's location is unknown;

(B) independent executor is eluding service; or

(C) independent executor is a nonresident of this state who does not have a resident agent to accept service of process in a probate proceeding or other action relating to the estate; or

(4) subject to Subsection (c)(3), 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 independent executor's care.

(c) The probate court may remove an independent executor:

(1) under Subsection (b)(1) only if the independent executor fails to qualify on or before the 30th day after the date the court sends a notice by certified mail, return receipt requested, to the independent executor's last known address and to the

last known address of the independent executor's attorney, notifying the independent executor and attorney of the court's intent to remove the independent executor for failure to qualify in the manner and period required by law;

(2) under Subsection (b)(2) only if the independent executor fails to file an inventory and list of claims or an affidavit in lieu of the inventory, appraisal, and list of claims as required by law on or before the 30th day after the date the court sends a notice by certified mail, return receipt requested, to the independent executor's last known address and to the last known address of the independent executor's attorney, notifying the independent executor and attorney of the court's intent to remove the independent executor for failure to file the inventory and list of claims or affidavit; and

(3) under Subsection (b)(4) only on presentation of clear and convincing evidence given under oath of the misapplication, embezzlement, or removal from this state of property as described by that subdivision.

(d) The order of removal shall state the cause of removal and shall direct by order the disposition of the assets remaining in the name or under the control of the removed executor. The order of removal shall require that letters issued to the removed executor shall be surrendered and that all letters shall be canceled of record. If an independent executor is removed by the court under this section, the court may, on application, appoint a successor independent executor as provided by Section 404.005.

(e) An independent executor who defends an action for the independent executor's removal in good faith, whether successful or not, shall be allowed out of the estate the independent executor's necessary expenses and disbursements, including reasonable attorney's fees, in the removal proceedings.

(f) Costs and expenses incurred by the party seeking removal that are incident to removal of an independent executor appointed without bond, including reasonable attorney's fees and expenses, may be paid out of the estate.

Sec. 404.004. POWERS OF AN ADMINISTRATOR WHO SUCCEEDS AN INDEPENDENT EXECUTOR. (a) Whenever a person has died, or shall die, testate, owning property in this state, and the person's will has been or shall be admitted to probate by the court, and the probated will names an independent executor or executors, or trustees acting in the capacity of independent executors, to execute the terms and provisions of that will, and the will grants to the independent executor, or executors, or trustees acting in the capacity of independent executors, the power to raise or borrow money and to mortgage, and the independent executor, or executors, or trustees, have died or shall die, resign, fail to qualify, or be removed from office, leaving unexecuted parts or portions of the will of the testator, and an administrator with the will annexed is appointed by the probate court, and an administrator's bond is filed and approved by the court, then in all such cases, the court may, in addition to the powers conferred on the administrator under other provisions of the laws of this state, authorize, direct, and empower the administrator to do and perform the acts and deeds, clothed with the rights, powers, authorities, and privileges, and subject to the limitations, set forth in the subsequent provisions of this section.



(b) The court, on application, citation, and hearing, may, by its order, authorize, direct, and empower the administrator to raise or borrow such sums of money and incur such obligations and debts as the court shall, in its said order, direct, and to renew and extend same from time to time, as the court, on application and order, shall provide; and, if authorized by the court's order, to secure such loans, obligations, and debts, by pledge or mortgage on property or assets of the estate, real, personal, or mixed, on such terms and conditions, and for such duration of time, as the court shall consider to be in the best interests of the estate, and by its order shall prescribe; and all such loans, obligations, debts, pledges, and mortgages shall be valid and enforceable against the estate and against the administrator in the administrator's official capacity.

(c) The court may order and authorize the administrator to have and exercise the powers and privileges set forth in Subsection (a) or (b) only to the extent that same are granted to or possessed by the independent executor, or executors, or trustees acting in the capacity of independent executors, under the terms of the probated will of the decedent, and then only in such cases as it appears, at the hearing of the application, that at the time of the appointment of the administrator, there are outstanding and unpaid obligations and debts of the estate, or of the independent executor, or executors, or trustees, chargeable against the estate, or unpaid expenses of administration, or when the court appointing the administrator orders the business of the estate to be carried on and it becomes necessary, from time to time, under orders of the court, for the administrator to borrow money and incur obligations and indebtedness in order to protect and preserve the estate.

(d) The court, in addition, may, on application, citation, and hearing, order, authorize, and empower the administrator to assume, exercise, and discharge, under the orders and directions of the court, made from time to time, all or such part of the rights, powers, and authorities vested in and delegated to, or possessed by, the independent executor, or executors, or trustees acting in the capacity of independent executors, under the terms of the will of the decedent, as the court finds to be in the best interests of the estate and shall, from time to time, order and direct.

(e) The granting to the administrator by the court of some, or all, of the powers and authorities set forth in this section shall be on application filed by the administrator with the county clerk, setting forth such facts as, in the judgment of the administrator, require the granting of the power or authority requested.

(f) On the filing of an application under Subsection (e), the clerk shall issue citation to all persons interested in the estate, stating the nature of the application, and requiring those persons to appear on the return day named in such citation and show cause why the application should not be granted, should they choose to do so. The citation shall be served by posting.

(g) The court shall hear the application and evidence on the application, on or after the return day named in the citation, and, if satisfied a necessity exists and that it would be in the best interests of the estate to grant the application in whole or in part, the court shall so order; otherwise, the court shall refuse the application.

**Sec. 404.005. COURT-APPOINTED SUCCESSOR INDEPENDENT EXECUTOR.** (a) If the will of a person who dies testate names an independent executor who, having qualified, fails for any reason to continue to serve, or is removed for cause by the court, and the will does not name a successor independent

executor or if each successor executor named in the will fails for any reason to qualify as executor or indicates by affidavit filed with the application for an order continuing independent administration the successor executor's inability or unwillingness to serve as successor independent executor, all of the distributees of the decedent as of the filing of the application for an order continuing independent administration may apply to the probate court for the appointment of a qualified person, firm, or corporation to serve as successor independent executor. If the probate court finds that continued administration of the estate is necessary, the court shall enter an order continuing independent administration and appointing the person, firm, or corporation designated in the application as successor independent executor, unless the probate court finds that it would not be in the best interest of the estate to do so. The successor independent executor shall serve with all of the powers and privileges granted to the successor's predecessor independent executor.

(b) If a distributee described in this section is an incapacitated person, the guardian of the person of the distributee may sign the application on behalf of the distributee. If the probate court finds that either the continuing of independent administration or the appointment of the person, firm, or corporation designated in the application as successor independent executor would not be in the best interest of the incapacitated person, then, notwithstanding Subsection (a), the court may not enter an order continuing independent administration of the estate. If the distributee is an incapacitated person and has no guardian of the person, the court may appoint a guardian ad litem to make application on behalf of the incapacitated person if the probate court considers such an appointment necessary to protect the interest of that distributee.

(c) If a trust is created in the decedent's will, the person or class of persons first eligible to receive the income from the trust, determined as if the trust were to be in existence on the date of the filing of the application for an order continuing independent administration, shall, for the purposes of this section, be considered to be the distributee or distributees on behalf of the trust, and any other trust or trusts coming into existence on the termination of the trust, and are authorized to apply for an order continuing independent administration on behalf of the trust without the consent or agreement of the trustee or any other beneficiary of the trust, or the trustee or any beneficiary of any other trust which may come into existence on the termination of the trust.

(d) If a life estate is created either in the decedent's will or by law, and if a life tenant is living at the time of the filing of the application for an order continuing independent administration, then the life tenant or life tenants, determined as if the life estate were to commence on the date of the filing of the application for an order continuing independent administration, shall, for the purposes of this section, be considered to be the distributee or distributees on behalf of the entire estate created, and are authorized to apply for an order continuing independent administration on behalf of the estate without the consent or approval of any remainderman.

(e) If a decedent's will contains a provision that a distributee must survive the decedent by a prescribed period of time in order to take under the decedent's will, for the purposes of determining who shall be the distributee under this section, it shall be

presumed that the distributees living at the time of the filing of the application for an order continuing independent administration of the decedent's estate survived the decedent for the prescribed period.

(f) In the case of all decedents, for the purposes of determining who shall be the distributees under this section, it shall be presumed that no distributee living at the time the application for an order continuing independent administration of the decedent's estate is filed shall subsequently disclaim any portion of the distributee's interest in the decedent's estate.

(g) If a distributee of a decedent's estate should die, and if by virtue of the distributee's death the distributee's share of the decedent's estate shall become payable to the distributee's estate, then the deceased distributee's personal representative may sign the application for an order continuing independent administration of the decedent's estate under this section.

(h) If a successor independent executor is appointed under this section, then, unless the probate court shall waive bond on application for waiver, the successor independent executor shall be required to enter into bond payable to and to be approved by the judge and the judge's successors in a sum that is found by the judge to be adequate under all circumstances, or a bond with one surety in an amount that is found by the judge to be adequate under all circumstances, if the surety is an authorized corporate surety.

(i) Absent proof of fraud or collusion on the part of a judge, the judge may not be held civilly liable for the commission of misdeeds or the omission of any required act of any person, firm, or corporation designated as a successor independent executor under this section. Section 351.354 does not apply to an appointment of a successor independent executor under this section.

#### CHAPTER 405. CLOSING AND DISTRIBUTIONS

Sec. 405.001. ACCOUNTING AND DISTRIBUTION. (a) In addition to or in lieu of the right to an accounting provided by Section 404.001, at any time after the expiration of two years after the date the court clerk first issues letters testamentary or of administration to any personal representative of an estate, a person interested in the estate then subject to independent administration may petition the court for an accounting and distribution. The court may order an accounting to be made with the court by the independent executor at such time as the court considers proper. The accounting shall include the information that the court considers necessary to determine whether any part of the estate should be distributed.

(b) On receipt of the accounting and, after notice to the independent executor and a hearing, unless the court finds a continued necessity for administration of the estate, the court shall order its distribution by the independent executor to the distributees entitled to the property. If the court finds there is a continued necessity for administration of the estate, the court shall order the distribution of any portion of the estate that the court finds should not be subject to further administration by the independent executor. If any portion of the estate that is ordered to be distributed is incapable of distribution without prior partition or sale, the court shall order partition and distribution, or sale, in the manner provided for the partition and distribution of property incapable of division in supervised estates.

(c) If all the property in the estate is ordered distributed by the court and the estate is fully administered, the court may also order the independent executor to file a final account with the court and may enter an order closing the administration and terminating the power of the independent executor to act as executor.

Sec. 405.002. RECEIPTS AND RELEASES FOR DISTRIBUTIONS BY INDEPENDENT EXECUTOR. (a) An independent executor may not be required to deliver tangible or intangible personal property to a distributee unless the independent executor receives, at or before the time of delivery of the property, a signed receipt or other proof of delivery of the property to the distributee.

(b) An independent executor may not require a waiver or release from the distributee as a condition of delivery of property to a distributee.

Sec. 405.003. JUDICIAL DISCHARGE OF INDEPENDENT EXECUTOR. (a) After an estate has been administered and if there is no further need for an independent administration of the estate, the independent executor of the estate may file an action for declaratory judgment under Chapter 37, Civil Practice and Remedies Code, seeking to discharge the independent executor from any liability involving matters relating to the past administration of the estate that have been fully and fairly disclosed.

(b) On the filing of an action under this section, each beneficiary of the estate shall be personally served with citation, except for a beneficiary who has waived the issuance and service of citation.

(c) In a proceeding under this section, the court may require the independent executor to file a final account that includes any information the court considers necessary to adjudicate the independent executor's request for a discharge of liability. The court may audit, settle, or approve a final account filed under this subsection.

(d) On or before filing an action under this section, the independent executor must distribute to the beneficiaries of the estate any of the remaining assets or property of the estate that remains in the independent executor's possession after all of the estate's debts have been paid, except for a reasonable reserve of assets that the independent executor may retain in a fiduciary capacity pending court approval of the final account. The court may review the amount of assets on reserve and may order the independent executor to make further distributions under this section.

(e) Except as ordered by the court, the independent executor is entitled to pay from the estate legal fees, expenses, or other costs incurred in relation to a proceeding for judicial discharge filed under this section. The independent executor shall be personally liable to refund any amount of such fees, expenses, or other costs not approved by the court as a proper charge against the estate.

Sec. 405.004. CLOSING INDEPENDENT ADMINISTRATION BY CLOSING REPORT OR NOTICE OF CLOSING ESTATE. When all of the debts known to exist against the estate have been paid, or when they have been paid so far as the assets in the independent executor's possession will permit, when there is no pending litigation, and when the independent executor has distributed to the distributees entitled to the estate all assets of the estate, if any, remaining after payment of debts, the independent executor may file with the court a closing report or a notice of closing of the estate.

Sec. 405.005. CLOSING REPORT. An independent executor may file a closing report verified by affidavit that:

(1) shows:

(A) the property of the estate that came into the independent executor's possession;

(B) the debts that have been paid;

(C) the debts, if any, still owing by the estate;

(D) the property of the estate, if any, remaining on hand after payment of debts; and

(E) the names and addresses of the distributees to whom the property of the estate, if any, remaining on hand after payment of debts has been distributed; and

(2) includes signed receipts or other proof of delivery of property to the distributees named in the closing report if the closing report reflects that there was property remaining on hand after payment of debts.

Sec. 405.006. NOTICE OF CLOSING ESTATE. (a) Instead of filing a closing report under Section 405.005, an independent executor may file a notice of closing estate verified by affidavit that states:

(1) that all debts known to exist against the estate have been paid or have been paid to the extent permitted by the assets in the independent executor's possession;

(2) that all remaining assets of the estate, if any, have been distributed; and

(3) the names and addresses of the distributees to whom the property of the estate, if any, remaining on hand after payment of debts has been distributed.

(b) Before filing the notice, the independent executor shall provide to each distributee of the estate a copy of the notice of closing estate. The notice of closing estate filed by the independent executor must include signed receipts or other proof that all distributees have received a copy of the notice of closing estate.

Sec. 405.007. EFFECT OF FILING CLOSING REPORT OR NOTICE OF CLOSING ESTATE. (a) The independent administration of an estate is considered closed 30 days after the date of the filing of a closing report or notice of closing estate unless an interested person files an objection with the court within that time. If an interested person files an objection within the 30-day period, the independent administration of the estate is closed when the objection has been disposed of or the court signs an order closing the estate.

(b) The closing of an independent administration by filing of a closing report or notice of closing estate terminates the power and authority of the independent executor, but does not relieve the independent executor from liability for any mismanagement of the estate or from liability for any false statements contained in the report or notice.

(c) When a closing report or notice of closing estate has been filed, persons dealing with properties of the estate, or with claims against the estate, shall deal directly with the distributees of the estate; and the acts of the distributees with respect to the properties or claims shall in all ways be valid and binding as regards the persons with whom they deal, notwithstanding any false statements made by the independent executor in the report or notice.

(d) If the independent executor is required to give bond, the independent executor's filing of the closing report and proof of delivery, if required, automatically releases the sureties on the bond from all liability for the future acts of the principal. The filing of a notice of closing estate does not release the sureties on the bond of an independent executor.

(e) An independent executor's closing report or notice of closing estate shall constitute sufficient legal authority to all persons owing any money, having custody of any property, or acting as registrar or transfer agent or trustee of any evidence of interest, indebtedness, property, or right that belongs to the estate, for payment or transfer without additional administration to the distributees described in the will as entitled to receive the particular asset or who as heirs at law are entitled to receive the asset. The distributees described in the will as entitled to receive the particular asset or the heirs at law entitled to receive the asset may enforce their right to the payment or transfer by suit.

Sec. 405.008. PARTITION AND DISTRIBUTION OR SALE OF PROPERTY INCAPABLE OF DIVISION. If the will does not distribute the entire estate of the testator or provide a means for partition of the estate, or if no will was probated, the independent executor may, but may not be required to, petition the probate court for either a partition and distribution of the estate or an order of sale of any portion of the estate alleged by the independent executor and found by the court to be incapable of a fair and equal partition and distribution, or both. The estate or portion of the estate shall either be partitioned and distributed or sold, or both, in the manner provided for the partition and distribution of property and the sale of property incapable of division in supervised estates.

Sec. 405.009. CLOSING INDEPENDENT ADMINISTRATION ON APPLICATION BY DISTRIBUTE. (a) At any time after an estate has been fully administered and there is no further need for an independent administration of the estate, any distributee may file an application to close the administration; and, after citation on the independent executor, and on hearing, the court may enter an order:

(1) requiring the independent executor to file a closing report meeting the requirements of Section 405.005;

(2) closing the administration;

(3) terminating the power of the independent executor to act as independent executor; and

(4) releasing the sureties on any bond the independent executor was required to give from all liability for the future acts of the principal.

(b) The order of the court closing the independent administration shall constitute sufficient legal authority to all persons owing any money, having custody of any property, or acting as registrar or transfer agent or trustee of any evidence of interest, indebtedness, property, or right that belongs to the estate, for payment or transfer without additional administration to the distributees described in the will as entitled to receive the particular asset or who as heirs at law are entitled to receive the asset. The distributees described in the will as entitled to receive the particular asset or the heirs at law entitled to receive the asset may enforce their right to the payment or transfer by suit.

Sec. 405.010. ISSUANCE OF LETTERS. At any time before the authority of an independent executor has been terminated in the manner set forth in this subtitle, the clerk shall issue such number of letters testamentary as the independent executor shall request.

Sec. 405.011. RIGHTS AND REMEDIES CUMULATIVE. The rights and remedies conferred by this chapter are cumulative of other rights and remedies to which a person interested in the estate may be entitled under law.

Sec. 405.012. CLOSING PROCEDURES NOT REQUIRED. An independent executor is not required to close the independent administration of an estate under Section 405.003 or Sections 405.004 through 405.007.

SECTION 2.60. Subsection (a), Section 551.001, Estates Code, as effective January 1, 2014, is amended to read as follows:

(a) The court, by written order, shall require the executor or administrator of an estate to pay to the comptroller as provided by this subchapter the share of that estate of a person entitled to that share who does not demand the share, including any portion deposited in an account in the court's registry under Section 362.011(b), from the executor or administrator within six months after the date of, as applicable:

(1) a court order approving the report of the commissioners of partition made under Section 360.154; or

(2) the settlement of the final account of the executor or administrator.

SECTION 2.61. (a) Sections 202.003 and 255.201, Estates Code, as effective January 1, 2014, are repealed.

(b) The following sections of the Texas Probate Code are repealed:

(1) Sections 4D, 4H, 15, 34A, 37A, 48(a), 49, 53C(a) and (b), 59, 64, 67, 77, 81(a), 83(a), 84, 89A(a), 128A, 143, 227, 250, 256, 260, 271(a) and (b), 286, 293, 385(a), 407, 408(b), (c), and (d), 427, 436, 439, 452, 471, 472, and 473, as amended by Article 1 of this Act; and

(2) Sections 6A, 6B, 6C, 6D, 8A, 8B, 48(d), 145A, 145B, 145C, and 254, as added by Article 1 of this Act.

(c) Notwithstanding the transfer of Sections 6 and 8, Texas Probate Code, to the Estates Code and redesignation as Sections 6 and 8 of that code effective January 1, 2014, by Section 2, Chapter 680 (H.B. 2502), Acts of the 81st Legislature, Regular Session, 2009, Sections 6 and 8, Texas Probate Code, as amended by Article 1 of this Act, are repealed.

(d) Notwithstanding the transfer of Sections 145 through 154A, Texas Probate Code, to the Estates Code and redesignation as Sections 145 through 154A of that code effective January 1, 2014, by Section 3, Chapter 680 (H.B. 2502), Acts of the 81st Legislature, Regular Session, 2009, the following sections are repealed:

(1) Sections 145, 146, 149B, 149C, and 151, Texas Probate Code, as amended by Article 1 of this Act; and

(2) Sections 147, 148, 149, 149A, 149D, 149E, 149F, 149G, 150, 152, 153, 154, and 154A, Texas Probate Code.

SECTION 2.62. This article takes effect January 1, 2014.

ARTICLE 3. CONFLICTS; EFFECTIVE DATE

SECTION 3.01. To the extent of any conflict, this Act prevails over another Act of the 82nd Legislature, Regular Session, 2011, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 3.02. Except as otherwise provided by this Act, this Act takes effect September 1, 2011.

The Conference Committee Report on **SB 1198** was filed with the Secretary of the Senate on Saturday, May 28, 2011.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 2439**

Senator Watson submitted the following Conference Committee Report:

Austin, Texas  
May 28, 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 2439** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

WATSON  
CARONA  
ELLIS  
JACKSON  
WHITMIRE

On the part of the Senate

GALLEGO  
HARLESS  
HILDERBRAN  
MARTINEZ  
MENENDEZ

On the part of the House

The Conference Committee Report on **HB 2439** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 1130**

Senator Hegar submitted the following Conference Committee Report:

Austin, Texas  
May 27, 2011

Honorable David Dewhurst  
President of the Senate



Honorable Joe Straus  
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 1130** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

HEGAR  
BIRDWELL  
DEUELL  
ELTIFE  
WENTWORTH  
On the part of the Senate

KLEINSCHMIDT  
SHEETS  
LEWIS  
QUINTANILLA  
On the part of the House

A BILL TO BE ENTITLED  
AN ACT

relating to the exception from required public disclosure of certain records of an appraisal district.

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

SECTION 1. Subsection (e), Section 552.149, Government Code, is amended to read as follows:

(e) This section applies to information described by Subsections (a), (c), and (d) and to an item of information or comparable sales data described by Subsection (b) only if the information, item of information, or comparable sales data relates to real property that is located in a county having a population of [~~20,000 or~~] more than 50,000.

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 Conference Committee Report on **SB 1130** was filed with the Secretary of the Senate on Saturday, May 28, 2011.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 1717**

Senator Duncan submitted the following Conference Committee Report:

Austin, Texas  
May 28, 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 1717** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

DUNCAN  
HARRIS  
HINOJOSA  
HUFFMAN  
URESTI

On the part of the Senate

LEWIS  
HARTNETT  
JACKSON  
RAYMOND  
THOMPSON

On the part of the House

A BILL TO BE ENTITLED  
AN ACT

relating to the operation and administration of, and practice and procedures in courts in, the judicial branch of state government.

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

ARTICLE 1. APPELLATE COURT PROVISIONS

SECTION 1.01. Subsection (b), Section 22.002, Government Code, is amended to read as follows:

(b) The supreme court or, in vacation, a justice of the supreme court may issue a writ of mandamus to compel a statutory county court judge, a statutory probate court judge, or a district judge to proceed to trial and judgment in a case ~~[agreeable to the principles and usages of law, returnable to the supreme court on or before the first day of the term, or during the session of the term, or before any justice of the supreme court as the nature of the case requires].~~

SECTION 1.02. (a) Section 24.007, Property Code, is amended to read as follows:

Sec. 24.007. APPEAL. (a) ~~[A final judgment of a county court in an eviction suit may not be appealed on the issue of possession unless the premises in question are being used for residential purposes only.]~~ A judgment of a county court in an eviction suit may not under any circumstances be stayed pending appeal unless, within 10 days of the signing of the judgment, the appellant files a supersedeas bond in an amount set by the county court. In setting the supersedeas bond the county court shall provide protection for the appellee to the same extent as in any other appeal, taking into consideration the value of rents likely to accrue during appeal, damages which may occur as a result of the stay during appeal, and other damages or amounts as the court may deem appropriate.

(b) Notwithstanding any other law, an appeal may be taken from a final judgment of a county court, statutory county court, statutory probate court, or district court in an eviction suit.

(b) The change in law made by this section applies to an appeal of a final judgment rendered on or after the effective date of this section. An appeal of a final judgment rendered before the effective date of this section is governed by the law in effect on the date the judgment was rendered, and the former law is continued in effect for that purpose.

## ARTICLE 2. GENERAL PROVISIONS FOR DISTRICT COURTS

SECTION 2.01. Section 24.002, Government Code, is amended to read as follows:

Sec. 24.002. ASSIGNMENT OF JUDGE OR TRANSFER OF CASE ON RECUSAL [SUBSTITUTE JUDGES]. If a district judge determines on the judge's own motion that the judge should not sit in a case pending in the judge's court because the judge is disqualified or otherwise should recuse himself or herself, the judge shall enter a recusal order, request the presiding judge of that administrative judicial region to assign another judge to sit, and take no further action in the case except for good cause stated in the order in which the action is taken. A change of venue is not necessary because of the disqualification of a district judge in a case or proceeding pending in the judge's [his] court[~~-, but the judge shall immediately certify his disqualification to the governor. The governor shall designate a district judge of another district to exchange benches with the disqualified judge to try the case. The governor shall notify both judges of his designation, and the judges shall exchange benches. If the judges are prevented from exchanging benches, the parties or their counsels may agree on an attorney of the court for the trial of the case. The district judge or special judge shall certify to the governor the fact of a failure of the parties or their counsels to agree on an attorney, and the governor shall appoint a person legally qualified to act as judge in the trial of the case.~~].

SECTION 2.02. Sections 24.003 and 24.007, Government Code, are amended to read as follows:

Sec. 24.003. TRANSFER OF CASES; EXCHANGE OF BENCHES [SUBSTITUTE JUDGES IN CERTAIN COUNTIES]. (a) This section applies only to [civil cases in] counties with two [five] or more district courts.

(b) Unless provided otherwise by the local rules of administration, a district judge in the county may:

(1) transfer any civil or criminal case or proceeding on the court's docket to the docket of another district court in the county;

(2) hear and determine any case or proceeding pending in another district court in the county without having the case transferred;

(3) sit for another district court in the county and hear and determine any case or proceeding pending in that court;

(4) temporarily exchange benches with the judge of another district court in the county;

(5) try different cases in the same court at the same time; and

(6) occupy the judge's own courtroom or the courtroom of another district court in the county.

(c) If a district judge in the county is sick or otherwise absent, another district judge in the county may hold court for the judge.

(d) A district judge in the county may hear and determine any part or question of any case or proceeding pending in any of the district courts, and any other district judge may complete the hearing and render judgment in the case or proceeding. A district judge may hear and determine motions, including motions for new trial, petitions for injunction, applications for the appointment of a receiver, interventions, pleas in abatement, dilatory pleas, and all preliminary matters, questions, and

proceedings, and may enter judgment or order on them in the court in which the case or proceeding is pending without transferring the case or proceeding. The district judge in whose court the matter is pending may proceed to hear, complete, and determine the matter, or all or any part of another matter, and render a final judgment. A district judge may issue a restraining order or injunction that is returnable to any other district court.

(e) A judgment or order shall be entered in the minutes of the court in which the case is pending.

(f) This section does not limit the powers of a district judge when acting for another judge by exchange of benches or otherwise ~~[If a district judge is disqualified in a case pending in his court and his disqualification is certified to the governor, the governor may require any other district judge in the county to exchange benches with the disqualified judge.]~~

~~[(e) If a district judge is absent, sick, or disqualified, any of the district judges in the county may hold court for him or may transfer a pending case to the court of any other district judge in the county].~~

Sec. 24.007. JURISDICTION. (a) The district court has the jurisdiction provided by Article V, Section 8, of the Texas Constitution.

(b) A district court has original jurisdiction of a civil matter in which the amount in controversy is more than \$500, exclusive of interest.

SECTION 2.03. Subsection (a), Section 24.012, Government Code, is amended to read as follows:

(a) Notwithstanding any other law, each ~~[Each]~~ district ~~[and criminal district]~~ court holds in each county in the judicial district ~~[at least two]~~ terms that commence on the first Mondays in January and July of ~~[court]~~ each year ~~[in each county in the district]~~. To the extent of a conflict between this subsection and a specific provision relating to a particular judicial district, this section controls.

SECTION 2.04. Subchapter A, Chapter 24, Government Code, is amended by adding Sections 24.023, 24.024, 24.025, 24.026, 24.027, 24.028, 24.029, 24.030, and 24.031 to read as follows:

Sec. 24.023. OBLIGATIONS; BONDS. (a) When a case is transferred from one court to another, all processes, writs, bonds, recognizances, and other obligations issued by the transferring court are returnable to the court to which the case is transferred as if originally issued by that court.

(b) The obligees in all bonds and recognizances taken in and for a court from which a case is transferred, and all witnesses summoned to appear in a district court from which a case is transferred, are required to appear before the court to which the case is transferred as if the bond, recognizance, or summons was taken in or for that court.

Sec. 24.024. FILING AND DOCKETING CASES. In a county with two or more district courts, the district judges may adopt rules governing the filing and numbering of cases, the assignment of cases for trial, and the distribution of the work of the courts as in their discretion they consider necessary or desirable for the orderly dispatch of the business of the courts.

Sec. 24.025. SUPPLEMENTAL COMPENSATION. (a) Unless otherwise provided by this subchapter, all district judges in a county are entitled to equal amounts of supplemental compensation from the county.

(b) A district judge is entitled to an amount of supplemental compensation for serving on the juvenile board of a county that is equal to the amount other judges serving on the juvenile board receive.

Sec. 24.026. APPOINTMENT OF INITIAL JUDGE. On the creation of a new judicial district, the initial vacancy in the office of district judge is filled in accordance with Section 28, Article V, Texas Constitution.

Sec. 24.027. GRAND AND PETIT JURORS. All grand and petit jurors selected in a county before a new district court is created or the composition of an existing district court is modified by an amendment to this chapter are considered to be selected for the new or modified district court, as applicable.

Sec. 24.028. CASES TRANSFERRED. If by an amendment to this chapter a county is removed from the composition of an existing judicial district and added to another existing or new judicial district, all cases and proceedings from that county that are pending in the district court of the judicial district from which the county was removed are transferred to the district court of the judicial district to which the county is added. The judge of each affected district court shall sign the proper orders in connection with the transfer.

Sec. 24.029. PROCESSES, WRITS, AND OTHER OBLIGATIONS REMAIN VALID. (a) If by an amendment to this chapter a county is removed from the composition of an existing judicial district and added to another existing or new judicial district, or if an amendment to this chapter changes the time or place at which the terms of court are held, all processes, writs, bonds, recognizances, and other obligations issued from and made returnable to that court before the effective date of the transfer or other change are returnable as provided by this subsection. An obligation issued from the affected court is returnable to another district court in the county on the date that court directs, but may not be made returnable on a date that is earlier than the date on which the obligation was originally returnable. The obligations are legal and valid as if the obligations had been made returnable to the issuing court.

(b) The obligees in all appearance bonds and recognizances taken in and for a district court of a county before the effective date of an amendment to this chapter, and all witnesses summoned to appear before that district court under laws existing before the effective date of an amendment to this chapter, are required to appear at another district court in the county on the date that court directs, but may not be required to appear on a date that is earlier than the date on which the obligees or witnesses were originally required to appear.

Sec. 24.030. LOCATION OF COURT. (a) A district court shall sit in the county seat for a jury trial in a civil case. The commissioners court of the county may authorize a district court to sit in any municipality within the county to hear and determine nonjury trials in civil cases and to hear and determine motions, arguments, and other matters not heard before a jury in a civil case that is within the court's jurisdiction.

(b) The district clerk or the clerk's deputy serves as clerk of the court when a court sits in a municipality other than the municipality that is the county seat and may transfer:

(1) all necessary books, minutes, records, and papers to that municipality while the court is in session there; and

(2) the books, minutes, records, and papers back to the clerk's office in the county seat at the end of each session.

(c) If the commissioners court authorizes a district court to sit in a municipality other than the municipality that is the county seat, the commissioners court shall provide suitable facilities for the court in that municipality.

Sec. 24.031. COURT OFFICERS. The prosecuting attorney, the sheriff, the district clerk, the bailiffs, and the other officers serving the other district courts of the county shall serve in their respective capacities for the courts listed in this chapter.

SECTION 2.05. Subsection (g), Section 25.0362, Government Code, is amended to read as follows:

(g) In matters of concurrent jurisdiction, a judge of a county court at law and a judge of a district court in Cass County may transfer cases between the courts in the same manner that judges of district courts may transfer cases under Section 24.003 ~~[24.303]~~.

SECTION 2.06. Subsection (w), Section 25.0732, Government Code, is amended to read as follows:

(w) In matters of concurrent jurisdiction, a judge of a statutory county court in El Paso County and a judge of a district court or another statutory county court in El Paso County may transfer cases between the courts in the same manner judges of district courts transfer cases under Section 24.003 ~~[24.303]~~.

SECTION 2.07. Subsection (c), Section 25.1672, Government Code, is amended to read as follows:

(c) In matters of concurrent jurisdiction, judges of the county courts at law and district courts in the county may exchange benches and courtrooms and may transfer cases between their dockets in the same manner that district court judges exchange benches and transfer cases under Section 24.003 ~~[24.303]~~.

SECTION 2.08. Subsection (v), Section 25.1862, Government Code, is amended to read as follows:

(v) In matters of concurrent jurisdiction, a judge of a county court at law and a judge of a district court or another county court at law may transfer cases between the courts in the same manner judges of district courts transfer cases under Section 24.003 ~~[24.303]~~.

SECTION 2.09. Subsection (k), Section 25.1932, Government Code, is amended to read as follows:

(k) Notwithstanding Section 74.121(b)(1), in matters of concurrent jurisdiction, the judge of a county court at law and the judges of the district courts in the county may exchange benches and courtrooms and may transfer cases between their dockets in the same manner that judges of district courts exchange benches and transfer cases under Section 24.003 ~~[24.303]~~.

SECTION 2.10. Subdivision (2), Subsection (b), Section 74.121, Government Code, is amended to read as follows:

(2) Notwithstanding Subdivision (1), in matters of concurrent jurisdiction, a judge of a statutory county court in Midland County and a judge of a district court in Midland County may exchange benches and courtrooms with each other and may transfer cases between their dockets in the same manner that judges of district courts exchange benches and transfer cases under Section 24.003 ~~[24.303]~~.

SECTION 2.11. Subsection (d), Section 659.012, Government Code, is amended to read as follows:

(d) Notwithstanding any other provision in this section or other law, in [H] a county with more than five district courts, a district judge who serves as a local administrative district judge under Section 74.091 is entitled to an annual salary from the state that is \$5,000 more than the salary from the state to which the judge is otherwise entitled ~~[under Subsection (a)(1)]~~.

SECTION 2.12. The following provisions of the Government Code are repealed:

- (1) Section 24.013;
- (2) Section 24.302;
- (3) Section 24.303;
- (4) Section 24.304;
- (5) Section 24.305;
- (6) Section 24.307;
- (7) Section 24.308;
- (8) Section 24.309;
- (9) Section 24.311;
- (10) Section 24.312;
- (11) Section 24.313;
- (12) Section 24.314;
- (13) Section 24.525(b);
- (14) Section 24.526(b);
- (15) Section 24.527(b);
- (16) Sections 24.528(b) and (c); and
- (17) Sections 24.529(b) and (c).

### ARTICLE 3. STATUTORY COUNTY COURTS

SECTION 3.01. Section 25.0002, Government Code, is amended to read as follows:

Sec. 25.0002. DEFINITIONS ~~[DEFINITION]~~. In this chapter:

(1) "Criminal law cases and proceedings" includes cases and proceedings for allegations of conduct punishable in part by confinement in the county jail not to exceed one year.

(2) "Family~~[-, "family"]~~ law cases and proceedings" includes cases and proceedings under Titles 1, 2, 4, and 5, Family Code ~~[involving adoptions, birth records, or removal of disability of minority or coverture; change of names of persons; child welfare, custody, support and reciprocal support, dependency, neglect, or delinquency; paternity; termination of parental rights; divorce and marriage annulment, including the adjustment of property rights, custody and support of minor children involved therein, temporary support pending final hearing, and every other matter incident to divorce or annulment proceedings; independent actions involving child support, custody of minors, and wife or child desertion; and independent actions involving controversies between parent and child, between parents, and between spouses].~~

(3) "Juvenile law cases and proceedings" includes all cases and proceedings brought under Title 3, Family Code.

(4) "Mental health cases and proceedings" includes all cases and proceedings brought under Chapter 462, Health and Safety Code, or Subtitle C or D, Title 7, Health and Safety Code.

SECTION 3.02. Subsection (c), Section 25.0003, Government Code, is amended to read as follows:

(c) In addition to other jurisdiction provided by law, a statutory county court exercising civil jurisdiction concurrent with the constitutional jurisdiction of the county court has concurrent jurisdiction with the district court in:

(1) civil cases in which the matter in controversy exceeds \$500 but does not exceed \$200,000 ~~[\$100,000]~~, excluding interest, statutory or punitive damages and penalties, and attorney's fees and costs, as alleged on the face of the petition; and

(2) appeals of final rulings and decisions of the division of workers' compensation of the Texas Department of Insurance regarding workers' compensation claims, regardless of the amount in controversy.

SECTION 3.03. Section 25.0004, Government Code, is amended by adding Subsections (f) and (g) to read as follows:

(f) The judge of a statutory county court does not have general supervisory control or appellate review of the commissioners court.

(g) A judge of a statutory county court has the judicial immunity of a district judge.

SECTION 3.04. Section 25.0007, Government Code, is amended to read as follows:

Sec. 25.0007. JURIES; PRACTICE AND PROCEDURE. (a) The drawing of jury panels, selection of jurors, and practice in the statutory county courts must conform to that prescribed by law for county courts.

(b) Practice in a statutory county court is that prescribed by law for county courts, except that practice, procedure, rules of evidence, issuance of process and writs, and all other matters pertaining to the conduct of trials and hearings in the statutory county courts, other than the number of jurors, that involve those matters of concurrent jurisdiction with district courts are governed by the laws and rules pertaining to district courts. This section does not affect local rules of administration adopted under Section 74.093.



SECTION 3.05. Section 25.0010, Government Code, is amended by amending Subsection (b) and adding Subsections (c), (d), (e), and (f) to read as follows:

(b) The county attorney or criminal district attorney ~~[and sheriff]~~ shall serve each statutory county court as required by law.

(c) A county sheriff shall in person or by deputy attend a statutory county court as required by the court.

(d) The county clerk shall serve as clerk of each statutory county court. The court officials shall perform the duties and responsibilities of their offices and are entitled to the compensation, fees, and allowances prescribed by law for those offices.

(e) The judge of a statutory county court may appoint the personnel necessary for the operation of the court, including a court coordinator or administrative assistant, if the commissioners court has approved the creation of the position.

(f) The commissioners court may authorize the employment of as many additional assistant district attorneys, assistant county attorneys, deputy sheriffs, and clerks as are necessary for a statutory county court.

SECTION 3.06. (a) Section 25.0014, Government Code, is amended to read as follows:

Sec. 25.0014. QUALIFICATIONS OF JUDGE. The judge of a statutory county court must:

(1) be at least 25 years of age;

(2) be a United States citizen and have resided in the county for at least two years before election or appointment; and

(3) be a licensed attorney in this state who has practiced law or served as a judge of a court in this state, or both combined, for the four years preceding election or appointment, unless otherwise provided for by law.

(b) The change in law made by this Act to Section 25.0014, Government Code, does not apply to a person serving as a statutory county court judge immediately before the effective date of this Act who met the qualifications of Section 25.0014, Government Code, as it existed on that date, and the former law is continued in effect for determining that person's qualifications to serve as a statutory county court judge.

SECTION 3.07. (a) Subchapter A, Chapter 25, Government Code, is amended by adding Sections 25.0016 and 25.00161 to read as follows:

Sec. 25.0016. TERMS OF COURT. The commissioners court, by order, shall set at least two terms a year for the statutory county court.

Sec. 25.00161. PRIVATE PRACTICE OF LAW. The regular judge of a statutory county court shall diligently discharge the duties of the office on a full-time basis and may not engage in the private practice of law.

(b) Section 25.00161, Government Code, as added by this Act, applies only to a regular judge serving a term to which the judge is elected on or after the effective date of this Act. A judge serving a term to which the judge was elected before the effective date of this Act is governed by the law in effect on the date the judge was elected, and that law is continued in effect for that purpose.

SECTION 3.08. Subsection (t), Section 25.0022, Government Code, is amended to read as follows:

(t) To be eligible for assignment under this section, a former or retired judge of a statutory probate court must:

(1) not have been removed from office;  
(2) certify under oath to the presiding judge, on a form prescribed by the state board of regional judges, that:

(A) the judge has not been publicly reprimanded or censured by the State Commission on Judicial Conduct; and

(B) the judge:

(i) did not resign or retire from office after the State Commission on Judicial Conduct notified the judge of the commencement of a full investigation into an allegation or appearance of misconduct or disability of the judge as provided in Section 33.022 and before the final disposition of that investigation; or

(ii) if the judge did resign from office under circumstances described by Subparagraph (i), was not publicly reprimanded or censured as a result of the investigation;

(3) annually demonstrate that the judge has completed in the past state fiscal year the educational requirements for an active statutory probate court judge;

(4) have served as an active judge for at least 72 ~~[96]~~ months in a district, statutory probate, statutory county, or appellate court; and

(5) have developed substantial experience in the judge's area of specialty.

SECTION 3.09. Section 25.00231, Government Code, is amended by amending Subsection (c) and adding Subsection (e) to read as follows:

(c) In lieu of the bond required by Subsection (b), a county may elect to obtain insurance or to self-insure in the amount required by Subsection (b) against losses caused by the statutory probate court judge's gross negligence in performing the duties of office.

(e) This section does not apply to an assigned or visiting judge sitting by assignment in a statutory probate court.

SECTION 3.10. (a) Subchapter B, Chapter 25, Government Code, is amended by adding Sections 25.0033, 25.0034, and 25.0035 to read as follows:

Sec. 25.0033. QUALIFICATIONS OF JUDGE. The judge of a statutory probate court must:

(1) be at least 25 years of age;

(2) be a United States citizen and have resided in the county for at least two years before election or appointment; and

(3) be a licensed attorney in this state who has practiced law or served as a judge of a court in this state, or both combined, for the five years preceding election or appointment, unless otherwise provided for by law.

Sec. 25.0034. PRIVATE PRACTICE OF LAW. The regular judge of a statutory probate court shall diligently discharge the duties of the office on a full-time basis and may not engage in the private practice of law.

Sec. 25.0035. TERMS OF COURT. The commissioners court, by order, shall set at least two terms a year for the statutory probate court.

(b) Section 25.0033, Government Code, as added by this Act, does not apply to a person serving as a statutory probate court judge immediately before the effective date of this Act. The qualifications of a person serving as a statutory probate court

judge on the effective date of this Act are governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 3.11. Subsections (g) and (i), Section 25.0042, Government Code, are amended to read as follows:

(g) The district clerk serves as clerk of a county court at law in all cases arising under the Family Code and Section 23.001 and shall establish a separate docket for a county court at law; the county clerk serves as clerk of the court in all other cases. ~~[The commissioners court may employ as many deputy sheriffs and bailiffs as are necessary to serve the court.]~~

(i) ~~[Practice in a county court at law is that prescribed by law for county courts, except that practice and procedure, rules of evidence, issuance of process and writs, and all other matters pertaining to the conduct of trials and hearings in a county court at law involving cases under the Family Code and Section 23.001 are governed by this section and the laws and rules pertaining to district courts and county courts.]~~ If a case under the Family Code or Section 23.001 is tried before a jury, the jury shall be composed of 12 members.

SECTION 3.12. Subsection (h), Section 25.0102, Government Code, is amended to read as follows:

(h) ~~[Practice in a county court at law is that prescribed by law for county courts, except that practice and procedure, rules of evidence, issuance of process and writs, and all other matters pertaining to the conduct of trials and hearings in the county court at law involving family law cases and proceedings shall be governed by this section and the laws and rules pertaining to district courts.]~~ If a family law case or proceeding is tried before a jury, the jury shall be composed of 12 members; in all other cases the jury shall be composed of six members.

SECTION 3.13. Subsections (e) and (f), Section 25.0132, Government Code, are amended to read as follows:

(e) The district clerk serves as clerk of a county court at law in family law cases and proceedings, and the county clerk serves as clerk of the court in all other cases. The district clerk shall establish a separate docket for a county court at law. ~~[The commissioners court may employ as many deputy sheriffs and bailiffs as are necessary to serve a county court at law.]~~

(f) ~~[Practice in a county court at law is that prescribed by law for county courts, except that practice and procedure, rules of evidence, issuance of process and writs, and all other matters pertaining to the conduct of trials and hearings in a county court at law involving family law cases and proceedings is that prescribed by law for district courts and county courts.]~~ If a family law case or proceeding is tried before a jury, the jury shall be composed of 12 members.

SECTION 3.14. Subsection (a), Section 25.0202, Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Bosque County has concurrent jurisdiction with the district court in:

- (1) family law cases and proceedings;

(2) civil cases in which the matter in controversy exceeds \$500 but does not exceed \$200,000 ~~[\$100,000]~~, excluding interest, court costs, and attorney's fees; and

(3) contested probate matters under Section 4D ~~[5(b)]~~, Texas Probate Code.

SECTION 3.15. Subsection (b), Section 25.0212, Government Code, is amended to read as follows:

(b) A county court at law does not have ~~[general supervisory control or appellate review of the commissioners court or]~~ jurisdiction of:

- (1) felony criminal matters;
- (2) suits on behalf of the state to recover penalties or escheated property;
- (3) misdemeanors involving official misconduct;
- (4) contested elections; or

(5) civil cases in which the matter in controversy exceeds \$200,000 ~~[\$100,000]~~, excluding interest, statutory or punitive damages and penalties, and attorney's fees and costs, as alleged on the face of the petition.

SECTION 3.16. Subsections (a) and (k), Section 25.0222, Government Code, are amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a statutory county court in Brazoria County has concurrent jurisdiction with the district court in:

(1) civil cases in which the matter in controversy exceeds \$500 but does not exceed \$200,000 ~~[\$100,000]~~, excluding interest, statutory damages and penalties, and attorney's fees and costs, as alleged on the face of the petition;

(2) appeals of final rulings and decisions of the division of workers' compensation of the Texas Department of Insurance regarding workers' compensation claims, regardless of the amount in controversy; and

(3) family law cases and proceedings and juvenile jurisdiction under Section 23.001.

(k) The district clerk serves as clerk of the statutory county courts in cases instituted in the district courts in which the district courts and statutory county courts have concurrent jurisdiction, and the county clerk serves as clerk for all other cases. ~~[The commissioners court may employ as many additional assistant criminal district attorneys, deputy sheriffs, and deputy clerks as are necessary to serve the statutory county courts.]~~

SECTION 3.17. Subsections (e) and (f), Section 25.0302, Government Code, are amended to read as follows:

(e) The district clerk serves as clerk of a county court at law in family law cases and proceedings, and the county clerk serves as clerk of the court in all other cases and proceedings. The district clerk shall establish a separate docket for a county court at law. ~~[The commissioners court may employ the assistant district attorneys, deputy sheriffs, and bailiffs necessary to serve each county court at law.]~~

(f) ~~[Practice in a county court at law is that prescribed by law for county courts, except that practice and procedure, rules of evidence, issuance of process and writs, and all other matters pertaining to the conduct of trials and hearings in a county court at law involving family law cases and proceedings shall be governed by this section and the laws and rules pertaining to district courts.]~~ If a family law case or proceeding is tried before a jury, the jury shall be composed of 12 members.

SECTION 3.18. Subsection (b), Section 25.0312, Government Code, is amended to read as follows:

(b) A county court at law does not have ~~[general supervisory control or appellate review of the commissioners court or]~~ jurisdiction of:

- (1) felony cases other than writs of habeas corpus;
- (2) misdemeanors involving official misconduct;
- (3) contested elections; or
- (4) appeals from county court.

SECTION 3.19. Subsection (b), Section 25.0362, Government Code, is amended to read as follows:

(b) A county court at law does not have ~~[general supervisory control or appellate review of the commissioners court or]~~ jurisdiction of:

- (1) misdemeanors involving official misconduct;
- (2) suits on behalf of the state to recover penalties or escheated property;
- (3) contested elections;
- (4) suits in which the county is a party; or
- (5) felony cases involving capital murder.

SECTION 3.20. Subsection (f), Section 25.0482, Government Code, is amended to read as follows:

(f) The district clerk serves as clerk of a county court at law for family law cases and proceedings, and the county clerk serves as clerk for all other cases and proceedings. ~~[The district clerk shall establish a separate docket for a county court at law. The commissioners court may employ as many assistant county attorneys, deputy sheriffs, and bailiffs as are necessary to serve the county courts at law.]~~

SECTION 3.21. Subsection (g), Section 25.0632, Government Code, is amended to read as follows:

(g) ~~[Jurors regularly impaneled for the week by the district courts of Denton County must include sufficient numbers to serve in the statutory county courts and statutory probate courts as well as the district courts. The jurors shall be made available by the district judge as necessary.]~~ The jury in a statutory county court or statutory probate court in all civil or criminal matters is composed of 12 members, except that in misdemeanor criminal cases and any other case in which the court has jurisdiction that under general law would be concurrent with the county court, the jury is composed of six members.

SECTION 3.22. Subsection (r), Section 25.0732, Government Code, is amended to read as follows:

(r) Section ~~[Sections]~~ 25.0006(b) does ~~[and 25.0007 do]~~ not apply to County Court at Law No. 2, 3, 4, 5, 6, or 7 of El Paso County, Texas.

SECTION 3.23. Subsection (a), Section 25.0733, Government Code, is amended to read as follows:

(a) Sections 25.0732(q) and ~~[25.0732(d), (h), (i), (j), (m), (n), (o), (p), (q),] (r); and (v)],~~ relating to county courts at law in El Paso County, apply to a statutory probate court in El Paso County.

SECTION 3.24. Subsections (i) and (l), Section 25.0862, Government Code, are amended to read as follows:

(i) ~~[The clerk of the statutory county courts and statutory probate court shall keep a separate docket for each court.]~~ The clerk shall tax the official court reporter's fees as costs in civil actions in the same manner as the fee is taxed in civil cases in the district courts. ~~[The district clerk serves as clerk of the county courts in a cause of action arising under the Family Code and an appeal of a final ruling or decision of the division of workers' compensation of the Texas Department of Insurance regarding workers' compensation claims, and the county clerk serves as clerk of the court in all other cases.]~~

(l) Each reporter may be made available when not engaged in proceedings in their court to report proceedings in all other courts. ~~[Practice, appeals, and writs of error in a statutory county court are as prescribed by law for county courts and county courts at law.]~~ Appeals and writs of error may be taken from judgments and orders of the County Courts Nos. 1, 2, and 3 of Galveston County and the judges, in civil and criminal cases, in the manner prescribed by law for appeals and writs of error. Appeals from interlocutory orders of the County Courts Nos. 1, 2, and 3 appointing a receiver or overruling a motion to vacate or appoint a receiver may be taken and are governed by the laws relating to appeals from similar orders of district courts.

SECTION 3.25. Subsection (f), Section 25.0962, Government Code, is amended to read as follows:

(f) ~~[Practice in a county court at law is that prescribed by law for county courts, except that practice and procedure, rules of evidence, issuance of process and writs, and all other matters pertaining to the conduct of trials and hearings in a county court at law involving cases in the court's concurrent jurisdiction with the district court shall be governed by this section and the laws and rules pertaining to district courts as well as county courts.]~~ If a case in the court's concurrent jurisdiction with the district court is tried before a jury, the jury shall be composed of 12 members.

SECTION 3.26. Subsection (a), Section 25.1033, Government Code, is amended to read as follows:

(a) A county criminal court at law in Harris County has the criminal jurisdiction provided by law for county courts, concurrent jurisdiction with civil statutory county courts for Harris County to hear appeals of the suspension of a driver's license and original proceedings regarding occupational driver's licenses, and appellate jurisdiction in appeals of criminal cases from justice courts and municipal courts in the county.

SECTION 3.27. Subsection (g), Section 25.1042, Government Code, is amended to read as follows:

(g) The criminal district attorney is entitled to the same fees prescribed by law for prosecutions in the county court. ~~[The commissioners court may employ as many additional deputy sheriffs and clerks as are necessary to serve a county court at law.]~~

SECTION 3.28. Subsections (e) and (f), Section 25.1072, Government Code, are amended to read as follows:

(e) The county clerk serves as clerk of a county court at law, except that the district clerk serves as clerk of the court in family law cases and proceedings. The district clerk shall establish a separate docket for a county court at law. ~~[The commissioners court may employ as many assistant district attorneys, deputy sheriffs, and bailiffs as are necessary to serve the court.]~~

(f) ~~[Practice in a county court at law is that prescribed by law for county courts, except that practice and procedure, rules of evidence, issuance of process and writs, and other matters pertaining to the conduct of trials and hearings in a county court at law involving family law cases and proceedings are governed by this section and the laws and rules pertaining to district courts, as well as county courts.]~~ If a family law case or proceeding is tried before a jury, the jury shall be composed of 12 members.

SECTION 3.29. Subsection (b), Section 25.1142, Government Code, is amended to read as follows:

(b) A county court at law does not have ~~[general supervisory control or appellate review of the commissioners court or]~~ jurisdiction of:

- (1) civil cases in which the amount in controversy exceeds \$200,000 ~~[\$100,000]~~, excluding interest;
- (2) felony jury trials;
- (3) suits on behalf of the state to recover penalties or escheated property;
- (4) misdemeanors involving official misconduct; or
- (5) contested elections.

SECTION 3.30. Subsection (b), Section 25.1182, Government Code, is amended to read as follows:

(b) A county court at law's civil jurisdiction concurrent with the district court in civil cases is limited to cases in which the matter in controversy does not exceed \$200,000. A county court at law does not have ~~[general supervisory control or appellate review of the commissioners court or]~~ jurisdiction of:

- (1) suits on behalf of this state to recover penalties or escheated property;
- (2) felony cases involving capital murder;
- (3) misdemeanors involving official misconduct; or
- (4) contested elections.

SECTION 3.31. Subsection (b), Section 25.1312, Government Code, is amended to read as follows:

(b) A statutory county court in Kaufman County does not have ~~[general supervisory control or appellate review of the commissioners court or]~~ jurisdiction of:

- (1) felony cases involving capital murder;
- (2) suits on behalf of the state to recover penalties or escheated property;
- (3) misdemeanors involving official misconduct; or
- (4) contested elections.

SECTION 3.32. Subsection (m), Section 25.1542, Government Code, is amended to read as follows:

(m) ~~[Practice and procedure and rules of evidence governing trials in and appeals from a county court apply to a county court at law, except that practice and procedure, rules of evidence, issuance of process and writs, and all other matters pertaining to the conduct of trials and hearings involving family law cases and proceedings shall be governed by this section and the laws and rules pertaining to district courts as well as county courts.]~~ In family law cases, juries shall be composed of 12 members.

SECTION 3.33. Subsection (g), Section 25.1652, Government Code, is amended to read as follows:

(g) ~~[Practice in a county court at law is that prescribed by law for county courts, except that practice and procedure, rules of evidence, issuance of process and writs, and all other matters pertaining to the conduct of trials and hearings involving family law matters and proceedings shall be governed by this section and the laws and rules pertaining to district courts.]~~ If a family law case is tried before a jury, the jury shall be composed of 12 members.

SECTION 3.34. Subsection (i), Section 25.1762, Government Code, is amended to read as follows:

(i) ~~[The laws governing the drawing, selection, service, and pay of jurors for county courts apply to a county court at law. Jurors regularly impaneled for a week by a district court may, at the request of the judge of a county court at law, be made available by the district judge in the numbers requested and shall serve for the week in the county court at law.]~~ In matters of concurrent jurisdiction with the district court, if a party to a suit files a written request for a 12-member jury with the clerk of the county court at law at a reasonable time that is not later than 30 days before the date the suit is set for trial, the jury shall be composed of 12 members.

SECTION 3.35. Subsection (b), Section 25.1772, Government Code, is amended to read as follows:

(b) A county court at law does not have ~~[general supervisory control or appellate review of the commissioners court or]~~ jurisdiction of:

- (1) suits on behalf of this state to recover penalties or escheated property;
- (2) felony cases involving capital murder;
- (3) misdemeanors involving official misconduct; or
- (4) contested elections.

SECTION 3.36. Subsection (e), Section 25.1892, Government Code, is amended to read as follows:

(e) ~~[The county attorney or district attorney serves a county court at law as required by the judge.]~~ The district clerk serves as clerk of a county court at law in cases enumerated in Subsection (a)(2), and the county clerk serves as clerk in all other cases. The district clerk shall establish a separate docket for a county court at law. ~~[The commissioners court may employ as many additional assistant county attorneys, deputy sheriffs, and clerks as are necessary to serve a county court at law.]~~

SECTION 3.37. Subsection (i), Section 25.1932, Government Code, is amended to read as follows:

(i) ~~[Practice in a county court at law is that prescribed by law for county courts, except that practice and procedure, rules of evidence, issuance of process and writs, and all other matters pertaining to the conduct of trials and hearings in a county court at law involving cases in the court's concurrent jurisdiction with the district court shall be governed by this section and the laws and rules pertaining to district courts as well as county courts.]~~ If a case in the court's concurrent jurisdiction with the district court is tried before a jury, the jury shall be composed of 12 members.

SECTION 3.38. Subsection (b), Section 25.2012, Government Code, is amended to read as follows:

(b) A county court at law does not have ~~[general supervisory control or appellate review of the commissioners court or]~~ jurisdiction of:

- (1) felony cases involving capital murder;



- (2) suits on behalf of the state to recover penalties or escheated property;
- (3) misdemeanors involving official misconduct; or
- (4) contested elections.

SECTION 3.39. Subsection (n), Section 25.2142, Government Code, is amended to read as follows:

(n) ~~[A special judge of a county court at law is entitled to receive for services actually performed the same amount of compensation as the regular judge.]~~ A former judge sitting as a visiting judge of a county court at law is entitled to receive for services performed the same amount of compensation that the regular judge receives, less an amount equal to the pro rata annuity received from any state, district, or county retirement fund. An active judge sitting as a visiting judge of a county court at law is entitled to receive for services performed the same amount of compensation that the regular judge receives, less an amount equal to the pro rata compensation received from state or county funds as salary, including supplements.

SECTION 3.40. (a) Subsection (b), Section 25.2222, Government Code, as amended by Chapter 22 (S.B. 124), Acts of the 72nd Legislature, Regular Session, 1991, and Chapter 265 (H.B. 7), Acts of the 79th Legislature, Regular Session, 2005, is reenacted and amended to read as follows:

(b) A county court at law has concurrent jurisdiction with the district court in:

(1) civil cases in which the matter in controversy exceeds \$500 and does not exceed \$200,000 ~~[\$100,000]~~, excluding mandatory damages and penalties, attorney's fees, interest, and costs;

(2) nonjury family law cases and proceedings;

(3) final rulings and decisions of the division of workers' compensation of the Texas Department of Insurance regarding workers' compensation claims, regardless of the amount in controversy;

(4) eminent domain proceedings, both statutory and inverse, regardless of the amount in controversy;

(5) suits to decide the issue of title to real or personal property;

(6) suits to recover damages for slander or defamation of character;

(7) suits for the enforcement of a lien on real property;

(8) suits for the forfeiture of a corporate charter;

(9) suits for the trial of the right to property valued at \$200 or more that has been levied on under a writ of execution, sequestration, or attachment; and

(10) suits for the recovery of real property.

(b) Subsection (b), Section 25.2222, Government Code, as amended by Chapter 746 (H.B. 66), Acts of the 72nd Legislature, Regular Session, 1991, is repealed as duplicative of Subsection (b), Section 25.2222, Government Code, as amended by Subsection (a) of this section.

SECTION 3.41. Subsection (a), Section 25.2232, Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Taylor County has:

(1) concurrent jurisdiction with the county court in the trial of cases involving insanity and approval of applications for admission to state hospitals and special schools if admission is by application; and

(2) concurrent jurisdiction with the district court in civil cases in which the matter in controversy exceeds \$500 but does not exceed \$200,000 [~~\$100,000~~], excluding interest.

SECTION 3.42. Subsection (i), Section 25.2352, Government Code, is amended to read as follows:

(i) [~~Practice in a county court at law is that prescribed by law for county courts, except that practice and procedure, rules of evidence, issuance of process and writs, and all other matters pertaining to the conduct of trials and hearings involving family law cases and proceedings shall be governed by this section and the laws and rules pertaining to district courts.~~] If a family law case is tried before a jury, the jury shall be composed of 12 members.

SECTION 3.43. Subsection (i), Section 25.2382, Government Code, is amended to read as follows:

(i) [~~Practice in a county court at law is that prescribed by law for county courts, except that practice and procedure, rules of evidence, issuance of process and writs, and all other matters pertaining to the conduct of trials and hearings in a county court at law involving matters enumerated in Subsection (a)(2)(B) or (C) shall be governed by this section and the laws and rules pertaining to district courts.~~] If a family law case [~~in Subsection (a)(2)(B) or (C)~~] is tried before a jury, the jury shall be composed of 12 members.

SECTION 3.44. (a) Section 25.2421(a), Government Code, is amended to read as follows:

(a) Webb County has the following statutory county courts:

- (1) the County Court at Law No. 1 of Webb County; ~~and~~
- (2) the County Court at Law No. 2 of Webb County; and
- (3) the County Court at Law No. 3 of Webb County.

(b) Notwithstanding Section 25.2421(a), Government Code, as amended by this Act, the County Court at Law No. 3 of Webb County is created January 1, 2031, or on an earlier date determined by the Commissioners Court of Webb County by an order entered in its minutes.

SECTION 3.45. Subsections (g) and (h), Section 25.2422, Government Code, are amended to read as follows:

(g) The district attorney of the 49th Judicial District serves as district attorney of a county court at law, except that the county attorney of Webb County prosecutes all juvenile, child welfare, mental health, and other civil cases in which the state is a party. The district clerk serves as clerk of a county court at law in the cases enumerated in Subsection (a)(2), and the county clerk serves as clerk of a county court at law in all other cases. [~~The commissioners court may employ as many deputy sheriffs and bailiffs as are necessary to serve the court.~~]

(h) [~~Practice and procedure, rules of evidence, issuance of process and writs, and all other matters pertaining to the conduct of trials and hearings in a county court at law involving those matters of concurrent jurisdiction enumerated in Subsection (a)(2)(B) or (C) are governed by this section and the laws and rules pertaining to district courts, as well as county courts.~~] If a family law case [~~enumerated in Subsection (a)(2)(B) or (C)~~] is tried before a jury, the jury shall be composed of 12 members.

SECTION 3.46. Subsections (d) and (k), Section 25.2452, Government Code, are amended to read as follows:

(d) A county court at law does not have jurisdiction of:

(1) a case under:

(A) the Alcoholic Beverage Code;

(B) the Election Code; or

(C) the Tax Code;

(2) a matter over which the district court has exclusive jurisdiction; or

(3) a civil case, other than a case under the Family Code or the Texas Probate Code, in which the amount in controversy is:

(A) less than the maximum amount in controversy allowed the justice court in Wichita County; or

(B) more than \$200,000 [~~\$100,000~~], exclusive of punitive or exemplary damages, penalties, interest, costs, and attorney's fees.

(k) Except as otherwise required by law, if a case is tried before a jury, the jury shall be composed of six members and may render verdicts by a five to one margin in civil cases and a unanimous verdict in criminal cases. ~~[The laws governing the drawing, selection, service, and pay of jurors for county courts apply to the county courts at law. Jurors regularly impaneled for a week by a district court may, on request of the county judge exercising the jurisdiction provided by this section or a county court at law judge, be made available and shall serve for the week in the county court or county court at law.]~~

SECTION 3.47. Subsection (h), Section 25.2462, Government Code, is amended to read as follows:

(h) ~~[The county attorney and the county sheriff shall attend a county court at law as required by the judge.]~~ The district clerk serves as clerk of a county court at law in family law cases and proceedings, and the county clerk serves as clerk of the court in all other cases and proceedings.

SECTION 3.48. Subsection (i), Section 25.2482, Government Code, is amended to read as follows:

(i) ~~[The county attorney and the county sheriff shall attend a county court at law as required by the judge.]~~ The district clerk serves as clerk of a county court at law in family law cases and proceedings, and the county clerk serves as clerk of the court in all other cases and proceedings.

SECTION 3.49. Subsection (a), Section 25.2512, Government Code, as amended by Chapters 518 (S.B. 1491) and 746 (H.B. 66), Acts of the 72nd Legislature, Regular Session, 1991, is reenacted and amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Wise County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) eminent domain cases;

(B) civil cases in which the amount in controversy exceeds \$500, but does not exceed \$200,000 [~~\$100,000~~], excluding interest and attorney's fees; and

(C) family law cases and proceedings.

SECTION 3.50. (a) The following provisions of the Government Code are repealed:

- (1) Subsections (b), (d), (f), and (j), Section 25.0042;
- (2) Subsections (b), (f), (g), and (h), Section 25.0052;
- (3) Subsections (b), (d), (f), and (i), Section 25.0102;
- (4) Subsections (d), (g), and (h), Section 25.0132;
- (5) Subsections (c) and (e), Section 25.0152;
- (6) Subsections (b), (f), (g), (h), and (i), Section 25.0162;
- (7) Subsections (d), (k), (l), (m), (n), (o), (q), (s), and (t), Section 25.0172;
- (8) Subsections (c), (d), (h), (i), and (k), Section 25.0173;
- (9) Subsections (c), (d), and (g), Section 25.0202;
- (10) Subsections (c), (e), and (g), Section 25.0212;
- (11) Subsections (d), (e), (i), (j), and (n), Section 25.0222;
- (12) Subsections (b), (d), (f), (h), and (i), Section 25.0232;
- (13) Subsections (b), (c), and (e), Section 25.0272;
- (14) Subsections (b), (c), (g), (h), and (i), Section 25.0292;
- (15) Subsections (b), (d), and (g), Section 25.0302;
- (16) Subsections (c), (e), and (j), Section 25.0312;
- (17) Subsections (e), (g), (i), (k), (l), and (m), Section 25.0332;
- (18) Subsection (c), Section 25.0362;
- (19) Subsections (b), (d), (f), (i), (j), and (k), Section 25.0392;
- (20) Subsections (b), (c), and (d), Section 25.0452;
- (21) Subsections (a), (c), (d), and (e), Section 25.0453;
- (22) Subsections (b), (d), (e), (g), and (h), Section 25.0482;
- (23) Subsections (a), (b), (d), (g), and (h), Section 25.0512;
- (24) Subsections (b), (d), (f), and (g), Section 25.0522;
- (25) Subsections (b), (h), (i), (j), and (k), Section 25.0592;
- (26) Subsections (d), (f), (g), (h), (i), and (j), Section 25.0593;
- (27) Subsections (d), (e), (g), (h), (i), (j), and (k), Section 25.0594;
- (28) Subsections (c), (d), (f), and (g), Section 25.0595;
- (29) Section 25.0596;
- (30) Subsections (a), (b), and (d), Section 25.0632;
- (31) Subsections (b), (g), (h), (j), (k), and (l), Section 25.0702;
- (32) Subsections (b), (d), (f), (j), and (k), Section 25.0722;
- (33) Subsections (d), (g), (h), (i), (j), (m), (n), (o), (p), (s), and (v), Section 25.0732;
- (34) Subsections (c), (d), and (f), Section 25.0733;
- (35) Subsection (b), Section 25.0742;
- (36) Subsections (d), (f), (h), (j), and (l), Section 25.0812;
- (37) Subsections (f) and (j), Section 25.0862;
- (38) Subsections (e), (f), and (i), Section 25.0932;
- (39) Subsections (c), (f), (g), (j), and (k), Section 25.0942;
- (40) Subsections (d), (e), and (g), Section 25.0962;
- (41) Subsections (d), (e), (g), (h), and (k), Section 25.1032;
- (42) Subsections (d), (e), (f), (m), and (o), Section 25.1033;
- (43) Subsections (c), (h), (k), and (l), Section 25.1034;

- (44) Subsections (b), (d), (f), (h), and (i), Section 25.1042;
- (45) Subsections (b), (d), (g), and (h), Section 25.1072;
- (46) Subsections (e), (f), (l), and (o), Section 25.1092;
- (47) Subsections (d), (e), (h), (i), (j), and (l), Section 25.1102;
- (48) Section 25.1103;
- (49) Subsections (b), (c), (f), and (k), Section 25.1112;
- (50) Subsections (f), (g), (h), (j), (l), (m), and (p), Section 25.1132;
- (51) Subsections (c), (e), and (g), Section 25.1142;
- (52) Subsections (b), (e), (f), (h), and (i), Section 25.1152;
- (53) Subsections (c), (e), and (h), Section 25.1182;
- (54) Subsections (c), (g), and (i), Section 25.1252;
- (55) Subsections (b), (d), (f), (h), and (i), Section 25.1282;
- (56) Subsections (d), (e), (i), (k), (l), and (n), Section 25.1312;
- (57) Subsections (d), (e), (f), (i), and (j), Section 25.1322;
- (58) Subsections (d) and (h), Section 25.1352;
- (59) Subsections (e), (g), and (i), Section 25.1392;
- (60) Subsections (b), (c), (e), (h), (i), and (k), Section 25.1412;
- (61) Subsections (d), (g), (h), (l), and (m), Section 25.1482;
- (62) Subsections (f), (i), (k), and (n), Section 25.1542;
- (63) Subsections (e), (f), and (g), Section 25.1572;
- (64) Subsections (d), (f), and (h), Section 25.1652;
- (65) Subsections (b) and (f), Section 25.1672;
- (66) Subsections (b), (c), and (g), Section 25.1722;
- (67) Subsections (d), (e), (f), (h), and (i), Section 25.1732;
- (68) Subsections (b), (e), (f), and (h), Section 25.1762;
- (69) Subsections (c), (e), and (h), Section 25.1772;
- (70) Subsections (e), (f), (h), (i), and (j), Section 25.1792;
- (71) Subsections (c), (h), (i), (j), (k), (l), and (q), Section 25.1802;
- (72) Subsections (b), (d), and (j), Section 25.1832;
- (73) Subsections (e), (f), and (i), Section 25.1852;
- (74) Subsections (c), (f), (h), (i), (j), (m), (n), (p), (q), and (u), Section 25.1862;
- (75) Subsection (d), Section 25.1892;
- (76) Subsections (e), (g), (i), (j), and (k), Section 25.1902;
- (77) Subsections (b), (c), (f), (h), and (j), Section 25.1932;
- (78) Subsections (b), (d), (f), (h), and (j), Section 25.1972;
- (79) Subsections (d), (e), (i), (k), (l), and (n), Section 25.2012;
- (80) Subsections (c), (e), and (h), Section 25.2032;
- (81) Subsections (c), (e), (f), (h), and (i), Section 25.2072;
- (82) Subsections (c), (e), (i), (r), (t), and (u), Section 25.2142;
- (83) Subsections (d), (f), (h), (j), and (k), Section 25.2162;
- (84) Subsections (c), (g), (h), (i), (k), and (n), Section 25.2222;
- (85) Subsections (c), (e), (g), and (h), Section 25.2223;
- (86) Subsections (b), (c), (f), (g), (i), and (j), Section 25.2224;
- (87) Subsections (b), (e), (f), and (g), Section 25.2232;
- (88) Subsections (b), (d), (f), (g), (i), and (j), Section 25.2282;

- (89) Subsections (b), (e), (i), (k), and (l), Section 25.2292;
- (90) Subsections (e), (f), (g), (k), and (l), Section 25.2293;
- (91) Subsections (b), (d), (f), (g), and (j), Section 25.2352;
- (92) Subsections (c), (e), and (h), Section 25.2362;
- (93) Subsections (c), (f), (g), (h), and (i), Section 25.2372;
- (94) Subsections (b), (d), (f), and (j), Section 25.2382;
- (95) Subsections (b), (d), (f), and (j), Section 25.2392;
- (96) Subsections (b), (d), (f), (i), and (k), Section 25.2412;
- (97) Subsections (b), (d), (f), (i), and (j), Section 25.2422;
- (98) Subsections (f), (h), and (j), Section 25.2452;
- (99) Subsections (c), (d), (e), (g), (i), and (j), Section 25.2462;
- (100) Subsections (d), (e), (f), (h), (j), and (k), Section 25.2482; and
- (101) Subsections (b), (e), (h), and (i), Section 25.2512.

(b) The repeal of Subsection (d), Section 25.1042, and Subsection (d), Section 25.2162, Government Code, apply only to a regular judge serving a term for which the judge is elected on or after the effective date of this Act. A judge serving a term for which the judge was elected before the effective date of this Act is governed by the law in effect on the date the judge was elected, and that law is continued in effect for that purpose.

#### ARTICLE 4. PROVISIONS RELATING TO JUSTICE AND SMALL CLAIMS COURTS

SECTION 4.01. (a) Subsection (a), Section 27.005, Government Code, is amended to read as follows:

(a) For purposes of removal under Chapter 87, Local Government Code, "incompetency" in the case of a justice of the peace includes the failure of the justice to successfully complete:

(1) within one year after the date the justice is first elected, an 80-hour course in the performance of the justice's duties; and

(2) each following year, a 20-hour course in the performance of the justice's duties, including not less than 10 hours of instruction regarding substantive, procedural, and evidentiary law in civil matters.

(b) Subsection (a), Section 27.005, Government Code, as amended by this section, applies to a justice of the peace serving on or after the effective date of this article, regardless of the date the justice was elected or appointed.

SECTION 4.02. Subchapter C, Chapter 27, Government Code, is amended by adding Section 27.060 to read as follows:

Sec. 27.060. SMALL CLAIMS. (a) A justice court shall conduct proceedings in a small claims case, as that term is defined by the supreme court, in accordance with rules of civil procedure promulgated by the supreme court to ensure the fair, expeditious, and inexpensive resolution of small claims cases.

(b) Except as provided by Subsection (c), rules of the supreme court must provide that:

(1) if both parties appear, the judge shall proceed to hear the case;

(2) formal pleadings other than the statement are not required;

(3) the judge shall hear the testimony of the parties and the witnesses that the parties produce and shall consider the other evidence offered;

(4) the hearing is informal, with the sole objective being to dispense speedy justice between the parties;

(5) discovery is limited to that considered appropriate and permitted by the judge; and

(6) the judge shall develop the facts of the case, and for that purpose may question a witness or party and may summon any party to appear as a witness as the judge considers necessary to a correct judgment and speedy disposition of the case.

(c) The rules of the supreme court must provide specific procedures for an action by:

(1) an assignee of a claim or other person seeking to bring an action on an assigned claim;

(2) a person primarily engaged in the business of lending money at interest;  
or

(3) a collection agency or collection agent.

SECTION 4.03. Subchapter C, Chapter 27, Government Code, is amended by adding Section 27.061 to read as follows:

Sec. 27.061. RULES OF ADMINISTRATION. The justices of the peace in each county shall, by majority vote, adopt local rules of administration.

SECTION 4.04. Subchapter E, Chapter 15, Civil Practice and Remedies Code, is amended by adding Section 15.0821 to read as follows:

Sec. 15.0821. ADMINISTRATIVE RULES FOR TRANSFER. The justices of the peace in each county shall, by majority vote, adopt local rules of administration regarding the transfer of a pending case from one precinct to a different precinct.

SECTION 4.05. (a) Article 4.12, Code of Criminal Procedure, is amended by amending Subsection (a) and adding Subsection (e) to read as follows:

(a) Except as otherwise provided by this article, a misdemeanor case to be tried in justice court shall be tried:

(1) in the precinct in which the offense was committed;

(2) in the precinct in which the defendant or any of the defendants reside;

[or]

(3) with the written consent of the state and each defendant or the defendant's attorney, in any other precinct within the county; or

(4) in any precinct in the county that is adjacent to the precinct in which the offense was committed if the offense was committed in a county with a population of 3.3 million or more.

(e) The justices of the peace in each county shall, by majority vote, adopt local rules of administration regarding the transfer of a pending misdemeanor case from one precinct to a different precinct.

(b) Subsection (a), Article 4.12, Code of Criminal Procedure, as amended by this article, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this subsection, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 4.06. (a) Chapter 28, Government Code, is repealed.

(b) On the effective date of this section, each small claims court under Chapter 28, Government Code, is abolished.

SECTION 4.07. Not later than May 1, 2013, the Texas Supreme Court shall promulgate:

- (1) rules to define cases that constitute small claims cases;
- (2) rules of civil procedure applicable to small claims cases as required by Section 27.060, Government Code, as added by this article; and
- (3) rules for eviction proceedings.

SECTION 4.08. (a) Immediately before the date the small claims court in a county is abolished in accordance with this article, the justice of the peace sitting as judge of that court shall transfer all cases pending in the court to a justice court in the county.

(b) When a case is transferred as provided by Subsection (a) of this section, all processes, writs, bonds, recognizances, or other obligations issued from the transferring court are returnable to the court to which the case is transferred as if originally issued by that court. The obligees on all bonds and recognizances taken in and for the transferring court and all witnesses summoned to appear in the transferring court are required to appear before the court to which the case is transferred as if originally required to appear before that court.

SECTION 4.09. Sections 4.02 and 4.06 of this article take effect May 1, 2013.

#### ARTICLE 5. ASSOCIATE JUDGES

SECTION 5.01. Subtitle D, Title 2, Government Code, is amended by adding Chapter 54A to read as follows:

##### CHAPTER 54A. ASSOCIATE JUDGES

##### SUBCHAPTER A. CRIMINAL ASSOCIATE JUDGES

Sec. 54A.001. APPLICABILITY. This subchapter applies to a district court or a statutory county court that hears criminal cases.

Sec. 54A.002. APPOINTMENT. (a) A judge of a court subject to this subchapter may appoint a full-time or part-time associate judge to perform the duties authorized by this subchapter if the commissioners court of the county in which the court has jurisdiction has authorized the creation of an associate judge position.

(b) If a court has jurisdiction in more than one county, an associate judge appointed by that court may serve only in a county in which the commissioners court has authorized the appointment.

(c) If more than one court in a county is subject to this subchapter, the commissioners court may authorize the appointment of an associate judge for each court or may authorize one or more associate judges to share service with two or more courts.

(d) If an associate judge serves more than one court, the associate judge's appointment must be made as established by local rule, but in no event by less than a vote of two-thirds of the judges under whom the associate judge serves.

Sec. 54A.003. QUALIFICATIONS. To qualify for appointment as an associate judge under this subchapter, a person must:

- (1) be a resident of this state and one of the counties the person will serve;
- (2) have been licensed to practice law in this state for at least four years;



(3) not have been removed from office by impeachment, by the supreme court, by the governor on address to the legislature, by a tribunal reviewing a recommendation of the State Commission on Judicial Conduct, or by the legislature's abolition of the judge's court; and

(4) not have resigned from office after having received notice that formal proceedings by the State Commission on Judicial Conduct had been instituted as provided by Section 33.022 and before final disposition of the proceedings.

Sec. 54A.004. COMPENSATION. (a) An associate judge shall be paid a salary determined by the commissioners court of the county in which the associate judge serves.

(b) If an associate judge serves in more than one county, the associate judge shall be paid a salary as determined by agreement of the commissioners courts of the counties in which the associate judge serves.

(c) The associate judge's salary is paid from the county fund available for payment of officers' salaries.

Sec. 54A.005. TERMINATION. (a) An associate judge who serves a single court serves at the will of the judge of that court.

(b) The employment of an associate judge who serves more than two courts may only be terminated by a majority vote of all the judges of the courts the associate judge serves.

(c) The employment of an associate judge who serves two courts may be terminated by either of the judges of the courts the associate judge serves.

(d) To terminate an associate judge's employment, the appropriate judges must sign a written order of termination. The order must state:

(1) the associate judge's name and state bar identification number;

(2) each court ordering termination; and

(3) the date the associate judge's employment ends.

Sec. 54A.006. PROCEEDINGS THAT MAY BE REFERRED. (a) A judge may refer to an associate judge any matter arising out of a criminal case involving:

(1) a negotiated plea of guilty or no contest before the court;

(2) a bond forfeiture;

(3) a pretrial motion;

(4) a writ of habeas corpus;

(5) an examining trial;

(6) an occupational driver's license;

(7) an appeal of an administrative driver's license revocation hearing;

(8) a civil commitment matter under Subtitle C, Title 7, Health and Safety

Code;

(9) setting, adjusting, or revoking bond; and

(10) any other matter the judge considers necessary and proper.

(b) An associate judge may accept an agreed plea of guilty or no contest from a defendant charged with misdemeanor, felony, or both misdemeanor and felony offenses and may assess punishment if a plea agreement is announced on the record between the defendant and the state.

(c) An associate judge has all of the powers of a magistrate under the laws of this state and may administer an oath for any purpose.

(d) An associate judge may select a jury. Except as provided in Subsection (b), an associate judge may not preside over a trial on the merits, whether or not the trial is before a jury.

Sec. 54A.007. ORDER OF REFERRAL. (a) To refer one or more cases to an associate judge, a judge must issue a written order of referral that specifies the associate judge's duties.

(b) An order of referral may:

(1) limit the powers of the associate judge and direct the associate judge to report only on specific issues, do particular acts, or receive and report on evidence only;

(2) set the time and place for the hearing;

(3) prescribe a closing date for the hearing;

(4) provide a date for filing the associate judge's findings;

(5) designate proceedings for more than one case over which the associate judge shall preside;

(6) direct the associate judge to call the court's docket; and

(7) set forth general powers and limitations or authority of the associate judge applicable to any case referred.

Sec. 54A.008. POWERS. (a) Except as limited by an order of referral, an associate judge to whom a case is referred may:

(1) conduct hearings;

(2) hear evidence;

(3) compel production of relevant evidence;

(4) rule on the admissibility of evidence;

(5) issue summons for the appearance of witnesses;

(6) examine a witness;

(7) swear a witness for a hearing;

(8) make findings of fact on evidence;

(9) formulate conclusions of law;

(10) rule on pretrial motions;

(11) recommend the rulings, orders, or judgment to be made in a case;

(12) regulate proceedings in a hearing;

(13) order the attachment of a witness or party who fails to obey a subpoena;

(14) accept a plea of guilty from a defendant charged with misdemeanor, felony, or both misdemeanor and felony offenses;

(15) select a jury; and

(16) take action as necessary and proper for the efficient performance of the duties required by the order of referral.

(b) An associate judge may not enter a ruling on any issue of law or fact if that ruling could result in dismissal or require dismissal of a pending criminal prosecution, but the associate judge may make findings, conclusions, and recommendations on those issues.

(c) Except as limited by an order of referral, an associate judge who is appointed by a district or statutory county court judge and to whom a case is referred may accept a plea of guilty or nolo contendere in a misdemeanor case for a county criminal court. The associate judge shall forward any fee or fine collected for the misdemeanor offense to the county clerk.

(d) An associate judge may, in the interest of justice, refer a case back to the referring court regardless of whether a timely objection to the associate judge hearing the trial on the merits or presiding at a jury trial has been made by any party.

Sec. 54A.009. ATTENDANCE OF BAILIFF. A bailiff shall attend a hearing by an associate judge if directed by the referring court.

Sec. 54A.010. COURT REPORTER. At the request of a party, the court shall provide a court reporter to record the proceedings before the associate judge.

Sec. 54A.011. WITNESS. (a) A witness appearing before an associate judge is subject to the penalties for perjury provided by law.

(b) A referring court may issue attachment against and may fine or imprison a witness whose failure to appear after being summoned or whose refusal to answer questions has been certified to the court.

Sec. 54A.012. PAPERS TRANSMITTED TO JUDGE. At the conclusion of the proceedings, an associate judge shall transmit to the referring court any papers relating to the case, including the associate judge's findings, conclusions, orders, recommendations, or other action taken.

Sec. 54A.013. JUDICIAL ACTION. (a) Not later than the 30th day after the date an action is taken by an associate judge, a referring court may modify, correct, reject, reverse, or recommit for further information the action taken by the associate judge.

(b) If the court does not modify, correct, reject, reverse, or recommit an action to the associate judge, the action becomes the decree of the court.

Sec. 54A.014. JUDICIAL IMMUNITY. An associate judge has the same judicial immunity as a district judge.

[Sections 54A.015-54A.100 reserved for expansion]

#### SUBCHAPTER B. CIVIL ASSOCIATE JUDGES

Sec. 54A.101. APPLICABILITY. This subchapter applies to a district court or a statutory county court that is assigned civil cases.

Sec. 54A.102. APPOINTMENT. (a) A judge of a court subject to this subchapter may appoint a full-time or part-time associate judge to perform the duties authorized by this subchapter if the commissioners court of the county in which the court has jurisdiction has authorized the creation of an associate judge position.

(b) If a district court has jurisdiction in more than one county, an associate judge appointed by that court may serve only in a county in which the commissioners court has authorized the appointment.

(c) If more than one court in a county is subject to this subchapter, the commissioners court may authorize the appointment of an associate judge for each court or may authorize one or more associate judges to share service with two or more courts.

(d) If an associate judge serves more than one court, the associate judge's appointment must be made as established by local rule, but in no event by less than a vote of two-thirds of the judges under whom the associate judge serves.

Sec. 54A.103. QUALIFICATIONS. To qualify for appointment as an associate judge under this subchapter, a person must:

(1) be a resident of this state and one of the counties the person will serve;  
(2) have been licensed to practice law in this state for at least four years;  
(3) not have been removed from office by impeachment, by the supreme court, by the governor on address to the legislature, by a tribunal reviewing a recommendation of the State Commission on Judicial Conduct, or by the legislature's abolition of the judge's court; and

(4) not have resigned from office after having received notice that formal proceedings by the State Commission on Judicial Conduct had been instituted as provided in Section 33.022 and before final disposition of the proceedings.

Sec. 54A.104. COMPENSATION. (a) An associate judge shall be paid a salary determined by the commissioners court of the county in which the associate judge serves.

(b) If an associate judge serves in more than one county, the associate judge shall be paid a salary as determined by agreement of the commissioners courts of the counties in which the associate judge serves.

(c) The associate judge's salary is paid from the county fund available for payment of officers' salaries.

Sec. 54A.105. TERMINATION. (a) An associate judge who serves a single court serves at the will of the judge of that court.

(b) The employment of an associate judge who serves more than two courts may only be terminated by a majority vote of all the judges of the courts the associate judge serves.

(c) The employment of an associate judge who serves two courts may be terminated by either of the judges of the courts the associate judge serves.

(d) To terminate an associate judge's employment, the appropriate judges must sign a written order of termination. The order must state:

- (1) the associate judge's name and state bar identification number;
- (2) each court ordering termination; and
- (3) the date the associate judge's employment ends.

Sec. 54A.106. CASES THAT MAY BE REFERRED. (a) Except as provided by this section, a judge of a court may refer any civil case or portion of a civil case to an associate judge for resolution.

(b) Unless a party files a written objection to the associate judge hearing a trial on the merits, the judge may refer the trial to the associate judge. A trial on the merits is any final adjudication from which an appeal may be taken to a court of appeals.

(c) A party must file an objection to an associate judge hearing a trial on the merits or presiding at a jury trial not later than the 10th day after the date the party receives notice that the associate judge will hear the trial. If an objection is filed, the referring court shall hear the trial on the merits or preside at a jury trial.

Sec. 54A.107. METHODS OF REFERRAL. (a) A case may be referred to an associate judge by an order of referral in a specific case or by an omnibus order.

(b) The order of referral may limit the powers or duties of an associate judge.

Sec. 54A.108. POWERS. (a) Except as limited by an order of referral, an associate judge may:

- (1) conduct hearings;
- (2) hear evidence;
- (3) compel production of relevant evidence;
- (4) rule on the admissibility of evidence;
- (5) issue summons for the appearance of witnesses;
- (6) examine a witness;
- (7) swear a witness for a hearing;
- (8) make findings of fact on evidence;
- (9) formulate conclusions of law;
- (10) rule on pretrial motions;
- (11) recommend the rulings, orders, or judgment to be made in a case;
- (12) regulate proceedings in a hearing;
- (13) order the attachment of a witness or party who fails to obey a

subpoena; and

(14) take action as necessary and proper for the efficient performance of the duties required by the order of referral.

(b) An associate judge may, in the interest of justice, refer a case back to the referring court regardless of whether a timely objection to the associate judge hearing the trial on the merits or presiding at a jury trial has been made by any party.

Sec. 54A.109. WITNESS. (a) A witness appearing before an associate judge is subject to the penalties for perjury provided by law.

(b) A referring court may fine or imprison a witness who:

- (1) failed to appear before an associate judge after being summoned; or
- (2) improperly refused to answer questions if the refusal has been certified

to the court by the associate judge.

Sec. 54A.110. COURT REPORTER; RECORD. (a) A court reporter may be provided during a hearing held by an associate judge appointed under this subchapter. A court reporter is required to be provided when the associate judge presides over a jury trial.

(b) A party, the associate judge, or the referring court may provide for a reporter during the hearing if one is not otherwise provided.

(c) Except as provided by Subsection (a), in the absence of a court reporter or on agreement of the parties, the record may be preserved by any means approved by the associate judge.

(d) The referring court or associate judge may assess the expense of preserving the record under Subsection (c) as costs.

(e) On appeal of the associate judge's report or proposed order, the referring court may consider testimony or other evidence in the record if the record is taken by a court reporter.

Sec. 54A.111. NOTICE OF DECISION; APPEAL. (a) After hearing a matter, an associate judge shall notify each attorney participating in the hearing of the associate judge's decision. An associate judge's decision has the same force and effect as an order of the referring court unless a party appeals the decision as provided by Subsection (b).

(b) To appeal an associate judge's decision, other than the issuance of a temporary restraining order or temporary injunction, a party must file an appeal in the referring court not later than the seventh day after the date the party receives notice of the decision under Subsection (a).

(c) A temporary restraining order issued by an associate judge is effective immediately and expires on the 15th day after the date of issuance unless, after a hearing, the order is modified or extended by the associate judge or referring judge.

(d) A temporary injunction issued by an associate judge is effective immediately and continues during the pendency of a trial unless, after a hearing, the order is modified by a referring judge.

(e) A matter appealed to the referring court shall be tried de novo and is limited to only those matters specified in the appeal. Except on leave of court, a party may not submit on appeal any additional evidence or pleadings.

Sec. 54A.112. NOTICE OF RIGHT TO DE NOVO HEARING; WAIVER.

(a) Notice of the right to a de novo hearing before the referring court shall be given to all parties.

(b) The notice may be given:

(1) by oral statement in open court;

(2) by posting inside or outside the courtroom of the referring court; or

(3) as otherwise directed by the referring court.

(c) Before the start of a hearing by an associate judge, a party may waive the right of a de novo hearing before the referring court in writing or on the record.

Sec. 54A.113. ORDER OF COURT. (a) Pending a de novo hearing before the referring court, a proposed order or judgment of the associate judge is in full force and effect and is enforceable as an order or judgment of the referring court, except for an order providing for the appointment of a receiver.

(b) If a request for a de novo hearing before the referring court is not timely filed or the right to a de novo hearing before the referring court is waived, the proposed order or judgment of the associate judge becomes the order or judgment of the referring court only on the referring court's signing the proposed order or judgment.

(c) An order by an associate judge for the temporary detention or incarceration of a witness or party shall be presented to the referring court on the day the witness or party is detained or incarcerated. The referring court, without prejudice to the right to a de novo hearing provided by Section 54A.115, may approve the temporary detention or incarceration or may order the release of the party or witness, with or without bond, pending a de novo hearing. If the referring court is not immediately available, the associate judge may order the release of the party or witness, with or without bond, pending a de novo hearing or may continue the person's detention or incarceration for not more than 72 hours.

Sec. 54A.114. JUDICIAL ACTION ON ASSOCIATE JUDGE'S PROPOSED ORDER OR JUDGMENT. Unless a party files a written request for a de novo hearing before the referring court, the referring court may:

(1) adopt, modify, or reject the associate judge's proposed order or judgment;

(2) hear additional evidence; or

(3) recommit the matter to the associate judge for further proceedings.

Sec. 54A.115. DE NOVO HEARING. (a) A party may request a de novo hearing before the referring court by filing with the clerk of the referring court a written request not later than the seventh working day after the date the party receives notice of the substance of the associate judge's decision as provided by Section 54A.111.

(b) A request for a de novo hearing under this section must specify the issues that will be presented to the referring court. The de novo hearing is limited to the specified issues.

(c) Notice of a request for a de novo hearing before the referring court shall be given to the opposing attorney in the manner provided by Rule 21a, Texas Rules of Civil Procedure.

(d) If a request for a de novo hearing before the referring court is filed by a party, any other party may file a request for a de novo hearing before the referring court not later than the seventh working day after the date the initial request was filed.

(e) The referring court, after notice to the parties, shall hold a de novo hearing not later than the 30th day after the date the initial request for a de novo hearing was filed with the clerk of the referring court.

(f) In the de novo hearing before the referring court, the parties may present witnesses on the issues specified in the request for hearing. The referring court may also consider the record from the hearing before the associate judge, including the charge to and verdict returned by a jury, if the record was taken by a court reporter.

(g) The denial of relief to a party after a de novo hearing under this section or a party's waiver of the right to a de novo hearing before the referring court does not affect the right of a party to file a motion for new trial, a motion for judgment notwithstanding the verdict, or other posttrial motions.

(h) A party may not demand a second jury in a de novo hearing before the referring court if the associate judge's proposed order or judgment resulted from a jury trial.

Sec. 54A.116. APPELLATE REVIEW. (a) A party's failure to request a de novo hearing before the referring court or a party's waiver of the right to request a de novo hearing before the referring court does not deprive the party of the right to appeal to or request other relief from a court of appeals or the supreme court.

(b) Except as provided by Subsection (c), the date an order or judgment by the referring court is signed is the controlling date for the purposes of appeal to or request for other relief from a court of appeals or the supreme court.

(c) The date an agreed order or a default order is signed by an associate judge is the controlling date for the purpose of an appeal to, or a request for other relief relating to the order from, a court of appeals or the supreme court.

Sec. 54A.117. JUDICIAL ACTION. (a) Not later than the 30th day after the date an action is taken by an associate judge, a referring court may modify, correct, reject, reverse, or recommit for further information the action taken by the associate judge.

(b) If the court does not modify, correct, reject, reverse, or recommit an action to the associate judge, the action becomes the decree of the court.

Sec. 54A.118. JUDICIAL IMMUNITY. An associate judge appointed under this subchapter has the judicial immunity of a district judge.

SECTION 5.02. Subchapter G, Chapter 54, Government Code, is transferred to Chapter 54A, Government Code, as added by this Act, redesignated as Subchapter C, Chapter 54A, Government Code, and amended to read as follows:

SUBCHAPTER C [G]. STATUTORY PROBATE COURT ASSOCIATE JUDGES

Sec. 54A.201 [54.601]. DEFINITION. In this subchapter, "statutory probate court" has the meaning assigned by Section 3, Texas Probate Code.

Sec. 54A.202. APPLICABILITY. This subchapter applies to a statutory probate court.

Sec. 54A.203 [54.603]. APPOINTMENT. (a) After obtaining the approval of the commissioners court to create an associate judge position, the judge of a statutory probate court by order may appoint one or more full-time or part-time [a person to act as] associate judges to perform the duties authorized by this subchapter [judge for the statutory probate court].

(b) If a statutory probate court has jurisdiction in more than one county, an associate judge appointed by that court may serve only in a county in which the commissioners court has authorized the appointment.

(c) The commissioners court may authorize the appointment of an associate judge for each court or may authorize one or more associate judges to share service with two or more courts, if more than one statutory probate court exists in a county.

(d) [e] If an associate judge serves more than one court, the associate judge's appointment must be made with the unanimous approval of all the judges under whom the associate judge serves.

[(d) An associate judge must meet the qualifications to serve as a judge of the court to which the associate judge is appointed.]

(e) An associate judge appointed under this subchapter may serve as an associate judge appointed under Section 574.0085, Health and Safety Code.

Sec. 54A.204. QUALIFICATIONS. To qualify for appointment as an associate judge under this subchapter, a person must:

(1) be a resident of this state and one of the counties the person will serve;  
(2) have been licensed to practice law in this state for at least five years;  
(3) not have been removed from office by impeachment, by the supreme court, by the governor on address to the legislature, by a tribunal reviewing a recommendation of the State Commission on Judicial Conduct, or by the legislature's abolition of the judge's court; and

(4) not have resigned from office after having received notice that formal proceedings by the State Commission on Judicial Conduct had been instituted as provided in Section 33.022 and before final disposition of the proceedings.



Sec. 54A.205 ~~[54.605]~~. COMPENSATION. (a) An associate judge is entitled to the compensation set by the appointing judge and approved by the commissioners court or commissioners courts of the counties in which the associate judge serves. ~~[The salary of the associate judge may not exceed the salary of the appointing judge.]~~

(b) If an associate judge serves in more than one county, the associate judge shall be paid a salary as determined by agreement of the commissioners courts of the counties in which the associate judge serves.

(c) Except as provided by Subsection (d) ~~[(e)]~~, the compensation of the associate judge shall be paid by the county from the county general fund. The compensation must be paid in the same manner that the appointing judge's salary is paid.

(d) ~~[(e)]~~ On the recommendation of the statutory probate court judges in the county and subject to the approval of the county commissioners court, the county may pay all or part of the compensation of the associate judge from the excess contributions remitted to the county under Section 25.00212 and deposited in the contributions fund created under Section 25.00213.

Sec. 54A.206 ~~[54.604]~~. TERMINATION OF ASSOCIATE JUDGE. (a) An associate judge who serves a single court serves at the will of the judge of that court.

(b) The employment of an associate judge who serves more than two courts may only be terminated by a majority vote of all the judges of the courts that the associate judge serves.

(c) The employment of an associate judge who serves two courts may be terminated by either of the judges of the courts that the associate judge serves.

(d) The appointment of the associate judge terminates if:

(1) the associate judge becomes a candidate for election to public office; or  
(2) the commissioners court does not appropriate funds in the county's budget to pay the salary of the associate judge.

(e) If an associate judge serves a single court and the appointing judge vacates the judge's office, the associate judge's employment continues, subject to Subsections (d) and (h), unless the successor appointed or elected judge terminates that employment.

(f) If an associate judge serves two courts and one of the appointing judges vacates the judge's office, the associate judge's employment continues, subject to Subsections (d) and (h), unless the successor appointed or elected judge terminates that employment or the judge of the other court served by the associate judge terminates that employment as provided by Subsection (c).

(g) If an associate judge serves more than two courts and an appointing judge vacates the judge's office, the associate judge's employment continues, subject to Subsections (d) and (h), unless:

(1) if no successor judge has been elected or appointed, the majority of the judges of the other courts the associate judge serves vote to terminate that employment; or

(2) if a successor judge has been elected or appointed, the majority of the judges of the courts the associate judge serves, including the successor judge, vote to terminate that employment as provided by Subsection (b).

(h) Notwithstanding the powers of an associate judge provided by Section 54A.209 ~~[54.610]~~, an associate judge whose employment continues as provided by Subsection (e), (f), or (g) after the judge of a court served by the associate judge vacates the judge's office may perform administrative functions with respect to that court, but may not perform any judicial function, including any power prescribed by Section 54A.209 ~~[54.610]~~, with respect to that court until a successor judge is appointed or elected.

Sec. 54A.207 ~~[54.608]~~. **CASES THAT MAY BE REFERRED.** (a) Except as provided by this section, a judge of a court may refer to an associate judge any aspect of a suit over which the probate court has jurisdiction, including any matter ancillary to the suit.

(b) Unless a party files a written objection to the associate judge hearing a trial on the merits, the judge may refer the trial to the associate judge. A trial on the merits is any final adjudication from which an appeal may be taken to a court of appeals.

(c) A party must file an objection to an associate judge hearing a trial on the merits or presiding at a jury trial not later than the 10th day after the date the party receives notice that the associate judge will hear the trial. If an objection is filed, the referring court shall hear the trial on the merits or preside at a jury trial.

Sec. 54A.207 ~~[54.606]~~. **OATH.** An associate judge must take the constitutional oath of office required of appointed officers of this state.

~~[Sec. 54.607. **MAGISTRATE.** An associate judge appointed under this subchapter is a magistrate.]~~

Sec. 54A.208 ~~[54.609]~~. **METHODS ~~[ORDER]~~ OF REFERRAL.** (a) A case may be referred to an associate judge by an order of referral in a specific case or by an omnibus order ~~[In referring a case to an associate judge, the judge of the referring court shall render:~~

~~[(1) an individual order of referral; or  
(2) a general order of referral]~~ specifying the class and type of cases to be referred ~~[heard by the associate judge].~~

(b) The order of referral may limit the power or duties of an associate judge.

Sec. 54A.209 ~~[54.610]~~. **POWERS OF ASSOCIATE JUDGE.** (a) Except as limited by an order of referral, an associate judge may:

- (1) conduct a hearing;
- (2) hear evidence;
- (3) compel production of relevant evidence;
- (4) rule on the admissibility of evidence;
- (5) issue a summons for the appearance of witnesses;
- (6) examine a witness;
- (7) swear a witness for a hearing;
- (8) make findings of fact on evidence;
- (9) formulate conclusions of law;
- (10) rule on pretrial motions;
- (11) recommend the rulings, orders, or judgment ~~[an order]~~ to be made ~~[rendered]~~ in a case;
- (12) ~~[(11)]~~ regulate all proceedings in a hearing before the associate judge;

(13) ~~(12)~~ take action as necessary and proper for the efficient performance of the ~~associate judge's~~ duties required by the order of referral;

(14) ~~(13)~~ order the attachment of a witness or party who fails to obey a subpoena;

(15) ~~(14)~~ order the detention of a witness or party found guilty of contempt, pending approval by the referring court as provided by Section 54A.214 ~~[54.616]~~;

(16) ~~(15)~~ without prejudice to the right to a de novo hearing under Section 54A.216 ~~[54.618]~~, render and sign:

(A) a final order agreed to in writing as to both form and substance by all parties;

(B) a final default order;

(C) a temporary order;

(D) a final order in a case in which a party files an unrevoked waiver made in accordance with Rule 119, Texas Rules of Civil Procedure, that waives notice to the party of the final hearing or waives the party's appearance at the final hearing;

(E) an order specifying that the court clerk shall issue:

(i) letters testamentary or of administration; or

(ii) letters of guardianship; or

(F) an order for inpatient or outpatient mental health, mental retardation, or chemical dependency services or an order authorizing psychoactive medications; and

(17) ~~(16)~~ sign a final order that includes a waiver of the right to a de novo hearing in accordance with Section 54A.216 ~~[54.618]~~.

(b) An associate judge may, in the interest of justice, refer a case back to the referring court regardless of whether a timely objection to the associate judge hearing the trial on the merits or presiding at a jury trial has been made by any party.

(c) An order described by Subsection (a)(16) ~~[(a)(15)]~~ that is rendered and signed by an associate judge constitutes an order of the referring court. The judge of the referring court shall sign the order not later than the 30th day after the date the associate judge signs the order.

(d) An answer filed by or on behalf of a party who previously filed a waiver described in Subsection (a)(16)(D) ~~[(a)(15)(D)]~~ revokes that waiver.

Sec. 54A.2091 ~~[54.611]~~. ATTENDANCE OF BAILIFF. A bailiff shall attend a hearing conducted by an associate judge if directed to attend by the referring court.

~~[Sec. 54.612. COURT REPORTER. (a) A court reporter may be provided during a hearing held by an associate judge appointed under this subchapter unless required by other law. A court reporter is required to be provided when the associate judge presides over a jury trial.~~

~~[(b) A party, the associate judge, or the referring court may provide for a reporter during the hearing, if one is not otherwise provided.~~

~~[(c) Except as provided by Subsection (a), in the absence of a court reporter or an agreement of the parties, the record may be preserved by any means approved by the referring court.~~

~~[(d) The referring court or associate judge may impose on a party the expense of preserving the record as a court cost.~~

~~[(e) On a request for a de novo hearing, the referring court may consider testimony or other evidence in the record, if the record is taken by a court reporter, in addition to witnesses or other matters presented under Section 54.618.]~~

Sec. 54A.210 ~~[54.613]~~. WITNESS. (a) A witness appearing before an associate judge is subject to the penalties for perjury provided by law.

(b) A referring court may issue attachment against and may fine or imprison a witness whose failure ~~[who:~~

~~[(1) fails]~~ to appear ~~[before an associate judge]~~ after being summoned or whose refusal to answer questions has been certified to the court~~[-or~~

~~[(2) improperly refuses to answer a question if the refusal has been certified to the court by the associate judge].~~

Sec. 54A.211. COURT REPORTER; RECORD. (a) A court reporter may be provided during a hearing held by an associate judge appointed under this subchapter. A court reporter is required to be provided when the associate judge presides over a jury trial.

(b) A party, the associate judge, or the referring court may provide for a reporter during the hearing if one is not otherwise provided.

(c) Except as provided by Subsection (a), in the absence of a court reporter or on agreement of the parties, the record may be preserved by any means approved by the associate judge.

(d) The referring court or associate judge may assess the expense of preserving the record as court costs.

(e) On appeal of the associate judge's report or proposed order, the referring court may consider testimony or other evidence in the record if the record is taken by a court reporter.

Sec. 54A.212 ~~[54.614]~~. REPORT. (a) The associate judge's report may contain the associate judge's findings, conclusions, or recommendations and may be in the form of a proposed order.

(b) The associate judge shall prepare a ~~[written]~~ report in the form directed by the referring court, including in the form of:

- (1) a notation on the referring court's docket sheet or in the court's jacket; or
- (2) a proposed order.

(c) [(b)] After a hearing, the associate judge shall provide the parties participating in the hearing notice of the substance of the associate judge's report, including any proposed order.

(d) [(c)] Notice may be given to the parties:

- (1) in open court, by an oral statement, or by providing a copy of the associate judge's written report, including any proposed order;
- (2) by certified mail, return receipt requested; or
- (3) by facsimile transmission.

(e) [(d)] There is a rebuttable presumption that notice is received on the date stated on:

- (1) the signed return receipt, if notice was provided by certified mail; or
- (2) the confirmation page produced by the facsimile machine, if notice was provided by facsimile transmission.

(f) ~~(e)~~ After a hearing conducted by an associate judge, the associate judge shall send the associate judge's signed and dated report, including any proposed order, and all other papers relating to the case to the referring court.

Sec. 54A.213 ~~[54.615]~~. NOTICE OF RIGHT TO DE NOVO HEARING BEFORE REFERRING COURT. (a) An associate judge shall give all parties notice of the right to a de novo hearing before the referring court.

(b) The notice may be given:

- (1) by oral statement in open court;
- (2) by posting inside or outside the courtroom of the referring court; or
- (3) as otherwise directed by the referring court.

(c) Before the start of a hearing by an associate judge, a party may waive the right to a de novo hearing before the referring court in writing or on the record.

Sec. 54A.214 ~~[54.616]~~. ORDER OF COURT. (a) Pending a de novo hearing before the referring court, the decisions and recommendations of the associate judge or a proposed order or judgment of the associate judge has the full force and effect, and is enforceable as, an order or judgment of the referring court, except for an order providing for the appointment of a receiver.

(b) Except as provided by Section 54A.209(c) ~~[54.610(e)]~~, if a request for a de novo hearing before the referring court is not timely filed or the right to a de novo hearing before the referring court is waived, the decisions and recommendations of the associate judge or the proposed order or judgment of the associate judge becomes the order or judgment of the referring court at the time the judge of the referring court signs the proposed order or judgment.

(c) An order by an associate judge for the temporary detention or incarceration of a witness or party shall be presented to the referring court on the day the witness or party is detained or incarcerated. The referring court, without prejudice to the right to a de novo hearing provided by Section 54A.216, may approve the temporary detention or incarceration or may order the release of the party or witness, with or without bond, pending a de novo hearing. If the referring court is not immediately available, the associate judge may order the release of the party or witness, with or without bond, pending a de novo hearing or may continue the person's detention or incarceration for not more than 72 hours.

Sec. 54A.215 ~~[54.617]~~. JUDICIAL ACTION ON ASSOCIATE JUDGE'S PROPOSED ORDER OR JUDGMENT. (a) Unless a party files a written request for a de novo hearing before the referring court, the referring court may:

(1) adopt, modify, or reject the associate judge's proposed order or judgment;

(2) hear further evidence; or

(3) recommit the matter to the associate judge for further proceedings.

(b) The judge of the referring court shall sign a proposed order or judgment the court adopts as provided by Subsection (a)(1) not later than the 30th day after the date the associate judge signed the order or judgment.

Sec. 54A.216 ~~[54.618]~~. DE NOVO HEARING BEFORE REFERRING COURT. (a) A party may request a de novo hearing before the referring court by filing with the clerk of the referring court a written request not later than the seventh working day after the date the party receives notice of the substance of the associate judge's report as provided by Section 54A.212 ~~[54.614]~~.

(b) A request for a de novo hearing under this section must specify the issues that will be presented to the referring court. The de novo hearing is limited to the specified issues.

(c) In the de novo hearing before the referring court, the parties may present witnesses on the issues specified in the request for hearing. The referring court may also consider the record from the hearing before the associate judge, including the charge to and verdict returned by a jury, if the record was taken by a court reporter.

(d) Notice of a request for a de novo hearing before the referring court must be given to the opposing attorney in the manner provided by Rule 21a, Texas Rules of Civil Procedure.

(e) If a request for a de novo hearing before the referring court is filed by a party, any other party may file a request for a de novo hearing before the referring court not later than the seventh working day after the date of filing of the initial request.

(f) The referring court, after notice to the parties, shall hold a de novo hearing not later than the 30th day after the date on which the initial request for a de novo hearing was filed with the clerk of the referring court~~[, unless all of the parties agree to a later date]~~.

(g) Before the start of a hearing conducted by an associate judge, the parties may waive the right of a de novo hearing before the referring court. The waiver may be in writing or on the record.

(h) The denial of relief to a party after a de novo hearing under this section or a party's waiver of the right to a de novo hearing before the referring court does not affect the right of a party to file a motion for new trial, motion for judgment notwithstanding the verdict, or other post-trial motion.

(i) A party may not demand a second jury in a de novo hearing before the referring court if the associate judge's proposed order or judgment resulted from a jury trial.

Sec. 54A.217 ~~[54.619]~~. APPELLATE REVIEW. (a) A party's failure to request a de novo hearing before the referring court or a party's waiver of the right to request a de novo hearing before the referring court does not deprive the party of the right to appeal to or request other relief from a court of appeals or the supreme court.

(b) Except as provided by Subsection (c), the date the judge of a referring court signs an order or judgment is the controlling date for the purposes of appeal to or request for other relief from a court of appeals or the supreme court.

(c) The date an order described by Section 54A.209(a)(16) ~~[54.610(a)(15)]~~ is signed by an associate judge is the controlling date for the purpose of an appeal to, or a request for other relief relating to the order from, a court of appeals or the supreme court.

Sec. 54A.218 ~~[54.620]~~. IMMUNITY. An associate judge appointed under this subchapter has the judicial immunity of a probate judge. All existing immunity granted an associate judge by law, express or implied, continues in full force and effect.

SECTION 5.03. Chapter 201, Family Code, is amended by adding Subchapter D to read as follows:

**SUBCHAPTER D. ASSOCIATE JUDGE FOR JUVENILE MATTERS**

Sec. 201.301. APPLICABILITY. This subchapter applies only to an associate judge appointed under this subchapter and does not apply to a juvenile court master appointed under Subchapter K, Chapter 54, Government Code.

Sec. 201.302. APPOINTMENT. (a) A judge of a court that is designated as a juvenile court may appoint a full-time or part-time associate judge to perform the duties authorized by this chapter if the commissioners court of a county in which the court has jurisdiction has authorized creation of an associate judge position.

(b) If a court has jurisdiction in more than one county, an associate judge appointed by that court may serve only in a county in which the commissioners court has authorized the appointment.

(c) If more than one court in a county has been designated as a juvenile court, the commissioners court may authorize the appointment of an associate judge for each court or may authorize one or more associate judges to share service with two or more courts.

(d) If an associate judge serves more than one court, the associate judge's appointment must be made as established by local rule, but in no event by less than a vote of two-thirds of the judges under whom the associate judge serves.

Sec. 201.303. QUALIFICATIONS. To qualify for appointment as an associate judge under this subchapter, a person must:

(1) be a resident of this state and one of the counties the person will serve;  
(2) have been licensed to practice law in this state for at least four years;  
(3) not have been removed from office by impeachment, by the supreme court, by the governor on address to the legislature, by a tribunal reviewing a recommendation of the State Commission on Judicial Conduct, or by the legislature's abolition of the judge's court; and

(4) not have resigned from office after having received notice that formal proceedings by the State Commission on Judicial Conduct had been instituted as provided in Section 33.022, Government Code, and before final disposition of the proceedings.

Sec. 201.304. COMPENSATION. (a) An associate judge shall be paid a salary determined by the commissioners court of the county in which the associate judge serves.

(b) If an associate judge serves in more than one county, the associate judge shall be paid a salary as determined by agreement of the commissioners courts of the counties in which the associate judge serves.

(c) The associate judge's salary is paid from the county fund available for payment of officers' salaries.

Sec. 201.305. TERMINATION. (a) An associate judge who serves a single court serves at the will of the judge of that court.

(b) The employment of an associate judge who serves more than two courts may only be terminated by a majority vote of all the judges of the courts which the associate judge serves.

(c) The employment of an associate judge who serves two courts may be terminated by either of the judges of the courts which the associate judge serves.

(d) To terminate an associate judge's employment, the appropriate judges must sign a written order of termination. The order must state:

- (1) the associate judge's name and state bar identification number;
- (2) each court ordering termination; and
- (3) the date the associate judge's employment ends.

Sec. 201.306. CASES THAT MAY BE REFERRED. (a) Except as provided by this section, a judge of a juvenile court may refer to an associate judge any aspect of a juvenile matter brought:

- (1) under this title or Title 3; or
- (2) in connection with Rule 308a, Texas Rules of Civil Procedure.

(b) Unless a party files a written objection to the associate judge hearing a trial on the merits, the judge may refer the trial to the associate judge. A trial on the merits is any final adjudication from which an appeal may be taken to a court of appeals.

(c) A party must file an objection to an associate judge hearing a trial on the merits or presiding at a jury trial not later than the 10th day after the date the party receives notice that the associate judge will hear the trial. If an objection is filed, the referring court shall hear the trial on the merits or preside at a jury trial.

(d) The requirements of Subsections (b) and (c) apply when a judge has authority to refer the trial of a suit under this title, Title 1, or Title 4 to an associate judge, master, or other assistant judge regardless of whether the assistant judge is appointed under this subchapter.

Sec. 201.307. METHODS OF REFERRAL. (a) A case may be referred to an associate judge by an order of referral in a specific case or by an omnibus order.

(b) The order of referral may limit the power or duties of an associate judge.

Sec. 201.308. POWERS OF ASSOCIATE JUDGE. (a) Except as limited by an order of referral, an associate judge may:

- (1) conduct a hearing;
- (2) hear evidence;
- (3) compel production of relevant evidence;
- (4) rule on the admissibility of evidence;
- (5) issue a summons for:

(A) the appearance of witnesses; and

(B) the appearance of a parent who has failed to appear before an agency authorized to conduct an investigation of an allegation of abuse or neglect of a child after receiving proper notice;

- (6) examine a witness;
- (7) swear a witness for a hearing;
- (8) make findings of fact on evidence;
- (9) formulate conclusions of law;
- (10) recommend an order to be rendered in a case;
- (11) regulate proceedings in a hearing;



(12) order the attachment of a witness or party who fails to obey a subpoena;

(13) order the detention of a witness or party found guilty of contempt, pending approval by the referring court; and

(14) take action as necessary and proper for the efficient performance of the associate judge's duties.

(b) An associate judge may, in the interest of justice, refer a case back to the referring court regardless of whether a timely objection to the associate judge hearing the trial on the merits or presiding at a jury trial has been made by any party.

Sec. 201.309. REFEREES. (a) An associate judge appointed under this subchapter may serve as a referee as provided by Sections 51.04(g) and 54.10.

(b) A referee appointed under Section 51.04(g) may be appointed to serve as an associate judge under this subchapter.

Sec. 201.310. ATTENDANCE OF BAILIFF. A bailiff may attend a hearing by an associate judge if directed by the referring court.

Sec. 201.311. WITNESS. (a) A witness appearing before an associate judge is subject to the penalties for perjury provided by law.

(b) A referring court may fine or imprison a witness who:

(1) failed to appear before an associate judge after being summoned; or

(2) improperly refused to answer questions if the refusal has been certified to the court by the associate judge.

Sec. 201.312. COURT REPORTER; RECORD. (a) A court reporter may be provided during a hearing held by an associate judge appointed under this subchapter. A court reporter is required to be provided when the associate judge presides over a jury trial or a contested final termination hearing.

(b) A party, the associate judge, or the referring court may provide for a reporter during the hearing if one is not otherwise provided.

(c) Except as provided by Subsection (a), in the absence of a court reporter or on agreement of the parties, the record may be preserved by any means approved by the associate judge.

(d) The referring court or associate judge may assess the expense of preserving the record as costs.

(e) On a request for a de novo hearing, the referring court may consider testimony or other evidence in the record, if the record is taken by a court reporter, in addition to witnesses or other matters presented under Section 201.317.

Sec. 201.313. REPORT. (a) The associate judge's report may contain the associate judge's findings, conclusions, or recommendations and may be in the form of a proposed order. The associate judge's report must be in writing and in the form directed by the referring court.

(b) After a hearing, the associate judge shall provide the parties participating in the hearing notice of the substance of the associate judge's report, including any proposed order.

(c) Notice may be given to the parties:

(1) in open court, by an oral statement or by providing a copy of the associate judge's written report, including any proposed order;

(2) by certified mail, return receipt requested; or

(3) by facsimile.

(d) A rebuttable presumption exists that notice is received on the date stated on:

(1) the signed return receipt, if notice was provided by certified mail; or

(2) the confirmation page produced by the facsimile machine, if notice was provided by facsimile.

(e) After a hearing conducted by an associate judge, the associate judge shall send the associate judge's signed and dated report, including any proposed order, and all other papers relating to the case to the referring court.

Sec. 201.314. NOTICE OF RIGHT TO DE NOVO HEARING; WAIVER. (a) An associate judge shall give all parties notice of the right to a de novo hearing to the judge of the referring court.

(b) The notice may be given:

(1) by oral statement in open court;

(2) by posting inside or outside the courtroom of the referring court; or

(3) as otherwise directed by the referring court.

(c) Before the start of a hearing by an associate judge, a party may waive the right of a de novo hearing before the referring court in writing or on the record.

Sec. 201.315. ORDER OF COURT. (a) Pending a de novo hearing before the referring court, a proposed order or judgment of the associate judge is in full force and effect and is enforceable as an order or judgment of the referring court, except for an order providing for the appointment of a receiver.

(b) If a request for a de novo hearing before the referring court is not timely filed or the right to a de novo hearing before the referring court is waived, the proposed order or judgment of the associate judge becomes the order or judgment of the referring court only on the referring court's signing the proposed order or judgment.

(c) An order by an associate judge for the temporary detention or incarceration of a witness or party shall be presented to the referring court on the day the witness or party is detained or incarcerated. The referring court, without prejudice to the right to a de novo hearing provided by Section 201.317, may approve the temporary detention or incarceration or may order the release of the party or witness, with or without bond, pending a de novo hearing. If the referring court is not immediately available, the associate judge may order the release of the party or witness, with or without bond, pending a de novo hearing or may continue the person's detention or incarceration for not more than 72 hours.

Sec. 201.316. JUDICIAL ACTION ON ASSOCIATE JUDGE'S PROPOSED ORDER OR JUDGMENT. Unless a party files a written request for a de novo hearing before the referring court, the referring court may:

(1) adopt, modify, or reject the associate judge's proposed order or judgment;

(2) hear additional evidence; or

(3) recommit the matter to the associate judge for further proceedings.

Sec. 201.317. DE NOVO HEARING. (a) A party may request a de novo hearing before the referring court by filing with the clerk of the referring court a written request not later than the seventh working day after the date the party receives notice of the substance of the associate judge's report as provided by Section 201.313.

(b) A request for a de novo hearing under this section must specify the issues that will be presented to the referring court. The de novo hearing is limited to the specified issues.

(c) Notice of a request for a de novo hearing before the referring court shall be given to the opposing attorney in the manner provided by Rule 21a, Texas Rules of Civil Procedure.

(d) If a request for a de novo hearing before the referring court is filed by a party, any other party may file a request for a de novo hearing before the referring court not later than the seventh working day after the date the initial request was filed.

(e) The referring court, after notice to the parties, shall hold a de novo hearing not later than the 30th day after the date the initial request for a de novo hearing was filed with the clerk of the referring court.

(f) In the de novo hearing before the referring court, the parties may present witnesses on the issues specified in the request for hearing. The referring court may also consider the record from the hearing before the associate judge, including the charge to and verdict returned by a jury, if the record was taken by a court reporter.

(g) The denial of relief to a party after a de novo hearing under this section or a party's waiver of the right to a de novo hearing before the referring court does not affect the right of a party to file a motion for new trial, a motion for judgment notwithstanding the verdict, or other posttrial motions.

(h) A party may not demand a second jury in a de novo hearing before the referring court if the associate judge's proposed order or judgment resulted from a jury trial.

Sec. 201.318. APPELLATE REVIEW. (a) A party's failure to request a de novo hearing before the referring court or a party's waiver of the right to request a de novo hearing before the referring court does not deprive the party of the right to appeal to or request other relief from a court of appeals or the supreme court.

(b) Except as provided by Subsection (c), the date an order or judgment by the referring court is signed is the controlling date for the purposes of appeal to or request for other relief from a court of appeals or the supreme court.

(c) The date an agreed order or a default order is signed by an associate judge is the controlling date for the purpose of an appeal to, or a request for other relief relating to the order from, a court of appeals or the supreme court.

Sec. 201.319. JUDICIAL IMMUNITY. An associate judge appointed under this subchapter has the judicial immunity of a district judge.

Sec. 201.320. VISITING ASSOCIATE JUDGE. (a) If an associate judge appointed under this subchapter is temporarily unable to perform the judge's official duties because of absence or illness, injury, or other disability, a judge of a court having jurisdiction of a suit under this title or Title 1 or 4 may appoint a visiting associate judge to perform the duties of the associate judge during the period of the associate judge's absence or disability if the commissioners court of a county in which the court has jurisdiction authorizes the employment of a visiting associate judge.

(b) To be eligible for appointment under this section, a person must have served as an associate judge for at least two years.

(c) Sections 201.001 through 201.017 apply to a visiting associate judge appointed under this section.

SECTION 5.04. Subsection (b), Section 22.110, Government Code, is amended to read as follows:

(b) The court of criminal appeals shall adopt the rules necessary to accomplish the purposes of this section. The rules must require each district judge, judge of a statutory county court, associate judge appointed under Chapter 54A [~~54~~] of this code or Chapter 201, Family Code, master, referee, and magistrate to complete at least 12 hours of the training within the judge's first term of office or the judicial officer's first four years of service and provide a method for certification of completion of that training. At least four hours of the training must be dedicated to issues related to child abuse and neglect and must cover at least two of the topics described in Subsections (d)(8)-(12). At least six hours of the training must be dedicated to the training described by Subsections (d)(5), (6), and (7). The rules must require each judge and judicial officer to complete an additional five hours of training during each additional term in office or four years of service. At least two hours of the additional training must be dedicated to issues related to child abuse and neglect. The rules must exempt from the training requirement of this subsection each judge or judicial officer who files an affidavit stating that the judge or judicial officer does not hear any cases involving family violence, sexual assault, or child abuse and neglect.

SECTION 5.05. (a) Section 101.0611, Government Code, is amended to read as follows:

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

(1) appellate judicial system filing fees for:

(A) First or Fourteenth Court of Appeals District (Sec. 22.2021, Government Code) . . . not more than \$5;

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

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

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

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

(E-1) Sixth Court of Appeals District (Sec. 22.2071, Government Code) . . . \$5;

(E-2) Seventh Court of Appeals District (Sec. 22.2081, Government Code) . . . \$5;

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

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

(G-1) Twelfth Court of Appeals District (Sec. 22.2131, Government Code) . . . \$5; and

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

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

(3) additional filing fees:

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

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

(B-1) to fund the improvement of Bexar County court facilities, if authorized by the county commissioners court (Sec. 51.706, Government Code) . . . not more than \$15; ~~and~~

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

(D) to fund the preservation of court records (Sec. 51.708, Government Code) . . . not more than \$10;

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

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

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

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

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

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

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

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

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

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

(7-a) for district court records archiving, if adopted by the county commissioners court (Sec. 51.317(b)(5), Government Code) . . . not more than \$5;

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

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

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

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

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

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

(14) for a certified copy of a record, judgment, order, pleading, or paper on file or of record in the district clerk's office, including certificate and seal, for each page or part of a page (Sec. 51.318, Government Code) . . . \$1;

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

(16) fee for performing a service:

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

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

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

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

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

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

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

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

(b) Sections 101.06111, 101.06113, 101.06114, 101.06115, 101.06116, and 101.06117, Government Code, are repealed.

SECTION 5.06. Section 602.002, Government Code, is amended to read as follows:

Sec. 602.002. OATH MADE IN TEXAS. An oath made in this state may be administered and a certificate of the fact given by:

(1) a judge, retired judge, or clerk of a municipal court;

(2) a judge, retired judge, senior judge, clerk, or commissioner of a court of record;

(3) a justice of the peace or a clerk of a justice court;

(4) an associate judge, magistrate, master, referee, or criminal law hearing officer;

(5) a notary public;

(6) ~~(5)~~ a member of a board or commission created by a law of this state, in a matter pertaining to a duty of the board or commission;

(7) ~~(6)~~ a person employed by the Texas Ethics Commission who has a duty related to a report required by Title 15, Election Code, in a matter pertaining to that duty;

(8) ~~(7)~~ a county tax assessor-collector or an employee of the county tax assessor-collector if the oath relates to a document that is required or authorized to be filed in the office of the county tax assessor-collector;

(9) ~~(8)~~ the secretary of state or a former secretary of state;

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

(11) ~~(10)~~ the lieutenant governor or a former lieutenant governor;

(12) ~~(11)~~ the speaker of the house of representatives or a former speaker of the house of representatives;

(13) ~~(12)~~ the governor or a former governor;

(14) ~~(13)~~ a legislator or retired legislator;

(15) ~~(14)~~ the attorney general or a former attorney general;

(16) ~~(15)~~ the secretary or clerk of a municipality in a matter pertaining to the official business of the municipality; or

(17) ~~(16)~~ a peace officer described by Article 2.12, Code of Criminal Procedure, if:

(A) the oath is administered when the officer is engaged in the performance of the officer's duties; and

(B) the administration of the oath relates to the officer's duties.

SECTION 5.07. Article 2.09, Code of Criminal Procedure, is amended to read as follows:

Art. 2.09. WHO ARE MAGISTRATES. Each of the following officers is a magistrate within the meaning of this Code: The justices of the Supreme Court, the judges of the Court of Criminal Appeals, the justices of the Courts of Appeals, the judges of the District Court, the magistrates appointed by the judges of the district courts of Bexar County, Dallas County, or Tarrant County that give preference to criminal cases, the criminal law hearing officers for Harris County appointed under Subchapter L, Chapter 54, Government Code, the criminal law hearing officers for Cameron County appointed under Subchapter BB, Chapter 54, Government Code, the magistrates or associate judges appointed by the judges of the district courts of Lubbock County, Nolan County, or Webb County, the magistrates appointed by the judges of the criminal district courts of Dallas County or Tarrant County, the associate judges ~~judges~~ ~~masters~~ appointed by the judges of the district courts and the county courts at law that give preference to criminal cases in Jefferson County, the associate judges ~~magistrates~~ appointed by the judges of the district courts and the statutory county courts of Brazos County, Nueces County, or Williamson County, the magistrates

appointed by the judges of the district courts and statutory county courts that give preference to criminal cases in Travis County, the criminal magistrates appointed by the Brazoria County Commissioners Court, the county judges, the judges of the county courts at law, judges of the county criminal courts, the judges of statutory probate courts, the associate judges appointed by the judges of the statutory probate courts under ~~[Subchapter G,]~~ Chapter 54A [54], Government Code, the associate judges appointed by the judge of a district court under Chapter 54A ~~[Subchapter II, Chapter 54]~~, Government Code, the justices of the peace, and the mayors and recorders and the judges of the municipal courts of incorporated cities or towns.

SECTION 5.08. Subsection (d), Article 102.017, Code of Criminal Procedure, is amended to read as follows:

(d) Except as provided by Subsection (d-2), the clerks of the respective courts shall collect the costs and pay them to the county or municipal treasurer, as appropriate, or to any other official who discharges the duties commonly delegated to the county or municipal treasurer, as appropriate, for deposit in a fund to be known as the courthouse security fund or a fund to be known as the municipal court building security fund, as appropriate. Money deposited in a courthouse security fund may be used only for security personnel, services, and items related to buildings that house the operations of district, county, or justice courts, and money deposited in a municipal court building security fund may be used only for security personnel, services, and items related to buildings that house the operations of municipal courts. For purposes of this subsection, operations of a district, county, or justice court include the activities of associate judges, masters, magistrates, referees, hearing officers, criminal law magistrate court judges, and masters in chancery appointed under:

- (1) Section 61.311, Alcoholic Beverage Code;
- (2) Section 51.04(g) or Chapter 201, Family Code;
- (3) Section 574.0085, Health and Safety Code;
- (4) Section 33.71, Tax Code;
- (5) Chapter 54A ~~[Chapter 54]~~, Government Code; or
- (6) Rule 171, Texas Rules of Civil Procedure.

SECTION 5.09. Subsection (a), Section 54.10, Family Code, is amended to read as follows:

(a) Except as provided by Subsection (e), a hearing under Section 54.03, 54.04, or 54.05, including a jury trial, a hearing under Chapter 55, including a jury trial, or a hearing under the Interstate Compact for Juveniles (Chapter 60) may be held by a referee appointed in accordance with Section 51.04(g) or an associate judge ~~[a master]~~ appointed under Chapter 54A [54], Government Code, provided:

- (1) the parties have been informed by the referee or associate judge ~~[master]~~ that they are entitled to have the hearing before the juvenile court judge; and
- (2) after each party is given an opportunity to object, no party objects to holding the hearing before the referee or associate judge ~~[master]~~.

SECTION 5.10. A magistrate, master, referee, associate judge, or hearing officer appointed as provided by Subchapters A, B, C, E, F, I, O, P, S, T, U, V, X, CC, FF, and II, Chapter 54, Government Code, before the effective date of this Act, continues to serve as an associate judge under Chapter 54A, Government Code, as added by this



article, with the powers and duties provided by that chapter, provided the court for which the magistrate, master, referee, associate judge, or hearing officer serves has authority to appoint an associate judge under Chapter 54A, Government Code.

SECTION 5.11. The changes in law made by this article apply to a matter referred to an associate judge on or after the effective date of this article. A matter referred to an associate judge before the effective date of this article is governed by the law in effect on the date the matter was referred to the associate judge, and the former law is continued in effect for that purpose.

SECTION 5.12. The following subchapters of Chapter 54, Government Code, are repealed:

- (1) Subchapter A;
- (2) Subchapter B;
- (3) Subchapter C;
- (4) Subchapter E;
- (5) Subchapter F;
- (6) Subchapter I;
- (7) Subchapter O;
- (8) Subchapter P;
- (9) Subchapter S;
- (10) Subchapter T;
- (11) Subchapter U;
- (12) Subchapter V;
- (13) Subchapter X;
- (14) Subchapter CC;
- (15) Subchapter FF; and
- (16) Subchapter II.

#### ARTICLE 6. COURT ADMINISTRATION

SECTION 6.01. Section 74.005, Government Code, is amended to read as follows:

Sec. 74.005. APPOINTMENT OF [REGIONAL] PRESIDING JUDGES OF ADMINISTRATIVE JUDICIAL REGIONS. (a) The governor, with the advice and consent of the senate, shall appoint one judge in each administrative judicial region as presiding judge of the region.

(b) On the death, resignation, removal, or expiration of the term of office of a presiding judge, the governor immediately shall appoint or reappoint a presiding judge.

SECTION 6.02. Section 74.050, Government Code, is amended to read as follows:

Sec. 74.050. SUPPORT STAFF [ADMINISTRATIVE ASSISTANT]. (a) The presiding judge may employ, directly or through a contract with another governmental entity, a full-time or part-time administrative assistant.

(b) An administrative assistant ~~[must have the qualifications established by rule of the supreme court.~~

~~[(c) An administrative assistant]~~ shall aid the presiding judge in carrying out the judge's duties under this chapter. The administrative assistant shall:

(1) perform the duties that are required by the presiding judge and by the rules of administration;

(2) conduct correspondence for the presiding judge;

(3) under the direction of the presiding judge, make an annual report of the activities of the administrative region and special reports as provided by the rules of administration to the supreme court, which shall be made in the manner directed by the supreme court; and

(4) attend to other matters that are prescribed by the council of judges.

(c) ~~(c)~~ An administrative assistant, with the approval of the presiding judge, may purchase the necessary office equipment, stamps, stationery, and supplies and employ additional personnel as authorized by the presiding judge.

(d) ~~(e)~~ An administrative assistant is entitled to receive the compensation from the state provided by the General Appropriations Act, from county funds, or from any public or private grant.

SECTION 6.03. Subsection (c), Section 74.093, Government Code, is amended to read as follows:

(c) The rules may provide for:

(1) the selection and authority of a presiding judge of the courts giving preference to a specified class of cases, such as civil, criminal, juvenile, or family law cases;

(2) other strategies for managing cases that require special judicial attention;

(3) ~~(2)~~ a coordinated response for the transaction of essential judicial functions in the event of a disaster; and

(4) ~~(3)~~ any other matter necessary to carry out this chapter or to improve the administration and management of the court system and its auxiliary services.

SECTION 6.04. (a) Section 74.141, Government Code, is amended to read as follows:

Sec. 74.141. DEFENSE OF JUDGES. The attorney general shall defend a state district judge, a presiding judge of an administrative region, the presiding judge of the statutory probate courts, or an active, retired, or former judge assigned under this chapter in any action or suit in any court in which the judge is a defendant because of his office as judge if the judge requests the attorney general's assistance in the defense of the suit.

(b) Section 74.141, Government Code, as amended by this Act, applies to a cause of action filed on or after the effective date of this Act. A cause of action filed before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 6.05. Chapter 74, Government Code, is amended by adding Subchapter J to read as follows:

#### SUBCHAPTER J. ADDITIONAL RESOURCES FOR CERTAIN CASES

Sec. 74.251. APPLICABILITY OF SUBCHAPTER. This subchapter does not apply to:

(1) a criminal matter;

(2) a case in which judicial review is sought under Subchapter G, Chapter 2001; or

(3) a case that has been transferred by the judicial panel on multidistrict litigation to a district court for consolidated or coordinated pretrial proceedings under Subchapter H.

Sec. 74.252. RULES TO GUIDE DETERMINATION OF WHETHER CASE REQUIRES ADDITIONAL RESOURCES. (a) The supreme court shall adopt rules under which courts, presiding judges of the administrative judicial regions, and the judicial committee for additional resources may determine whether a case requires additional resources to ensure efficient judicial management of the case.

(b) In developing the rules, the supreme court shall include considerations regarding whether a case involves or is likely to involve:

- (1) a large number of parties who are separately represented by counsel;
- (2) coordination with related actions pending in one or more courts in other counties of this state or in one or more United States district courts;
- (3) numerous pretrial motions that present difficult or novel legal issues that will be time-consuming to resolve;
- (4) a large number of witnesses or substantial documentary evidence;
- (5) substantial postjudgment supervision;
- (6) a trial that will last more than four weeks; and
- (7) a substantial additional burden on the trial court's docket and the resources available to the trial court to hear the case.

Sec. 74.253. JUDICIAL DETERMINATION. (a) On the motion of a party in a case, or on the court's own motion, the judge of the court in which the case is pending shall review the case and determine whether, under rules adopted by the supreme court under Section 74.252, the case will require additional resources to ensure efficient judicial management. The judge is not required to conduct an evidentiary hearing for purposes of making the determination but may, in the judge's discretion, direct the attorneys for the parties to the case and the parties to appear before the judge for a conference to provide information to assist the judge in making the determination.

(b) On determining that a case will require additional resources as provided by Subsection (a), the judge shall:

- (1) notify the presiding judge of the administrative judicial region in which the court is located about the case; and
- (2) request any specific additional resources that are needed, including the assignment of a judge under this chapter.

(c) If the presiding judge of the administrative judicial region agrees that, in accordance with the rules adopted by the supreme court under Section 74.252, the case will require additional resources to ensure efficient judicial management, the presiding judge shall:

- (1) use resources previously allotted to the presiding judge; or
- (2) submit a request for specific additional resources to the judicial committee for additional resources.

Sec. 74.254. JUDICIAL COMMITTEE FOR ADDITIONAL RESOURCES. (a) The judicial committee for additional resources is composed of:

- (1) the chief justice of the supreme court; and
- (2) the nine presiding judges of the administrative judicial regions.

(b) The chief justice of the supreme court serves as presiding officer. The office of court administration shall provide staff support to the committee.

(c) On receipt of a request for additional resources from a presiding judge of an administrative judicial region under Section 74.253, the committee shall determine whether the case that is the subject of the request requires additional resources in accordance with the rules adopted under Section 74.252. If the committee determines that the case does require additional resources, the committee shall make available the resources requested by the trial judge to the extent funds are available for those resources under the General Appropriations Act and to the extent the committee determines the requested resources are appropriate to the circumstances of the case.

(d) Subject to Subsections (c) and (f), additional resources the committee may make available under this section include:

(1) the assignment of an active or retired judge under this chapter, subject to the consent of the judge of the court in which the case for which the resources are provided is pending;

(2) additional legal, administrative, or clerical personnel;

(3) information and communication technology, including case management software, video conferencing, and specially designed courtroom presentation hardware or software to facilitate presentation of the evidence to the trier of fact;

(4) specialized continuing legal education;

(5) an associate judge;

(6) special accommodations or furnishings for the parties;

(7) other services or items determined necessary to try the case; and

(8) any other resources the committee considers appropriate.

(e) Notwithstanding any provision of Subchapter C, a justice or judge to whom Section 74.053(d) applies may not be assigned under Subsection (d).

(f) The judicial committee for additional resources may not provide additional resources under this subchapter in an amount that is more than the amount appropriated for this purpose.

Sec. 74.255. COST OF ADDITIONAL RESOURCES. The cost of additional resources provided for a case under this subchapter shall be paid by the state and may not be taxed against any party in the case for which the resources are provided or against the county in which the case is pending.

Sec. 74.256. NO STAY OR CONTINUANCE PENDING DETERMINATION. The filing of a motion under Section 74.253 in a case is not grounds for a stay or continuance of the proceedings in the case in the court in which the case is pending during the period the motion or request is being considered by:

(1) the judge of that court;

(2) the presiding judge of the administrative judicial region; or

(3) the judicial committee for additional resources.

Sec. 74.257. APPELLATE REVIEW. A determination made by a trial court judge, the presiding judge of an administrative judicial region, or the judicial committee for additional resources under this subchapter is not appealable or subject to review by mandamus.

SECTION 6.06. (a) The Texas Supreme Court shall request the president of the State Bar of Texas to appoint a task force to consider and make recommendations regarding the rules for determining whether civil cases pending in trial courts require additional resources for efficient judicial management required by Section 74.252, Government Code, as added by this Act. The president of the State Bar of Texas shall ensure that the task force has diverse representation and includes judges of trial courts and attorneys licensed to practice law in this state who regularly appear in civil cases before courts in this state. The task force shall provide recommendations on the rules to the Texas Supreme Court not later than March 1, 2012.

(b) The Texas Supreme Court shall:

(1) consider the recommendations of the task force provided as required by Subsection (a) of this section; and

(2) adopt the rules required by Section 74.252, Government Code, as added by this Act, not later than May 1, 2012.

SECTION 6.07. The changes in law made by this article apply to cases pending on or after May 1, 2012.

#### ARTICLE 7. GRANT PROGRAMS

SECTION 7.01. Subchapter C, Chapter 72, Government Code, is amended by adding Section 72.029 to read as follows:

Sec. 72.029. GRANTS FOR COURT SYSTEM ENHANCEMENTS. (a) The office shall develop and administer, except as provided by Subsection (c), a program to provide grants from available funds to counties for initiatives that will enhance their court systems or otherwise carry out the purposes of this chapter.

(b) To be eligible for a grant under this section, a county must:

(1) use the grant money to implement initiatives that will enhance the county's court system, including grants to develop programs to more efficiently manage cases that require special judicial attention, or otherwise carry out the purposes of this chapter; and

(2) apply for the grant in accordance with procedures developed by the office and comply with any other requirements of the office.

(c) The judicial committee for additional resources shall determine whether to award a grant to a county that meets the eligibility requirements prescribed by Subsection (b).

(d) If the judicial committee for additional resources awards a grant to a county, the office shall:

(1) direct the comptroller to distribute the grant money to the county; and

(2) monitor the county's use of the grant money.

(e) The office may accept gifts, grants, and donations for purposes of this section. The office may not use state funds to provide a grant under this section or to administer the grant program.

SECTION 7.02. Subchapter A, Chapter 22, Government Code, is amended by adding Section 22.017 to read as follows:

Sec. 22.017. GRANTS FOR CHILD PROTECTION. (a) In this section, "commission" means the Permanent Judicial Commission for Children, Youth and Families established by the supreme court.

(b) The commission shall develop and administer a program to provide grants from available funds for initiatives that will improve safety and permanency outcomes, enhance due process, or increase the timeliness of resolution in child protection cases.

(c) To be eligible for a grant under this section, a prospective recipient must:

(1) use the grant money to improve safety or permanency outcomes, enhance due process, or increase timeliness of resolution in child protection cases; and

(2) apply for the grant in accordance with procedures developed by the commission and comply with any other requirements of the supreme court.

(d) If the commission awards a grant, the commission shall:

(1) direct the comptroller to distribute the grant money; and

(2) monitor the use of the grant money.

(e) The commission may accept gifts, grants, and donations for purposes of this section. The commission may not use state funds to provide a grant under this section or to administer the grant program.

#### ARTICLE 8. VEXATIOUS LITIGANTS

SECTION 8.01. Subdivision (3), Section 11.001, Civil Practice and Remedies Code, is amended to read as follows:

(3) "Local administrative judge" means a local administrative district judge, a local administrative statutory probate court judge, or a local administrative statutory county court judge.

SECTION 8.02. Section 11.101, Civil Practice and Remedies Code, is amended by adding Subsection (c) to read as follows:

(c) A litigant may appeal from a prefiling order entered under Subsection (a) designating the person a vexatious litigant.

SECTION 8.03. Section 11.102, Civil Practice and Remedies Code, is amended by adding Subsection (c) to read as follows:

(c) A decision of a local administrative judge denying a litigant permission to file a litigation under Subsection (a), or conditioning permission to file a litigation on the furnishing of security under Subsection (b), is not grounds for appeal, except that the litigant may apply for a writ of mandamus with the court of appeals not later than the 30th day after the date of the decision. The denial of a writ of mandamus by the court of appeals is not grounds for appeal to the supreme court or court of criminal appeals.

SECTION 8.04. Section 11.103, Civil Practice and Remedies Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) Except as provided by Subsection (d), a [A] clerk of a court may not file a litigation, original proceeding, appeal, or other claim presented by a vexatious litigant subject to a prefiling order under Section 11.101 unless the litigant obtains an order from the local administrative judge permitting the filing.

(d) A clerk of a court of appeals may file an appeal from a prefiling order entered under Section 11.101 designating a person a vexatious litigant or a timely filed writ of mandamus under Section 11.102(c).

SECTION 8.05. Section 11.104, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 11.104. NOTICE TO OFFICE OF COURT ADMINISTRATION; DISSEMINATION OF LIST. (a) A clerk of a court shall provide the Office of Court Administration of the Texas Judicial System a copy of any prefilng order issued under Section 11.101 not later than the 30th day after the date the prefilng order is signed.

(b) The Office of Court Administration of the Texas Judicial System shall post on the agency's Internet website [maintain] a list of vexatious litigants subject to prefilng orders under Section 11.101 [and shall annually send the list to the clerks of the courts of this state]. On request of a person designated a vexatious litigant, the list shall indicate whether the person designated a vexatious litigant has filed an appeal of that designation.

SECTION 8.06. The posting, before the effective date of this article, of the name of a person designated a vexatious litigant under Chapter 11, Civil Practice and Remedies Code, on a list of vexatious litigants on the Internet website of the Office of Court Administration of the Texas Judicial System is not:

- (1) grounds for a cause of action;
- (2) a defense against a finding that a plaintiff is a vexatious litigant under Chapter 11, Civil Practice and Remedies Code; or
- (3) grounds for relief or appeal from a stay, order, or dismissal or any other action taken by a court or a clerk of a court under Chapter 11, Civil Practice and Remedies Code.

#### ARTICLE 9. STUDY BY OFFICE OF COURT ADMINISTRATION OF TEXAS JUDICIAL SYSTEM

SECTION 9.01. In this article, "office of court administration" means the Office of Court Administration of the Texas Judicial System.

SECTION 9.02. (a) The office of court administration shall study the district courts and statutory county courts of this state to determine overlapping jurisdiction in civil cases in which the amount in controversy is more than \$200,000. The study must determine the feasibility, efficiency, and potential cost of converting to district courts those statutory county courts with jurisdiction in civil cases in which the amount in controversy is more than \$200,000.

(b) Not later than January 1, 2013, the office of court administration shall submit a report regarding the determinations made by the office relating to statutory county courts to the governor, the lieutenant governor, the speaker of the house of representatives, the chairs of the standing committees of the senate and house of representatives with primary jurisdiction over the judicial system, and the commissioners court of any county with a statutory county court with jurisdiction in civil cases in which the amount in controversy is more than \$200,000.

(c) The office of court administration may accept gifts, grants, and donations to conduct the study under this section. The office of court administration may not use state funds to conduct the study and, notwithstanding Subsection (a) of this section, is required to conduct the study only to the extent gifts, grants, and donations are available for that purpose.

#### ARTICLE 10. SUITS AFFECTING THE PARENT-CHILD RELATIONSHIP

SECTION 10.01. Section 263.601, Family Code, is amended by amending Subdivision (1) and adding Subdivision (3-a) to read as follows:

(1) "Foster care" means a voluntary residential living arrangement with a foster parent or other residential child-care provider that is:

(A) licensed or approved by the department or verified by a licensed child-placing agency; and

(B) paid under a contract with the department.

(3-a) "Trial independence period" means a period of not less than six months, or a longer period as a court may order not to exceed 12 months, during which a young adult exits foster care with the option to return to foster care under the continuing extended jurisdiction of the court.

SECTION 10.02. Section 263.602, Family Code, is amended to read as follows:

Sec. 263.602. EXTENDED JURISDICTION. (a) A court that had continuing, exclusive jurisdiction over a young adult on the day before ~~[may, at]~~ the young adult's 18th birthday continues to have extended ~~[request, render an order that extends the court's]~~ jurisdiction over the young adult and shall retain the case on the court's docket while the young adult remains in extended foster care and during a trial independence period described ~~[as provided]~~ by this section ~~[subchapter]~~.

(b) A court with extended jurisdiction over a young adult who remains in extended foster care shall conduct extended foster care review hearings every six months for the purpose of reviewing and making findings regarding:

(1) whether the young adult's living arrangement is safe and appropriate and whether the department has made reasonable efforts to place the young adult in the least restrictive environment necessary to meet the young adult's needs;

(2) whether the department is making reasonable efforts to finalize the permanency plan that is in effect for the young adult, including a permanency plan for independent living;

(3) whether, for a young adult whose permanency plan is independent living:

(A) the young adult participated in the development of the plan of service;

(B) the young adult's plan of service reflects the independent living skills and appropriate services needed to achieve independence by the projected date; and

(C) the young adult continues to make reasonable progress in developing the skills needed to achieve independence by the projected date; and

(4) whether additional services that the department is authorized to provide are needed to meet the needs of the young adult ~~[The extended jurisdiction of the court terminates on the earlier of:~~

~~[(1) the young adult's 21st birthday; or~~

~~[(2) the date the young adult withdraws consent to the extension of the court's jurisdiction in writing or in court].~~

(c) Not later than the 10th day before the date set for a hearing under this section, the department shall file with the court a copy of the young adult's plan of service and a report that addresses the issues described by Subsection (b).

(d) Notice of an extended foster care review hearing shall be given as provided by Rule 21a, Texas Rules of Civil Procedure, to the following persons, each of whom has a right to present evidence and be heard at the hearing:



- (1) the young adult who is the subject of the suit;
- (2) the department;
- (3) the foster parent with whom the young adult is placed and the administrator of a child-placing agency responsible for placing the young adult, if applicable;
- (4) the director of the residential child-care facility or other approved provider with whom the young adult is placed, if applicable;
- (5) each parent of the young adult whose parental rights have not been terminated and who is still actively involved in the life of the young adult;
- (6) a legal guardian of the young adult, if applicable; and
- (7) the young adult's attorney ad litem, guardian ad litem, and volunteer advocate, the appointment of which has not been previously dismissed by the court.

(e) If, after reviewing the young adult's plan of service and the report filed under Subsection (c), and any additional testimony and evidence presented at the review hearing, the court determines that the young adult is entitled to additional services, the court may order the department to take appropriate action to ensure that the young adult receives those services.

(f) A court with extended jurisdiction over a young adult as described in Subsection (a) shall continue to have jurisdiction over the young adult and shall retain the case on the court's docket until the earlier of:

- (1) the last day of the:
  - (A) sixth month after the date the young adult leaves foster care; or
  - (B) 12th month after the date the young adult leaves foster care if specified in a court order, for the purpose of allowing the young adult to pursue a trial independence period; or
- (2) the young adult's 21st birthday.

(g) A court with extended jurisdiction described by this section is not required to conduct periodic hearings for a young adult during a trial independence period and may not compel a young adult who has exited foster care to attend a court hearing.

SECTION 10.03. Subchapter G, Chapter 263, Family Code, is amended by adding Section 263.6021 to read as follows:

Sec. 263.6021. VOLUNTARY EXTENDED JURISDICTION FOR YOUNG ADULT RECEIVING TRANSITIONAL LIVING SERVICES. (a) Notwithstanding Section 263.602, a court that had continuing, exclusive jurisdiction over a young adult on the day before the young adult's 18th birthday may, at the young adult's request, render an order that extends the court's jurisdiction beyond the end of a trial independence period if the young adult receives transitional living services from the department.

(b) The extended jurisdiction of the court under this section terminates on the earlier of:

- (1) the young adult's 21st birthday; or
- (2) the date the young adult withdraws consent to the extension of the court's jurisdiction in writing or in court.

(c) At the request of a young adult who is receiving transitional living services from the department and who consents to voluntary extension of the court's jurisdiction under this section, the court may hold a hearing to review the services the young adult is receiving.

(d) Before a review hearing scheduled under this section, the department must file with the court a report summarizing the young adult's transitional living services plan, services being provided to the young adult under that plan, and the young adult's progress in achieving independence.

(e) If, after reviewing the report and any additional testimony and evidence presented at the hearing, the court determines that the young adult is entitled to additional services, the court may order the department to take appropriate action to ensure that the young adult receives those services.

SECTION 10.04. Subsections (a) and (c), Section 263.603, Family Code, are amended to read as follows:

(a) Notwithstanding Section 263.6021 ~~[263.602]~~, if the court believes that a young adult may be incapacitated as defined by Section 601(14)(B), Texas Probate Code, the court may extend its jurisdiction on its own motion without the young adult's consent to allow the department to refer the young adult to the Department of Aging and Disability Services for guardianship services as required by Section 48.209, Human Resources Code.

(c) If the Department of Aging and Disability Services determines a guardianship is not appropriate, or the court with probate jurisdiction denies the application to appoint a guardian, the court under Subsection (a) may continue to extend its jurisdiction over the young adult only as provided by Section 263.602 or 263.6021.

SECTION 10.05. Section 263.609, Family Code, is repealed.

SECTION 10.06. This article takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this article takes effect September 1, 2011.

#### ARTICLE 11. INMATE LITIGATION

SECTION 11.01. Subsection (a), Section 14.002, Civil Practice and Remedies Code, is amended to read as follows:

(a) This chapter applies only to an action, including an appeal or original proceeding, [a suit] brought by an inmate in a district, county, justice of the peace, or small claims court or an appellate court, including the supreme court or the court of criminal appeals, in which an affidavit or unsworn declaration of inability to pay costs is filed by the inmate.

SECTION 11.02. Subsections (a) and (b), Section 14.004, Civil Practice and Remedies Code, are amended to read as follows:

(a) An inmate who files an affidavit or unsworn declaration of inability to pay costs shall file a separate affidavit or declaration:

(1) identifying each action [suit], other than an action [a suit] under the Family Code, previously brought by the person and in which the person was not represented by an attorney, without regard to whether the person was an inmate at the time the action [suit] was brought; and

(2) describing each action ~~[suit]~~ that was previously brought by:  
    (A) stating the operative facts for which relief was sought;  
    (B) listing the case name, cause number, and the court in which the action ~~[suit]~~ was brought;  
    (C) identifying each party named in the action ~~[suit]~~; and  
    (D) stating the result of the action ~~[suit]~~, including whether the action or a claim that was a basis for the action ~~[suit]~~ was dismissed as frivolous or malicious under Section 13.001 or Section 14.003 or otherwise.

(b) If the affidavit or unsworn declaration filed under this section states that a previous action or claim ~~[suit]~~ was dismissed as frivolous or malicious, the affidavit or unsworn declaration must state the date of the final order affirming the dismissal.

SECTION 11.03. Subsection (a), Section 14.007, Civil Practice and Remedies Code, is amended to read as follows:

(a) An order of a court under Section 14.006(a) shall include the costs described by Subsection (b) if the court finds that:

(1) the inmate has previously filed an action to which this chapter applies ~~[in a district, county, justice of the peace, or small claims court]~~; and

(2) a final order has been issued that affirms that the action was dismissed as frivolous or malicious under Section 13.001 or Section 14.003 or otherwise.

SECTION 11.04. The change in law made by this article applies only to an action brought on or after the effective date of this Act. An action brought before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

## ARTICLE 12. PROVISIONS RELATED TO EXEMPTING CERTAIN JUDICIAL OFFICERS FROM CERTAIN CONCEALED HANDGUN LICENSING REQUIREMENTS

SECTION 12.01. Subdivision (1), Subsection (a), Section 411.201, Government Code, is amended to read as follows:

(1) "Active judicial officer" means:

(A) a person serving as a judge or justice of the supreme court, the court of criminal appeals, a court of appeals, a district court, a criminal district court, a constitutional county court, a statutory county court, a justice court, or a municipal court; ~~[or]~~

(B) a federal judge who is a resident of this state; or

(C) a person appointed and serving as an associate judge under Chapter 201, Family Code.

SECTION 12.02. Subsection (a), Section 46.15, Penal Code, is amended to read as follows:

(a) Sections 46.02 and 46.03 do not apply to:

(1) peace officers or special investigators under Article 2.122, Code of Criminal Procedure, and neither section prohibits a peace officer or special investigator from carrying a weapon in this state, including in an establishment in this state serving the public, regardless of whether the peace officer or special investigator is engaged in the actual discharge of the officer's or investigator's duties while carrying the weapon;

(2) parole officers and neither section prohibits an officer from carrying a weapon in this state if the officer is:

(A) engaged in the actual discharge of the officer's duties while carrying the weapon; and

(B) in compliance with policies and procedures adopted by the Texas Department of Criminal Justice regarding the possession of a weapon by an officer while on duty;

(3) community supervision and corrections department officers appointed or employed under Section 76.004, Government Code, and neither section prohibits an officer from carrying a weapon in this state if the officer is:

(A) engaged in the actual discharge of the officer's duties while carrying the weapon; and

(B) authorized to carry a weapon under Section 76.0051, Government Code;

(4) an active judicial officer as defined by Section 411.201, Government Code, ~~[a judge or justice of a federal court, the supreme court, the court of criminal appeals, a court of appeals, a district court, a criminal district court, a constitutional county court, a statutory county court, a justice court, or a municipal court]~~ who is licensed to carry a concealed handgun under Subchapter H, Chapter 411, Government Code;

(5) an honorably retired peace officer or federal criminal investigator who holds a certificate of proficiency issued under Section 1701.357, Occupations Code, and is carrying a photo identification that:

(A) verifies that the officer honorably retired after not less than 15 years of service as a commissioned officer; and

(B) is issued by a state or local law enforcement agency;

(6) a district attorney, criminal district attorney, county attorney, or municipal attorney who is licensed to carry a concealed handgun under Subchapter H, Chapter 411, Government Code;

(7) an assistant district attorney, assistant criminal district attorney, or assistant county attorney who is licensed to carry a concealed handgun under Subchapter H, Chapter 411, Government Code;

(8) a bailiff designated by an active judicial officer as defined by Section 411.201, Government Code, who is:

(A) licensed to carry a concealed handgun under Chapter 411, Government Code; and

(B) engaged in escorting the judicial officer; or

(9) a juvenile probation officer who is authorized to carry a firearm under Section 142.006, Human Resources Code.

SECTION 12.03. The change in law made by this article to Section 46.15, Penal Code, applies only to an offense committed on or after the effective date of this article. An offense committed before the effective date of this article 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 article if any element of the offense occurred before that date.

SECTION 12.04. This article takes effect September 1, 2011.

## ARTICLE 13. COURT COSTS

SECTION 13.01. Subsection (b), Section 51.005, Government Code, is amended to read as follows:

(b) The fees are:

- (1) application for petition for review [~~writ of error~~] . . . . . \$ 50
- (2) additional fee if application for petition for review [~~writ of error~~] is granted . . . . . \$ 75
- (3) motion for leave to file petition for writ of mandamus, prohibition, injunction, and other similar proceedings originating in the supreme court . . . . . \$ 50
- (4) additional fee if a motion under Subdivision (3) is granted. . . . . \$ 75
- (5) certified question from a federal court of appeals to the supreme court \$ 75
- (6) case appealed to the supreme court from the district court by direct appeal . . . . . \$100
- (7) any other proceeding filed in the supreme court . . . . . \$ 75.

SECTION 13.02. Subsection (a), Section 51.207, Government Code, is amended to read as follows:

(a) The clerk of a court of appeals shall collect the fees described in Subsection (b) in a civil case before the court for the following services:

- (1) filing records, applications, motions, briefs, and other necessary and proper papers;
- (2) docketing and making docket and minute book entries;
- (3) issuing notices, citations, processes, and mandates;
- (4) preparing transcripts on application for petition for review [~~writ of error~~] to the supreme court; and
- (5) performing other necessary clerical duties.

SECTION 13.03. Section 101.021, Government Code, is amended to read as follows:

Sec. 101.021. SUPREME COURT FEES AND COSTS: GOVERNMENT CODE. The clerk of the supreme court shall collect fees and costs as follows:

- (1) application for petition for review [~~writ of error~~] (Sec. 51.005, Government Code) . . . \$50;
- (2) additional fee if application for petition for review [~~writ of error~~] is granted (Sec. 51.005, Government Code) . . . \$75;
- (3) motion for leave to file petition for writ of mandamus, prohibition, injunction, and other similar proceedings originating in the supreme court (Sec. 51.005, Government Code) . . . \$50;
- (4) additional fee if a motion under Subdivision (3) is granted (Sec. 51.005, Government Code) . . . \$75;
- (5) certified question from a federal court of appeals to the supreme court (Sec. 51.005, Government Code) . . . \$75;
- (6) case appealed to the supreme court from the district court by direct appeal (Sec. 51.005, Government Code) . . . \$100;
- (7) any other proceeding filed in the supreme court (Sec. 51.005, Government Code) . . . \$75;

(8) administering an oath and giving a sealed certificate of the oath (Sec. 51.005, Government Code) . . . \$5;

(9) making certain copies, including certificate and seal (Sec. 51.005, Government Code) . . . \$5, or \$0.50 per page if more than 10 pages;

(10) any official service performed by the clerk for which a fee is not otherwise provided (Sec. 51.005, Government Code) . . . reasonable amount set by order or rule of supreme court;

(10-a) supreme court support account filing fee (Sec. 51.0051, Government Code) . . . amount set by the supreme court, not to exceed \$50;

(11) issuance of attorney's license or certificate (Sec. 51.006, Government Code) . . . \$10; and

(12) additional filing fee to fund civil legal services for the indigent (Sec. 51.941, Government Code) . . . \$25.

#### ARTICLE 14. NO APPROPRIATION; EFFECTIVE DATE

SECTION 14.01. This Act does not make an appropriation. A provision in this Act that creates a new governmental program, creates a new entitlement, or imposes a new duty on a governmental entity is not mandatory during a fiscal period for which the legislature has not made a specific appropriation to implement the provision.

SECTION 14.02. Except as otherwise provided by this Act, this Act takes effect January 1, 2012.

The Conference Committee Report on **SB 1717** was filed with the Secretary of the Senate.

### CONFERENCE COMMITTEE REPORT ON HOUSE BILL 3468

Senator Shapiro submitted the following Conference Committee Report:

Austin, Texas

May 28, 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 3468** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

SHAPIRO

CARONA

NELSON

SELIGER

WEST

On the part of the Senate

PATRICK

AYCOCK

BRANCH

D. HOWARD

SHELTON

On the part of the House

The Conference Committee Report on **HB 3468** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 8**

Senator Nelson submitted the following Conference Committee Report:

Austin, Texas  
May 28, 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 8** 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.

NELSON  
CARONA  
HUFFMAN  
PATRICK  
SHAPIRO

On the part of the Senate

KOLKHORST  
SCHWERTNER  
COLEMAN  
GEREN  
HUNTER

On the part of the House

**A BILL TO BE ENTITLED  
AN ACT**

relating to improving the quality and efficiency of health care.

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

**ARTICLE 1. LEGISLATIVE FINDINGS AND INTENT; COMPLIANCE WITH  
ANTITRUST LAWS**

SECTION 1.01. (a) The legislature finds that it would benefit the State of Texas to:

- (1) explore innovative health care delivery and payment models to improve the quality and efficiency of health care in this state;
- (2) improve health care transparency;
- (3) give health care providers the flexibility to collaborate and innovate to improve the quality and efficiency of health care; and
- (4) create incentives to improve the quality and efficiency of health care.

(b) The legislature finds that the use of certified health care collaboratives will increase pro-competitive effects as the ability to compete on the basis of quality of care and the furtherance of the quality of care through a health care collaborative will overcome any anticompetitive effects of joining competitors to create the health care collaboratives and the payment mechanisms that will be used to encourage the furtherance of quality of care. Consequently, the legislature finds it appropriate and necessary to authorize health care collaboratives to promote the efficiency and quality of health care.

(c) The legislature intends to exempt from antitrust laws and provide immunity from federal antitrust laws through the state action doctrine a health care collaborative that holds a certificate of authority under Chapter 848, Insurance Code, as added by Article 3 of this Act, and that collaborative's negotiations of contracts with payors. The legislature does not intend or authorize any person or entity to engage in activities or to conspire to engage in activities that would constitute per se violations of federal antitrust laws.

(d) The legislature intends to permit the use of alternative payment mechanisms, including bundled or global payments and quality-based payments, among physicians and other health care providers participating in a health care collaborative that holds a certificate of authority under Chapter 848, Insurance Code, as added by Article 3 of this Act. The legislature intends to authorize a health care collaborative to contract for and accept payments from governmental and private payors based on alternative payment mechanisms, and intends that the receipt and distribution of payments to participating physicians and health care providers is not a violation of any existing state law.

## ARTICLE 2. TEXAS INSTITUTE OF HEALTH CARE QUALITY AND EFFICIENCY

SECTION 2.01. Title 12, Health and Safety Code, is amended by adding Chapter 1002 to read as follows:

### CHAPTER 1002. TEXAS INSTITUTE OF HEALTH CARE QUALITY AND EFFICIENCY

#### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1002.001. DEFINITIONS. In this chapter:

(1) "Board" means the board of directors of the Texas Institute of Health Care Quality and Efficiency established under this chapter.

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

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

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

(5) "Health care collaborative" has the meaning assigned by Section 848.001, Insurance Code.

(6) "Health care facility" means:

(A) a hospital licensed under Chapter 241;

(B) an institution licensed under Chapter 242;

(C) an ambulatory surgical center licensed under Chapter 243;

(D) a birthing center licensed under Chapter 244;

(E) an end stage renal disease facility licensed under Chapter 251; or

(F) a freestanding emergency medical care facility licensed under Chapter 254.

(7) "Institute" means the Texas Institute of Health Care Quality and Efficiency established under this chapter.

(8) "Potentially preventable admission" means an admission of a person to a hospital or long-term care facility that may have reasonably been prevented with adequate access to ambulatory care or health care coordination.



(9) "Potentially preventable ancillary service" means a health care service provided or ordered by a physician or other health care provider to supplement or support the evaluation or treatment of a patient, including a diagnostic test, laboratory test, therapy service, or radiology service, that may not be reasonably necessary for the provision of quality health care or treatment.

(10) "Potentially preventable complication" means a harmful event or negative outcome with respect to a person, including an infection or surgical complication, that:

(A) occurs after the person's admission to a hospital or long-term care facility; and

(B) may have resulted from the care, lack of care, or treatment provided during the hospital or long-term care facility stay rather than from a natural progression of an underlying disease.

(11) "Potentially preventable event" means a potentially preventable admission, a potentially preventable ancillary service, a potentially preventable complication, a potentially preventable emergency room visit, a potentially preventable readmission, or a combination of those events.

(12) "Potentially preventable emergency room visit" means treatment of a person in a hospital emergency room or freestanding emergency medical care facility for a condition that may not require emergency medical attention because the condition could be, or could have been, treated or prevented by a physician or other health care provider in a nonemergency setting.

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

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

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

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

Sec. 1002.002. ESTABLISHMENT; PURPOSE. The Texas Institute of Health Care Quality and Efficiency is established to improve health care quality, accountability, education, and cost containment in this state by encouraging health care provider collaboration, effective health care delivery models, and coordination of health care services.

[Sections 1002.003-1002.050 reserved for expansion]

#### SUBCHAPTER B. ADMINISTRATION

Sec. 1002.051. APPLICATION OF SUNSET ACT. The institute is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the institute is abolished and this chapter expires September 1, 2017.

Sec. 1002.052. COMPOSITION OF BOARD OF DIRECTORS. (a) The institute is governed by a board of 15 directors appointed by the governor.

(b) The following ex officio, nonvoting members also serve on the board:

- (1) the commissioner of the department;
- (2) the executive commissioner;
- (3) the commissioner of insurance;
- (4) the executive director of the Employees Retirement System of Texas;
- (5) the executive director of the Teacher Retirement System of Texas;
- (6) the state Medicaid director of the Health and Human Services

Commission;

- (7) the executive director of the Texas Medical Board;
- (8) the commissioner of the Department of Aging and Disability Services;
- (9) the executive director of the Texas Workforce Commission;
- (10) the commissioner of the Texas Higher Education Coordinating Board;

and

(11) a representative from each state agency or system of higher education that purchases or provides health care services, as determined by the governor.

(c) The governor shall appoint as board members health care providers, payors, consumers, and health care quality experts or persons who possess expertise in any other area the governor finds necessary for the successful operation of the institute.

(d) A person may not serve as a voting member of the board if the person serves on or advises another board or advisory board of a state agency.

Sec. 1002.053. TERMS OF OFFICE. (a) Appointed members of the board serve staggered terms of four years, with the terms of as close to one-half of the members as possible expiring January 31 of each odd-numbered year.

(b) Board members may serve consecutive terms.

Sec. 1002.054. ADMINISTRATIVE SUPPORT. (a) The institute is administratively attached to the commission.

(b) The commission shall coordinate administrative responsibilities with the institute to streamline and integrate the institute's administrative operations and avoid unnecessary duplication of effort and costs.

(c) The institute may collaborate with, and coordinate its administrative functions, including functions related to research and reporting activities with, other public or private entities, including academic institutions and nonprofit organizations, that perform research on health care issues or other topics consistent with the purpose of the institute.

Sec. 1002.055. EXPENSES. (a) Members of the board serve without compensation but, subject to the availability of appropriated funds, may receive reimbursement for actual and necessary expenses incurred in attending meetings of the board.

(b) Information relating to the billing and payment of expenses under this section is subject to Chapter 552, Government Code.

Sec. 1002.056. OFFICER; CONFLICT OF INTEREST. (a) The governor shall designate a member of the board as presiding officer to serve in that capacity at the pleasure of the governor.

(b) Any board member or a member of a committee formed by the board with direct interest, personally or through an employer, in a matter before the board shall abstain from deliberations and actions on the matter in which the conflict of interest arises and shall further abstain on any vote on the matter, and may not otherwise participate in a decision on the matter.

(c) Each board member shall:

(1) file a conflict of interest statement and a statement of ownership interests with the board to ensure disclosure of all existing and potential personal interests related to board business; and

(2) update the statements described by Subdivision (1) at least annually.

(d) A statement filed under Subsection (c) is subject to Chapter 552, Government Code.

Sec. 1002.057. PROHIBITION ON CERTAIN CONTRACTS AND EMPLOYMENT. (a) The board may not compensate, employ, or contract with any individual who serves as a member of the board of, or on an advisory board or advisory committee for, any other governmental body, including any agency, council, or committee, in this state.

(b) The board may not compensate, employ, or contract with any person that provides financial support to the board, including a person who provides a gift, grant, or donation to the board.

Sec. 1002.058. MEETINGS. (a) The board may meet as often as necessary, but shall meet at least once each calendar quarter.

(b) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the authority of the institute.

Sec. 1002.059. BOARD MEMBER IMMUNITY. (a) A board member may not be held civilly liable for an act performed, or omission made, in good faith in the performance of the member's powers and duties under this chapter.

(b) A cause of action does not arise against a member of the board for an act or omission described by Subsection (a).

Sec. 1002.060. PRIVACY OF INFORMATION. (a) Protected health information and individually identifiable health information collected, assembled, or maintained by the institute is confidential and is not subject to disclosure under Chapter 552, Government Code.

(b) The institute shall comply with all state and federal laws and rules relating to the protection, confidentiality, and transmission of health information, including the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) and rules adopted under that Act, 42 U.S.C. Section 290dd-2, and 42 C.F.R. Part 2.

(c) The commission, department, or institute or an officer or employee of the commission, department, or institute, including a board member, may not disclose any information that is confidential under this section.

(d) Information, documents, and records that are confidential as provided by this section are not subject to subpoena or discovery and may not be introduced into evidence in any civil or criminal proceeding.

(e) An officer or employee of the commission, department, or institute, including a board member, may not be examined in a civil, criminal, special, administrative, or other proceeding as to information that is confidential under this section.

Sec. 1002.061. FUNDING. (a) The institute may be funded through the General Appropriations Act and may request, accept, and use gifts, grants, and donations as necessary to implement its functions.

(b) The institute may participate in other revenue-generating activity that is consistent with the institute's purposes.

(c) Except as otherwise provided by law, each state agency represented on the board as a nonvoting member shall provide funds to support the institute and implement this chapter. The commission shall establish a funding formula to determine the level of support each state agency is required to provide.

(d) This section does not permit the sale of information that is confidential under Section 1002.060.

[Sections 1002.062-1002.100 reserved for expansion]

#### SUBCHAPTER C. POWERS AND DUTIES

Sec. 1002.101. GENERAL POWERS AND DUTIES. The institute shall make recommendations to the legislature on:

(1) improving quality and efficiency of health care delivery by:

(A) providing a forum for regulators, payors, and providers to discuss and make recommendations for initiatives that promote the use of best practices, increase health care provider collaboration, improve health care outcomes, and contain health care costs;

(B) researching, developing, supporting, and promoting strategies to improve the quality and efficiency of health care in this state;

(C) determining the outcome measures that are the most effective measures of quality and efficiency:

(i) using nationally accredited measures; or

(ii) if no nationally accredited measures exist, using measures based on expert consensus;

(D) reducing the incidence of potentially preventable events; and

(E) creating a state plan that takes into consideration the regional differences of the state to encourage the improvement of the quality and efficiency of health care services;

(2) improving reporting, consolidation, and transparency of health care information; and

(3) implementing and supporting innovative health care collaborative payment and delivery systems under Chapter 848, Insurance Code.

Sec. 1002.102. GOALS FOR QUALITY AND EFFICIENCY OF HEALTH CARE; STATEWIDE PLAN. (a) The institute shall study and develop recommendations to improve the quality and efficiency of health care delivery in this state, including:

(1) quality-based payment systems that align payment incentives with high-quality, cost-effective health care;

(2) alternative health care delivery systems that promote health care coordination and provider collaboration;

(3) quality of care and efficiency outcome measurements that are effective measures of prevention, wellness, coordination, provider collaboration, and cost-effective health care; and

(4) meaningful use of electronic health records by providers and electronic exchange of health information among providers.

(b) The institute shall study and develop recommendations for measuring quality of care and efficiency across:

(1) all state employee and state retiree benefit plans;

(2) employee and retiree benefit plans provided through the Teacher Retirement System of Texas;

(3) the state medical assistance program under Chapter 32, Human Resources Code; and

(4) the child health plan under Chapter 62.

(c) In developing recommendations under Subsection (b), the institute shall use nationally accredited measures or, if no nationally accredited measures exist, measures based on expert consensus.

(d) The institute may study and develop recommendations for measuring the quality of care and efficiency in state or federally funded health care delivery systems other than those described by Subsection (b).

(e) In developing recommendations under Subsections (a) and (b), the institute may not base its recommendations solely on actuarial data.

(f) Using the studies described by Subsections (a) and (b), the institute shall develop recommendations for a statewide plan for quality and efficiency of the delivery of health care.

[Sections 1002.103-1002.150 reserved for expansion]

#### SUBCHAPTER D. HEALTH CARE COLLABORATIVE GUIDELINES AND SUPPORT

Sec. 1002.151. INSTITUTE STUDIES AND RECOMMENDATIONS REGARDING HEALTH CARE PAYMENT AND DELIVERY SYSTEMS. (a) The institute shall study and make recommendations for alternative health care payment and delivery systems.

(b) The institute shall recommend methods to evaluate a health care collaborative's effectiveness, including methods to evaluate:

(1) the efficiency and effectiveness of cost-containment methods used by the collaborative;

(2) alternative health care payment and delivery systems used by the collaborative;

(3) the quality of care;

(4) health care provider collaboration and coordination;

(5) the protection of patients;

(6) patient satisfaction; and

(7) the meaningful use of electronic health records by providers and electronic exchange of health information among providers.

[Sections 1002.152-1002.200 reserved for expansion]

SUBCHAPTER E. IMPROVED TRANSPARENCY

Sec. 1002.201. HEALTH CARE ACCOUNTABILITY; IMPROVED TRANSPARENCY. (a) With the assistance of the department, the institute shall complete an assessment of all health-related data collected by the state, what information is available to the public, and how the public and health care providers currently benefit and could potentially benefit from this information, including health care cost and quality information.

(b) The institute shall develop a plan:

(1) for consolidating reports of health-related data from various sources to reduce administrative costs to the state and reduce the administrative burden to health care providers and payors;

(2) for improving health care transparency to the public and health care providers by making information available in the most effective format; and

(3) providing recommendations to the legislature on enhancing existing health-related information available to health care providers and the public, including provider reporting of additional information not currently required to be reported under existing law, to improve quality of care.

Sec. 1002.202. ALL PAYOR CLAIMS DATABASE. (a) The institute shall study the feasibility and desirability of establishing a centralized database for health care claims information across all payors.

(b) The study described by Subsection (a) shall:

(1) use the assessment described by Section 1002.201 to develop recommendations relating to the adequacy of existing data sources for carrying out the state's purposes under this chapter and Chapter 848, Insurance Code;

(2) determine whether the establishment of an all payor claims database would reduce the need for some data submissions provided by payors;

(3) identify the best available sources of data necessary for the state's purposes under this chapter and Chapter 848, Insurance Code, that are not collected by the state under existing law;

(4) describe how an all payor claims database may facilitate carrying out the state's purposes under this chapter and Chapter 848, Insurance Code;

(5) identify national standards for claims data collection and use, including standardized data sets, standardized methodology, and standard outcome measures of health care quality and efficiency; and

(6) estimate the costs of implementing an all payor claims database, including:

(A) the costs to the state for collecting and processing data;

(B) the cost to the payors for supplying the data; and

(C) the available funding mechanisms that might support an all payor claims database.

(c) The institute shall consult with the department and the Texas Department of Insurance to develop recommendations to submit to the legislature on the establishment of the centralized claims database described by Subsection (a).

SECTION 2.02. Chapter 109, Health and Safety Code, is repealed.

SECTION 2.03. On the effective date of this Act:

(1) the Texas Health Care Policy Council established under Chapter 109, Health and Safety Code, is abolished; and

(2) any unexpended and unobligated balance of money appropriated by the legislature to the Texas Health Care Policy Council established under Chapter 109, Health and Safety Code, as it existed immediately before the effective date of this Act, is transferred to the Texas Institute of Health Care Quality and Efficiency created by Chapter 1002, Health and Safety Code, as added by this Act.

SECTION 2.04. (a) The governor shall appoint voting members of the board of directors of the Texas Institute of Health Care Quality and Efficiency under Section 1002.052, Health and Safety Code, as added by this Act, as soon as practicable after the effective date of this Act.

(b) In making the initial appointments under this section, the governor shall designate seven members to terms expiring January 31, 2013, and eight members to terms expiring January 31, 2015.

SECTION 2.05. (a) Not later than December 1, 2012, the Texas Institute of Health Care Quality and Efficiency shall submit a report regarding recommendations for improved health care reporting to the governor, the lieutenant governor, the speaker of the house of representatives, and the chairs of the appropriate standing committees of the legislature outlining:

(1) the initial assessment conducted under Subsection (a), Section 1002.201, Health and Safety Code, as added by this Act;

(2) the plans initially developed under Subsection (b), Section 1002.201, Health and Safety Code, as added by this Act;

(3) the changes in existing law that would be necessary to implement the assessment and plans described by Subdivisions (1) and (2) of this subsection; and

(4) the cost implications to state agencies, small businesses, micro businesses, payors, and health care providers to implement the assessment and plans described by Subdivisions (1) and (2) of this subsection.

(b) Not later than December 1, 2012, the Texas Institute of Health Care Quality and Efficiency shall submit a report regarding recommendations for an all payor claims database to the governor, the lieutenant governor, the speaker of the house of representatives, and the chairs of the appropriate standing committees of the legislature outlining:

(1) the feasibility and desirability of establishing a centralized database for health care claims;

(2) the recommendations developed under Subsection (c), Section 1002.202, Health and Safety Code, as added by this Act;

(3) the changes in existing law that would be necessary to implement the recommendations described by Subdivision (2) of this subsection; and

(4) the cost implications to state agencies, small businesses, micro businesses, payors, and health care providers to implement the recommendations described by Subdivision (2) of this subsection.

SECTION 2.06. (a) The Texas Institute of Health Care Quality and Efficiency under Chapter 1002, Health and Safety Code, as added by this Act, with the assistance of and in coordination with the Texas Department of Insurance, shall conduct a study:

(1) evaluating how the legislature may promote a consumer-driven health care system, including by increasing the adoption of high-deductible insurance products with health savings accounts by consumers and employers to lower health care costs and increase personal responsibility for health care; and

(2) examining the issue of differing amounts of payment in full accepted by a provider for the same or similar health care services or supplies, including bundled health care services and supplies, and addressing:

(A) the extent of the differences in the amounts accepted as payment in full for a service or supply;

(B) the reasons that amounts accepted as payment in full differ for the same or similar services or supplies;

(C) the availability of information to the consumer regarding the amount accepted as payment in full for a service or supply;

(D) the effects on consumers of differing amounts accepted as payment in full; and

(E) potential methods for improving consumers' access to information in relation to the amounts accepted as payment in full for health care services or supplies, including the feasibility and desirability of requiring providers to:

(i) publicly post the amount that is accepted as payment in full for a service or supply; and

(ii) adhere to the posted amount.

(b) The institute shall submit a report to the legislature outlining the results of the study conducted under this section and any recommendations for potential legislation not later than January 1, 2013.

(c) This section expires September 1, 2013.

### ARTICLE 3. HEALTH CARE COLLABORATIVES

SECTION 3.01. Subtitle C, Title 6, Insurance Code, is amended by adding Chapter 848 to read as follows:

#### CHAPTER 848. HEALTH CARE COLLABORATIVES

##### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 848.001. DEFINITIONS. In this chapter:

(1) "Affiliate" means a person who controls, is controlled by, or is under common control with one or more other persons.

(2) "Health care collaborative" means an entity:

(A) that undertakes to arrange for medical and health care services for insurers, health maintenance organizations, and other payors in exchange for payments in cash or in kind;

(B) that accepts and distributes payments for medical and health care services;

(C) that consists of:

(i) physicians;

(ii) physicians and other health care providers;

(iii) physicians and insurers or health maintenance organizations; or

(iv) physicians, other health care providers, and insurers or health maintenance organizations; and



(D) that is certified by the commissioner under this chapter to lawfully accept and distribute payments to physicians and other health care providers using the reimbursement methodologies authorized by this chapter.

(3) "Health care services" means services provided by a physician or health care provider to prevent, alleviate, cure, or heal human illness or injury. The term includes:

- (A) pharmaceutical services;
- (B) medical, chiropractic, or dental care; and
- (C) hospitalization.

(4) "Health care provider" means any person, partnership, professional association, corporation, facility, or institution licensed, certified, registered, or chartered by this state to provide health care services. The term includes a hospital but does not include a physician.

(5) "Health maintenance organization" means an organization operating under Chapter 843.

(6) "Hospital" means a general or special hospital, including a public or private institution licensed under Chapter 241 or 577, Health and Safety Code.

(7) "Institute" means the Texas Institute of Health Care Quality and Efficiency established under Chapter 1002, Health and Safety Code.

(8) "Physician" means:

(A) an individual licensed to practice medicine in this state;  
(B) a professional association organized under the Texas Professional Association Act (Article 1528f, Vernon's Texas Civil Statutes) or the Texas Professional Association Law by an individual or group of individuals licensed to practice medicine in this state;

(C) a partnership or limited liability partnership formed by a group of individuals licensed to practice medicine in this state;

(D) a nonprofit health corporation certified under Section 162.001, Occupations Code;

(E) a company formed by a group of individuals licensed to practice medicine in this state under the Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes) or the Texas Professional Limited Liability Company Law; or

(F) an organization wholly owned and controlled by individuals licensed to practice medicine in this state.

(9) "Potentially preventable event" has the meaning assigned by Section 1002.001, Health and Safety Code.

Sec. 848.002. EXCEPTION: DELEGATED ENTITIES. (a) This section applies only to an entity, other than a health maintenance organization, that:

(1) by itself or through a subcontract with another entity, undertakes to arrange for or provide medical care or health care services to enrollees in exchange for predetermined payments on a prospective basis; and

(2) accepts responsibility for performing functions that are required by:

(A) Chapter 222, 251, 258, or 1272, as applicable, to a health maintenance organization; or

(B) Chapter 843, Chapter 1271, Section 1367.053, Subchapter A, Chapter 1452, or Subchapter B, Chapter 1507, as applicable, solely on behalf of health maintenance organizations.

(b) An entity described by Subsection (a) is subject to Chapter 1272 and is not required to obtain a certificate of authority or determination of approval under this chapter.

Sec. 848.003. USE OF INSURANCE-RELATED TERMS BY HEALTH CARE COLLABORATIVE. A health care collaborative that is not an insurer or health maintenance organization may not use in its name, contracts, or literature:

(1) the following words or initials:

(A) "insurance";

(B) "casualty";

(C) "surety";

(D) "mutual";

(E) "health maintenance organization"; or

(F) "HMO"; or

(2) any other words or initials that are:

(A) descriptive of the insurance, casualty, surety, or health maintenance organization business; or

(B) deceptively similar to the name or description of an insurer, surety corporation, or health maintenance organization engaging in business in this state.

Sec. 848.004. APPLICABILITY OF INSURANCE LAWS. (a) An organization may not arrange for or provide health care services to enrollees on a prepaid or indemnity basis through health insurance or a health benefit plan, including a health care plan, as defined by Section 843.002, unless the organization as an insurer or health maintenance organization holds the appropriate certificate of authority issued under another chapter of this code.

(b) Except as provided by Subsection (c), the following provisions of this code apply to a health care collaborative in the same manner and to the same extent as they apply to an individual or entity otherwise subject to the provision:

(1) Section 38.001;

(2) Subchapter A, Chapter 542;

(3) Chapter 541;

(4) Chapter 543;

(5) Chapter 602;

(6) Chapter 701;

(7) Chapter 803; and

(8) Chapter 804.

(c) The remedies available under this chapter in the manner provided by Chapter 541 do not include:

(1) a private cause of action under Subchapter D, Chapter 541; or

(2) a class action under Subchapter F, Chapter 541.

Sec. 848.005. CERTAIN INFORMATION CONFIDENTIAL. (a) Except as provided by Subsection (b), an application, filing, or report required under this chapter is public information subject to disclosure under Chapter 552, Government Code.

(b) The following information is confidential and is not subject to disclosure under Chapter 552, Government Code:

(1) a contract, agreement, or document that establishes another arrangement:

(A) between a health care collaborative and a governmental or private entity for all or part of health care services provided or arranged for by the health care collaborative; or

(B) between a health care collaborative and participating physicians and health care providers;

(2) a written description of a contract, agreement, or other arrangement described by Subdivision (1);

(3) information relating to bidding, pricing, or other trade secrets submitted to:

(A) the department under Sections 848.057(a)(5) and (6); or

(B) the attorney general under Section 848.059;

(4) information relating to the diagnosis, treatment, or health of a patient who receives health care services from a health care collaborative under a contract for services; and

(5) information relating to quality improvement or peer review activities of a health care collaborative.

Sec. 848.006. COVERAGE BY HEALTH CARE COLLABORATIVE NOT REQUIRED. (a) Except as provided by Subsection (b) and subject to Chapter 843 and Section 1301.0625, an individual may not be required to obtain or maintain coverage under:

(1) an individual health insurance policy written through a health care collaborative; or

(2) any plan or program for health care services provided on an individual basis through a health care collaborative.

(b) This chapter does not require an individual to obtain or maintain health insurance coverage.

(c) Subsection (a) does not apply to an individual:

(1) who is required to obtain or maintain health benefit plan coverage:

(A) written by an institution of higher education at which the individual is or will be enrolled as a student; or

(B) under an order requiring medical support for a child; or

(2) who voluntarily applies for benefits under a state administered program under Title XIX of the Social Security Act (42 U.S.C. Section 1396 et seq.), or Title XXI of the Social Security Act (42 U.S.C. Section 1397aa et seq.).

(d) Except as provided by Subsection (e), a fine or penalty may not be imposed on an individual if the individual chooses not to obtain or maintain coverage described by Subsection (a).

(e) Subsection (d) does not apply to a fine or penalty imposed on an individual described in Subsection (c) for the individual's failure to obtain or maintain health benefit plan coverage.

[Sections 848.007-848.050 reserved for expansion]

**SUBCHAPTER B. AUTHORITY TO ENGAGE IN BUSINESS**

Sec. 848.051. OPERATION OF HEALTH CARE COLLABORATIVE. A health care collaborative that is certified by the department under this chapter may provide or arrange to provide health care services under contract with a governmental or private entity.

Sec. 848.052. FORMATION AND GOVERNANCE OF HEALTH CARE COLLABORATIVE. (a) A health care collaborative is governed by a board of directors.

(b) The person who establishes a health care collaborative shall appoint an initial board of directors. Each member of the initial board serves a term of not more than 18 months. Subsequent members of the board shall be elected to serve two-year terms by physicians and health care providers who participate in the health care collaborative as provided by this section. The board shall elect a chair from among its members.

(c) If the participants in a health care collaborative are all physicians, each member of the board of directors must be an individual physician who is a participant in the health care collaborative.

(d) If the participants in a health care collaborative are both physicians and other health care providers, the board of directors must consist of:

(1) an even number of members who are individual physicians, selected by physicians who participate in the health care collaborative;

(2) a number of members equal to the number of members under Subdivision (1) who represent health care providers, one of whom is an individual physician, selected by health care providers who participate in the health care collaborative; and

(3) one individual member with business expertise, selected by unanimous vote of the members described by Subdivisions (1) and (2).

(e) The board of directors must include at least three nonvoting ex officio members who represent the community in which the health care collaborative operates.

(f) An individual may not serve on the board of directors of a health care collaborative if the individual has an ownership interest in, serves on the board of directors of, or maintains an officer position with:

(1) another health care collaborative that provides health care services in the same service area as the health care collaborative; or

(2) a physician or health care provider that:

(A) does not participate in the health care collaborative; and

(B) provides health care services in the same service area as the health care collaborative.

(g) In addition to the requirements of Subsection (f), the board of directors of a health care collaborative shall adopt a conflict of interest policy to be followed by members.

(h) The board of directors may remove a member for cause. A member may not be removed from the board without cause.

(i) The organizational documents of a health care collaborative may not conflict with any provision of this chapter, including this section.

Sec. 848.053. COMPENSATION ADVISORY COMMITTEE; SHARING OF CERTAIN DATA. (a) The board of directors of a health care collaborative shall establish a compensation advisory committee to develop and make recommendations to the board regarding charges, fees, payments, distributions, or other compensation assessed for health care services provided by physicians or health care providers who participate in the health care collaborative. The committee must include:

(1) a member of the board of directors; and

(2) if the health care collaborative consists of physicians and other health care providers:

(A) a physician who is not a participant in the health care collaborative, selected by the physicians who are participants in the collaborative; and

(B) a member selected by the other health care providers who participate in the collaborative.

(b) A health care collaborative shall establish and enforce policies to prevent the sharing of charge, fee, and payment data among nonparticipating physicians and health care providers.

Sec. 848.054. CERTIFICATE OF AUTHORITY AND DETERMINATION OF APPROVAL REQUIRED. (a) An organization may not organize or operate a health care collaborative in this state unless the organization holds a certificate of authority issued under this chapter.

(b) The commissioner shall adopt rules governing the application for a certificate of authority under this subchapter.

Sec. 848.055. EXCEPTIONS. (a) An organization is not required to obtain a certificate of authority under this chapter if the organization holds an appropriate certificate of authority issued under another chapter of this code.

(b) A person is not required to obtain a certificate of authority under this chapter to the extent that the person is:

(1) a physician engaged in the delivery of medical care; or

(2) a health care provider engaged in the delivery of health care services other than medical care as part of a health maintenance organization delivery network.

(c) A medical school, medical and dental unit, or health science center as described by Section 61.003, 61.501, or 74.601, Education Code, is not required to obtain a certificate of authority under this chapter to the extent that the medical school, medical and dental unit, or health science center contracts to deliver medical care services within a health care collaborative. This chapter is otherwise applicable to a medical school, medical and dental unit, or health science center.

(d) An entity licensed under the Health and Safety Code that employs a physician under a specific statutory authority is not required to obtain a certificate of authority under this chapter to the extent that the entity contracts to deliver medical care services and health care services within a health care collaborative. This chapter is otherwise applicable to the entity.

Sec. 848.056. APPLICATION FOR CERTIFICATE OF AUTHORITY. (a) An organization may apply to the commissioner for and obtain a certificate of authority to organize and operate a health care collaborative.

(b) An application for a certificate of authority must:

- (1) comply with all rules adopted by the commissioner;
- (2) be verified under oath by the applicant or an officer or other authorized representative of the applicant;
- (3) be reviewed by the division within the office of attorney general that is primarily responsible for enforcing the antitrust laws of this state and of the United States under Section 848.059;
- (4) demonstrate that the health care collaborative contracts with a sufficient number of primary care physicians in the health care collaborative's service area;
- (5) state that enrollees may obtain care from any physician or health care provider in the health care collaborative; and
- (6) identify a service area within which medical services are available and accessible to enrollees.

(c) Not later than the 190th day after the date an applicant submits an application to the commissioner under this section, the commissioner shall approve or deny the application.

(d) The commissioner by rule may:

- (1) extend the date by which an application is due under this section; and
- (2) require the disclosure of any additional information necessary to implement and administer this chapter, including information necessary to antitrust review and oversight.

Sec. 848.057. REQUIREMENTS FOR APPROVAL OF APPLICATION. (a) The commissioner shall issue a certificate of authority on payment of the application fee prescribed by Section 848.152 if the commissioner is satisfied that:

- (1) the applicant meets the requirements of Section 848.056;
- (2) with respect to health care services to be provided, the applicant:
  - (A) has demonstrated the willingness and potential ability to ensure that the health care services will be provided in a manner that:
    - (i) increases collaboration among health care providers and integrates health care services;
    - (ii) promotes improvement in quality-based health care outcomes, patient safety, patient engagement, and coordination of services; and
    - (iii) reduces the occurrence of potentially preventable events;
  - (B) has processes that contain health care costs without jeopardizing the quality of patient care;
  - (C) has processes to develop, compile, evaluate, and report statistics on performance measures relating to the quality and cost of health care services, the pattern of utilization of services, and the availability and accessibility of services; and
  - (D) has processes to address complaints made by patients receiving services provided through the organization;
- (3) the applicant is in compliance with all rules adopted by the commissioner under Section 848.151;
- (4) the applicant has working capital and reserves sufficient to operate and maintain the health care collaborative and to arrange for services and expenses incurred by the health care collaborative;

(5) the applicant's proposed health care collaborative is not likely to reduce competition in any market for physician, hospital, or ancillary health care services due to:

(A) the size of the health care collaborative; or

(B) the composition of the collaborative, including the distribution of physicians by specialty within the collaborative in relation to the number of competing health care providers in the health care collaborative's geographic market; and

(6) the pro-competitive benefits of the applicant's proposed health care collaborative are likely to substantially outweigh the anticompetitive effects of any increase in market power.

(b) A certificate of authority is effective for a period of one year, subject to Section 848.060(d).

Sec. 848.058. DENIAL OF CERTIFICATE OF AUTHORITY. (a) The commissioner may not issue a certificate of authority if the commissioner determines that the applicant's proposed plan of operation does not meet the requirements of Section 848.057.

(b) If the commissioner denies an application for a certificate of authority under Subsection (a), the commissioner shall notify the applicant that the plan is deficient and specify the deficiencies.

Sec. 848.059. CONCURRENCE OF ATTORNEY GENERAL. (a) If the commissioner determines that an application for a certificate of authority filed under Section 848.056 complies with the requirements of Section 848.057, the commissioner shall forward the application, and all data, documents, and analysis considered by the commissioner in making the determination, to the attorney general. The attorney general shall review the application and the data, documents, and analysis and, if the attorney general concurs with the commissioner's determination under Sections 848.057(a)(5) and (6), the attorney general shall notify the commissioner.

(b) If the attorney general does not concur with the commissioner's determination under Sections 848.057(a)(5) and (6), the attorney general shall notify the commissioner.

(c) A determination under this section shall be made not later than the 60th day after the date the attorney general receives the application and the data, documents, and analysis from the commissioner.

(d) If the attorney general lacks sufficient information to make a determination under Sections 848.057(a)(5) and (6), within 60 days of the attorney general's receipt of the application and the data, documents, and analysis the attorney general shall inform the commissioner that the attorney general lacks sufficient information as well as what information the attorney general requires. The commissioner shall then either provide the additional information to the attorney general or request the additional information from the applicant. The commissioner shall promptly deliver any such additional information to the attorney general. The attorney general shall then have 30 days from receipt of the additional information to make a determination under Subsection (a) or (b).

(e) If the attorney general notifies the commissioner that the attorney general does not concur with the commissioner's determination under Sections 848.057(a)(5) and (6), then, notwithstanding any other provision of this subchapter, the commissioner shall deny the application.

(f) In reviewing the commissioner's determination, the attorney general shall consider the findings, conclusions, or analyses contained in any other governmental entity's evaluation of the health care collaborative.

(g) The attorney general at any time may request from the commissioner additional time to consider an application under this section. The commissioner shall grant the request and notify the applicant of the request. A request by the attorney general or an order by the commissioner granting a request under this section is not subject to administrative or judicial review.

Sec. 848.060. RENEWAL OF CERTIFICATE OF AUTHORITY AND DETERMINATION OF APPROVAL. (a) Not later than the 180th day before the one-year anniversary of the date on which a health care collaborative's certificate of authority was issued or most recently renewed, the health care collaborative shall file with the commissioner an application to renew the certificate.

(b) An application for renewal must:

(1) be verified by at least two principal officers of the health care collaborative; and

(2) include:

(A) a financial statement of the health care collaborative, including a balance sheet and receipts and disbursements for the preceding calendar year, certified by an independent certified public accountant;

(B) a description of the service area of the health care collaborative;

(C) a description of the number and types of physicians and health care providers participating in the health care collaborative;

(D) an evaluation of the quality and cost of health care services provided by the health care collaborative;

(E) an evaluation of the health care collaborative's processes to promote evidence-based medicine, patient engagement, and coordination of health care services provided by the health care collaborative;

(F) the number, nature, and disposition of any complaints filed with the health care collaborative under Section 848.107; and

(G) any other information required by the commissioner.

(c) If a completed application for renewal is filed under this section:

(1) the commissioner shall conduct a review under Section 848.057 as if the application for renewal were a new application, and, on approval by the commissioner, the attorney general shall review the application under Section 848.059 as if the application for renewal were a new application; and

(2) the commissioner shall renew or deny the renewal of a certificate of authority at least 20 days before the one-year anniversary of the date on which a health care collaborative's certificate of authority was issued.

(d) If the commissioner does not act on a renewal application before the one-year anniversary of the date on which a health care collaborative's certificate of authority was issued or renewed, the health care collaborative's certificate of authority



expires on the 90th day after the date of the one-year anniversary unless the renewal of the certificate of authority or determination of approval, as applicable, is approved before that date.

(e) A health care collaborative shall report to the department a material change in the size or composition of the collaborative. On receipt of a report under this subsection, the department may require the collaborative to file an application for renewal before the date required by Subsection (a).

[Sections 848.061-848.100 reserved for expansion]

#### SUBCHAPTER C. GENERAL POWERS AND DUTIES OF HEALTH CARE COLLABORATIVE

Sec. 848.101. PROVIDING OR ARRANGING FOR SERVICES. (a) A health care collaborative may provide or arrange for health care services through contracts with physicians and health care providers or with entities contracting on behalf of participating physicians and health care providers.

(b) A health care collaborative may not prohibit a physician or other health care provider, as a condition of participating in the health care collaborative, from participating in another health care collaborative.

(c) A health care collaborative may not use a covenant not to compete to prohibit a physician from providing medical services or participating in another health care collaborative in the same service area after the termination of the physician's contract with the health care collaborative.

(d) Except as provided by Subsection (f), on written consent of a patient who was treated by a physician participating in a health care collaborative, the health care collaborative shall provide the physician with the medical records of the patient, regardless of whether the physician is participating in the health care collaborative at the time the request for the records is made.

(e) Records provided under Subsection (d) shall be made available to the physician in the format in which the records are maintained by the health care collaborative. The health care collaborative may charge the physician a fee for copies of the records, as established by the Texas Medical Board.

(f) If a physician requests a patient's records from a health care collaborative under Subsection (d) for the purpose of providing emergency treatment to the patient:

(1) the health care collaborative may not charge a fee to the physician under Subsection (e); and

(2) the health care collaborative shall provide the records to the physician regardless of whether the patient has provided written consent.

Sec. 848.102. INSURANCE, REINSURANCE, INDEMNITY, AND REIMBURSEMENT. A health care collaborative may contract with an insurer authorized to engage in business in this state to provide insurance, reinsurance, indemnification, or reimbursement against the cost of health care and medical care services provided by the health care collaborative. This section does not affect the requirement that the health care collaborative maintain sufficient working capital and reserves.

Sec. 848.103. PAYMENT BY GOVERNMENTAL OR PRIVATE ENTITY. (a) A health care collaborative may:

(1) contract for and accept payments from a governmental or private entity for all or part of the cost of services provided or arranged for by the health care collaborative; and

(2) distribute payments to participating physicians and health care providers.

(b) Notwithstanding any other law, a health care collaborative that is in compliance with this code, including Chapters 841, 842, and 843, as applicable, may contract for, accept, and distribute payments from governmental or private payors based on fee-for-service or alternative payment mechanisms, including:

(1) episode-based or condition-based bundled payments;

(2) capitation or global payments; or

(3) pay-for-performance or quality-based payments.

(c) Except as provided by Subsection (d), a health care collaborative may not contract for and accept from a governmental or private entity payments on a prospective basis, including bundled or global payments, unless the health care collaborative is licensed under Chapter 843.

(d) A health care collaborative may contract for and accept from an insurance company or a health maintenance organization payments on a prospective basis, including bundled or global payments.

Sec. 848.104. CONTRACTS FOR ADMINISTRATIVE OR MANAGEMENT SERVICES. A health care collaborative may contract with any person, including an affiliated entity, to perform administrative, management, or any other required business functions on behalf of the health care collaborative.

Sec. 848.105. CORPORATION, PARTNERSHIP, OR ASSOCIATION POWERS. A health care collaborative has all powers of a partnership, association, corporation, or limited liability company, including a professional association or corporation, as appropriate under the organizational documents of the health care collaborative, that are not in conflict with this chapter or other applicable law.

Sec. 848.106. QUALITY AND COST OF HEALTH CARE SERVICES. (a) A health care collaborative shall establish policies to improve the quality and control the cost of health care services provided by participating physicians and health care providers that are consistent with prevailing professionally recognized standards of medical practice. The policies must include standards and procedures relating to:

(1) the selection and credentialing of participating physicians and health care providers;

(2) the development, implementation, monitoring, and evaluation of evidence-based best practices and other processes to improve the quality and control the cost of health care services provided by participating physicians and health care providers, including practices or processes to reduce the occurrence of potentially preventable events;

(3) the development, implementation, monitoring, and evaluation of processes to improve patient engagement and coordination of health care services provided by participating physicians and health care providers; and

(4) complaints initiated by participating physicians, health care providers, and patients under Section 848.107.

(b) The governing body of a health care collaborative shall establish a procedure for the periodic review of quality improvement and cost control measures.

Sec. 848.107. COMPLAINT SYSTEMS. (a) A health care collaborative shall implement and maintain complaint systems that provide reasonable procedures to resolve an oral or written complaint initiated by:

(1) a patient who received health care services provided by a participating physician or health care provider; or

(2) a participating physician or health care provider.

(b) The complaint system for complaints initiated by patients must include a process for the notice and appeal of a complaint.

(c) A health care collaborative may not take a retaliatory or adverse action against a physician or health care provider who files a complaint with a regulatory authority regarding an action of the health care collaborative.

Sec. 848.108. DELEGATION AGREEMENTS. (a) Except as provided by Subsection (b), a health care collaborative that enters into a delegation agreement described by Section 1272.001 is subject to the requirements of Chapter 1272 in the same manner as a health maintenance organization.

(b) Section 1272.301 does not apply to a delegation agreement entered into by a health care collaborative.

(c) A health care collaborative may enter into a delegation agreement with an entity licensed under Chapter 841, 842, or 883 if the delegation agreement assigns to the entity responsibility for:

(1) a function regulated by:

(A) Chapter 222;

(B) Chapter 841;

(C) Chapter 842;

(D) Chapter 883;

(E) Chapter 1272;

(F) Chapter 1301;

(G) Chapter 4201;

(H) Section 1367.053; or

(I) Subchapter A, Chapter 1507; or

(2) another function specified by commissioner rule.

(d) A health care collaborative that enters into a delegation agreement under this section shall maintain reserves and capital in addition to the amounts required under Chapter 1272, in an amount and form determined by rule of the commissioner to be necessary for the liabilities and risks assumed by the health care collaborative.

(e) A health care collaborative that enters into a delegation agreement under this section is subject to Chapters 404, 441, and 443 and is considered to be an insurer for purposes of those chapters.

Sec. 848.109. VALIDITY OF OPERATIONS AND TRADE PRACTICES OF HEALTH CARE COLLABORATIVES. The operations and trade practices of a health care collaborative that are consistent with the provisions of this chapter, the rules adopted under this chapter, and applicable federal antitrust laws are presumed to be consistent with Chapter 15, Business & Commerce Code, or any other applicable provision of law.

Sec. 848.110. RIGHTS OF PHYSICIANS; LIMITATIONS ON PARTICIPATION. (a) Before a complaint against a physician under Section 848.107 is resolved, or before a physician's association with a health care collaborative is terminated, the physician is entitled to an opportunity to dispute the complaint or termination through a process that includes:

- (1) written notice of the complaint or basis of the termination;
- (2) an opportunity for a hearing not earlier than the 30th day after receiving notice under Subdivision (1);
- (3) the right to provide information at the hearing, including testimony and a written statement; and
- (4) a written decision that includes the specific facts and reasons for the decision.

(b) A health care collaborative may limit a physician or group of physicians from participating in the health care collaborative if the limitation is based on an established development plan approved by the board of directors. Each applicant physician or group shall be provided with a copy of the development plan.

[Sections 848.111-848.150 reserved for expansion]

#### SUBCHAPTER D. REGULATION OF HEALTH CARE COLLABORATIVES

Sec. 848.151. RULES. The commissioner and the attorney general may adopt reasonable rules as necessary and proper to implement the requirements of this chapter.

Sec. 848.152. FEES AND ASSESSMENTS. (a) The commissioner shall, within the limits prescribed by this section, prescribe the fees to be charged and the assessments to be imposed under this section.

(b) Amounts collected under this section shall be deposited to the credit of the Texas Department of Insurance operating account.

(c) A health care collaborative shall pay to the department:

- (1) an application fee in an amount determined by commissioner rule; and
- (2) an annual assessment in an amount determined by commissioner rule.

(d) The commissioner shall set fees and assessments under this section in an amount sufficient to pay the reasonable expenses of the department and attorney general in administering this chapter, including the direct and indirect expenses incurred by the department and attorney general in examining and reviewing health care collaboratives. Fees and assessments imposed under this section shall be allocated among health care collaboratives on a pro rata basis to the extent that the allocation is feasible.

Sec. 848.153. EXAMINATIONS. (a) The commissioner may examine the financial affairs and operations of any health care collaborative or applicant for a certificate of authority under this chapter.

(b) A health care collaborative shall make its books and records relating to its financial affairs and operations available for an examination by the commissioner or attorney general.

(c) On request of the commissioner or attorney general, a health care collaborative shall provide to the commissioner or attorney general, as applicable:

- (1) a copy of any contract, agreement, or other arrangement between the health care collaborative and a physician or health care provider; and

(2) a general description of the fee arrangements between the health care collaborative and the physician or health care provider.

(d) Documentation provided to the commissioner or attorney general under this section is confidential and is not subject to disclosure under Chapter 552, Government Code.

(e) The commissioner or attorney general may disclose the results of an examination conducted under this section or documentation provided under this section to a governmental agency that contracts with a health care collaborative for the purpose of determining financial stability, readiness, or other contractual compliance needs.

[Sections 848.154-848.200 reserved for expansion]

#### SUBCHAPTER E. ENFORCEMENT

Sec. 848.201. ENFORCEMENT ACTIONS. (a) After notice and opportunity for a hearing, the commissioner may:

(1) suspend or revoke a certificate of authority issued to a health care collaborative under this chapter;

(2) impose sanctions under Chapter 82;

(3) issue a cease and desist order under Chapter 83; or

(4) impose administrative penalties under Chapter 84.

(b) The commissioner may take an enforcement action listed in Subsection (a) against a health care collaborative if the commissioner finds that the health care collaborative:

(1) is operating in a manner that is:

(A) significantly contrary to its basic organizational documents; or

(B) contrary to the manner described in and reasonably inferred from other information submitted under Section 848.057;

(2) does not meet the requirements of Section 848.057;

(3) cannot fulfill its obligation to provide health care services as required under its contracts with governmental or private entities;

(4) does not meet the requirements of Chapter 1272, if applicable;

(5) has not implemented the complaint system required by Section 848.107 in a manner to resolve reasonably valid complaints;

(6) has advertised or merchandised its services in an untrue, misrepresentative, misleading, deceptive, or unfair manner or a person on behalf of the health care collaborative has advertised or merchandised the health care collaborative's services in an untrue, misrepresentative, misleading, deceptive, or untrue manner;

(7) has not complied substantially with this chapter or a rule adopted under this chapter;

(8) has not taken corrective action the commissioner considers necessary to correct a failure to comply with this chapter, any applicable provision of this code, or any applicable rule or order of the commissioner not later than the 30th day after the date of notice of the failure or within any longer period specified in the notice and determined by the commissioner to be reasonable; or

(9) has or is utilizing market power in an anticompetitive manner, in accordance with established antitrust principles of market power analysis.

Sec. 848.202. OPERATIONS DURING SUSPENSION OR AFTER REVOCATION OF CERTIFICATE OF AUTHORITY. (a) During the period a certificate of authority of a health care collaborative is suspended, the health care collaborative may not:

- (1) enter into a new contract with a governmental or private entity; or
- (2) advertise or solicit in any way.

(b) After a certificate of authority of a health care collaborative is revoked, the health care collaborative:

(1) shall proceed, immediately following the effective date of the order of revocation, to conclude its affairs;

(2) may not conduct further business except as essential to the orderly conclusion of its affairs; and

(3) may not advertise or solicit in any way.

(c) Notwithstanding Subsection (b), the commissioner may, by written order, permit the further operation of the health care collaborative to the extent that the commissioner finds necessary to serve the best interest of governmental or private entities that have entered into contracts with the health care collaborative.

Sec. 848.203. INJUNCTIONS. If the commissioner believes that a health care collaborative or another person is violating or has violated this chapter or a rule adopted under this chapter, the attorney general at the request of the commissioner may bring an action in a Travis County district court to enjoin the violation and obtain other relief the court considers appropriate.

Sec. 848.204. NOTICE. The commissioner shall:

(1) report any action taken under this subchapter to:

(A) the relevant state licensing or certifying agency or board; and

(B) the United States Department of Health and Human Services National Practitioner Data Bank; and

(2) post notice of the action on the department's Internet website.

Sec. 848.205. INDEPENDENT AUTHORITY OF ATTORNEY GENERAL. (a) The attorney general may:

(1) investigate a health care collaborative with respect to anticompetitive behavior that is contrary to the goals and requirements of this chapter; and

(2) request that the commissioner:

(A) impose a penalty or sanction;

(B) issue a cease and desist order; or

(C) suspend or revoke the health care collaborative's certificate of authority.

(b) This section does not limit any other authority or power of the attorney general.

SECTION 3.02. Paragraph (A), Subdivision (12), Subsection (a), Section 74.001, Civil Practice and Remedies Code, is amended to read as follows:

(A) "Health care provider" means any person, partnership, professional association, corporation, facility, or institution duly licensed, certified, registered, or chartered by the State of Texas to provide health care, including:

- (i) a registered nurse;
- (ii) a dentist;

- (iii) a podiatrist;
- (iv) a pharmacist;
- (v) a chiropractor;
- (vi) an optometrist; ~~or~~
- (vii) a health care institution; or
- (viii) a health care collaborative certified under Chapter 848,

Insurance Code.

SECTION 3.03. Subchapter B, Chapter 1301, Insurance Code, is amended by adding Section 1301.0625 to read as follows:

Sec. 1301.0625. HEALTH CARE COLLABORATIVES. (a) Subject to the requirements of this chapter, a health care collaborative may be designated as a preferred provider under a preferred provider benefit plan and may offer enhanced benefits for care provided by the health care collaborative.

(b) A preferred provider contract between an insurer and a health care collaborative may use a payment methodology other than a fee-for-service or discounted fee methodology. A reimbursement methodology used in a contract under this subsection is not subject to Chapter 843.

(c) A contract authorized by Subsection (b) must specify that the health care collaborative and the physicians or providers providing health care services on behalf of the collaborative will hold an insured harmless for payment of the cost of covered health care services if the insurer or the health care collaborative do not pay the physician or health care provider for the services.

(d) An insurer issuing an exclusive provider benefit plan authorized by another law of this state may limit access to only preferred providers participating in a health care collaborative if the limitation is consistent with all requirements applicable to exclusive provider benefit plans.

SECTION 3.04. Subtitle F, Title 4, Health and Safety Code, is amended by adding Chapter 315 to read as follows:

#### CHAPTER 315. ESTABLISHMENT OF HEALTH CARE COLLABORATIVES

Sec. 315.001. AUTHORITY TO ESTABLISH HEALTH CARE COLLABORATIVE. A public hospital created under Subtitle C or D or a hospital district created under general or special law may form and sponsor a nonprofit health care collaborative that is certified under Chapter 848, Insurance Code.

SECTION 3.05. Section 102.005, Occupations Code, is amended to read as follows:

Sec. 102.005. APPLICABILITY TO CERTAIN ENTITIES. Section 102.001 does not apply to:

- (1) a licensed insurer;
- (2) a governmental entity, including:
  - (A) an intergovernmental risk pool established under Chapter 172, Local Government Code; and
  - (B) a system as defined by Section 1601.003, Insurance Code;
- (3) a group hospital service corporation; ~~or~~
- (4) a health maintenance organization that reimburses, provides, offers to provide, or administers hospital, medical, dental, or other health-related benefits under a health benefits plan for which it is the payor; or

(5) a health care collaborative certified under Chapter 848, Insurance Code.

SECTION 3.06. Subdivision (5), Subsection (a), Section 151.002, Occupations Code, is amended to read as follows:

(5) "Health care entity" means:

(A) a hospital licensed under Chapter 241 or 577, Health and Safety Code;

(B) an entity, including a health maintenance organization, group medical practice, nursing home, health science center, university medical school, hospital district, hospital authority, or other health care facility, that:

(i) provides or pays for medical care or health care services; and

(ii) follows a formal peer review process to further quality medical care or health care;

(C) a professional society or association of physicians, or a committee of such a society or association, that follows a formal peer review process to further quality medical care or health care; ~~or~~

(D) an organization established by a professional society or association of physicians, hospitals, or both, that:

(i) collects and verifies the authenticity of documents and other information concerning the qualifications, competence, or performance of licensed health care professionals; and

(ii) acts as a health care facility's agent under the Health Care Quality Improvement Act of 1986 (42 U.S.C. Section 11101 et seq.); or

(E) a health care collaborative certified under Chapter 848, Insurance Code.

SECTION 3.07. Not later than September 1, 2012, the commissioner of insurance and the attorney general shall adopt rules as necessary to implement this article.

SECTION 3.08. As soon as practicable after the effective date of this Act, the commissioner of insurance shall designate or employ staff with antitrust expertise sufficient to carry out the duties required by this Act.

#### ARTICLE 4. PATIENT IDENTIFICATION

SECTION 4.01. Subchapter A, Chapter 311, Health and Safety Code, is amended by adding Section 311.004 to read as follows:

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

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

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

(b) The department shall coordinate with hospitals to develop a statewide standardized patient risk identification system under which a patient with a specific medical risk may be readily identified through the use of a system that communicates to hospital personnel the existence of that risk. The executive commissioner of the Health and Human Services Commission shall appoint an ad hoc committee of hospital representatives to assist the department in developing the statewide system.



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

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

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

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

#### ARTICLE 5. REPORTING OF HEALTH CARE-ASSOCIATED INFECTIONS

SECTION 5.01. Section 98.001, Health and Safety Code, as added by Chapter 359 (S.B. 288), Acts of the 80th Legislature, Regular Session, 2007, is amended by adding Subdivisions (8-a) and (10-a) to read as follows:

(8-a) "Health care professional" means an individual licensed, certified, or otherwise authorized to administer health care, for profit or otherwise, in the ordinary course of business or professional practice. The term does not include a health care facility.

(10-a) "Potentially preventable complication" and "potentially preventable readmission" have the meanings assigned by Section 1002.001, Health and Safety Code.

SECTION 5.02. Subsection (c), Section 98.102, Health and Safety Code, as added by Chapter 359 (S.B. 288), Acts of the 80th Legislature, Regular Session, 2007, is amended to read as follows:

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

(1) avoid duplicate submission of records;

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

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

SECTION 5.03. Section 98.103, Health and Safety Code, as added by Chapter 359 (S.B. 288), Acts of the 80th Legislature, Regular Session, 2007, is amended by amending Subsection (b) and adding Subsection (d-1) to read as follows:

(b) A pediatric and adolescent hospital shall report the incidence of surgical site infections, including the causative pathogen if the infection is laboratory-confirmed, occurring in the following procedures to the department:

(1) cardiac procedures, excluding thoracic cardiac procedures;

(2) ventricular [~~ventriculoperitoneal~~] shunt procedures; and

(3) spinal surgery with instrumentation.

(d-1) The executive commissioner by rule may designate the federal Centers for Disease Control and Prevention's National Healthcare Safety Network, or its successor, to receive reports of health care-associated infections from health care facilities on behalf of the department. A health care facility must file a report required in accordance with a designation made under this subsection in accordance with the

National Healthcare Safety Network's definitions, methods, requirements, and procedures. A health care facility shall authorize the department to have access to facility-specific data contained in a report filed with the National Healthcare Safety Network in accordance with a designation made under this subsection.

SECTION 5.04. Section 98.1045, Health and Safety Code, as added by Chapter 359 (S.B. 288), Acts of the 80th Legislature, Regular Session, 2007, is amended by adding Subsection (c) to read as follows:

(c) The executive commissioner by rule may designate an agency of the United States Department of Health and Human Services to receive reports of preventable adverse events by health care facilities on behalf of the department. A health care facility shall authorize the department to have access to facility-specific data contained in a report made in accordance with a designation made under this subsection.

SECTION 5.05. Subchapter C, Chapter 98, Health and Safety Code, as added by Chapter 359 (S.B. 288), Acts of the 80th Legislature, Regular Session, 2007, is amended by adding Sections 98.1046 and 98.1047 to read as follows:

Sec. 98.1046. PUBLIC REPORTING OF CERTAIN POTENTIALLY PREVENTABLE EVENTS FOR HOSPITALS. (a) In consultation with the Texas Institute of Health Care Quality and Efficiency under Chapter 1002, the department, using data submitted under Chapter 108, shall publicly report for hospitals in this state risk-adjusted outcome rates for those potentially preventable complications and potentially preventable readmissions that the department, in consultation with the institute, has determined to be the most effective measures of quality and efficiency.

(b) The department shall make the reports compiled under Subsection (a) available to the public on the department's Internet website.

(c) The department may not disclose the identity of a patient or health care professional in the reports authorized in this section.

Sec. 98.1047. STUDIES ON LONG-TERM CARE FACILITY REPORTING OF ADVERSE HEALTH CONDITIONS. (a) In consultation with the Texas Institute of Health Care Quality and Efficiency under Chapter 1002, the department shall study which adverse health conditions commonly occur in long-term care facilities and, of those health conditions, which are potentially preventable.

(b) The department shall develop recommendations for reporting adverse health conditions identified under Subsection (a).

SECTION 5.06. Section 98.105, Health and Safety Code, as added by Chapter 359 (S.B. 288), Acts of the 80th Legislature, Regular Session, 2007, is amended to read as follows:

Sec. 98.105. REPORTING SYSTEM MODIFICATIONS. Based on the recommendations of the advisory panel, the executive commissioner by rule may modify in accordance with this chapter the list of procedures that are reportable under Section 98.103 ~~or 98.104~~. The modifications must be based on changes in reporting guidelines and in definitions established by the federal Centers for Disease Control and Prevention.

SECTION 5.07. Subsections (a), (b), and (d), Section 98.106, Health and Safety Code, as added by Chapter 359 (S.B. 288), Acts of the 80th Legislature, Regular Session, 2007, are amended to read as follows:

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

(1) the infections reported by facilities under Section [~~Sections~~] 98.103 [~~and 98.104~~]; and

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

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

(d) The department shall publish the departmental summary at least annually and may publish the summary more frequently as the department considers appropriate. Data made available to the public must include aggregate data covering a period of at least a full calendar quarter.

SECTION 5.08. Subchapter C, Chapter 98, Health and Safety Code, as added by Chapter 359 (S.B. 288), Acts of the 80th Legislature, Regular Session, 2007, is amended by adding Section 98.1065 to read as follows:

Sec. 98.1065. STUDY OF INCENTIVES AND RECOGNITION FOR HEALTH CARE QUALITY. The department, in consultation with the Texas Institute of Health Care Quality and Efficiency under Chapter 1002, shall conduct a study on developing a recognition program to recognize exemplary health care facilities for superior quality of health care and make recommendations based on that study.

SECTION 5.09. Section 98.108, Health and Safety Code, as added by Chapter 359 (S.B. 288), Acts of the 80th Legislature, Regular Session, 2007, is amended to read as follows:

Sec. 98.108. FREQUENCY OF REPORTING. (a) In consultation with the advisory panel, the executive commissioner by rule shall establish the frequency of reporting by health care facilities required under Sections 98.103[, 98.104,] and 98.1045.

(b) Except as provided by Subsection (c), facilities [~~Facilities~~] may not be required to report more frequently than quarterly.

(c) The executive commissioner may adopt rules requiring reporting more frequently than quarterly if more frequent reporting is necessary to meet the requirements for participation in the federal Centers for Disease Control and Prevention's National Healthcare Safety Network.

SECTION 5.10. Subsection (a), Section 98.109, Health and Safety Code, as added by Chapter 359 (S.B. 288), Acts of the 80th Legislature, Regular Session, 2007, is amended to read as follows:

(a) Except as provided by Sections 98.1046, 98.106, and 98.110, all information and materials obtained or compiled or reported by the department under this chapter or compiled or reported by a health care facility under this chapter, and all related information and materials, are confidential and:

(1) are not subject to disclosure under Chapter 552, Government Code, or discovery, subpoena, or other means of legal compulsion for release to any person; and

(2) may not be admitted as evidence or otherwise disclosed in any civil, criminal, or administrative proceeding.

SECTION 5.11. Section 98.110, Health and Safety Code, as added by Chapter 359 (S.B. 288), Acts of the 80th Legislature, Regular Session, 2007, is amended to read as follows:

Sec. 98.110. DISCLOSURE AMONG CERTAIN AGENCIES.

(a) Notwithstanding any other law, the department may disclose information reported by health care facilities under Section 98.103~~[-98.104,]~~ or 98.1045 to other programs within the department, to the Health and Human Services Commission, ~~[and]~~ to other health and human services agencies, as defined by Section 531.001, Government Code, and to the federal Centers for Disease Control and Prevention, or any other agency of the United States Department of Health and Human Services, for public health research or analysis purposes only, provided that the research or analysis relates to health care-associated infections or preventable adverse events. The privilege and confidentiality provisions contained in this chapter apply to such disclosures.

(b) If the executive commissioner designates an agency of the United States Department of Health and Human Services to receive reports of health care-associated infections or preventable adverse events, that agency may use the information submitted for purposes allowed by federal law.

SECTION 5.12. Section 98.104, Health and Safety Code, as added by Chapter 359 (S.B. 288), Acts of the 80th Legislature, Regular Session, 2007, is repealed.

SECTION 5.13. Not later than December 1, 2012, the Department of State Health Services shall submit a report regarding recommendations for improved health care reporting to the governor, the lieutenant governor, the speaker of the house of representatives, and the chairs of the appropriate standing committees of the legislature outlining:

(1) the initial assessment in the study conducted under Section 98.1065, Health and Safety Code, as added by this Act;

(2) based on the study described by Subdivision (1) of this subsection, the feasibility and desirability of establishing a recognition program to recognize exemplary health care facilities for superior quality of health care;

(3) the recommendations developed under Section 98.1065, Health and Safety Code, as added by this Act; and

(4) the changes in existing law that would be necessary to implement the recommendations described by Subdivision (3) of this subsection.

ARTICLE 6. INFORMATION MAINTAINED BY DEPARTMENT OF STATE  
HEALTH SERVICES

SECTION 6.01. Section 108.002, Health and Safety Code, is amended by adding Subdivisions (4-a) and (8-a) and amending Subdivision (7) to read as follows:

(4-a) "Commission" means the Health and Human Services Commission.

(7) "Department" means the ~~[Texas]~~ Department of State Health Services.

(8-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

SECTION 6.02. Chapter 108, Health and Safety Code, is amended by adding Section 108.0026 to read as follows:

Sec. 108.0026. TRANSFER OF DUTIES; REFERENCE TO COUNCIL.

(a) The powers and duties of the Texas Health Care Information Council under this chapter were transferred to the Department of State Health Services in accordance with Section 1.19, Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session, 2003.

(b) In this chapter or other law, a reference to the Texas Health Care Information Council means the Department of State Health Services.

SECTION 6.03. Subsection (h), Section 108.009, Health and Safety Code, is amended to read as follows:

(h) The department ~~[council]~~ shall coordinate data collection with the data submission formats used by hospitals and other providers. The department ~~[council]~~ shall accept data in the format developed by the American National Standards Institute ~~[National Uniform Billing Committee (Uniform Hospital Billing Form UB 92) and HCFA 1500]~~ or its successor ~~[their successors]~~ or other nationally ~~[universally]~~ accepted standardized forms that hospitals and other providers use for other complementary purposes.

SECTION 6.04. Section 108.013, Health and Safety Code, is amended by amending Subsections (a) through (d), (g), (i), and (j) and adding Subsections (k) through (n) to read as follows:

(a) The data received by the department under this chapter ~~[council]~~ shall be used by the department and commission ~~[council]~~ for the benefit of the public. Subject to specific limitations established by this chapter and executive commissioner ~~[council]~~ rule, the department ~~[council]~~ shall make determinations on requests for information in favor of access.

(b) The executive commissioner ~~[council]~~ by rule shall designate the characters to be used as uniform patient identifiers. The basis for assignment of the characters and the manner in which the characters are assigned are confidential.

(c) Unless specifically authorized by this chapter, the department ~~[council]~~ may not release and a person or entity may not gain access to any data obtained under this chapter:

(1) that could reasonably be expected to reveal the identity of a patient;  
(2) that could reasonably be expected to reveal the identity of a physician;  
(3) disclosing provider discounts or differentials between payments and billed charges;

(4) relating to actual payments to an identified provider made by a payer; or  
(5) submitted to the department ~~[council]~~ in a uniform submission format that is not included in the public use data set established under Sections 108.006(f) and (g), except in accordance with Section 108.0135.

(d) Except as provided by this section, all ~~[All]~~ data collected and used by the department ~~[and the council]~~ under this chapter is subject to the confidentiality provisions and criminal penalties of:

- (1) Section 311.037;
- (2) Section 81.103; and
- (3) Section 159.002, Occupations Code.

(g) Unless specifically authorized by this chapter, the department [The council] may not release data elements in a manner that will reveal the identity of a patient. The department [council] may not release data elements in a manner that will reveal the identity of a physician.

(i) Notwithstanding any other law and except as provided by this section, the [council and the] department may not provide information made confidential by this section to any other agency of this state.

(j) The executive commissioner [council] shall by rule, [with the assistance of the advisory committee under Section 108.003(g)(5),] develop and implement a mechanism to comply with Subsections (c)(1) and (2).

(k) The department may disclose data collected under this chapter that is not included in public use data to any department or commission program if the disclosure is reviewed and approved by the institutional review board under Section 108.0135.

(l) Confidential data collected under this chapter that is disclosed to a department or commission program remains subject to the confidentiality provisions of this chapter and other applicable law. The department shall identify the confidential data that is disclosed to a program under Subsection (k). The program shall maintain the confidentiality of the disclosed confidential data.

(m) The following provisions do not apply to the disclosure of data to a department or commission program:

(1) Section 81.103;

(2) Sections 108.010(g) and (h);

(3) Sections 108.011(e) and (f);

(4) Section 311.037; and

(5) Section 159.002, Occupations Code.

(n) Nothing in this section authorizes the disclosure of physician identifying data.

SECTION 6.05. Section 108.0135, Health and Safety Code, is amended to read as follows:

Sec. 108.0135. INSTITUTIONAL [SCIENTIFIC] REVIEW BOARD [PANEL]. (a) The department [council] shall establish an institutional [a scientific] review board [panel] to review and approve requests for access to data not contained in [information other than] public use data. The members of the institutional review board must [panel shall] have experience and expertise in ethics, patient confidentiality, and health care data.

(b) To assist the institutional review board [panel] in determining whether to approve a request for information, the executive commissioner [council] shall adopt rules similar to the federal Centers for Medicare and Medicaid Services' [Health Care Financing Administration's] guidelines on releasing data.

(c) A request for information other than public use data must be made on the form prescribed [created] by the department [council].

(d) Any approval to release information under this section must require that the confidentiality provisions of this chapter be maintained and that any subsequent use of the information conform to the confidentiality provisions of this chapter.

SECTION 6.06. Effective September 1, 2014, Subdivisions (5) and (18), Section 108.002, Section 108.0025, and Subsection (c), Section 108.009, Health and Safety Code, are repealed.

ARTICLE 7. ADOPTION OF VACCINE PREVENTABLE DISEASES POLICY  
BY HEALTH CARE FACILITIES

SECTION 7.01. The heading to Subtitle A, Title 4, Health and Safety Code, is amended to read as follows:

SUBTITLE A. FINANCING, CONSTRUCTING, REGULATING, AND  
INSPECTING  
HEALTH FACILITIES

SECTION 7.02. Subtitle A, Title 4, Health and Safety Code, is amended by adding Chapter 224 to read as follows:

CHAPTER 224. POLICY ON VACCINE PREVENTABLE DISEASES

Sec. 224.001. DEFINITIONS. In this chapter:

(1) "Covered individual" means:  
(A) an employee of the health care facility;  
(B) an individual providing direct patient care under a contract with a health care facility; or  
(C) an individual to whom a health care facility has granted privileges to provide direct patient care.

(2) "Health care facility" means:  
(A) a facility licensed under Subtitle B, including a hospital as defined by Section 241.003; or  
(B) a hospital maintained or operated by this state.

(3) "Regulatory authority" means a state agency that regulates a health care facility under this code.

(4) "Vaccine preventable diseases" means the diseases included in the most current recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention.

Sec. 224.002. VACCINE PREVENTABLE DISEASES POLICY REQUIRED.

(a) Each health care facility shall develop and implement a policy to protect its patients from vaccine preventable diseases.

(b) The policy must:  
(1) require covered individuals to receive vaccines for the vaccine preventable diseases specified by the facility based on the level of risk the individual presents to patients by the individual's routine and direct exposure to patients;  
(2) specify the vaccines a covered individual is required to receive based on the level of risk the individual presents to patients by the individual's routine and direct exposure to patients;  
(3) include procedures for verifying whether a covered individual has complied with the policy;  
(4) include procedures for a covered individual to be exempt from the required vaccines for the medical conditions identified as contraindications or precautions by the Centers for Disease Control and Prevention;

(5) for a covered individual who is exempt from the required vaccines, include procedures the individual must follow to protect facility patients from exposure to disease, such as the use of protective medical equipment, such as gloves and masks, based on the level of risk the individual presents to patients by the individual's routine and direct exposure to patients;

(6) prohibit discrimination or retaliatory action against a covered individual who is exempt from the required vaccines for the medical conditions identified as contraindications or precautions by the Centers for Disease Control and Prevention, except that required use of protective medical equipment, such as gloves and masks, may not be considered retaliatory action for purposes of this subdivision;

(7) require the health care facility to maintain a written or electronic record of each covered individual's compliance with or exemption from the policy; and

(8) include disciplinary actions the health care facility is authorized to take against a covered individual who fails to comply with the policy.

(c) The policy may include procedures for a covered individual to be exempt from the required vaccines based on reasons of conscience, including a religious belief.

Sec. 224.003. DISASTER EXEMPTION. (a) In this section, "public health disaster" has the meaning assigned by Section 81.003.

(b) During a public health disaster, a health care facility may prohibit a covered individual who is exempt from the vaccines required in the policy developed by the facility under Section 224.002 from having contact with facility patients.

Sec. 224.004. DISCIPLINARY ACTION. A health care facility that violates this chapter is subject to an administrative or civil penalty in the same manner, and subject to the same procedures, as if the facility had violated a provision of this code that specifically governs the facility.

Sec. 224.005. RULES. The appropriate rulemaking authority for each regulatory authority shall adopt rules necessary to implement this chapter.

SECTION 7.03. Not later than June 1, 2012, a state agency that regulates a health care facility subject to Chapter 224, Health and Safety Code, as added by this article, shall adopt the rules necessary to implement that chapter.

SECTION 7.04. Notwithstanding Chapter 224, Health and Safety Code, as added by this article, a health care facility subject to that chapter is not required to have a policy on vaccine preventable diseases in effect until September 1, 2012.

#### ARTICLE 8. TEXAS EMERGENCY AND TRAUMA CARE EDUCATION PARTNERSHIP PROGRAM

SECTION 8.01. Chapter 61, Education Code, is amended by adding Subchapter GG to read as follows:

#### SUBCHAPTER GG. TEXAS EMERGENCY AND TRAUMA CARE EDUCATION PARTNERSHIP PROGRAM

Sec. 61.9801. DEFINITIONS. In this subchapter:

(1) "Emergency and trauma care education partnership" means a partnership that:

(A) consists of one or more hospitals in this state and one or more graduate professional nursing or graduate medical education programs in this state; and



(B) serves to increase training opportunities in emergency and trauma care for doctors and registered nurses at participating graduate medical education and graduate professional nursing programs.

(2) "Participating education program" means a graduate professional nursing program as that term is defined by Section 54.221 or a graduate medical education program leading to board certification by the American Board of Medical Specialties that participates in an emergency and trauma care education partnership.

Sec. 61.9802. PROGRAM: ESTABLISHMENT; ADMINISTRATION; PURPOSE. (a) The Texas emergency and trauma care education partnership program is established.

(b) The board shall administer the program in accordance with this subchapter and rules adopted under this subchapter.

(c) Under the program, to the extent funds are available under Section 61.9805, the board shall make grants to emergency and trauma care education partnerships to assist those partnerships to meet the state's needs for doctors and registered nurses with training in emergency and trauma care by offering one-year or two-year fellowships to students enrolled in graduate professional nursing or graduate medical education programs through collaboration between hospitals and graduate professional nursing or graduate medical education programs and the use of the existing expertise and facilities of those hospitals and programs.

Sec. 61.9803. GRANTS: CONDITIONS; LIMITATIONS. (a) The board may make a grant under this subchapter to an emergency and trauma care education partnership only if the board determines that:

(1) the partnership will meet applicable standards for instruction and student competency for each program offered by each participating education program;

(2) each participating education program will, as a result of the partnership, enroll in the education program a sufficient number of additional students as established by the board;

(3) each hospital participating in an emergency and trauma care education partnership will provide to students enrolled in a participating education program clinical placements that:

(A) allow the students to take part in providing or to observe, as appropriate, emergency and trauma care services offered by the hospital; and

(B) meet the clinical education needs of the students; and

(4) the partnership will satisfy any other requirement established by board rule.

(b) A grant under this subchapter may be spent only on costs related to the development or operation of an emergency and trauma care education partnership that prepares a student to complete a graduate professional nursing program with a specialty focus on emergency and trauma care or earn board certification by the American Board of Medical Specialties.

Sec. 61.9804. PRIORITY FOR FUNDING. In awarding a grant under this subchapter, the board shall give priority to an emergency and trauma care education partnership that submits a proposal that:

(1) provides for collaborative educational models between one or more participating hospitals and one or more participating education programs that have signed a memorandum of understanding or other written agreement under which the participants agree to comply with standards established by the board, including any standards the board may establish that:

(A) provide for program management that offers a centralized decision-making process allowing for inclusion of each entity participating in the partnership;

(B) provide for access to clinical training positions for students in graduate professional nursing and graduate medical education programs that are not participating in the partnership; and

(C) specify the details of any requirement relating to a student in a participating education program being employed after graduation in a hospital participating in the partnership, including any details relating to the employment of students who do not complete the program, are not offered a position at the hospital, or choose to pursue other employment;

(2) includes a demonstrable education model to:

(A) increase the number of students enrolled in, the number of students graduating from, and the number of faculty employed by each participating education program; and

(B) improve student or resident retention in each participating education program;

(3) indicates the availability of money to match a portion of the grant money, including matching money or in-kind services approved by the board from a hospital, private or nonprofit entity, or institution of higher education;

(4) can be replicated by other emergency and trauma care education partnerships or other graduate professional nursing or graduate medical education programs; and

(5) includes plans for sustainability of the partnership.

Sec. 61.9805. GRANTS, GIFTS, AND DONATIONS. In addition to money appropriated by the legislature, the board may solicit, accept, and spend grants, gifts, and donations from any public or private source for the purposes of this subchapter.

Sec. 61.9806. RULES. The board shall adopt rules for the administration of the Texas emergency and trauma care education partnership program. The rules must include:

(1) provisions relating to applying for a grant under this subchapter; and

(2) standards of accountability consistent with other graduate professional nursing and graduate medical education programs to be met by any emergency and trauma care education partnership awarded a grant under this subchapter.

Sec. 61.9807. ADMINISTRATIVE COSTS. A reasonable amount, not to exceed three percent, of any money appropriated for purposes of this subchapter may be used to pay the costs of administering this subchapter.

SECTION 8.02. As soon as practicable after the effective date of this article, the Texas Higher Education Coordinating Board shall adopt rules for the implementation and administration of the Texas emergency and trauma care education partnership

program established under Subchapter GG, Chapter 61, Education Code, as added by this article. The board may adopt the initial rules in the manner provided by law for emergency rules.

#### ARTICLE 9. INTERSTATE HEALTH CARE COMPACT

SECTION 9.01. Title 15, Insurance Code, is amended by adding Chapter 5002 to read as follows:

##### CHAPTER 5002. INTERSTATE HEALTH CARE COMPACT

Sec. 5002.001. EXECUTION OF COMPACT. This state enacts the Interstate Health Care Compact and enters into the compact with all other states legally joining in the compact in substantially the following form:

Whereas, the separation of powers, both between the branches of the Federal government and between Federal and State authority, is essential to the preservation of individual liberty;

Whereas, the Constitution creates a Federal government of limited and enumerated powers, and reserves to the States or to the people those powers not granted to the Federal government;

Whereas, the Federal government has enacted many laws that have preempted State laws with respect to Health Care, and placed increasing strain on State budgets, impairing other responsibilities such as education, infrastructure, and public safety;

Whereas, the Member States seek to protect individual liberty and personal control over Health Care decisions, and believe the best method to achieve these ends is by vesting regulatory authority over Health Care in the States;

Whereas, by acting in concert, the Member States may express and inspire confidence in the ability of each Member State to govern Health Care effectively; and

Whereas, the Member States recognize that consent of Congress may be more easily secured if the Member States collectively seek consent through an interstate compact;  
NOW THEREFORE, the Member States hereto resolve, and by the adoption into law under their respective State Constitutions of this Health Care Compact, agree, as follows:

Sec. 1. Definitions. As used in this Compact, unless the context clearly indicates otherwise:

"Commission" means the Interstate Advisory Health Care Commission.

"Effective Date" means the date upon which this Compact shall become effective for purposes of the operation of State and Federal law in a Member State, which shall be the later of:

(a) the date upon which this Compact shall be adopted under the laws of the Member State, and

(b) the date upon which this Compact receives the consent of Congress pursuant to Article I, Section 10, of the United States Constitution, after at least two Member States adopt this Compact.

"Health Care" means care, services, supplies, or plans related to the health of an individual and includes but is not limited to:

(a) preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care and counseling, service, assessment, or procedure with respect to the physical or mental condition or functional status of an individual or that affects the structure or function of the body, and

(b) sale or dispensing of a drug, device, equipment, or other item in accordance with a prescription, and

(c) an individual or group plan that provides, or pays the cost of, care, services, or supplies related to the health of an individual, except any care, services, supplies, or plans provided by the United States Department of Defense and United States Department of Veterans Affairs, or provided to Native Americans.

"Member State" means a State that is signatory to this Compact and has adopted it under the laws of that State.

"Member State Base Funding Level" means a number equal to the total Federal spending on Health Care in the Member State during Federal fiscal year 2010. On or before the Effective Date, each Member State shall determine the Member State Base Funding Level for its State, and that number shall be binding upon that Member State.

"Member State Current Year Funding Level" means the Member State Base Funding Level multiplied by the Member State Current Year Population Adjustment Factor multiplied by the Current Year Inflation Adjustment Factor.

"Member State Current Year Population Adjustment Factor" means the average population of the Member State in the current year less the average population of the Member State in Federal fiscal year 2010, divided by the average population of the Member State in Federal fiscal year 2010, plus 1. Average population in a Member State shall be determined by the United States Census Bureau.

"Current Year Inflation Adjustment Factor" means the Total Gross Domestic Product Deflator in the current year divided by the Total Gross Domestic Product Deflator in Federal fiscal year 2010. Total Gross Domestic Product Deflator shall be determined by the Bureau of Economic Analysis of the United States Department of Commerce.

Sec. 2. Pledge. The Member States shall take joint and separate action to secure the consent of the United States Congress to this Compact in order to return the authority to regulate Health Care to the Member States consistent with the goals and principles articulated in this Compact. The Member States shall improve Health Care policy within their respective jurisdictions and according to the judgment and discretion of each Member State.

Sec. 3. Legislative Power. The legislatures of the Member States have the primary responsibility to regulate Health Care in their respective States.

Sec. 4. State Control. Each Member State, within its State, may suspend by legislation the operation of all federal laws, rules, regulations, and orders regarding Health Care that are inconsistent with the laws and regulations adopted by the Member State pursuant to this Compact. Federal and State laws, rules, regulations, and orders regarding Health Care will remain in effect unless a Member State expressly suspends them pursuant to its authority under this Compact. For any federal law, rule, regulation, or order that remains in effect in a Member State after the Effective Date, that Member State shall be responsible for the associated funding obligations in its State.

Sec. 5. Funding.

(a) Each Federal fiscal year, each Member State shall have the right to Federal monies up to an amount equal to its Member State Current Year Funding Level for that Federal fiscal year, funded by Congress as mandatory spending and not subject to

annual appropriation, to support the exercise of Member State authority under this Compact. This funding shall not be conditional on any action of or regulation, policy, law, or rule being adopted by the Member State.

(b) By the start of each Federal fiscal year, Congress shall establish an initial Member State Current Year Funding Level for each Member State, based upon reasonable estimates. The final Member State Current Year Funding Level shall be calculated, and funding shall be reconciled by the United States Congress based upon information provided by each Member State and audited by the United States Government Accountability Office.

Sec. 6. Interstate Advisory Health Care Commission.

(a) The Interstate Advisory Health Care Commission is established. The Commission consists of members appointed by each Member State through a process to be determined by each Member State. A Member State may not appoint more than two members to the Commission and may withdraw membership from the Commission at any time. Each Commission member is entitled to one vote. The Commission shall not act unless a majority of the members are present, and no action shall be binding unless approved by a majority of the Commission's total membership.

(b) The Commission may elect from among its membership a Chairperson. The Commission may adopt and publish bylaws and policies that are not inconsistent with this Compact. The Commission shall meet at least once a year, and may meet more frequently.

(c) The Commission may study issues of Health Care regulation that are of particular concern to the Member States. The Commission may make non-binding recommendations to the Member States. The legislatures of the Member States may consider these recommendations in determining the appropriate Health Care policies in their respective States.

(d) The Commission shall collect information and data to assist the Member States in their regulation of Health Care, including assessing the performance of various State Health Care programs and compiling information on the prices of Health Care. The Commission shall make this information and data available to the legislatures of the Member States. Notwithstanding any other provision in this Compact, no Member State shall disclose to the Commission the health information of any individual, nor shall the Commission disclose the health information of any individual.

(e) The Commission shall be funded by the Member States as agreed to by the Member States. The Commission shall have the responsibilities and duties as may be conferred upon it by subsequent action of the respective legislatures of the Member States in accordance with the terms of this Compact.

(f) The Commission shall not take any action within a Member State that contravenes any State law of that Member State.

Sec. 7. Congressional Consent. This Compact shall be effective on its adoption by at least two Member States and consent of the United States Congress. This Compact shall be effective unless the United States Congress, in consenting to this Compact, alters the fundamental purposes of this Compact, which are:

(a) To secure the right of the Member States to regulate Health Care in their respective States pursuant to this Compact and to suspend the operation of any conflicting federal laws, rules, regulations, and orders within their States; and

(b) To secure Federal funding for Member States that choose to invoke their authority under this Compact, as prescribed by Section 5 above.

Sec. 8. Amendments. The Member States, by unanimous agreement, may amend this Compact from time to time without the prior consent or approval of Congress and any amendment shall be effective unless, within one year, the Congress disapproves that amendment. Any State may join this Compact after the date on which Congress consents to the Compact by adoption into law under its State Constitution.

Sec. 9. Withdrawal; Dissolution. Any Member State may withdraw from this Compact by adopting a law to that effect, but no such withdrawal shall take effect until six months after the Governor of the withdrawing Member State has given notice of the withdrawal to the other Member States. A withdrawing State shall be liable for any obligations that it may have incurred prior to the date on which its withdrawal becomes effective. This Compact shall be dissolved upon the withdrawal of all but one of the Member States.

SECTION 9.02. This article takes effect immediately if the Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this article takes effect September 1, 2011.

#### ARTICLE 10. COVERED SERVICES OF CERTAIN HEALTH CARE PRACTITIONERS

SECTION 10.01. Section 1451.109, Insurance Code, is amended to read as follows:

Sec. 1451.109. SELECTION OF CHIROPRACTOR. (a) An insured may select a chiropractor to provide the medical or surgical services or procedures scheduled in the health insurance policy that are within the scope of the chiropractor's license.

(b) If physical modalities and procedures are covered services under a health insurance policy and within the scope of the license of a chiropractor and one or more other type of practitioner, a health insurance policy issuer may not:

(1) deny payment or reimbursement for physical modalities and procedures provided by a chiropractor if:

(A) the chiropractor provides the modalities and procedures in strict compliance with laws and rules relating to a chiropractor's license; and

(B) the health insurance policy issuer allows payment or reimbursement for the same physical modalities and procedures performed by another type of practitioner;

(2) make payment or reimbursement for particular covered physical modalities and procedures within the scope of a chiropractor's practice contingent on treatment or examination by a practitioner that is not a chiropractor; or

(3) establish other limitations on the provision of covered physical modalities and procedures that would prohibit an insured from seeking the covered physical modalities and procedures from a chiropractor to the same extent that the insured may obtain covered physical modalities and procedures from another type of practitioner.

(c) Nothing in this section requires a health insurance policy issuer to cover particular services or affects the ability of a health insurance policy issuer to determine whether specific procedures for which payment or reimbursement is requested are medically necessary.

(d) This section does not apply to:

(1) workers' compensation insurance coverage as defined by Section 401.011, Labor Code;

(2) a self-insured employee welfare benefit plan subject to the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.);

(3) the child health plan program under Chapter 62, Health and Safety Code, or the health benefits plan for children under Chapter 63, Health and Safety Code; or

(4) a Medicaid managed care program operated under Chapter 533, Government Code, or a Medicaid program operated under Chapter 32, Human Resources Code.

SECTION 10.02. The changes in law made by this article to Section 1451.109, Insurance Code, apply only to a health insurance policy that is delivered, issued for delivery, or renewed on or after the effective date of this Act. A policy delivered, issued for delivery, or renewed before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

#### ARTICLE 11. EFFECTIVE DATE

SECTION 11.01. Except as specifically provided by this Act, this Act takes effect September 1, 2011.

The Conference Committee Report on **SB 8** was filed with the Secretary of the Senate.

#### CONFERENCE COMMITTEE REPORT ON SENATE BILL 1811

Senator Duncan submitted the following Conference Committee Report:

Austin, Texas  
May 28, 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 1811** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

DUNCAN  
DEUELL  
PATRICK

PITTS  
CROWNOVER  
EISSLER

WEST  
WILLIAMS

On the part of the Senate

GEREN

On the part of the House

A BILL TO BE ENTITLED  
AN ACT

relating to certain state fiscal matters; providing penalties.

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

ARTICLE 1. FOUNDATION SCHOOL PROGRAM PAYMENTS

SECTION 1.01. Subsections (c), (d), and (f), Section 42.259, Education Code, are amended to read as follows:

(c) Payments from the foundation school fund to each category 2 school district shall be made as follows:

(1) 22 percent of the yearly entitlement of the district shall be paid in an installment to be made on or before the 25th day of September of a fiscal year;

(2) 18 percent of the yearly entitlement of the district shall be paid in an installment to be made on or before the 25th day of October;

(3) 9.5 percent of the yearly entitlement of the district shall be paid in an installment to be made on or before the 25th day of November;

(4) 7.5 percent of the yearly entitlement of the district shall be paid in an installment to be made on or before the 25th day of April;

(5) five percent of the yearly entitlement of the district shall be paid in an installment to be made on or before the 25th day of May;

(6) 10 percent of the yearly entitlement of the district shall be paid in an installment to be made on or before the 25th day of June;

(7) 13 percent of the yearly entitlement of the district shall be paid in an installment to be made on or before the 25th day of July; and

(8) 15 percent of the yearly entitlement of the district shall be paid in an installment to be made after the 5th day of September and not later than the 10th day of September of the calendar year following the calendar year of the payment made under Subdivision (1) [on or before the 25th day of August].

(d) Payments from the foundation school fund to each category 3 school district shall be made as follows:

(1) 45 percent of the yearly entitlement of the district shall be paid in an installment to be made on or before the 25th day of September of a fiscal year;

(2) 35 percent of the yearly entitlement of the district shall be paid in an installment to be made on or before the 25th day of October; and

(3) 20 percent of the yearly entitlement of the district shall be paid in an installment to be made after the 5th day of September and not later than the 10th day of September of the calendar year following the calendar year of the payment made under Subdivision (1) [on or before the 25th day of August].

(f) Except as provided by Subsection (c)(8) or (d)(3), any [Any] previously unpaid additional funds from prior fiscal years owed to a district shall be paid to the district together with the September payment of the current fiscal year entitlement.

SECTION 1.02. The changes made by this article to Section 42.259, Education Code, apply only to a payment from the foundation school fund that is made on or after the effective date of this Act. A payment to a school district from the foundation



school fund that is made before that date is governed by Section 42.259, Education Code, as it existed before amendment by this article, and the former law is continued in effect for that purpose.

## ARTICLE 2. FISCAL MATTERS REGARDING REGULATION AND TAXATION OF INSURERS

SECTION 2.01. Section 221.006, Insurance Code, is amended by adding Subsection (c) to read as follows:

(c) An insurer is not entitled to a credit under Subsection (a) for an examination or evaluation fee paid in calendar year 2012 or 2013. This subsection expires January 1, 2014.

SECTION 2.02. Section 222.007, Insurance Code, is amended by adding Subsection (c) to read as follows:

(c) An insurer or health maintenance organization is not entitled to a credit under Subsection (a) for an examination or evaluation fee paid in calendar year 2012 or 2013. This subsection expires January 1, 2014.

SECTION 2.03. Section 223.009, Insurance Code, is amended by adding Subsection (c) to read as follows:

(c) A title insurance company is not entitled to a credit under Subsection (a) for an examination or evaluation fee paid in calendar year 2012 or 2013. This subsection expires January 1, 2014.

SECTION 2.04. Section 401.151, Insurance Code, is amended by adding Subsection (f) to read as follows:

(f) An insurer is not entitled to a credit under Subsection (e) for an examination or evaluation fee paid in calendar year 2012 or 2013. This subsection expires January 1, 2014.

SECTION 2.05. Section 401.154, Insurance Code, is amended to read as follows:

Sec. 401.154. TAX CREDIT AUTHORIZED. (a) An insurer is entitled to a credit on the amount of premium taxes to be paid by the insurer for all examination fees paid under Section 401.153. The insurer may take the credit for the taxable year during which the examination fees are paid and may take the credit to the same extent the insurer may take a credit for examination fees paid when a salaried department examiner conducts the examination.

(b) An insurer is not entitled to a credit under Subsection (a) for an examination fee paid in calendar year 2012 or 2013. This subsection expires January 1, 2014.

SECTION 2.06. Section 463.160, Insurance Code, is amended to read as follows:

Sec. 463.160. PREMIUM TAX CREDIT FOR CLASS A ASSESSMENT. The amount of a Class A assessment paid by a member insurer in each taxable year shall be allowed as a credit on the amount of premium taxes due ~~[in the same manner as a credit is allowed under Section 401.151(c)].~~

SECTION 2.07. The changes in law made by this article apply only to a tax credit for an examination or evaluation fee paid on or after January 1, 2012. Tax credits for examination or evaluation fees paid before January 1, 2012, are governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

ARTICLE 4. STATE SALES AND FRANCHISE TAX REFUNDS FOR CERTAIN  
AD VALOREM TAXPAYERS

SECTION 4.01. Subchapter F, Chapter 111, Tax Code, is repealed.

SECTION 4.02. The repeal of Subchapter F, Chapter 111, Tax Code, by this article does not affect an eligible person's right to claim a refund of state sales and use and state franchise taxes that was established under Section 111.301, Tax Code, in relation to taxes paid before the effective date of this article in a calendar year for which the person paid ad valorem taxes to a school district as provided by Section 111.301, Tax Code, before the effective date of this article. An eligible person's right to claim a refund of state sales and use and state franchise taxes that was established under Section 111.301, Tax Code, in relation to taxes paid before the effective date of this article in a calendar year for which the person paid ad valorem taxes to a school district as provided by Section 111.301, Tax Code, before the effective date of this article is governed by the law in effect on the date the right to claim the refund was established, and the former law is continued in effect for that purpose.

ARTICLE 5. TAX RECORDS

SECTION 5.01. Section 2153.201, Occupations Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) A record required under Subsection (a) must:

(1) be available at all times for inspection by the attorney general, the comptroller, or an authorized representative of the attorney general or comptroller as provided by Subsection (c);

(2) include information relating to:

(A) the kind of each machine;

(B) the date each machine is:

(i) acquired or received in this state; and

(ii) placed in operation;

(C) the location of each machine, including the:

(i) county;

(ii) municipality, if any; and

(iii) street or rural route number;

(D) the name and complete address of each operator of each machine;

(E) if the owner is an individual, the full name and address of the owner; and

(F) if the owner is not an individual, the name and address of each principal officer or member of the owner; and

(3) be maintained[

~~[(A)] at a permanent address in this state designated on the application for a license under Section 2153.153[; and~~

~~[(B)] until the second anniversary of the date the owner ceases ownership of the machine that is the subject of the record].~~

(c) A record required under Subsection (a) must be available for inspection under Subsection (b) for at least four years and as required by Section 111.0041, Tax Code.

SECTION 5.02. Section 111.0041, Tax Code, is amended to read as follows:

Sec. 111.0041. RECORDS; BURDEN TO PRODUCE AND SUBSTANTIATE CLAIMS. (a) Except as provided by Subsection (b), a ~~Any~~ taxpayer who is required by this title to keep records shall keep those records open to inspection by the comptroller, the attorney general, or the authorized representatives of either of them for at least four years.

(b) A taxpayer is required to keep records open for inspection under Subsection (a) for more than four years throughout any period when:

(1) any tax, penalty, or interest may be assessed, collected, or refunded by the comptroller; or

(2) an administrative hearing is pending before the comptroller, or a judicial proceeding is pending, to determine the amount of the tax, penalty, or interest that is to be assessed, collected, or refunded.

(c) A taxpayer shall produce contemporaneous records and supporting documentation appropriate to the tax or fee for the period in question to substantiate and enable verification of the taxpayer's claim related to the amount of tax, penalty, or interest to be assessed, collected, or refunded in an administrative or judicial proceeding. Contemporaneous records and supporting documentation appropriate to the tax or fee include invoices, vouchers, checks, shipping records, contracts, and other equivalent records, such as electronically stored images of such documents, reflecting legal relationships and taxes collected or paid.

(d) Summary records submitted by the taxpayer, including accounting journals and ledgers, without supporting contemporaneous records and documentation for the period in question are not sufficient to substantiate and enable verification of the taxpayer's claim regarding the amount of tax, penalty, or interest that may be assessed, collected, or refunded.

(e) This section prevails over any other conflicting provision of this title.

SECTION 5.03. Section 112.052, Tax Code, is amended by adding Subsection (d) to read as follows:

(d) A taxpayer shall produce contemporaneous records and supporting documentation appropriate to the tax or fee for the period in question to substantiate and enable verification of a taxpayer's claim relating to the amount of the tax, penalty, or interest that is to be assessed, collected, or refunded, as required by Section 111.0041.

SECTION 5.04. Section 112.151, Tax Code, is amended by adding Subsection (f) to read as follows:

(f) A taxpayer shall produce contemporaneous records and supporting documentation appropriate to the tax or fee for the period in question to substantiate and enable verification of a taxpayer's claim relating to the amount of the tax, penalty, or interest that is to be assessed, collected, or refunded, as required by Section 111.0041.

SECTION 5.05. Section 151.025(b), Tax Code, is amended to read as follows:

(b) A record required by Subsection (a) ~~[of this section]~~ shall be kept for not less than four years from the date ~~[day]~~ that it is made unless:

- (1) the comptroller authorizes in writing its destruction at an earlier date; or
- (2) Section 111.0041 requires that the record be kept for a longer period.

SECTION 5.06. Section 152.063, Tax Code, is amended by adding Subsection (h) to read as follows:

(h) Section 111.0041 applies to a person required to keep records under this chapter.

SECTION 5.07. Section 152.0635, Tax Code, is amended by adding Subsection (e) to read as follows:

(e) Section 111.0041 applies to a person required to keep records under this chapter.

SECTION 5.08. Section 154.209(a), Tax Code, is amended to read as follows:

(a) Except as provided by Section 111.0041, each ~~Each~~ permit holder shall keep records available for inspection and copying by the comptroller and the attorney general for at least four years.

SECTION 5.09. Section 155.110(a), Tax Code, is amended to read as follows:

(a) Except as provided by Section 111.0041, each ~~Each~~ permit holder shall keep records available for inspection and copying by the comptroller and the attorney general for at least four years.

SECTION 5.10. Section 160.046, Tax Code, is amended by adding Subsection (g) to read as follows:

(g) A person required to keep records under this section shall also keep the records as required by Section 111.0041.

SECTION 5.11. Subchapter A, Chapter 162, Tax Code, is amended by adding Section 162.0125 to read as follows:

Sec. 162.0125. DUTY TO KEEP RECORDS. A person required to keep a record under this chapter shall also keep the record as required by Section 111.0041.

SECTION 5.12. This article takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this article takes effect September 1, 2011.

## ARTICLE 6. UNCLAIMED PROPERTY

SECTION 6.01. Subsection (a), Section 72.101, Property Code, is amended to read as follows:

(a) Except as provided by this section and Sections 72.1015, 72.1016, 72.1017, and 72.102, personal property is presumed abandoned if, for longer than three years:

(1) the existence and location of the owner of the property is unknown to the holder of the property; and

(2) according to the knowledge and records of the holder of the property, a claim to the property has not been asserted or an act of ownership of the property has not been exercised.

SECTION 6.02. Subchapter B, Chapter 72, Property Code, is amended by adding Section 72.1017 to read as follows:

Sec. 72.1017. UTILITY DEPOSITS. (a) In this section:

(1) "Utility" has the meaning assigned by Section 183.001, Utilities Code.

(2) "Utility deposit" is a refundable money deposit a utility requires a user of the utility service to pay as a condition of initiating the service.

(b) Notwithstanding Section 73.102, a utility deposit is presumed abandoned on the latest of:

(1) the first anniversary of the date a refund check for the utility deposit was payable to the owner of the deposit;

(2) the first anniversary of the date the utility last received documented communication from the owner of the utility deposit; or

(3) the first anniversary of the date the utility issued a refund check for the deposit payable to the owner of the deposit if, according to the knowledge and records of the utility or payor of the check, during that period, a claim to the check has not been asserted or an act of ownership by the payee has not been exercised.

SECTION 6.03. Subsection (c), Section 72.102, Property Code, is amended to read as follows:

(c) A money order to which Subsection (a) applies is presumed to be abandoned on the latest of:

(1) the third ~~[seventh]~~ anniversary of the date on which the money order was issued;

(2) the third ~~[seventh]~~ anniversary of the date on which the issuer of the money order last received from the owner of the money order communication concerning the money order; or

(3) the third ~~[seventh]~~ anniversary of the date of the last writing, on file with the issuer, that indicates the owner's interest in the money order.

SECTION 6.04. Section 72.103, Property Code, is amended to read as follows:

Sec. 72.103. PRESERVATION OF PROPERTY. Notwithstanding any other provision of this title except a provision of this section or Section 72.1016 relating to a money order or a stored value card, a holder of abandoned property shall preserve the property and may not at any time, by any procedure, including a deduction for service, maintenance, or other charge, transfer or convert to the profits or assets of the holder or otherwise reduce the value of the property. For purposes of this section, value is determined as of the date of the last transaction or contact concerning the property, except that in the case of a money order, value is determined as of the date the property is presumed abandoned under Section 72.102(c). If a holder imposes service, maintenance, or other charges on a money order prior to the time of presumed abandonment, such charges may not exceed the amount of \$1 ~~[50 cents]~~ per month for each month the money order remains uncashed prior to the month in which the money order is presumed abandoned.

SECTION 6.05. Section 73.101, Property Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) An account or safe deposit box is presumed abandoned if:

(1) except as provided by Subsection (c), the account or safe deposit box has been inactive for at least five years as determined under Subsection (b);

(2) the location of the depositor of the account or owner of the safe deposit box is unknown to the depository; and

(3) the amount of the account or the contents of the box have not been delivered to the comptroller in accordance with Chapter 74.

(c) If the account is a checking or savings account or is a matured certificate of deposit, the account is presumed abandoned if the account has been inactive for at least three years as determined under Subsection (b)(1).

SECTION 6.06. Subsection (a), Section 74.101, Property Code, is amended to read as follows:

(a) Each holder who on March 1 ~~[June 30]~~ holds property that is presumed abandoned under Chapter 72, 73, or 75 of this code or under Chapter 154, Finance Code, shall file a report of that property on or before the following July ~~[November]~~ 1. The comptroller may require the report to be in a particular format, including a format that can be read by a computer.

SECTION 6.07. Subsection (a), Section 74.1011, Property Code, is amended to read as follows:

(a) Except as provided by Subsection (b), a holder who on March 1 ~~[June 30]~~ holds property valued at more than \$250 that is presumed abandoned under Chapter 72, 73, or 75 of this code or Chapter 154, Finance Code, shall, on or before the preceding May ~~[following August]~~ 1, mail to the last known address of the known owner written notice stating that:

(1) the holder is holding the property; and

(2) the holder may be required to deliver the property to the comptroller on or before July ~~[November]~~ 1 if the property is not claimed.

SECTION 6.08. Subsections (a) and (c), Section 74.301, Property Code, are amended to read as follows:

(a) Except as provided by Subsection (c), each holder who on March 1 ~~[June 30]~~ holds property that is presumed abandoned under Chapter 72, 73, or 75 shall deliver the property to the comptroller on or before the following July ~~[November]~~ 1 accompanied by the report required to be filed under Section 74.101.

(c) If the property subject to delivery under Subsection (a) is the contents of a safe deposit box, the comptroller may instruct a holder to deliver the property on a specified date before July ~~[November]~~ 1 of the following year.

SECTION 6.09. Subsection (e), Section 74.601, Property Code, is amended to read as follows:

(e) The comptroller on receipt or from time to time may ~~[from time to time]~~ sell securities, including stocks, bonds, and mutual funds, received under this chapter or any other statute requiring the delivery of unclaimed property to the comptroller and use the proceeds to buy, exchange, invest, or reinvest in marketable securities. When making or selling the investments, the comptroller shall exercise the judgment and care of a prudent person.

SECTION 6.10. Section 74.708, Property Code, is amended to read as follows:

Sec. 74.708. PROPERTY HELD IN TRUST. A holder who on March 1 ~~[June 30]~~ holds property presumed abandoned under Chapters 72-75 holds the property in trust for the benefit of the state on behalf of the missing owner and is liable to the state for the full value of the property, plus any accrued interest and penalty. A holder is not required by this section to segregate or establish trust accounts for the property provided the property is timely delivered to the comptroller in accordance with Section 74.301.

SECTION 6.11. (a) Except as provided by Subsection (b) of this section, this article takes effect September 1, 2011.

(b) Sections 74.101(a), 74.1011(a), 74.301(a) and (c), and 74.708, Property Code, as amended by this article, take effect January 1, 2013.

SECTION 6.12. A charge imposed on a money order under Section 72.103, Property Code, by a holder before the effective date of this article is governed by the law applicable to the charge immediately before the effective date of this article, and the holder may retain the charge.

#### ARTICLE 7. CLASSIFICATION OF JUDICIAL AND COURT PERSONNEL TRAINING FUND

SECTION 7.01. Section 56.001, Government Code, is amended to read as follows:

##### Sec. 56.001. JUDICIAL AND COURT PERSONNEL TRAINING FUND.

(a) The judicial and court personnel training fund is an account in the general revenue fund. Money in the judicial and court personnel training fund may be appropriated only to [created in the state treasury and shall be administered by] the court of criminal appeals for the uses authorized in Section 56.003.

(b) ~~[(+)]~~ On requisition of the court of criminal appeals, the comptroller shall draw a warrant on the fund for the amount specified in the requisition for a use authorized in Section 56.003. A warrant may not exceed the amount appropriated for any one fiscal year. ~~[At the end of each state fiscal year, any unexpended balance in the fund in excess of \$500,000 shall be transferred to the general revenue fund.]~~

#### ARTICLE 8. PROCESS SERVER CERTIFICATION FEES

SECTION 8.01. Subchapter A, Chapter 51, Government Code, is amended by adding Section 51.008 to read as follows:

Sec. 51.008. FEES FOR PROCESS SERVER CERTIFICATION. (a) The process server review board established by supreme court order may recommend to the supreme court the fees to be charged for process server certification and renewal of certification. The supreme court must approve the fees recommended by the process server review board before the fees may be collected.

(b) If a certification is issued or renewed for a term that is less than the certification period provided by supreme court rule, the fee for the certification shall be prorated so that the process server pays only that portion of the fee that is allocable to the period during which the certification is valid. On renewal of the certification on the new expiration date, the process server must pay the entire certification renewal fee.

(c) The Office of Court Administration of the Texas Judicial System may collect the fees recommended by the process server review board and approved by the supreme court. Fees collected under this section shall be sent to the comptroller for deposit to the credit of the general revenue fund.

(d) Fees collected under this section may be appropriated to the Office of Court Administration of the Texas Judicial System for the support of regulatory programs for process servers and guardians.

SECTION 8.02. (a) The fees recommended and approved under Section 51.008, Government Code, as added by this article, apply to:

(1) each person who holds a process server certification on the effective date of this article; and

(2) each person who applies for process server certification on or after the effective date of this article.

(b) The Office of Court Administration of the Texas Judicial System shall prorate the process server certification fee so that a person who holds a process server certification on the effective date of this article pays only that portion of the fee that is allocable to the period during which the certification is valid. On renewal of the certification on the new expiration date, the entire certification renewal fee is payable.

#### ARTICLE 9. FISCAL MATTERS REGARDING PETROLEUM INDUSTRY REGULATION

SECTION 9.01. Section 26.3574, Water Code, is amended by amending Subsection (b) and adding Subsection (b-1) to read as follows:

(b) A fee is imposed on the delivery of a petroleum product on withdrawal from bulk of that product as provided by this subsection. Each operator of a bulk facility on withdrawal from bulk of a petroleum product shall collect from the person who orders the withdrawal a fee in an amount determined as follows:

(1) not more than \$3.125 ~~[\$3.75]~~ for each delivery into a cargo tank having a capacity of less than 2,500 gallons ~~[for the state fiscal year beginning September 1, 2007, through the state fiscal year ending August 31, 2011];~~

(2) not more than \$6.25 ~~[\$7.50]~~ for each delivery into a cargo tank having a capacity of 2,500 gallons or more but less than 5,000 gallons ~~[for the state fiscal year beginning September 1, 2007, through the state fiscal year ending August 31, 2011];~~

(3) not more than \$9.37 ~~[\$11.75]~~ for each delivery into a cargo tank having a capacity of 5,000 gallons or more but less than 8,000 gallons ~~[for the state fiscal year beginning September 1, 2007, through the state fiscal year ending August 31, 2011];~~

(4) not more than \$12.50 ~~[\$15.00]~~ for each delivery into a cargo tank having a capacity of 8,000 gallons or more but less than 10,000 gallons ~~[for the state fiscal year beginning September 1, 2007, through the state fiscal year ending August 31, 2011];~~ and

(5) not more than \$6.25 ~~[\$7.50]~~ for each increment of 5,000 gallons or any part thereof delivered into a cargo tank having a capacity of 10,000 gallons or more ~~[for the state fiscal year beginning September 1, 2007, through the state fiscal year ending August 31, 2011].~~

(b-1) The commission by rule shall set the amount of the fee in Subsection (b) in an amount not to exceed the amount necessary to cover the agency's costs of administering this subchapter, as indicated by the amount appropriated by the legislature from the petroleum storage tank remediation account for that purpose.

#### ARTICLE 10. REMITTANCE AND ALLOCATION OF CERTAIN MOTOR FUELS TAXES

SECTION 10.01. Section 162.113, Tax Code, is amended by adding Subsections (a-1), (a-2), (a-3), and (a-4) to read as follows:

(a-1) On August 28, 2013, each licensed distributor and licensed importer shall remit to the supplier or permissive supplier, as applicable, a tax prepayment in an amount equal to 25 percent of the tax imposed by Section 162.101 for gasoline removed at the terminal rack during July 2013 by the licensed distributor or licensed importer, without accounting for any credit or allowance to which the licensed distributor or licensed importer is entitled. The supplier or permissive supplier shall remit the tax prepayment received under this subsection to the comptroller by



electronic funds transfer on August 30, 2013, without accounting for any credit or allowance to which the supplier or permissive supplier is entitled. Subsections (c)-(e) do not apply to the tax prepayment under this subsection.

(a-2) A licensed distributor or licensed importer may take a credit against the amount of tax imposed by Section 162.101 for gasoline removed at a terminal rack during August 2013 that is required to be remitted to the supplier or permissive supplier, as applicable, under Subsection (a) in September 2013. The amount of the credit is equal to the amount of any tax prepayment remitted by the licensed distributor or licensed importer as required by Subsection (a-1).

(a-3) Subsections (a-1) and (a-2) apply to a supplier or an affiliate of a supplier who removes gasoline at the terminal rack for distribution to the same extent and in the same manner that those subsections apply to a licensed distributor or licensed importer.

(a-4) Subsections (a-1), (a-2), and (a-3) and this subsection expire September 1, 2015.

SECTION 10.02. Section 162.214, Tax Code, is amended by adding Subsections (a-1), (a-2), (a-3), and (a-4) to read as follows:

(a-1) On August 28, 2013, each licensed distributor and licensed importer shall remit to the supplier or permissive supplier, as applicable, a tax prepayment in an amount equal to 25 percent of the tax imposed by Section 162.201 for diesel fuel removed at the terminal rack during July 2013 by the licensed distributor or licensed importer, without accounting for any credit or allowance to which the licensed distributor or licensed importer is entitled. The supplier or permissive supplier shall remit the tax prepayment received under this subsection to the comptroller by electronic funds transfer on August 30, 2013, without accounting for any credit or allowance to which the supplier or permissive supplier is entitled. Subsections (c)-(e) do not apply to the tax prepayment under this subsection.

(a-2) A licensed distributor or licensed importer may take a credit against the amount of tax imposed by Section 162.201 for diesel fuel removed at a terminal rack during August 2013 that is required to be remitted to the supplier or permissive supplier, as applicable, under Subsection (a) in September 2013. The amount of the credit is equal to any tax prepayment remitted by the licensed distributor or licensed importer as required by Subsection (a-1).

(a-3) Subsections (a-1) and (a-2) apply to a supplier or an affiliate of a supplier who removes diesel fuel at the terminal rack for distribution to the same extent and in the same manner that those subsections apply to a licensed distributor or licensed importer.

(a-4) Subsections (a-1), (a-2), and (a-3) and this subsection expire September 1, 2015.

SECTION 10.03. Section 162.503, Tax Code, is amended to read as follows:

Sec. 162.503. ALLOCATION OF GASOLINE TAX. (a) On or before the fifth workday after the end of each month, the comptroller, after making all deductions for refund purposes and for the amounts allocated under Sections 162.502 and 162.5025, shall allocate the net remainder of the taxes collected under Subchapter B as follows:

(1) one-fourth of the tax shall be deposited to the credit of the available school fund;

(2) one-half of the tax shall be deposited to the credit of the state highway fund for the construction and maintenance of the state road system under existing law; and

(3) from the remaining one-fourth of the tax the comptroller shall:

(A) deposit to the credit of the county and road district highway fund all the remaining tax receipts until a total of \$7,300,000 has been credited to the fund each fiscal year; and

(B) after the amount required to be deposited to the county and road district highway fund has been deposited, deposit to the credit of the state highway fund the remainder of the one-fourth of the tax, the amount to be provided on the basis of allocations made each month of the fiscal year, which sum shall be used by the Texas Department of Transportation for the construction, improvement, and maintenance of farm-to-market roads.

(b) Notwithstanding Subsection (a), the comptroller may not allocate revenue otherwise required to be allocated under Subsection (a) during July and August 2013 before the first workday of September 2013. The revenue shall be allocated as otherwise provided by Subsection (a) not later than the fifth workday of September 2013. This subsection expires September 1, 2015.

SECTION 10.04. Section 162.504, Tax Code, is amended to read as follows:

Sec. 162.504. ALLOCATION OF DIESEL FUEL TAX. (a) On or before the fifth workday after the end of each month, the comptroller, after making deductions for refund purposes, for the administration and enforcement of this chapter, and for the amounts allocated under Section 162.5025, shall allocate the remainder of the taxes collected under Subchapter C as follows:

(1) one-fourth of the taxes shall be deposited to the credit of the available school fund; and

(2) three-fourths of the taxes shall be deposited to the credit of the state highway fund.

(b) Notwithstanding Subsection (a), the comptroller may not allocate revenue otherwise required to be allocated under Subsection (a) during July and August 2013 before the first workday of September 2013. The revenue shall be allocated as otherwise provided by Subsection (a) not later than the fifth workday of September 2013. This subsection expires September 1, 2015.

SECTION 10.05. The expiration of the amendments made to the Tax Code in accordance with this article does not affect tax liability accruing before the expiration of those amendments. That liability continues in effect as if the amendments had not expired, and the former law is continued in effect for the collection of taxes due and for civil and criminal enforcement of the liability for those taxes.

## ARTICLE 11. REMITTANCE OF MIXED BEVERAGE TAXES AND TAXES AND FEES ON CERTAIN ALCOHOLIC BEVERAGES

SECTION 11.01. Section 34.04, Alcoholic Beverage Code, is amended by adding Subsections (c), (d), and (e) to read as follows:

(c) In August 2013, a permittee shall remit a tax prepayment of taxes due to be remitted in September 2013 that is equal to 25 percent of the amount the permittee is otherwise required to remit during August 2013 under the reporting system prescribed by the commission. The prepayment is in addition to the amount the permittee is

otherwise required to remit during August. The permittee shall remit the additional payment in conjunction with the report and payment otherwise required during that month.

(d) A permittee who remits the additional payment as required by Subsection (c) may take a credit in the amount of the additional payment against the next payment due under the reporting system prescribed by the commission.

(e) Subsections (c) and (d) and this subsection expire September 1, 2015.

SECTION 11.02. Section 48.04, Alcoholic Beverage Code, is amended by adding Subsections (c), (d), and (e) to read as follows:

(c) In August 2013, a permittee shall remit a tax prepayment of taxes due to be remitted in September 2013 that is equal to 25 percent of the amount the permittee is otherwise required to remit during August 2013 under the reporting system prescribed by the commission. The prepayment is in addition to the amount the permittee is otherwise required to remit during August. The permittee shall remit the additional payment in conjunction with the report and payment otherwise required during that month.

(d) A permittee who remits the additional payment as required by Subsection (c) may take a credit in the amount of the additional payment against the next payment due under the reporting system prescribed by the commission.

(e) Subsections (c) and (d) and this subsection expire September 1, 2015.

SECTION 11.03. Section 201.07, Alcoholic Beverage Code, is amended to read as follows:

Sec. 201.07. DUE DATE. (a) The tax on liquor is due and payable on the 15th of the month following the first sale, together with a report on the tax due.

(b) In August 2013, each permittee who is liable for the taxes imposed by this subchapter shall remit a tax prepayment of taxes due to be remitted in September 2013 that is equal to 25 percent of the amount the permittee is otherwise required to remit during August 2013 under Subsection (a). The prepayment is in addition to the amount the permittee is otherwise required to remit during August. The permittee shall remit the additional payment in conjunction with the report and payment otherwise required during that month.

(c) A permittee who remits the additional payment as required by Subsection (b) may take a credit in the amount of the additional payment against the next payment due under Subsection (a).

(d) Subsections (b) and (c) and this subsection expire September 1, 2015.

SECTION 11.04. Section 201.43, Alcoholic Beverage Code, is amended by amending Subsection (b) and adding Subsections (c), (d), and (e) to read as follows:

(b) The tax is due and payable on the 15th day of the month following the month in which the taxable first sale occurs, together with a report on the tax due.

(c) In August 2013, each permittee who is liable for the tax imposed by this subchapter shall remit a tax prepayment of taxes due to be remitted in September 2013 that is equal to 25 percent of the amount the permittee is otherwise required to remit during August 2013 under Subsection (b). The prepayment is in addition to the amount the permittee is otherwise required to remit during August. The permittee shall remit the additional payment in conjunction with the report and payment otherwise required during that month.

(d) A permittee who remits the additional payment as required by Subsection (c) may take a credit in the amount of the additional payment against the next payment due under Subsection (b).

(e) Subsections (c) and (d) and this subsection expire September 1, 2015.

SECTION 11.05. Section 203.03, Alcoholic Beverage Code, is amended by amending Subsection (b) and adding Subsections (c), (d), and (e) to read as follows:

(b) The tax is due and payable on the 15th day of the month following the month in which the taxable first sale occurs, together with a report on the tax due.

(c) Each licensee who is liable for the tax imposed by this chapter shall remit a tax prepayment of taxes due to be remitted in September 2013 that is equal to 25 percent of the amount the licensee is otherwise required to remit during August 2013 under Subsection (b). The prepayment is in addition to the amount the licensee is otherwise required to remit during August. The licensee shall remit the additional payment in conjunction with the report and payment otherwise required during that month.

(d) A licensee who remits the additional payment as required by Subsection (c) may take a credit in the amount of the additional payment against the next payment due under Subsection (b).

(e) Subsections (c) and (d) and this subsection expire September 1, 2015.

SECTION 11.06. Section 183.023, Tax Code, is amended to read as follows:

Sec. 183.023. PAYMENT. (a) The tax due for the preceding month shall accompany the return and shall be payable to the state.

(b) The comptroller shall deposit the revenue received under this section in the general revenue fund.

(c) In August 2013, each permittee who is liable for the tax imposed by this subchapter shall remit a tax prepayment of taxes due to be remitted in September 2013 that is equal to 25 percent of the amount the permittee is otherwise required to remit during August 2013 under Subsection (a). The prepayment is in addition to the amount the permittee is otherwise required to remit during August. The permittee shall remit the additional payment in conjunction with the return and payment otherwise required during that month.

(d) A permittee who remits the additional payment as required by Subsection (c) may take a credit in the amount of the additional payment against the next payment due under Subsection (a).

(e) Subsections (c) and (d) and this subsection expire September 1, 2015.

SECTION 11.07. The expiration of the amendments made to the Alcoholic Beverage Code and Tax Code in accordance with this article does not affect tax liability accruing before the expiration of those amendments. That liability continues in effect as if the amendments had not expired, and the former law is continued in effect for the collection of taxes due and for civil and criminal enforcement of the liability for those taxes.

## ARTICLE 12. CIGARETTE TAX STAMPING ALLOWANCE

SECTION 12.01. Subsection (a), Section 154.052, Tax Code, is amended to read as follows:

(a) A distributor is, subject to the provisions of Section 154.051, entitled to 2.5 ~~three~~ percent of the face value of stamps purchased as a stamping allowance for providing the service of affixing stamps to cigarette packages, except that an out-of-state distributor is entitled to receive only the same percentage of stamping allowance as that given to Texas distributors doing business in the state of the distributor.

SECTION 12.02. This article applies only to cigarette stamps purchased on or after the effective date of this article. Cigarette stamps purchased before the effective date of this article are governed by the law in effect on the date the cigarette stamps were purchased, and that law is continued in effect for that purpose.

#### ARTICLE 13. SALES FOR RESALE

SECTION 13.01. Section 151.006, Tax Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) "Sale for resale" means a sale of:

(1) tangible personal property or a taxable service to a purchaser who acquires the property or service for the purpose of reselling it with or as a taxable item in the United States of America or a possession or territory of the United States of America or in the United Mexican States in the normal course of business in the form or condition in which it is acquired or as an attachment to or integral part of other tangible personal property or taxable service;

(2) tangible personal property to a purchaser for the sole purpose of the purchaser's leasing or renting it in the United States of America or a possession or territory of the United States of America or in the United Mexican States in the normal course of business to another person, but not if incidental to the leasing or renting of real estate;

(3) tangible personal property to a purchaser who acquires the property for the purpose of transferring it in the United States of America or a possession or territory of the United States of America or in the United Mexican States as an integral part of a taxable service; ~~or~~

(4) a taxable service performed on tangible personal property that is held for sale by the purchaser of the taxable service; or

(5) except as provided by Subsection (c), tangible personal property to a purchaser who acquires the property for the purpose of transferring it as an integral part of performing a contract, or a subcontract of a contract, with the federal government only if the purchaser:

(A) allocates and bills to the contract the cost of the property as a direct or indirect cost; and

(B) transfers title to the property to the federal government under the contract and applicable federal acquisition regulations.

(c) A sale for resale does not include the sale of tangible personal property or a taxable service to a purchaser who acquires the property or service for the purpose of performing a service that is not taxed under this chapter, regardless of whether title transfers to the service provider's customer, unless the tangible personal property or taxable service is purchased for the purpose of reselling it to the United States in a contract, or a subcontract of a contract, with any branch of the Department of Defense, Department of Homeland Security, Department of Energy, National Aeronautics and

Space Administration, Central Intelligence Agency, National Security Agency, National Oceanic and Atmospheric Administration, or National Reconnaissance Office to the extent allocated and billed to the contract with the federal government.

SECTION 13.02. This article takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this article takes effect September 1, 2011.

#### ARTICLE 14. REMITTANCE OF SALES AND USE TAXES

SECTION 14.01. Section 151.401, Tax Code, is amended by adding Subsections (c), (d), and (e) to read as follows:

(c) In August 2013, a taxpayer who is required to pay the taxes imposed by this chapter on or before the 20th day of that month under Subsection (a), who pays the taxes imposed by this chapter by electronic funds transfer, and who does not prepay as provided by Section 151.424 shall remit to the comptroller a tax prepayment that is equal to 25 percent of the amount the taxpayer is otherwise required to remit during August 2013 under Subsection (a). The prepayment is in addition to the amount the taxpayer is otherwise required to remit during August. The taxpayer shall remit the additional payment in conjunction with the payment otherwise required during that month. Section 151.424 does not apply with respect to the additional payment required by this subsection.

(d) A taxpayer who remits the additional payment as required by Subsection (c) may take a credit in the amount of the additional payment against the next payment due under Subsection (a).

(e) Subsections (c) and (d) and this subsection expire September 1, 2015.

SECTION 14.02. Section 151.402, Tax Code, is amended to read as follows:

Sec. 151.402. TAX REPORT DATES. (a) ~~A [Except as provided by Subsection (b) of this section, a]~~ tax report required by this chapter for a reporting period is due on the same date that the tax payment for the period is due as provided by Section 151.401.

(b) A taxpayer may report a credit in the amount of any tax prepayment remitted to the comptroller as required by Section 151.401(c) on the tax report required by this chapter that is otherwise due in September 2013 [for taxes required by Section 151.401(a) to be paid on or before August 20 is due on or before the 20th day of the following month]. This subsection expires September 1, 2015.

SECTION 14.03. The expiration of the amendments made to the Tax Code in accordance with this article does not affect tax liability accruing before the expiration of those amendments. That liability continues in effect as if the amendments had not expired, and the former law is continued in effect for the collection of taxes due and for civil and criminal enforcement of the liability for those taxes.

#### ARTICLE 15. REPORTS REGARDING CERTAIN SALES OF ALCOHOLIC BEVERAGES

SECTION 15.01. Section 111.006, Tax Code, is amended by adding Subsections (h) and (i) to read as follows:

(h) The comptroller shall disclose information to a person regarding net sales by quantity, brand, and size that is submitted in a report required under Section 151.462 if:

(1) the person requesting the information holds a permit or license under Chapter 19, 20, 21, 37, 64, 65, or 66, Alcoholic Beverage Code; and

(2) the request relates only to information regarding the sale of a product distributed by the person making the request.

(i) A disclosure made under Subsection (h) is not considered a disclosure of competitively sensitive, proprietary, or confidential information.

SECTION 15.02. Chapter 151, Tax Code, is amended by adding Subchapter I-1, and a heading is added to that subchapter to read as follows:

SUBCHAPTER I-1. REPORTS BY PERSONS INVOLVED IN THE  
MANUFACTURE AND DISTRIBUTION OF ALCOHOLIC BEVERAGES

SECTION 15.03. Subchapter I-1, Chapter 151, Tax Code, as added by this Act, is amended by adding Sections 151.462, 151.463, 151.464, 151.465, 151.466, 151.467, 151.468, 151.469, 151.470, and 151.471, and Section 151.433, Tax Code, is transferred to Subchapter I-1, Chapter 151, Tax Code, redesignated as Section 151.461, Tax Code, and amended to read as follows:

Sec. 151.461 ~~[151.433].~~ DEFINITIONS. ~~[REPORTS BY WHOLESALERS AND DISTRIBUTORS OF BEER, WINE, AND MALT LIQUOR. (a)]~~ In this subchapter ~~[section]~~:

(1) "Brewer" means a person required to hold a brewer's permit under Chapter 12, Alcoholic Beverage Code.

(2) "Distributor" means a person required to hold:

(A) a general distributor's license under Chapter 64, Alcoholic Beverage Code;

(B) a local distributor's license under Chapter 65, Alcoholic Beverage Code; or

(C) a branch distributor's license under Chapter 66, Alcoholic Beverage Code.

(3) "Manufacturer" means a person required to hold a manufacturer's license under Chapter 62, Alcoholic Beverage Code.

(4) "Package store local distributor" means a person required to hold:

(A) a package store permit under Chapter 22, Alcoholic Beverage Code; and

(B) a local distributor's permit under Chapter 23, ~~[a general, local, or branch distributor's license under the]~~ Alcoholic Beverage Code.

(5) ~~(2)~~ "Retailer" means a person required to hold ~~[the following]~~:

(A) a wine and beer retailer's permit under Chapter 25, Alcoholic Beverage Code;

(B) a wine and beer retailer's off-premise permit under Chapter 26, Alcoholic Beverage Code;

(C) a temporary wine and beer retailer's permit or special three-day wine and beer permit under Chapter 27, Alcoholic Beverage Code;

(D) a mixed beverage permit under Chapter 28, Alcoholic Beverage Code;

(E) a daily temporary mixed beverage permit under Chapter 30, Alcoholic Beverage Code;

(F) a private club registration permit under Chapter 32, Alcoholic Beverage Code;

(G) a certificate issued to a fraternal or veterans organization under Section 32.11, Alcoholic Beverage Code;

(H) a daily temporary private club permit under Subchapter B, Chapter 33, Alcoholic Beverage Code;

(I) a temporary charitable auction permit under Chapter 53, Alcoholic Beverage Code;

(J) a retail dealer's on-premise license under Chapter 69, Alcoholic Beverage Code;

(K) a temporary license under Chapter 72, Alcoholic Beverage Code; or

(L) ~~(D)~~ a retail dealer's off-premise license under Chapter 71, Alcoholic Beverage Code, except for a dealer who also holds a package store permit under Chapter 22, Alcoholic Beverage Code.

(6) ~~(3)~~ "Wholesaler" means a person required to hold ~~[the following under the Alcoholic Beverage Code]:~~

(A) a winery permit under Chapter 16, Alcoholic Beverage Code;

(B) a wholesaler's permit under Chapter 19, Alcoholic Beverage Code;

(C) ~~(B)~~ a general Class B wholesaler's permit under Chapter 20, Alcoholic Beverage Code; or

(D) ~~(C)~~ a local Class B wholesaler's permit under Chapter 21, Alcoholic Beverage Code.

Sec. 151.462. REPORTS BY BREWERS, MANUFACTURERS, WHOLESALERS, AND DISTRIBUTORS. (a) ~~(b)~~ The comptroller shall ~~[may, when considered necessary by the comptroller for the administration of a tax under this chapter,~~ require each brewer, manufacturer, wholesaler, ~~[or] distributor, or package store local distributor [of beer, wine, or malt liquor]~~ to file with the comptroller a report each month of alcoholic beverage sales to retailers in this state.

(b) Each brewer, manufacturer, ~~(c) The~~ wholesaler, ~~[or] distributor, or package store local distributor~~ shall file a separate ~~[the]~~ report for each permit or license held on or before the 25th day of each month. The report must contain the following information for the preceding calendar month's sales in relation to each retailer:

(1) the brewer's, manufacturer's, wholesaler's, distributor's, or package store local distributor's name, address, taxpayer number and outlet number assigned by the comptroller, and alphanumeric permit or license number issued by the Texas Alcoholic Beverage Commission;

(2) the retailer's:

(A) name and address, including street name and number, city, and zip code;

(B) taxpayer number assigned by the comptroller; and

(C) alphanumeric permit or license number issued by the Texas Alcoholic Beverage Commission for each separate retail location or outlet to which the brewer, manufacturer, wholesaler, distributor, or package store local distributor sold the alcoholic beverages that are listed on the report ~~[the name of the retailer and the address of the retailer's outlet location to which the wholesaler or distributor delivered beer, wine, or malt liquor, including the city and zip code;~~



~~[(2) the taxpayer number assigned by the comptroller to the retailer, if the wholesaler or distributor is in possession of the number;~~

~~[(3) the permit or license number assigned to the retailer by the Texas Alcoholic Beverage Commission]; and~~

(3) [(4)] the monthly net sales made by the brewer, manufacturer, wholesaler, distributor, or package store local distributor to the retailer for each [by] outlet or location covered by a separate retail permit or license issued by the Texas Alcoholic Beverage Commission, including separate line items for:

(A) the number of units of alcoholic beverages;

(B) the individual container size and pack of each unit;

(C) the brand name;

(D) the type of beverage, such as distilled spirits, wine, or malt beverage;

(E) the universal product code of the alcoholic beverage; and

(F) the net selling price of the alcoholic beverage [by the wholesaler or distributor, including the quantity and units of beer, wine, and malt liquor sold to the retailer].

(c) [(d)] Except as provided by this subsection, the brewer, manufacturer, wholesaler, [or] distributor, or package store local distributor shall file the report with the comptroller electronically. The comptroller may establish procedures to temporarily postpone the electronic reporting requirement [for allowing an alternative method of filing] for a brewer, manufacturer, wholesaler, [or] distributor, or package store local distributor who demonstrates to the comptroller an inability to comply because undue hardship would result if it were required to file the return electronically [with the electronic reporting requirement]. If the comptroller determines that another technological method of filing the report is more efficient than electronic filing, the comptroller may establish procedures requiring its use by brewers, manufacturers, wholesalers, [and] distributors, and package store local distributors.

Sec. 151.463. RULES. The comptroller may adopt rules to implement this subchapter.

Sec. 151.464. CONFIDENTIALITY. [(e)] Except as provided by Section 111.006, information contained in a report required to be filed by this subchapter [section] is confidential and not subject to disclosure under Chapter 552, Government Code.

Sec. 151.465. APPLICABILITY TO CERTAIN BREWERS. This subchapter applies only to a brewer whose annual production of malt liquor in this state, together with the annual production of beer at the same premises by the holder of a manufacturer's license under Section 62.12, Alcoholic Beverage Code, does not exceed 75,000 barrels.

Sec. 151.466. APPLICABILITY TO CERTAIN MANUFACTURERS. This subchapter applies only to a manufacturer whose annual production of beer in this state does not exceed 75,000 barrels.

Sec. 151.467. SUSPENSION OR CANCELLATION OF PERMIT. [(f)] If a person fails to file a report required by this subchapter [section] or fails to file a complete report, the comptroller may suspend or cancel one or more permits issued to the person under Section 151.203.

Sec. 151.468. CIVIL PENALTY; CRIMINAL PENALTY. (a) If a person fails to file a report required by this subchapter or fails to file a complete report, the comptroller ~~and~~ may impose a civil or criminal penalty, or both, under Section 151.7031 or 151.709.

(b) In addition to the penalties imposed under Subsection (a), a brewer, manufacturer, wholesaler, distributor, or package store local distributor shall pay the state a civil penalty of not less than \$25 or more than \$2,000 for each day a violation continues if the brewer, manufacturer, wholesaler, distributor, or package store local distributor:

(1) violates this subchapter; or

(2) violates a rule adopted to administer or enforce this subchapter.

Sec. 151.469. ACTION BY TEXAS ALCOHOLIC BEVERAGE COMMISSION. ~~[(g)]~~ If a person fails to file a report required by this subchapter ~~[section]~~ or fails to file a complete report, the comptroller may notify the Texas Alcoholic Beverage Commission of the failure and the commission may take administrative action against the person for the failure under the Alcoholic Beverage Code.

Sec. 151.470. AUDIT; INSPECTION. The comptroller may audit, inspect, or otherwise verify a brewer's, manufacturer's, wholesaler's, distributor's, or package store local distributor's compliance with this subchapter.

Sec. 151.471. ACTION BY ATTORNEY GENERAL; VENUE; ATTORNEY'S FEES. (a) The comptroller may bring an action to enforce this subchapter and obtain any civil remedy authorized by this subchapter or any other law for the violation of this subchapter. The attorney general shall prosecute the action on the comptroller's behalf.

(b) Venue for and jurisdiction of an action under this section is exclusively conferred on the district courts in Travis County.

(c) If the comptroller prevails in an action under this section, the comptroller and attorney general are entitled to recover court costs and reasonable attorney's fees incurred in bringing the action.

SECTION 15.04. Subchapter I-1, Chapter 151, Tax Code, as added by this article, applies only to a report due on or after the effective date of this article. A report due before the effective date of this article is governed by the law as it existed on the date the report was due, and the former law is continued in effect for that purpose.

## **ARTICLE 16. PENALTIES FOR FAILURE TO REPORT OR REMIT CERTAIN TAXES OR FEES**

SECTION 16.01. Subsection (b), Section 111.00455, Tax Code, is amended to read as follows:

(b) The following are not contested cases under Subsection (a) and Section 2003.101, Government Code:

(1) a show cause hearing or any hearing not related to the collection, receipt, administration, or enforcement of the amount of a tax or fee imposed, or the penalty or interest associated with that amount, except for a hearing under Section 151.157(f), 151.1575(c), 151.712(g), 154.1142, or 155.0592;

(2) a property value study hearing under Subchapter M, Chapter 403, Government Code;

(3) a hearing in which the issue relates to:

(A) Chapters 72-75, Property Code;

(B) forfeiture of a right to do business;

(C) a certificate of authority;

(D) articles of incorporation;

(E) a penalty imposed under Section 151.703(d) ~~[151.703+]~~;

(F) the refusal or failure to settle under Section 111.101; or

(G) a request for or revocation of an exemption from taxation; and

(4) any other hearing not related to the collection, receipt, administration, or enforcement of the amount of a tax or fee imposed, or the penalty or interest associated with that amount.

SECTION 16.02. Subsection (f), Section 151.433, Tax Code, is amended to read as follows:

(f) If a person fails to file a report required by this section or fails to file a complete report, the comptroller may suspend or cancel one or more permits issued to the person under Section 151.203 and may impose a civil or criminal penalty, or both, under Section 151.703(d) ~~[151.703+]~~ or 151.709.

SECTION 16.03. Section 151.703, Tax Code, is amended by adding Subsection (d) to read as follows:

(d) In addition to any other penalty authorized by this section, a person who fails to file a report as required by this chapter shall pay a penalty of \$50. The penalty provided by this subsection is assessed without regard to whether the taxpayer subsequently files the report or whether any taxes were due from the taxpayer for the reporting period under the required report.

SECTION 16.04. Section 152.045, Tax Code, is amended by adding Subsection (d) to read as follows:

(d) In addition to any other penalty provided by law, the owner of a motor vehicle subject to the tax on gross rental receipts who is required to file a report as provided by this chapter and who fails to timely file the report shall pay a penalty of \$50. The penalty provided by this subsection is assessed without regard to whether the taxpayer subsequently files the report or whether any taxes were due from the taxpayer for the reporting period under the required report.

SECTION 16.05. Section 152.047, Tax Code, is amended by adding Subsection (j) to read as follows:

(j) In addition to any other penalty provided by law, the seller of a motor vehicle sold in a seller-financed sale who is required to file a report as provided by this chapter and who fails to timely file the report shall pay a penalty of \$50. The penalty provided by this subsection is assessed without regard to whether the taxpayer subsequently files the report or whether any taxes were due from the taxpayer for the reporting period under the required report.

SECTION 16.06. Section 156.202, Tax Code, is amended by amending Subsection (c) and adding Subsection (d) to read as follows:

(c) The minimum penalty under Subsections (a) and (b) ~~[this section]~~ is \$1.

(d) In addition to any other penalty authorized by this section, a person who fails to file a report as required by this chapter shall pay a penalty of \$50. The penalty provided by this subsection is assessed without regard to whether the taxpayer subsequently files the report or whether any taxes were due from the taxpayer for the reporting period under the required report.

SECTION 16.07. Section 162.401, Tax Code, is amended by adding Subsection (c) to read as follows:

(c) In addition to any other penalty authorized by this section, a person who fails to file a report as required by this chapter shall pay a penalty of \$50. The penalty provided by this subsection is assessed without regard to whether the taxpayer subsequently files the report or whether any taxes were due from the taxpayer for the reporting period under the required report.

SECTION 16.08. Section 171.362, Tax Code, is amended by amending Subsection (c) and adding Subsection (f) to read as follows:

(c) The minimum penalty under Subsections (a) and (b) [~~this section~~] is \$1.

(f) In addition to any other penalty authorized by this section, a taxable entity who fails to file a report as required by this chapter shall pay a penalty of \$50. The penalty provided by this subsection is assessed without regard to whether the taxable entity subsequently files the report or whether any taxes were due from the taxable entity for the reporting period under the required report.

SECTION 16.09. Subchapter B, Chapter 183, Tax Code, is amended by adding Section 183.024 to read as follows:

Sec. 183.024. FAILURE TO PAY TAX OR FILE REPORT. (a) A permittee who fails to file a report as required by this chapter or who fails to pay a tax imposed by this chapter when due shall pay five percent of the amount due as a penalty, and if the permittee fails to file the report or pay the tax within 30 days after the day the tax or report is due, the permittee shall pay an additional five percent of the amount due as an additional penalty.

(b) The minimum penalty under Subsection (a) is \$1.

(c) A delinquent tax draws interest beginning 60 days from the due date.

(d) In addition to any other penalty authorized by this section, a permittee who fails to file a report as required by this chapter shall pay a penalty of \$50. The penalty provided by this subsection is assessed without regard to whether the permittee subsequently files the report or whether any taxes were due from the permittee for the reporting period under the required report.

SECTION 16.10. Section 771.0712, Health and Safety Code, is amended by adding Subsections (c) and (d) to read as follows:

(c) A seller who fails to file a report or remit a fee collected or payable as provided by this section and comptroller rules shall pay five percent of the amount due and payable as a penalty, and if the seller fails to file the report or remit the fee within 30 days after the day the fee or report is due, the seller shall pay an additional five percent of the amount due and payable as an additional penalty.

(d) In addition to any other penalty authorized by this section, a seller who fails to file a report as provided by this section shall pay a penalty of \$50. The penalty provided by this subsection is assessed without regard to whether the seller subsequently files the report or whether any taxes were due from the seller for the reporting period under the required report.

SECTION 16.11. Section 151.7031, Tax Code, is repealed.

SECTION 16.12. The change in law made by this article applies only to a report due or a tax or fee due and payable on or after the effective date of this article. A report due or a tax or fee due and payable before the effective date of this article is governed by the law in effect at that time, and that law is continued in effect for that purpose.

SECTION 16.13. This article takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this article takes effect September 1, 2011.

#### ARTICLE 17. FISCAL MATTERS RELATED TO VOTER REGISTRATION

SECTION 17.01. Subsections (b), (c), and (d), Section 18.065, Election Code, are amended to read as follows:

(b) On determining that a registrar is not in substantial compliance, the secretary shall deliver written notice of the noncompliance to[~~+~~

~~[(+)] the registrar and include[, including] in the notice a description of the violation and an explanation of the action necessary for substantial compliance and of the consequences of noncompliance[~~+~~and~~

~~[(2) the comptroller of public accounts, including in the notice the identity of the noncomplying registrar].~~

(c) On determining that a noncomplying registrar has corrected the violation and is in substantial compliance, the secretary shall deliver written notice to the registrar ~~[and to the comptroller]~~ that the registrar is in substantial compliance.

(d) ~~[The comptroller shall retain a notice received under this section on file until July 1 following the voting year in which it is received.]~~ The secretary shall retain a copy of each notice the secretary delivers under this section for two years after the date the notice is delivered.

SECTION 17.02. Subsection (a), Section 19.001, Election Code, is amended to read as follows:

(a) Before May 15 of each year, the registrar shall prepare and submit to the secretary of state ~~[comptroller of public accounts]~~ a statement containing:

- (1) the total number of initial registrations for the previous voting year;
- (2) the total number of registrations canceled under Sections 16.031(a)(1), 16.033, and 16.0332 for the previous voting year; and
- (3) the total number of registrations for which information was updated for the previous voting year.

SECTION 17.03. The heading to Section 19.002, Election Code, is amended to read as follows:

Sec. 19.002. PAYMENTS ~~[ISSUANCE OF WARRANTS BY COMPTROLLER].~~

SECTION 17.04. Subsections (b) and (d), Section 19.002, Election Code, are amended to read as follows:

(b) After June 1 of each year, the secretary of state ~~[comptroller of public accounts]~~ shall make payments ~~[issue warrants]~~ pursuant to vouchers submitted by the registrar and approved by the secretary of state in amounts that in the aggregate do not exceed the registrar's entitlement. The secretary of state shall prescribe the procedures necessary to implement this subsection.

(d) The secretary of state ~~[comptroller]~~ may not make a payment under Subsection (b) ~~[issue a warrant]~~ if on June 1 of the year in which the payment ~~[warrant]~~ is to be made ~~[issued the most recent notice received by the comptroller from the secretary of state under Section 18.065 indicates that]~~ the registrar is not in substantial compliance with Section 15.083, 16.032, 18.042, or 18.065 or with rules implementing the registration service program.

SECTION 17.05. The heading to Section 19.0025, Election Code, is amended to read as follows:

Sec. 19.0025. ELECTRONIC ADMINISTRATION OF VOUCHERS AND PAYMENTS ~~[WARRANTS]~~.

SECTION 17.06. Subsection (a), Section 19.0025, Election Code, is amended to read as follows:

(a) The secretary of state shall establish and maintain an online electronic system for administering vouchers submitted and payments made ~~[warrants issued]~~ under Section 19.002.

SECTION 17.07. Subsection (c), Section 19.002, Election Code, is repealed.

SECTION 17.08. This article takes effect September 1, 2011.

## ARTICLE 18. CERTAIN POWERS AND DUTIES OF THE COMPTROLLER OF PUBLIC ACCOUNTS

SECTION 18.01. Subsection (d), Section 403.0551, Government Code, is amended to read as follows:

(d) This section does not authorize the comptroller to deduct the amount of a state employee's indebtedness to a state agency from any amount of compensation owed by the agency to the employee, the employee's successor, or the assignee of the employee or successor. In this subsection, "compensation" has the meaning assigned by Section 403.055 and ~~["compensation,"]~~ "indebtedness," "state agency," "state employee," and "successor" have the meanings assigned by Section 666.001.

SECTION 18.02. Subsection (h), Section 404.022, Government Code, is amended to read as follows:

(h) The comptroller may execute a simplified version of a depository agreement with an eligible institution desiring to hold ~~[\$98,000 or less in]~~ state deposits that are fully insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund.

SECTION 18.03. Subsection (a), Section 411.109, Government Code, is amended to read as follows:

(a) The comptroller is entitled to obtain from the department criminal history record information maintained by the department that the comptroller believes is necessary for the enforcement or administration of Chapter 151, 152, ~~[153,]~~ 154, ~~[or]~~ 155, or 162, Tax Code, including criminal history record information that relates to a person who is:

- (1) an applicant for a permit under any of those chapters;
- (2) a permit holder under any of those chapters;
- (3) an officer, director, stockholder owning 10 percent or more of the outstanding stock, partner, owner, or managing employee of an applicant or permit holder under any of those chapters that is a corporation, association, joint venture, syndicate, partnership, or proprietorship;
- (4) believed to have violated any of those chapters; or
- (5) being considered by the comptroller for employment as a peace officer.

SECTION 18.04. Subsection (d), Section 403.0551, Government Code, as amended by this article, applies to a deduction made on or after the effective date of this Act for an indebtedness to a state agency regardless of:

- (1) the date the indebtedness accrued; or
- (2) the dates of the pay period for which the compensation from which the indebtedness is deducted is earned.

#### ARTICLE 19. PREPARATION AND PUBLICATION OF CERTAIN REPORTS AND OTHER MATERIALS

SECTION 19.01. Subsection (c), Section 61.539, Education Code, is amended to read as follows:

(c) As soon as practicable after each state fiscal year, the board ~~[comptroller]~~ shall prepare a report for that fiscal year of the number of students registered in a medical branch, school, or college, the total amount of tuition charges collected by each institution, the total amount transferred to the comptroller under this section, and the total amount available in the physician education loan repayment program account for the repayment of student loans of physicians under this subchapter. The board ~~[comptroller]~~ shall deliver a copy of the report to ~~[the board and to]~~ the governor, lieutenant governor, and speaker of the house of representatives not later than January 1 following the end of the fiscal year covered by the report.

SECTION 19.02. Subsection (c), Section 5.05, Tax Code, is amended to read as follows:

(c) The comptroller shall electronically publish all materials under this section ~~[provide without charge one copy of all materials to officials of local government who are responsible]~~ for administering the property tax system. ~~[If a local government official requests more than one copy, the comptroller may charge a reasonable fee to offset the costs of printing and distributing the materials.]~~ The comptroller shall make the materials available to local governmental officials and members of the public but may charge a reasonable fee to offset the costs of preparing, printing, and distributing the materials.

SECTION 19.03. Section 5.06, Tax Code, is amended to read as follows:

Sec. 5.06. EXPLANATION OF TAXPAYER REMEDIES. ~~[(a)]~~ The comptroller shall prepare and electronically publish a pamphlet explaining the remedies available to dissatisfied taxpayers and the procedures to be followed in seeking remedial action. The comptroller shall include in the pamphlet advice on preparing and presenting a protest.

~~[(b) The comptroller shall provide without charge a reasonable number of copies of the pamphlet to any person on request. The comptroller may charge a person who requests multiple copies of the pamphlet a reasonable fee to offset the costs of printing and distributing those copies. The comptroller at its discretion shall determine the number of copies that a person may receive without charge.]~~

SECTION 19.04. Section 5.09, Tax Code, is amended to read as follows:

Sec. 5.09. BIENNIAL ~~[ANNUAL]~~ REPORTS. (a) The comptroller shall prepare a biennial ~~[publish an annual]~~ report of ~~[the operations of the appraisal districts. The report shall include for each appraisal district, each county, and each school district and may include for other taxing units]~~ the total appraised values~~;~~ assessed values~~;~~ and taxable values of taxable property by category ~~[class of property, the assessment ratio,]~~ and the tax rates of each county, municipality, and school district in effect for the two years preceding the year in which the report is prepared ~~[rate]~~.

(b) Not later than December 31 of each even-numbered year, the ~~[The]~~ comptroller shall:

- (1) electronically publish on the comptroller's Internet website the ~~[deliver a copy of each annual]~~ report required by ~~[published under]~~ Subsection (a); and
- (2) notify ~~[of this section to]~~ the governor, the lieutenant governor, and each member of the legislature that the report is available on the website.

SECTION 19.05. The following are repealed:

- (1) Sections 403.030 and 552.143(e), Government Code; and
- (2) Subchapter F, Chapter 379A, Local Government Code.

## ARTICLE 20. SURPLUS LINES AND INDEPENDENTLY PROCURED INSURANCE

SECTION 20.01. Subsection (b), Section 101.053, Insurance Code, is amended to read as follows:

(b) Sections 101.051 and 101.052 do not apply to:

- (1) the lawful transaction of surplus lines insurance under Chapter 981;
- (2) the lawful transaction of reinsurance by insurers;
- (3) a transaction in this state that:
  - (A) involves a policy that:
    - (i) is lawfully solicited, written, and delivered outside this state; and
    - (ii) covers, at the time the policy is issued, only subjects of insurance that are not resident, located, or expressly to be performed in this state; and
  - (B) takes place after the policy is issued;
- (4) a transaction:
  - (A) that involves an insurance contract independently procured by the insured from an insurance company not authorized to do insurance business in this state through negotiations occurring entirely outside this state;
  - (B) that is reported; and



(C) on which premium tax, if applicable, is paid in accordance with Chapter 226;

(5) a transaction in this state that:

(A) involves group life, health, or accident insurance, other than credit insurance, and group annuities in which the master policy for the group was lawfully issued and delivered in a state in which the insurer or person was authorized to do insurance business; and

(B) is authorized by a statute of this state;

(6) an activity in this state by or on the sole behalf of a nonadmitted captive insurance company that insures solely:

(A) directors' and officers' liability insurance for the directors and officers of the company's parent and affiliated companies;

(B) the risks of the company's parent and affiliated companies; or

(C) both the individuals and entities described by Paragraphs (A) and (B);

(7) the issuance of a qualified charitable gift annuity under Chapter 102; or

(8) a lawful transaction by a servicing company of the Texas workers' compensation employers' rejected risk fund under Section 4.08, Article 5.76-2, as that article existed before its repeal.

SECTION 20.02. Section 225.001, Insurance Code, is amended to read as follows:

Sec. 225.001. DEFINITIONS ~~[DEFINITION]~~. In this chapter:

(1) "Affiliate" means, with respect to an insured, a person or entity that controls, is controlled by, or is under common control with the insured.

(2) "Affiliated group" means a group of entities whose members are all affiliated.

(3) "Control" means, with respect to determining the home state of an affiliated entity:

(A) to directly or indirectly, acting through one or more persons, own, control, or hold the power to vote at least 25 percent of any class of voting security of the affiliated entity; or

(B) to control in any manner the election of the majority of directors or trustees of the affiliated entity.

(4) "Home state" means:

(A) for an insured that is not an affiliated group described by Paragraph (B):

(i) the state in which the insured maintains the insured's principal residence, if the insured is an individual;

(ii) the state in which an insured that is not an individual maintains its principal place of business; or

(iii) if 100 percent of the insured risk is located outside of the state in which the insured maintains the insured's principal residence or maintains the insured's principal place of business, as applicable, the state to which the largest percentage of the insured's taxable premium for the insurance contract that covers the risk is allocated; or

(B) for an affiliated group with respect to which more than one member is a named insured on a single insurance contract subject to this chapter, the home state of the member, as determined under Paragraph (A), that has the largest percentage of premium attributed to it under the insurance contract.

(5) "Premium" means any payment made in consideration for insurance and  
["premium"] includes:

(A) [(4)] a premium;

(B) premium deposits;

(C) [(2)] a membership fee;

(D) a registration fee;

(E) [(3)] an assessment;

(F) [(4)] dues; and

(G) [(5)] any other compensation given in consideration for surplus

lines insurance.

SECTION 20.03. Section 225.002, Insurance Code, is amended to read as follows:

Sec. 225.002. APPLICABILITY OF CHAPTER. This chapter applies to a surplus lines agent who collects gross premiums for surplus lines insurance for any risk in which this state is the home state of the insured.

SECTION 20.04. Section 225.004, Insurance Code, is amended by adding Subsections (a-1) and (f) and amending Subsections (b), (c), and (e) to read as follows:

(a-1) Consistent with 15 U.S.C. Section 8201 et seq., this state may not impose a premium tax on nonadmitted insurance premiums other than premiums paid for insurance in which this state is the home state of the insured.

(b) Taxable gross premiums under this section are based on gross premiums written or received for surplus lines insurance placed through an eligible surplus lines insurer during a calendar year. Notwithstanding the tax basis described by this subsection, the comptroller by rule may establish an alternate basis for taxation for multistate and single-state policies for the purpose of achieving uniformity.

(c) If a surplus lines insurance policy covers risks or exposures only partially located in this state, and this state has not entered into a cooperative agreement, reciprocal agreement, or compact with another state for the collection of surplus lines tax as authorized by Chapter 229, the tax is computed on the entire policy [portion of the] premium for any policy in which this state is the home state of the insured [that is properly allocated to a risk or exposure located in this state].

(e) Premiums [The following premiums are not taxable in this state:

[(1) premiums properly allocated to another state that are specifically exempt from taxation in that state; and

[(2) premiums] on risks or exposures that are properly allocated to federal or international waters or are under the jurisdiction of a foreign government are not taxable in this state.

(f) If this state enters a cooperative agreement, reciprocal agreement, or compact with another state for the allocation of surplus lines tax as authorized by Chapter 229, taxes due on multistate policies shall be allocated and reported in accordance with the agreement or compact.

SECTION 20.05. Section 225.005, Insurance Code, is amended to read as follows:

Sec. 225.005. TAX EXCLUSIVE. The tax imposed by this chapter is a transaction tax collected by the surplus lines agent of record and is in lieu of any [and] other transaction [insurance] taxes on these premiums.

SECTION 20.06. Section 225.009, Insurance Code, is amended by adding Subsection (d) to read as follows:

(d) Notwithstanding Subsections (a), (b), and (c), if this state enters a cooperative agreement, reciprocal agreement, or compact with another state for the allocation of surplus lines tax as authorized by Chapter 229, the tax shall be allocated and reported in accordance with the terms of the agreement or compact.

SECTION 20.07. Section 226.051, Insurance Code, is amended to read as follows:

Sec. 226.051. DEFINITIONS ~~[DEFINITION]~~. In this subchapter:

(1) "Affiliate" means, with respect to an insured, a person or entity that controls, is controlled by, or is under common control with the insured.

(2) "Affiliated group" means a group of entities whose members are all affiliated.

(3) "Control" means, with respect to determining the home state of an affiliated entity:

(A) to directly or indirectly, acting through one or more persons, own, control, or hold the power to vote at least 25 percent of any class of voting security of the affiliated entity; or

(B) to control in any manner the election of the majority of directors or trustees of the affiliated entity.

(4) "Home state" means:

(A) for an insured that is not an affiliated group described by Paragraph (B):

(i) the state in which the insured maintains the insured's principal residence, if the insured is an individual;

(ii) the state in which an insured that is not an individual maintains its principal place of business; or

(iii) if 100 percent of the insured risk is located outside of the state in which the insured maintains the insured's principal residence or maintains the insured's principal place of business, as applicable, the state to which the largest percentage of the insured's taxable premium for the insurance contract that covers the risk is allocated; or

(B) for an affiliated group with respect to which more than one member is a named insured on a single insurance contract subject to this chapter, the home state of the member, as determined under Paragraph (A), that has the largest percentage of premium attributed to it under the insurance contract.

(5) "Independently procured insurance" means insurance procured directly by an insured from a nonadmitted insurer.

(6) "Premium" means any payment made in consideration for insurance and [,"premium"] includes [any consideration for insurance, including]:

(A) ~~(4)~~ a premium;

- (B) premium deposits;
- (C) ~~[(2)]~~ a membership fee; ~~[or]~~
- (D) a registration fee;
- (E) an assessment;
- (F) ~~[(3)]~~ dues; and
- (G) any other compensation given in consideration for insurance.

SECTION 20.08. Section 226.052, Insurance Code, is amended to read as follows:

Sec. 226.052. APPLICABILITY OF SUBCHAPTER. This subchapter applies to an insured who procures an independently procured insurance contract for any risk in which this state is the home state of the insured ~~[in accordance with Section 101.053(b)(4)]~~.

SECTION 20.09. Section 226.053, Insurance Code, is amended by amending Subsections (a) and (b) and adding Subsection (d) to read as follows:

(a) A tax is imposed on each insured at the rate of 4.85 percent of the premium paid for the insurance contract procured in accordance with Section 226.052 ~~[101.053(b)(4)]~~.

(b) If an independently procured insurance policy ~~[contract]~~ covers risks or exposures only partially located in this state and this state has not joined a cooperative agreement, reciprocal agreement, or compact with another state for the allocation of nonadmitted insurance taxes as authorized by Chapter 229, the tax is computed on the entire policy ~~[portion of the]~~ premium for any policy in which this state is the home state of the insured ~~[that is properly allocated to a risk or exposure located in this state]~~.

(d) If this state enters into a cooperative agreement, reciprocal agreement, or compact with another state for the allocation of nonadmitted insurance taxes as authorized by Chapter 229, the tax due on multistate policies shall be allocated and reported in accordance with the agreement or compact.

SECTION 20.10. Section 981.008, Insurance Code, is amended to read as follows:

Sec. 981.008. SURPLUS LINES INSURANCE PREMIUM TAX. The premiums charged for surplus lines insurance are subject to the premium tax, if applicable, imposed under Chapter 225.

SECTION 20.11. The following provisions are repealed:

- (1) Sections 225.004(d) and (d-1), Insurance Code; and
- (2) Section 226.053(b-1), Insurance Code.

SECTION 20.12. The changes in law made by this article to Chapters 225 and 226, Insurance Code, apply only to an insurance policy that is delivered, issued for delivery, or renewed on or after July 21, 2011. A policy that is delivered, issued for delivery, or renewed before July 21, 2011, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 20.13. This article takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this article takes effect September 1, 2011.

ARTICLE 21. FISCAL MATTERS CONCERNING EARLY HIGH SCHOOL  
GRADUATION

SECTION 21.01. Subchapter K, Chapter 56, Education Code, is amended by adding Section 56.2012 to read as follows:

Sec. 56.2012. EXPIRATION OF SUBCHAPTER; ELIGIBILITY CLOSED. (a) This subchapter expires September 1, 2017.

(b) Notwithstanding Section 56.203, a person may not receive an award under this subchapter if the person graduates from high school on or after September 1, 2011.

SECTION 21.02. Subsection (b), Section 54.213, Education Code, is amended to read as follows:

~~(b) [Savings to the foundation school fund that occur as a result of the Early High School Graduation Scholarship program created in Subchapter K, Chapter 56, and that are not required for the funding of state credits for tuition and mandatory fees under Section 56.204 or school district credits under Section 56.2075 shall be used first to provide tuition exemptions under Section 54.212. Any of those savings remaining after providing tuition exemptions under Section 54.212 shall be used to provide tuition exemptions under Section 54.214.]~~ The Texas Education Agency shall ~~[also]~~ accept and make available to provide tuition exemptions under Section 54.214 gifts, grants, and donations made to the agency for that purpose. The commissioner of education shall transfer those funds to the Texas Higher Education Coordinating Board to distribute to institutions of higher education that provide exemptions under that section ~~[Payment of funds under this subsection shall be made in the manner provided by Section 56.207 for state credits under Subchapter K, Chapter 56].~~

SECTION 21.03. Section 56.210, Education Code, is repealed.

ARTICLE 22. FISCAL MATTERS CONCERNING RETIRED TEACHERS

SECTION 22.01. Notwithstanding Section 825.404(a), Government Code, for the state fiscal year ending August 31, 2012, only, the amount of the state contribution to the Teacher Retirement System of Texas under that section may be less than the amount contributed by members during that fiscal year.

SECTION 22.02. Notwithstanding Section 1575.202(a), Insurance Code, for the state fiscal year ending August 31, 2013, only, the state may contribute an amount to the retired school employees group insurance fund that is less than one percent of the salary of each active employee.

ARTICLE 23. COASTAL EROSION

SECTION 23.01. Section 33.608, Natural Resources Code, is amended to read as follows:

Sec. 33.608. REPORT TO LEGISLATURE. (a) Each biennium, the commissioner shall submit to the legislature a report listing:

- (1) each critical erosion area;
- (2) each proposed erosion response study or project;
- (3) an estimate of the cost of each proposed study or project described by Subdivision (2);
- (4) each coastal erosion response study or project funded under this subchapter during the preceding biennium;

(5) the economic and natural resource benefits from each coastal erosion response study or project described by Subdivision (4);

(6) the financial status of the account; and

(7) an estimate of the cost of implementing this subchapter during the succeeding biennium.

(b) The report must include a plan for coastal erosion response studies and projects that may be funded, wholly or partly, from money in the account and may be undertaken during the next 10 or more years.

#### **ARTICLE 24. FISCAL MATTERS CONCERNING PARKS AND WILDLIFE CONTRIBUTIONS**

SECTION 24.01. Subchapter D, Chapter 502, Transportation Code, is amended by adding Sections 502.1747 and 502.1748 to read as follows:

Sec. 502.1747. VOLUNTARY CONTRIBUTION TO PARKS AND WILDLIFE DEPARTMENT. (a) When a person registers or renews the registration of a motor vehicle under this chapter, the person may contribute \$5 or more to the Parks and Wildlife Department.

(b) The department shall:

(1) include space on each motor vehicle registration renewal notice, on the page that states the total fee for registration renewal, that allows a person renewing a registration to indicate the amount that the person is voluntarily contributing to the state parks account;

(2) provide an opportunity to contribute to the state parks account similar to the opportunity described by Subsection (a) and in the manner described by Subdivision (1) in any registration renewal system that succeeds the system in place on September 1, 2011; and

(3) provide an opportunity for a person to contribute to the state parks account during the registration renewal process on the department's Internet website.

(c) If a person makes a contribution under this section and does not pay the full amount of a registration fee, the county assessor-collector may credit all or a portion of the contribution to the person's registration fee.

(d) The county assessor-collector shall send any contribution made under this section to the comptroller for deposit to the credit of the state parks account under Section 11.035, Parks and Wildlife Code. Money received by the Parks and Wildlife Department under this section may be used only for the operation and maintenance of state parks, historic sites, or natural areas under the jurisdiction of the Parks and Wildlife Department.

(e) The department shall consult with the Parks and Wildlife Department in performing the department's duties under this section.

Sec. 502.1748. DISPOSITION OF CERTAIN VOLUNTARY CONTRIBUTIONS. If a person makes a voluntary contribution under Section 502.1746 or 502.1747 at the time the person registers or renews the registration of a motor vehicle under this chapter but the person does not clearly specify the entity to which the person intends to contribute, the county assessor-collector shall divide the contribution between the entities authorized to receive contributions under those sections.

SECTION 24.02. Sections 502.1747 and 502.1748, Transportation Code, as added by this article, apply only to a motor vehicle registration renewal notice issued for a registration that expires on or after January 1, 2012.

ARTICLE 25. FISCAL MATTERS CONCERNING OIL AND GAS REGULATION

SECTION 25.01. Subsection (c), Section 81.0521, Natural Resources Code, is amended to read as follows:

(c) Two-thirds of the proceeds from this fee, excluding [including] any penalties collected in connection with the fee, shall be deposited to the oil and gas regulation and [oil field] cleanup fund as provided by Section 81.067 [91.111].

SECTION 25.02. Subchapter C, Chapter 81, Natural Resources Code, is amended by adding Sections 81.067 through 81.070 to read as follows:

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 shall 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) two-thirds of the 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 81.070.

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 biennium, including goals for each quarter of each state fiscal year of the 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; and

(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; and

(2) any additional information or data 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 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. ESTABLISHMENT 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 as provided by Section 81.067 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 as provided by Section 81.067.

(f) A surcharge collected under this section shall not exceed an amount equal to 185 percent of the fee on which it is imposed.

SECTION 25.03. 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 ~~[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]~~.

SECTION 25.04. Subsections (d) and (e), Section 81.116, 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 oil and gas regulation and ~~[oil field]~~ cleanup fund as provided by Section 81.067 ~~[91.111 of this code]~~.

SECTION 25.05. Subsections (d) and (e), Section 81.117, 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 oil and gas regulation and ~~[oil field]~~ cleanup fund as provided by Section 81.067 ~~[91.111 of this code]~~.

SECTION 25.06. Subsection (d), Section 85.2021, 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 25.07. Subsection (d), Section 89.024, 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 25.08. Subsection (d), Section 89.026, 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 25.09. Subsection (d), Section 89.048, 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 25.10. Subsection (j), Section 89.083, 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 25.11. Subsection (d), Section 89.085, 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 25.12. 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 25.13. Subsections (a) and (h) through (k), Section 89.086, 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 25.14. Subsection (b), Section 89.121, 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 25.15. Subsection (c), Section 91.1013, 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 25.16. 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 25.17. Subsection (a), Section 91.109, 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 25.18. Subsections (a) and (f), Section 91.113, 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 oil and gas regulation and [oil field] cleanup fund.

SECTION 25.19. Subsection (c), Section 91.264, 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 25.20. Subsection (b), Section 91.457, 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 25.21. Subsection (c), Section 91.459, 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 25.22. Subsection (e), Section 91.605, 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 25.23. Subsection (e), Section 91.654, 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 81.067 ~~[91.111]~~.

SECTION 25.24. Subsection (b), Section 91.707, Natural Resources Code, is amended to read as follows:

(b) Fees collected under this section shall be deposited to the oil and gas regulation and [oil field] cleanup fund.

SECTION 25.25. The heading to Section 121.211, Utilities Code, is amended to read as follows:

Sec. 121.211. PIPELINE SAFETY AND REGULATORY FEES.

SECTION 25.26. Subsections (a) through (e) and (h), Section 121.211, Utilities Code, are amended to read as follows:

(a) The railroad commission by rule may adopt a [an inspection] 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 [chapter].

(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 [~~chapter~~].

(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 [~~chapter~~], 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 [~~chapter~~] an annual [~~inspection~~] 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 [~~chapter~~] an annual [~~inspection~~] 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 25.27. 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 25.28. The following provisions of the Natural Resources Code are repealed:

- (1) Section 91.111; and
- (2) Section 91.112.

SECTION 25.29. On the effective date of this article:

- (1) the oil-field cleanup fund is abolished;
- (2) any money remaining in the oil-field cleanup fund is transferred to the oil and gas regulation and cleanup fund;
- (3) any claim against the oil-field cleanup fund is transferred to the oil and gas regulation and cleanup fund; and
- (4) 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.

## ARTICLE 26. FISCAL MATTERS REGARDING LEASING CERTAIN STATE FACILITIES

SECTION 26.01. The heading to Section 2165.2035, Government Code, is amended to read as follows:

Sec. 2165.2035. LEASE OF SPACE IN STATE-OWNED PARKING LOTS AND GARAGES; USE AFTER HOURS.

SECTION 26.02. Subchapter E, Chapter 2165, Government Code, is amended by adding Sections 2165.204, 2165.2045, and 2165.2046 to read as follows:

Sec. 2165.204. LEASE OF SPACE IN STATE-OWNED PARKING LOTS AND GARAGES; EXCESS INDIVIDUAL PARKING SPACES. (a) The commission may lease to a private individual an individual parking space in a state-owned parking lot or garage located in the city of Austin that the commission determines is not needed to accommodate the regular parking requirements of state employees who work near the lot or garage and visitors to nearby state government offices.

(b) Money received from a lease under this section shall be deposited to the credit of the general revenue fund.

(c) In leasing a parking space under Subsection (a), the commission must ensure that the lease does not restrict uses for parking lots and garages developed under Section 2165.2035, including special event parking related to institutions of higher education.

(d) In leasing or renewing a lease for a parking space under Subsection (a), the commission shall give preference to an individual who is currently leasing or previously leased the parking space.

Sec. 2165.2045. LEASE OF SPACE IN STATE-OWNED PARKING LOTS AND GARAGES; EXCESS BLOCKS OF PARKING SPACE. (a) The commission may lease to an institution of higher education or a local government all or a significant block of a state-owned parking lot or garage located in the city of Austin that the commission determines is not needed to accommodate the regular parking requirements of state employees who work near the lot or garage and visitors to nearby state government offices.

(b) Money received from a lease under this section shall be deposited to the credit of the general revenue fund.

(c) In leasing all or a block of a state-owned parking lot or garage under Subsection (a), the commission must ensure that the lease does not restrict uses for parking lots and garages developed under Section 2165.2035, including special event parking related to institutions of higher education.

(d) In leasing or renewing a lease for all or a block of a state-owned parking lot or garage under Subsection (a), the commission shall give preference to an entity that is currently leasing or previously leased the lot or garage or a block of the lot or garage.

Sec. 2165.2046. REPORTS ON PARKING PROGRAMS. On or before October 1 of each even-numbered year, the commission shall submit a report to the Legislative Budget Board describing the effectiveness of parking programs developed by the commission under this subchapter. The report must, at a minimum, include:

- (1) the yearly revenue generated by the programs;
- (2) the yearly administrative and enforcement costs of each program;
- (3) yearly usage statistics for each program; and
- (4) initiatives and suggestions by the commission to:
  - (A) modify administration of the programs; and
  - (B) increase revenue generated by the programs.



SECTION 26.03. This article takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this article takes effect September 1, 2011.

ARTICLE 27. FISCAL MATTERS RELATING TO SECRETARY OF STATE

SECTION 27.01. Section 405.014, Government Code, is amended to read as follows:

Sec. 405.014. ACTS OF THE LEGISLATURE. (a) At each session of the legislature the secretary of state shall obtain the bills that have become law. Immediately after the closing of each session of the legislature, the secretary of state shall bind all enrolled bills and resolutions in volumes on which the date of the session is placed.

(b) As soon as practicable after the closing of each session of the legislature, the secretary of state shall publish and maintain electronically the bills enacted at that session. The electronic publication must be:

(1) indexed by bill number and assigned chapter number for each bill; and

(2) made available by an electronic link on the secretary of state's generally accessible Internet website.

SECTION 27.02. Subchapter B, Chapter 2158, Government Code, is repealed.

SECTION 27.03. The change in law made by this article does not apply to a contract for the publication of the laws of this state entered into before the effective date of this article.

SECTION 27.04. This article takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this article takes effect September 1, 2011.

ARTICLE 28. FISCAL MATTERS REGARDING ATTORNEY GENERAL

SECTION 28.01. Section 402.006, Government Code, is amended by adding Subsection (e) to read as follows:

(e) The attorney general may charge a reasonable fee for the electronic filing of a document.

SECTION 28.02. The heading to Section 402.0212, Government Code, is amended to read as follows:

Sec. 402.0212. PROVISION OF LEGAL SERVICES—OUTSIDE COUNSEL; FEES.

SECTION 28.03. Section 402.0212, Government Code, is amended by amending Subsections (b) and (c) and adding Subsections (d), (e), and (f) to read as follows:

(b) An invoice submitted to a state agency under a contract for legal services as described by Subsection (a) must be reviewed by the attorney general to determine whether the invoice is eligible for payment.

(c) An attorney or law firm must pay an administrative fee to the attorney general for the review described in Subsection (b) when entering into a contract to provide legal services to a state agency.

(d) For purposes of this section, the functions of a hearing examiner, administrative law judge, or other quasi-judicial officer are not considered legal services.

(e) ~~(e)~~ This section shall not apply to the Texas Turnpike Authority division of the Texas Department of Transportation.

(f) The attorney general may adopt rules as necessary to implement and administer this section.

SECTION 28.04. Section 371.051, Transportation Code, is amended to read as follows:

Sec. 371.051. ATTORNEY GENERAL REVIEW AND EXAMINATION FEE.

(a) A toll project entity may not enter into a comprehensive development agreement unless the attorney general reviews the proposed agreement and determines that it is legally sufficient.

(b) A toll project entity shall pay a nonrefundable examination fee to the attorney general on submitting a proposed comprehensive development agreement for review. At the time the examination fee is paid, the toll project entity shall also submit for review a complete transcript of proceedings related to the comprehensive development agreement.

(c) If the toll project entity submits multiple proposed comprehensive development agreements relating to the same toll project for review, the entity shall pay the examination fee under Subsection (b) for each proposed comprehensive development agreement.

(d) The attorney general shall provide a legal sufficiency determination not later than the 60th business day after the date the examination fee and transcript of the proceedings required under Subsection (b) are received. If the attorney general cannot provide a legal sufficiency determination within the 60-business-day period, the attorney general shall notify the toll project entity in writing of the reason for the delay and may extend the review period for not more than 30 business days.

(e) After the attorney general issues a legal sufficiency determination, a toll project entity may supplement the transcript of proceedings or amend the comprehensive development agreement to facilitate a redetermination by the attorney general of the prior legal sufficiency determination issued under this section.

(f) The toll project entity may collect or seek reimbursement of the examination fee under Subsection (b) from the private participant.

(g) The attorney general by rule shall set the examination fee required under Subsection (b) in a reasonable amount and may adopt other rules as necessary to implement this section. The fee may not be set in an amount that is determined by a percentage of the cost of the toll project. The amount of the fee may not exceed reasonable attorney's fees charged for similar legal services in the private sector.

SECTION 28.05. The fee prescribed by Section 402.006, Government Code, as amended by this article, applies only to a document electronically submitted to the office of the attorney general on or after the effective date of this article.

SECTION 28.06. The fee prescribed by Section 402.0212, Government Code, as amended by this article, applies only to invoices for legal services submitted to the office of the attorney general for review on or after the effective date of this article.

SECTION 28.07. The fee prescribed by Section 371.051, Transportation Code, as amended by this article, applies only to a comprehensive development agreement submitted to the office of the attorney general on or after the effective date of this article.

SECTION 28.08. The changes in law made by this article apply only to a contract for legal services between a state agency and a private attorney or law firm entered into on or after the effective date of this article. A contract for legal services between a state agency and a private attorney or law firm entered into before the effective date of this article is governed by the law in effect at the time the contract was entered into, and the former law is continued in effect for that purpose.

SECTION 28.09. Except as otherwise provided by this article, this article takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this article takes effect September 1, 2011.

#### ARTICLE 29. TEXAS PRESERVATION TRUST FUND ACCOUNT

SECTION 29.01. Subsections (a), (b), and (f), Section 442.015, Government Code, are amended to read as follows:

(a) Notwithstanding Section ~~[Sections 403.094 and]~~ 403.095, the Texas preservation trust fund account is a separate account in the general revenue fund. The account consists of transfers made to the account, loan repayments, grants and donations made for the purposes of this program, proceeds of sales, income earned ~~[earnings]~~ on money in the account, and any other money received under this section. Money in ~~[Distributions from]~~ the account may be used only for the purposes of this section and ~~[may not be used]~~ to pay operating expenses of the commission. Money allocated to the commission's historic preservation grant program shall be deposited to the credit of the account. Income earned ~~[Earnings]~~ on money in the account shall be deposited to the credit of the account.

(b) The commission may use money in ~~[distributions from]~~ the Texas preservation trust fund account to provide financial assistance to public or private entities for the acquisition, survey, restoration, or preservation, or for planning and educational activities leading to the preservation, of historic property in the state that is listed in the National Register of Historic Places or designated as a State Archeological Landmark or Recorded Texas Historic Landmark, or that the commission determines is eligible for such listing or designation. The financial assistance may be in the amount and form and according to the terms that the commission by rule determines. The commission shall give priority to property the commission determines to be endangered by demolition, neglect, underuse, looting, vandalism, or other threat to the property. Gifts and grants deposited to the credit of the account specifically for any eligible projects may be used only for the type of projects specified. If such a specification is not made, the gift or grant shall be unencumbered and accrue to the benefit of the Texas preservation trust fund account. If such a specification is made, the entire amount of the gift or grant may be used during any period for the project or type of project specified.

(f) The advisory board shall recommend to the commission rules for administering this section ~~[Subsections (a) (c)]~~.

SECTION 29.02. Subsections (h), (i), (j), (k), and (l), Section 442.015, Government Code, are repealed.

SECTION 29.03. The comptroller of public accounts and the Texas Historical Commission shall enter into a memorandum of understanding to facilitate the conversion of assets of the Texas preservation trust fund account into cash for deposit into the state treasury using a method that provides for the lowest amount of revenue loss to the state.

SECTION 29.04. This article takes effect November 1, 2011.

#### ARTICLE 30. FISCAL MATTERS CONCERNING INFORMATION TECHNOLOGY

SECTION 30.01. Section 2054.380, Government Code, is amended to read as follows:

Sec. 2054.380. FEES. (a) The department shall set and charge a fee to each state agency that receives a service from a statewide technology center in an amount sufficient to cover the direct and indirect cost of providing the service.

(b) Revenue derived from the collection of fees imposed under Subsection (a) may be appropriated to the department for:

(1) developing statewide information resources technology policies and planning under this chapter and Chapter 2059; and

(2) providing shared information resources technology services under this chapter.

SECTION 30.02. Subsection (d), Section 2157.068, Government Code, is amended to read as follows:

(d) The department may charge a reasonable administrative fee to a state agency, political subdivision of this state, or governmental entity of another state that purchases commodity items through the department in an amount that is sufficient to recover costs associated with the administration of this section. Revenue derived from the collection of fees imposed under this subsection may be appropriated to the department for:

(1) developing statewide information resources technology policies and planning under Chapters 2054 and 2059; and

(2) providing shared information resources technology services under Chapter 2054.

SECTION 30.03. Subsections (a) and (d), Section 2170.057, Government Code, are amended to read as follows:

(a) The department shall develop a system of billings and charges for services provided in operating and administering the consolidated telecommunications system that allocates the total state cost to each entity served by the system based on proportionate usage. The department shall set and charge a fee to each entity that receives services provided under this chapter in an amount sufficient to cover the direct and indirect costs of providing the service. Revenue derived from the collection of fees imposed under this subsection may be appropriated to the department for:

(1) developing statewide information resources technology policies and planning under Chapters 2054 and 2059; and

(2) providing:

(A) shared information resources technology services under Chapter 2054; and

(B) network security services under Chapter 2059.

(d) The department shall maintain in the revolving fund account sufficient amounts to pay the bills of the consolidated telecommunications system and the centralized capitol complex telephone system. ~~[The department shall certify amounts that exceed this amount to the comptroller, and the comptroller shall transfer the excess amounts to the credit of the statewide network applications account established by Section 2054.011.]~~

SECTION 30.04. This article takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this article takes effect September 1, 2011.

#### ARTICLE 31. STATE DEBT

SECTION 31.01. Chapter 1231, Government Code, is amended by adding Subchapter G to read as follows:

##### SUBCHAPTER G. LIMIT ON STATE DEBT PAYABLE FROM GENERAL REVENUE FUND

Sec. 1231.151. DEFINITIONS. In this subchapter:

(1) "Maximum annual debt service" means the limitation on annual debt service imposed by Section 49-j(a), Article III, Texas Constitution.

(2) "State debt payable from the general revenue fund" has the meaning assigned by Section 49-j(b), Article III, Texas Constitution.

(3) "Unissued debt" means state debt payable from the general revenue fund that has been authorized but not issued.

Sec. 1231.152. COMPUTATION OF DEBT LIMIT. In computing the annual debt service in a state fiscal year on state debt payable from the general revenue fund for purposes of determining whether additional state debt may be authorized without exceeding the maximum annual debt service, the board may employ any assumptions related to unissued debt that the board determines are necessary to reflect common or standard debt issuance practices authorized by law, including assumptions regarding:

(1) interest rates;

(2) debt maturity; and

(3) debt service payment structures.

Sec. 1231.153. REPORT ON COMPUTATION. (a) The board shall publish during each state fiscal year a report providing a detailed description of the method used to compute the annual debt service in that fiscal year on state debt payable from the general revenue fund for purposes of determining whether additional state debt may be authorized. The report must describe:

(1) the debt service included in the computation, including debt service on issued and unissued debt;

(2) the assumptions on which the debt service on unissued debt was based;  
and

(3) any other factors required by law that affect the computation.

(b) The board may publish the report required by this section as a component of any other report required by law, including the annual report required by Section 1231.102, or as an independent report. The board shall make the report available to the public.

SECTION 31.02. The Bond Review Board shall publish the initial report required by Section 1231.153, Government Code, as added by this article, during the state fiscal year beginning September 1, 2011.

SECTION 31.03. This article takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this article takes effect September 1, 2011.

#### ARTICLE 32. CONTINUING LEGAL EDUCATION REQUIREMENTS FOR ATTORNEY EMPLOYED BY ATTORNEY GENERAL

SECTION 32.01. Section 81.113, Government Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) The state bar shall credit an attorney licensed in this state with meeting the minimum continuing legal education requirements of the state bar for a reporting year if during the reporting year the attorney is employed full-time as an attorney by the office of the attorney general. An attorney credited for continuing legal education under this subsection must meet the continuing legal education requirements of the state bar in legal ethics or professional responsibility. This subsection expires January 1, 2014.

SECTION 32.02. Subchapter A, Chapter 402, Government Code, is amended by adding Section 402.010 to read as follows:

Sec. 402.010. CONTINUING LEGAL EDUCATION PROGRAMS. The office of the attorney general shall recognize, prepare, or administer continuing legal education programs that meet continuing legal education requirements imposed under Section 81.113(c) for the attorneys employed by the office. This section expires January 1, 2014.

SECTION 32.03. Section 81.113, Government Code, as amended by this article, applies only to the requirements for a continuing legal education compliance year that ends on or after September 1, 2011. The requirements for continuing legal education for a compliance year that ends before September 1, 2011, are covered by the law and rules in effect when the compliance year ended, and that law and those rules are continued in effect for that purpose.

#### ARTICLE 33. REGISTRATION FEE AND REGISTRATION RENEWAL FEE FOR LOBBYISTS

SECTION 33.01. Subsection (c), Section 305.005, Government Code, is amended to read as follows:

(c) The registration fee and registration renewal fee are:

(1) \$150 ~~[\$100]~~ for a registrant employed by an organization exempt from federal income tax under Section 501(c)(3), ~~[or]~~ 501(c)(4), or 501(c)(6), Internal Revenue Code of 1986;

(2) \$75 ~~[\$50]~~ for any person required to register solely because the person is required to register under Section 305.0041 ~~[of this chapter]~~; or

(3) \$750 ~~[\$500]~~ for any other registrant.

ARTICLE 34. ASSESSMENT OF PREMIUM DIFFERENTIAL ON CERTAIN  
PUBLIC EMPLOYEES WHO USE TOBACCO

SECTION 34.01. Subchapter G, Chapter 1551, Insurance Code, is amended by adding Section 1551.3075 to read as follows:

Sec. 1551.3075. TOBACCO USER PREMIUM DIFFERENTIAL. (a) The board of trustees shall assess each participant in a health benefit plan provided under the group benefits program who uses one or more tobacco products a tobacco user premium differential, to be paid in monthly installments. Except as provided by Subsection (b), the board of trustees shall determine the amount of the monthly installments of the premium differential.

(b) If the General Appropriations Act for a state fiscal biennium sets the amount of the monthly installments of the tobacco user premium differential for that biennium, the board of trustees shall assess the premium differential during that biennium in the amount prescribed by the General Appropriations Act.

SECTION 34.02. Section 1551.314, Insurance Code, is amended to read as follows:

Sec. 1551.314. CERTAIN STATE CONTRIBUTIONS PROHIBITED. A state contribution may not be:

(1) made for coverages under this chapter selected by an individual who receives a state contribution, other than as a spouse, dependent, or beneficiary, for coverages under a group benefits program provided by an institution of higher education, as defined by Section 61.003, Education Code; or

(2) made for or used to pay a tobacco user premium differential assessed under Section 1551.3075.

SECTION 34.03. The board of trustees of the Employees Retirement System of Texas shall implement the tobacco user premium differential required under Section 1551.3075, Insurance Code, as added by this article, not later than January 1, 2012.

ARTICLE 35. PUBLIC ASSISTANCE REPORTING INFORMATION SYSTEM

SECTION 35.01. Subsection (c), Section 434.017, Government Code, is amended to read as follows:

(c) Money in the fund may be appropriated to the Texas Veterans Commission to:

(1) enhance or improve veterans' assistance programs, including veterans' representation and counseling;

(2) make grants to address veterans' needs; ~~and~~

(3) administer the fund; and

(4) analyze and investigate data received from the federal Public Assistance Reporting Information System (PARIS) that is administered by the Administration for Children and Families of the United States Department of Health and Human Services.

SECTION 35.02. The comptroller shall credit to the fund for veterans' assistance established under Section 434.017, Government Code, as amended by this article, the savings generated from the use of the federal Public Assistance Reporting Information System (PARIS) under that section.

ARTICLE 36. REGIONAL POISON CONTROL CENTER MANAGEMENT  
CONTROLS AND EFFICIENCY

SECTION 36.01. Section 777.001, Health and Safety Code, is amended by amending Subsection (c) and adding Subsection (d) to read as follows:

(c) The Commission on State Emergency Communications may standardize the operations of and implement management controls to improve the efficiency of regional poison control centers ~~[vote to designate a seventh regional or satellite poison control center in Harris County. That poison control center is subject to all provisions of this chapter and other law relating to regional poison control centers].~~

(d) If the Commission on State Emergency Communications implements management controls under Subsection (c), the commission shall submit to the governor and the Legislative Budget Board a plan for implementing the controls not later than October 31, 2011. This subsection expires January 1, 2013.

ARTICLE 37. AUTHORIZED USES FOR CERTAIN DEDICATED PERMANENT  
FUNDS

SECTION 37.01. Section 403.105, Government Code, is amended by amending Subsection (b) and adding Subsection (b-1) to read as follows:

(b) Except as provided by Subsections (b-1), (c), (e), (f), and (h), money in the fund may not be appropriated for any purpose.

(b-1) Notwithstanding the limitations and requirements of Section 403.1068, the legislature may appropriate money in the fund, including the corpus and available earnings of the fund determined under Section 403.1068, to pay the principal of or interest on a bond issued for the purposes of Section 67, Article III, Texas Constitution. This subsection does not authorize the appropriation under this subsection of money subject to a limitation or requirement as described by Subsection (e) that is not consistent with the use of the money in accordance with this subsection.

SECTION 37.02. Section 403.1055, Government Code, is amended by amending Subsection (b) and adding Subsection (b-1) to read as follows:

(b) Except as provided by Subsections (b-1), (c), (e), (f), and (h), money in the fund may not be appropriated for any purpose.

(b-1) Notwithstanding the limitations and requirements of Section 403.1068, the legislature may appropriate money in the fund, including the corpus and available earnings of the fund determined under Section 403.1068, to pay the principal of or interest on a bond issued for the purposes of Section 67, Article III, Texas Constitution. This subsection does not authorize the appropriation under this subsection of money subject to a limitation or requirement as described by Subsection (e) that is not consistent with the use of the money in accordance with this subsection.

SECTION 37.03. Section 403.106, Government Code, is amended by amending Subsection (b) and adding Subsection (b-1) to read as follows:

(b) Except as provided by Subsections (b-1), (c), (e), (f), and (h), money in the fund may not be appropriated for any purpose.

(b-1) Notwithstanding the limitations and requirements of Section 403.1068, the legislature may appropriate money in the fund, including the corpus and available earnings of the fund determined under Section 403.1068, to pay the principal of or interest on a bond issued for the purposes of Section 67, Article III, Texas



Constitution. This subsection does not authorize the appropriation under this subsection of money subject to a limitation or requirement as described by Subsection (e) that is not consistent with the use of the money in accordance with this subsection.

SECTION 37.04. This article takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this article takes effect September 1, 2011.

#### ARTICLE 38. EMPLOYER ENROLLMENT FEE FOR PARTICIPATION IN CERTAIN HEALTH BENEFIT PLANS

SECTION 38.01. Subchapter G, Chapter 1551, Insurance Code, is amended by adding Section 1551.3076 to read as follows:

Sec. 1551.3076. EMPLOYER ENROLLMENT FEE. (a) The board of trustees shall assess each employer whose employees participate in the group benefits program an employer enrollment fee in an amount not to exceed a percentage of the employer's total payroll, as determined by the General Appropriations Act.

(b) The board of trustees shall deposit the enrollment fees to the credit of the employees life, accident, and health insurance and benefits fund to be used for the purposes specified by Section 1551.401.

#### ARTICLE 39. FISCAL MATTERS CONCERNING SURPLUS AND SALVAGE PROPERTY

SECTION 39.01. Subchapter C, Chapter 2175, Government Code, is repealed.

SECTION 39.02. Subsection (a), Section 32.102, Education Code, is amended to read as follows:

(a) As provided by this subchapter, a school district or open-enrollment charter school may transfer to a student enrolled in the district or school:

(1) any data processing equipment donated to the district or school, including equipment donated by:

(A) a private donor; or

(B) a state eleemosynary institution or a state agency under Section 2175.905 ~~[2175.128]~~, Government Code;

(2) any equipment purchased by the district or school, to the extent consistent with Section 32.105; and

(3) any surplus or salvage equipment owned by the district or school.

SECTION 39.03. Section 2175.002, Government Code, is amended to read as follows:

Sec. 2175.002. ADMINISTRATION OF CHAPTER. The commission is responsible for the disposal of surplus and salvage property of the state. The commission's surplus and salvage property division shall administer this chapter.

SECTION 39.04. Section 2175.065, Government Code, is amended by amending Subsection (a) and adding Subsections (c) and (d) to read as follows:

(a) The commission may authorize a state agency to dispose of surplus or salvage property if the agency demonstrates to the commission its ability to dispose of the property under this chapter ~~[Subchapters C and E]~~ in a manner that results in cost savings to the state, under commission rules adopted under this chapter.

(c) If property is disposed of under this section, the disposing state agency shall report the transaction to the commission. The report must include a description of the property disposed of, the reasons for disposal, the price paid for the property disposed of, and the recipient of the property disposed of.

(d) If the commission determines that a violation of a state law or rule has occurred based on the report under Subsection (c), the commission shall report the violation to the Legislative Budget Board.

SECTION 39.05. The heading to Subchapter D, Chapter 2175, Government Code, is amended to read as follows:

SUBCHAPTER D. DISPOSITION OF SURPLUS OR SALVAGE PROPERTY [~~BY~~  
COMMISSION]

SECTION 39.06. Section 2175.181, Government Code, is amended to read as follows:

Sec. 2175.181. APPLICABILITY. [~~(a) This subchapter applies only to surplus and salvage property located in:~~

~~[(1) Travis County;~~

~~[(2) a county in which federal surplus property is warehoused by the commission under Subchapter G; or~~

~~[(3) a county for which the commission determines that it is cost effective to follow the procedures created under this subchapter and informs affected state agencies of that determination.~~

~~[(b)] This subchapter applies [does not apply] to a state agency delegated the authority to dispose of surplus or salvage property under Section 2175.065.~~

SECTION 39.07. Section 2175.182, Government Code, is amended to read as follows:

Sec. 2175.182. STATE AGENCY TRANSFER OF PROPERTY [~~TO~~  
COMMISSION]. (a) A state agency that determines it has surplus or salvage property shall inform the commission of that fact for the purpose of determining the method of disposal of the property. [The commission is responsible for the disposal of surplus or salvage property under this subchapter.] The commission may take physical possession of the property.

(b) Based on the condition of the property, the commission, in conjunction with the state agency, shall determine whether the property is:

(1) surplus property that should be offered for transfer under Section 2175.184 or sold to the public; or

(2) salvage property.

(c) Following the determination in Subsection (b), the [The] commission shall direct the state agency to inform the comptroller's office of the property's kind, number, location, condition, original cost or value, and date of acquisition.

SECTION 39.08. Section 2175.1825, Government Code, is amended to read as follows:

Sec. 2175.1825. ADVERTISING ON COMPTROLLER WEBSITE. (a) Not later than the second day after the date the comptroller receives notice from a state agency [the commission] under Section 2175.182(c), the comptroller shall advertise the property's kind, number, location, and condition on the comptroller's website.

(b) The comptroller shall provide the commission access to all records in the state property accounting system related to surplus and salvage property.

SECTION 39.09. Section 2175.183, Government Code, is amended to read as follows:

Sec. 2175.183. COMMISSION NOTICE TO OTHER ENTITIES. ~~The [On taking responsibility for surplus property under this subchapter, the]~~ commission shall inform other state agencies, political subdivisions, and assistance organizations of the comptroller's website that lists surplus property that is available for sale.

SECTION 39.10. Section 2175.184, Government Code, is amended to read as follows:

Sec. 2175.184. DIRECT TRANSFER. During the 10 business days after the date the property is posted on the comptroller's website, a state agency, political subdivision, or assistance organization shall ~~[may]~~ coordinate with the commission for a transfer of the property at a price established by the commission ~~[in cooperation with the transferring agency]~~. A transfer to a state agency has priority over any other transfer during this period.

SECTION 39.11. Subsection (a), Section 2175.186, Government Code, is amended to read as follows:

(a) If a disposition of a state agency's surplus property is not made under Section 2175.184, the commission shall sell the property by competitive bid, auction, or direct sale to the public, including a sale using an Internet auction site. The commission may contract with a private vendor to assist with the sale of the property.

SECTION 39.12. Section 2175.189, Government Code, is amended to read as follows:

Sec. 2175.189. ADVERTISEMENT OF SALE. If the value of an item or a lot of property to be sold is estimated to be more than \$25,000 ~~[\$5,000]~~, the commission shall advertise the sale at least once in at least one newspaper of general circulation in the vicinity in which the property is located.

SECTION 39.13. Subsection (a), Section 2175.191, Government Code, is amended to read as follows:

(a) Proceeds from the sale of surplus or salvage property, less the cost of advertising the sale, the cost of selling the surplus or salvage property, including the cost of auctioneer services or assistance from a private vendor, and the amount of the fee collected under Section 2175.188, shall be deposited to the credit of the general revenue fund of the state treasury.

SECTION 39.14. Section 2175.302, Government Code, is amended to read as follows:

Sec. 2175.302. EXCEPTION FOR ELEEMOSYNARY INSTITUTIONS. Except as provided by Section 2175.905(b) ~~[2175.128(b)]~~, this chapter does not apply to the disposition of surplus or salvage property by a state eleemosynary institution.

SECTION 39.15. Section 2175.904, Government Code, is amended by amending Subsections (a) and (c) and adding Subsection (d) to read as follows:

(a) The commission shall establish a program for the sale of gambling equipment received from a municipality, from a commissioners court under Section 263.152(a)(5), Local Government Code, or from a state agency under this chapter.

(c) Proceeds from the sale of gambling equipment from a municipality or commissioners court, less the costs of the sale, including costs of advertising, storage, shipping, and auctioneer or broker services, and the amount of the fee collected under Section 2175.188 [2175.131], shall be divided according to an agreement between the commission and the municipality or commissioners court that provided the equipment for sale. The agreement must provide that:

(1) not less than 50 percent of the net proceeds be remitted to the commissioners court; and

(2) the remainder of the net proceeds retained by the commission be deposited to the credit of the general revenue fund.

(d) Proceeds from the sale of gambling equipment from a state agency, less the costs of the sale, including costs of advertising, storage, shipping, and auctioneer or broker services, and the amount of the fee collected under Section 2175.188, shall be deposited to the credit of the general revenue fund of the state treasury.

SECTION 39.16. Subchapter Z, Chapter 2175, Government Code, is amended by adding Sections 2175.905 and 2175.906 to read as follows:

Sec. 2175.905. DISPOSITION OF DATA PROCESSING EQUIPMENT. (a) If a disposition of a state agency's surplus or salvage data processing equipment is not made under Section 2175.184, the state agency shall transfer the equipment to:

(1) a school district or open-enrollment charter school in this state under Subchapter C, Chapter 32, Education Code;

(2) an assistance organization specified by the school district; or

(3) the Texas Department of Criminal Justice.

(b) If a disposition of the surplus or salvage data processing equipment of a state eleemosynary institution or an institution or agency of higher education is not made under other law, the institution or agency shall transfer the equipment to:

(1) a school district or open-enrollment charter school in this state under Subchapter C, Chapter 32, Education Code;

(2) an assistance organization specified by the school district; or

(3) the Texas Department of Criminal Justice.

(c) The state eleemosynary institution or institution or agency of higher education or other state agency may not collect a fee or other reimbursement from the district, the school, the assistance organization, or the Texas Department of Criminal Justice for the surplus or salvage data processing equipment transferred under this section.

Sec. 2175.906. ABOLISHED AGENCIES. On abolition of a state agency, in accordance with Chapter 325, the commission shall take custody of all of the agency's property or other assets as surplus property unless other law or the legislature designates another appropriate governmental entity to take custody of the property or assets.

#### ARTICLE 40. LAW ENFORCEMENT AND CUSTODIAL OFFICER SUPPLEMENTAL RETIREMENT FUND

SECTION 40.01. Section 815.317, Government Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) The comptroller shall deposit fees collected under Section 133.102(e)(7), Local Government Code, to the credit of the law enforcement and custodial officer supplemental retirement fund.

SECTION 40.02. Subsection (e), Section 133.102, Local Government Code, is amended to read as follows:

(e) The comptroller shall allocate the court costs received under this section to the following accounts and funds so that each receives to the extent practicable, utilizing historical data as applicable, the same amount of money the account or fund would have received if the court costs for the accounts and funds had been collected and reported separately, except that the account or fund may not receive less than the following percentages:

- (1) abused children's counseling 0.0088 percent;
- (2) crime stoppers assistance 0.2581 percent;
- (3) breath alcohol testing 0.5507 percent;
- (4) Bill Blackwood Law Enforcement Management Institute 2.1683 percent;
- (5) law enforcement officers standards and education 5.0034 percent;
- (6) comprehensive rehabilitation 5.3218 percent;
- (7) law enforcement and custodial officer supplemental retirement fund ~~operator's and chauffeur's license~~ 11.1426 percent;
- (8) criminal justice planning 12.5537 percent;
- (9) an account in the state treasury to be used only for the establishment and operation of the Center for the Study and Prevention of Juvenile Crime and Delinquency at Prairie View A&M University 1.2090 percent;
- (10) compensation to victims of crime fund 37.6338 percent;
- (11) fugitive apprehension account 12.0904 percent;
- (12) judicial and court personnel training fund 4.8362 percent;
- (13) an account in the state treasury to be used for the establishment and operation of the Correctional Management Institute of Texas and Criminal Justice Center Account 1.2090 percent; and
- (14) fair defense account 6.0143 percent.

SECTION 40.03. This article takes effect September 1, 2013.

#### ARTICLE 41. SALES AND USE TAX COLLECTION AND ALLOCATION

SECTION 41.01. Subsection (b), Section 151.008, Tax Code, is amended to read as follows:

(b) "Seller" and "retailer" include:

- (1) a person in the business of making sales at auction of tangible personal property owned by the person or by another;
- (2) a person who makes more than two sales of taxable items during a 12-month period, including sales made in the capacity of an assignee for the benefit of creditors or receiver or trustee in bankruptcy;
- (3) a person regarded by the comptroller as a seller or retailer under Section 151.024 ~~[of this code]~~;
- (4) a hotel, motel, or owner or lessor of an office or residential building or development that contracts and pays for telecommunications services for resale to guests or tenants; ~~[and]~~

(5) a person who engages in regular or systematic solicitation of sales of taxable items in this state by the distribution of catalogs, periodicals, advertising flyers, or other advertising, by means of print, radio, or television media, or by mail, telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system for the purpose of effecting sales of taxable items; and

(6) a person who, under an agreement with another person, is:

(A) entrusted with possession of tangible personal property with respect to which the other person has title or another ownership interest; and

(B) authorized to sell, lease, or rent the property without additional action by the person having title to or another ownership interest in the property.

SECTION 41.02. Section 151.107, Tax Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) For the purpose of this subchapter and in relation to the use tax, a retailer is engaged in business in this state if the retailer:

(1) maintains, occupies, or uses in this state permanently, temporarily, directly, or indirectly or through a subsidiary or agent by whatever name, an office, ~~[place of]~~ distribution center, sales or sample room or place, warehouse, storage place, or any other physical location where ~~[place of]~~ business is conducted;

(2) has a representative, agent, salesman, canvasser, or solicitor operating in this state under the authority of the retailer or its subsidiary for the purpose of selling or delivering or the taking of orders for a taxable item;

(3) derives receipts ~~[rentals]~~ from the sale, [a] lease, or rental of tangible personal property situated in this state;

(4) engages in regular or systematic solicitation of sales of taxable items in this state by the distribution of catalogs, periodicals, advertising flyers, or other advertising, by means of print, radio, or television media, or by mail, telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system for the purpose of effecting sales of taxable items;

(5) solicits orders for taxable items by mail or through other media and under federal law is subject to or permitted to be made subject to the jurisdiction of this state for purposes of collecting the taxes imposed by this chapter;

(6) has a franchisee or licensee operating under its trade name if the franchisee or licensee is required to collect the tax under this section; ~~[or]~~

(7) holds a substantial ownership interest in, or is owned in whole or substantial part by, a person who maintains a location in this state from which business is conducted and if:

(A) the retailer sells the same or a substantially similar line of products as the person with the location in this state and sells those products under a business name that is the same as or substantially similar to the business name of the person with the location in this state; or

(B) the facilities or employees of the person with the location in this state are used to:

(i) advertise, promote, or facilitate sales by the retailer to consumers; or

(ii) perform any other activity on behalf of the retailer that is intended to establish or maintain a marketplace for the retailer in this state, including receiving or exchanging returned merchandise;

(8) holds a substantial ownership interest in, or is owned in whole or substantial part by, a person that:

(A) maintains a distribution center, warehouse, or similar location in this state; and

(B) delivers property sold by the retailer to consumers; or

(9) otherwise does business in this state.

(d) In this section:

(1) "Ownership" includes:

(A) direct ownership;

(B) common ownership; and

(C) indirect ownership through a parent entity, subsidiary, or affiliate.

(2) "Substantial" means, with respect to an ownership interest, an interest in an entity that is:

(A) if the entity is a corporation, at least 50 percent, directly or indirectly, of:

(i) the total combined voting power of all classes of stock of the corporation; or

(ii) the beneficial ownership interest in the voting stock of the corporation;

(B) if the entity is a trust, at least 50 percent, directly or indirectly, of the current beneficial interest in the trust corpus or income;

(C) if the entity is a limited liability company, at least 50 percent, directly or indirectly, of:

(i) the total membership interest of the limited liability company; or

(ii) the beneficial ownership interest in the membership interest of the limited liability company; or

(D) for any entity, including a partnership or association, at least 50 percent, directly or indirectly, of the capital or profits interest in the entity.

SECTION 41.03. Subchapter M, Chapter 151, Tax Code, is amended by adding Section 151.802 to read as follows:

Sec. 151.802. ALLOCATION OF CERTAIN REVENUE TO PROPERTY TAX RELIEF FUND. (a) This section applies only:

(1) during the state fiscal years beginning September 1 of 2012, 2013, 2014, 2015, and 2016; and

(2) with respect to unused franchise tax credits described by Sections 18(e) and (f), Chapter 1 (H.B. 3), Acts of the 79th Legislature, 3rd Called Session, 2006.

(b) Notwithstanding Section 151.801, the comptroller shall deposit to the credit of the property tax relief fund under Section 403.109, Government Code, an amount of the proceeds from the collection of the taxes imposed by this chapter equal to the amount of revenue the state does not receive from the tax imposed under Chapter 171 because taxable entities, as defined by that chapter, that are corporations are entitled to claim unused franchise tax credits after December 31, 2012, and during that state fiscal year.

(c) This section expires September 1, 2017.

SECTION 41.04. The change in law made by this article does not affect tax liability accruing before the effective date of this article. That liability continues in effect as if this article had not been enacted, and the former law is continued in effect for the collection of taxes due and for civil and criminal enforcement of the liability for those taxes.

SECTION 41.05. This article takes effect January 1, 2012.

#### ARTICLE 42. CARRYFORWARD OF CERTAIN FRANCHISE TAX CREDITS

SECTION 42.01. Subsections (e) and (f), Section 18, Chapter 1 (H.B. 3), Acts of the 79th Legislature, 3rd Called Session, 2006, are amended to read as follows:

(e) A corporation that has any unused credits established before the effective date of this Act under Subchapter P, Chapter 171, Tax Code, may claim those unused credits on or with the tax report for the period in which the credit was established. However, if the corporation was allowed to carry forward unused credits under that subchapter, the corporation may continue to apply those credits on or with each consecutive report until the earlier of the date the credit would have expired under the terms of Subchapter P, Chapter 171, Tax Code, had it continued in existence, or December 31, 2016 ~~[2012]~~, and the former law under which the corporation established the credits is continued in effect for purposes of determining the amount of the credits the corporation may claim and the manner in which the corporation may claim the credits.

(f) A corporation that has any unused credits established before the effective date of this Act under Subchapter Q, Chapter 171, Tax Code, may claim those unused credits on or with the tax report for the period in which the credit was established. However, if the corporation was allowed to carry forward unused credits under that subchapter, the corporation may continue to apply those credits on or with each consecutive report until the earlier of the date the credit would have expired under the terms of Subchapter Q, Chapter 171, Tax Code, had it continued in existence, or December 31, 2016 ~~[2012]~~, and the former law under which the corporation established the credits is continued in effect for purposes of determining the amount of the credits the corporation may claim and the manner in which the corporation may claim the credits.

#### ARTICLE 43. STATE PURCHASING

SECTION 43.01. Section 2155.082, Government Code, is amended to read as follows:

Sec. 2155.082. PROVIDING CERTAIN PURCHASING SERVICES ON FEE-FOR-SERVICE BASIS OR THROUGH BENEFIT FUNDING. (a) The comptroller ~~[commission]~~ may provide open market purchasing services on a fee-for-service basis for state agency purchases that are delegated to an agency under Section 2155.131, 2155.132, ~~[2155.133,]~~ or 2157.121 or that are exempted from the purchasing authority of the comptroller ~~[commission]~~. The comptroller ~~[commission]~~ shall set the fees in an amount that recovers the comptroller's ~~[commission's]~~ costs in providing the services.

(b) The comptroller ~~[commission]~~ shall publish a schedule of ~~[its]~~ fees for services that are subject to this section. The schedule must include the comptroller's ~~[commission's]~~ fees for:



(1) reviewing bid and contract documents for clarity, completeness, and compliance with laws and rules;

(2) developing and transmitting invitations to bid;

(3) receiving and tabulating bids;

(4) evaluating and determining which bidder offers the best value to the state;

(5) creating and transmitting purchase orders; and

(6) participating in agencies' request for proposal processes.

(c) If the state agency on behalf of which the procurement is to be made agrees, the comptroller may engage a consultant to assist with a particular procurement on behalf of a state agency and pay the consultant from the cost savings realized by the state agency.

#### ARTICLE 44. PERIOD FOR SALES AND USE TAX HOLIDAY

SECTION 44.01. Subsection (a), Section 151.326, Tax Code, is amended to read as follows:

(a) The sale of an article of clothing or footwear designed to be worn on or about the human body is exempted from the taxes imposed by this chapter if:

(1) the sales price of the article is less than \$100; and

(2) the sale takes place during a period beginning at 12:01 a.m. on the [third] Friday before the eighth day preceding the earliest date on which any school district, other than a district operating a year-round system, may begin instruction for the school year as prescribed by Section 25.0811(a), Education Code, [in August] and ending at 12 midnight on the following Sunday.

SECTION 44.02. Subsection (a), Section 151.326, Tax Code, as amended by this article, does not affect tax liability accruing before the effective date of this article. That liability continues in effect as if this article had not been enacted, and the former law is continued in effect for the collection of taxes due and for civil and criminal enforcement of the liability for those taxes.

SECTION 44.03. This article takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this article takes effect September 1, 2011.

#### ARTICLE 45. LEGISLATIVE BUDGET BOARD MEETINGS

SECTION 45.01. Section 322.003, Government Code, is amended by adding Subsection (f) to read as follows:

(f) The board shall hold a public hearing each state fiscal year to receive a report from the comptroller and receive invited testimony regarding the financial condition of this state. The report from the comptroller shall include, to the extent practicable:

(1) information on each revenue source included in determining the estimate of anticipated revenue for purposes of the most recent statement required by Section 49a, Article III, Texas Constitution, and the total net revenue actually collected from that source for the state fiscal year as of the end of the most recent state fiscal quarter;

(2) a comparison for the period described by Subdivision (1) of the total net revenue collected from each revenue source required to be specified under that subdivision with the anticipated revenue from that source that was included for purposes of determining the estimate of anticipated revenue in the statement required by Section 49a, Article III, Texas Constitution;

(3) information on state revenue sources resulting from a law taking effect after the comptroller submitted the most recent statement required by Section 49a, Article III, Texas Constitution, and the estimated total net revenue collected from that source for the state fiscal year as of the end of the most recent state fiscal quarter;

(4) a summary of the indicators of state economic trends experienced since the most recent statement required by Section 49a, Article III, Texas Constitution; and

(5) a summary of anticipated state economic trends and the anticipated effect of the trends on state revenue collections.

SECTION 45.02. Chapter 322, Government Code, is amended by adding Section 322.0081 to read as follows:

Sec. 322.0081. BUDGET DOCUMENTS ONLINE. (a) The board shall post on the board's Internet website documents prepared by the board that are provided to a committee, subcommittee, or conference committee of either house of the legislature in connection with an appropriations bill.

(b) The board shall post a document to which this section applies as soon as practicable after the document is provided to a committee, subcommittee, or conference committee.

(c) The document must be downloadable and provide data in a format that allows the public to search, extract, organize, and analyze the information in the document.

(d) The requirement under Subsection (a) does not supersede any exceptions provided under Chapter 552.

(e) The board shall promulgate rules to implement the provisions of this section.

SECTION 45.03. Chapter 322, Government Code, is amended by adding Section 322.022 to read as follows:

Sec. 322.022. PUBLIC HEARING ON INTERIM BUDGET REDUCTION REQUEST. (a) In this section:

(1) "Interim budget reduction request" means a request communicated in any manner for a state agency to make adjustments to the strategies, methods of finance, performance measures, or riders applicable to the agency through the state budget in effect on the date the request is communicated that, if implemented, would reduce the agency's total expenditures for the current state fiscal biennium to an amount less than the total amount that otherwise would be permissible based on the appropriations made to the agency in the budget.

(2) "State agency" means an office, department, board, commission, institution, or other entity to which a legislative appropriation is made.

(b) A state agency shall provide to the board a detailed report of any expenditure reduction plan that:

(1) the agency develops in response to an interim budget reduction request made by the governor, the lieutenant governor, or a member of the legislature, or any combination of those persons; and

(2) if implemented, would reduce the agency's total expenditures for the current state fiscal biennium to an amount less than the total amount that otherwise would be permissible based on the appropriations made to the agency in the state budget for the biennium.

(c) The board shall hold a public hearing to solicit testimony on an expenditure reduction plan a state agency reports to the board as required by Subsection (b) as soon as practicable after receiving the report. The agency may not implement any element of the plan until the conclusion of the hearing.

(d) This section does not apply to an expenditure reduction a state agency desires to make that does not directly or indirectly result from an interim budget reduction request made by the governor, the lieutenant governor, or a member of the legislature, or any combination of those persons.

SECTION 45.04. Subchapter B, Chapter 403, Government Code, is amended by adding Section 403.0145 to read as follows:

Sec. 403.0145. PUBLICATION OF FEES SCHEDULE. As soon as practicable after the end of each state fiscal year, the comptroller shall publish online a schedule of all revenue to the state from fees authorized by statute. For each fee, the schedule must specify:

(1) the statutory authority for the fee;

(2) if the fee has been increased during the most recent legislative session, the amount of the increase;

(3) into which fund the fee revenue will be deposited; and

(4) the amount of the fee revenue that will be considered available for general governmental purposes and accordingly considered available for the purpose of certification under Section 403.121.

SECTION 45.05. Section 404.124, Government Code, is amended by amending Subsections (a) and (b) and adding Subsection (b-1) to read as follows:

(a) Before issuing notes the comptroller shall submit to the committee a general revenue cash flow shortfall forecast, based on the comptroller's most recent anticipated revenue estimate. The forecast must contain a detailed report of estimated revenues and expenditures for each month and each major revenue and expenditure category and must demonstrate the maximum general revenue cash flow shortfall that may be predicted. The committee shall hold a public hearing to receive invited testimony on the forecast, including testimony on this state's overall economic condition, as soon as practicable after receiving the forecast.

(b) Based on the forecast and testimony provided at the hearing required by Subsection (a), the committee may approve the issuance of notes, subject to Subsections (b-1) and (c), and the maximum outstanding balance of notes in any fiscal year. The outstanding balance may not exceed the maximum temporary cash shortfall forecast by the comptroller for any period in the fiscal year. The comptroller may not issue notes in excess of the amount approved.

(b-1) The committee's approval of the issuance of notes granted under Subsection (b) expires on the 91st day after the date the hearing conducted under Subsection (a) concludes. The comptroller may not issue notes on or after the 91st day unless the comptroller submits another general revenue cash flow shortfall forecast to the committee and the committee subsequently grants approval for the issuance of the

notes in accordance with the procedure required by Subsections (a) and (b). Each subsequent approval expires on the 61st day after the date the hearing on which the approval was based concludes.

ARTICLE 46. ECONOMIC AND WORKFORCE DEVELOPMENT PROGRAMS

SECTION 46.01. Section 481.078, Government Code, is amended by adding Subsection (m) to read as follows:

(m) Notwithstanding Subsections (e) and (e-1), during the state fiscal biennium that begins on September 1, 2011, the governor shall transfer \$10 million from the fund to the Texas Workforce Commission to fund the Texas Back to Work Program established under Chapter 313, Labor Code. The governor shall begin transferring money as required by this subsection as soon as possible after September 1, 2011, and may make more than one transfer if necessary to satisfy the requirements of this subsection. This subsection expires September 1, 2013.

SECTION 46.02. Subtitle B, Title 4, Labor Code, is amended by adding Chapter 313 to read as follows:

CHAPTER 313. TEXAS BACK TO WORK PROGRAM

Sec. 313.001. DEFINITION. In this chapter, "qualified applicant" means a person who made less than \$40 per hour at the person's last employment before becoming unemployed.

Sec. 313.002. INITIATIVE ESTABLISHED. (a) The Texas Back to Work Program is established within the commission.

(b) The purpose of the program is to establish public-private partnerships with employers to transition residents of this state from receiving unemployment compensation to becoming employed as members of the workforce.

(c) An employer that participates in the initiative may receive a wage subsidy for hiring one or more qualified applicants who are unemployed at the time of hire.

Sec. 313.003. RULES. The commission may adopt rules as necessary to implement this chapter.

ARTICLE 47. ELIGIBILITY OF SURVIVING SPOUSE OF DISABLED VETERAN TO PAY AD VALOREM TAXES ON RESIDENCE HOMESTEAD IN INSTALLMENTS

SECTION 47.01. Section 31.031, Tax Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a) This section applies only to:

(1) [~~If before the delinquency date~~] an individual who is:

(A) disabled or at least 65 years of age; and

(B) [~~is~~] qualified for an exemption under Section 11.13(c); or

(2) an individual who is:

(A) the unmarried surviving spouse of a disabled veteran; and

(B) qualified for an exemption under Section 11.22.

(a-1) If before the delinquency date an individual to whom this section applies pays at least one-fourth of a taxing unit's taxes imposed on property that the person owns and occupies as a residence homestead, accompanied by notice to the taxing unit that the person will pay the remaining taxes in installments, the person may pay

the remaining taxes without penalty or interest in three equal installments. The first installment must be paid before April 1, the second installment before June 1, and the third installment before August 1.

SECTION 47.02. This article applies only to an ad valorem tax year that begins on or after the effective date of this article.

SECTION 47.03. This article takes effect January 1, 2012.

#### ARTICLE 48. EXTENSION OF FRANCHISE TAX EXEMPTION

SECTION 48.01. Subsection (c), Section 1, Chapter 286 (H.B. 4765), Acts of the 81st Legislature, Regular Session, 2009, is amended to read as follows:

(c) This ~~[If this section takes effect, this]~~ section expires December 31, 2013 ~~[2011]~~.

SECTION 48.02. Subsection (b), Section 2, Chapter 286 (H.B. 4765), Acts of the 81st Legislature, Regular Session, 2009, is amended to read as follows:

(b) This section takes effect January 1, 2014 ~~[2012, if H.B. No. 2154, Acts of the 81st Legislature, Regular Session, 2009, amends Section 155.0211, Tax Code, in a manner that results in an increase in the revenue from the tax under that section during the state fiscal biennium beginning September 1, 2009, that is attributable to that change, and that Act is enacted and becomes law. If H.B. No. 2154, Acts of the 81st Legislature, Regular Session, 2009, does not amend Section 155.0211, Tax Code, in that manner or is not enacted or does not become law, this section takes effect January 1, 2010]~~.

SECTION 48.03. Subsection (b), Section 3, Chapter 286 (H.B. 4765), Acts of the 81st Legislature, Regular Session, 2009, is amended to read as follows:

(b) This section takes effect January 1, 2014 ~~[2012, if H.B. No. 2154, Acts of the 81st Legislature, Regular Session, 2009, amends Section 155.0211, Tax Code, in a manner that results in an increase in the revenue from the tax under that section during the state fiscal biennium beginning September 1, 2009, that is attributable to that change, and that Act is enacted and becomes law. If H.B. No. 2154, Acts of the 81st Legislature, Regular Session, 2009, does not amend Section 155.0211, Tax Code, in that manner or is not enacted or does not become law, this section takes effect January 1, 2010]~~.

SECTION 48.04. This article takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for this article to have immediate effect, this article takes effect September 1, 2011.

#### ARTICLE 49. FISCAL MATTERS REGARDING ASSISTANT PROSECUTORS

SECTION 49.01. Subsection (f), Section 41.255, Government Code, is amended to read as follows:

(f) A county is not required to pay longevity supplements if the county does not receive funds from the comptroller as provided by Subsection (d). If sufficient funds are not available to meet the requests made by counties for funds for payment of assistant prosecutors qualified for longevity supplements:

(1) [:] the comptroller shall apportion the available funds to the eligible counties by reducing the amount payable to each county on an equal percentage basis;

(2) a county is not entitled to receive the balance of the funds at a later date;  
and

(3) the longevity pay program under this chapter is suspended to the extent of the insufficiency. [A county that receives from the comptroller an amount less than the amount certified by the county to the comptroller under Subsection (d) shall apportion the funds received by reducing the amount payable to eligible assistant prosecutors on an equal percentage basis, but is not required to use county funds to make up any difference between the amount certified and the amount received.]

SECTION 49.02. Subsection (g), Section 41.255, Government Code, is repealed.

#### ARTICLE 50. FISCAL MATTERS REGARDING PROCESS SERVERS

SECTION 50.01. Subchapter B, Chapter 72, Government Code, is amended by adding Sections 72.013 and 72.014 to read as follows:

Sec. 72.013. PROCESS SERVER REVIEW BOARD. A person appointed to the process server review board established by supreme court order serves without compensation but is entitled to reimbursement for actual and necessary expenses incurred in traveling and performing official board duties.

Sec. 72.014. CERTIFICATION DIVISION. The office shall establish a certification division to oversee the regulatory programs assigned to the office by law or by the supreme court.

#### ARTICLE 51. FISCAL MATTERS REGARDING REIMBURSEMENT OF JURORS

SECTION 51.01. Section 61.001, Government Code, is amended by adding Subsections (a-1) and (a-2) to read as follows:

(a-1) Notwithstanding Subsection (a), and except as provided by Subsection (c), during the state fiscal biennium beginning September 1, 2011, a person who reports for jury service in response to the process of a court is entitled to receive as reimbursement for travel and other expenses an amount:

(1) not less than \$6 for the first day or fraction of the first day the person is in attendance in court in response to the process and discharges the person's duty for that day; and

(2) not less than the amount provided in the General Appropriations Act for each day or fraction of each day the person is in attendance in court in response to the process after the first day and discharges the person's duty for that day.

(a-2) This subsection and Subsection (a-1) expire September 1, 2013.

SECTION 51.02. Section 61.0015, Government Code, is amended by adding Subsections (a-1), (a-2), and (e-1) to read as follows:

(a-1) Notwithstanding Subsection (a), during the state fiscal biennium beginning September 1, 2011, the state shall reimburse a county the appropriate amount as provided in the General Appropriations Act for the reimbursement paid under Section 61.001 to a person who reports for jury service in response to the process of a court for each day or fraction of each day after the first day in attendance in court in response to the process.

(a-2) This subsection and Subsections (a-1) and (e-1) expire September 1, 2013.

(e-1) Notwithstanding Subsection (e), during the state fiscal biennium beginning September 1, 2011, if a payment on a county's claim for reimbursement is reduced under Subsection (d), or if a county fails to file the claim for reimbursement in a

timely manner, the comptroller may, as provided by rule, apportion the payment of the balance owed the county. The comptroller's rules may permit a different rate of reimbursement for each quarterly payment under Subsection (c).

#### ARTICLE 52. COLLECTION IMPROVEMENT PROGRAM

SECTION 52.01. Subsections (f), (h), (i), and (j), Article 103.0033, Code of Criminal Procedure, are amended to read as follows:

(f) The ~~[comptroller, in cooperation with the]~~ office~~[,]~~ shall develop a methodology for determining the collection rate of counties and municipalities described by Subsection (e) before implementation of a program. The office ~~[comptroller]~~ shall determine the rate for each county and municipality not later than the first anniversary of the county's or municipality's adoption of a program.

(h) The office~~[, in consultation with the comptroller,]~~ may:

(1) use case dispositions, population, revenue data, or other appropriate measures to develop a prioritized implementation schedule for programs; and

(2) determine whether it is not cost-effective to implement a program in a county or municipality and grant a waiver to the county or municipality.

(i) Each county and municipality shall at least annually submit to the office ~~[and the comptroller]~~ a written report that includes updated information regarding the program, as determined by the office ~~[in cooperation with the comptroller]~~. The report must be in a form approved by the office ~~[in cooperation with the comptroller]~~.

(j) The office ~~[comptroller]~~ shall periodically audit counties and municipalities to verify information reported under Subsection (i) and confirm that the county or municipality is conforming with requirements relating to the program. ~~[The comptroller shall consult with the office in determining how frequently to conduct audits under this section.]~~

SECTION 52.02. Subsection (e), Section 133.058, Local Government Code, is amended to read as follows:

(e) A municipality or county may not retain a service fee if, during an audit under ~~[Section 133.059 of this code or]~~ Article 103.0033(j), Code of Criminal Procedure, the Office of Court Administration of the Texas Judicial System ~~[comptroller]~~ determines that the municipality or county is not in compliance with Article 103.0033, Code of Criminal Procedure. The municipality or county may continue to retain a service fee under this section on receipt of a written confirmation from the Office of Court Administration of the Texas Judicial System ~~[comptroller]~~ that the municipality or county is in compliance with Article 103.0033, Code of Criminal Procedure.

SECTION 52.03. Subsection (c-1), Section 133.103, Local Government Code, is amended to read as follows:

(c-1) The treasurer shall send 100 percent of the fees collected under this section to the comptroller if, during an audit under ~~[Section 133.059 of this code or]~~ Article 103.0033(j), Code of Criminal Procedure, the Office of Court Administration of the Texas Judicial System ~~[comptroller]~~ determines that the municipality or county is not in compliance with Article 103.0033, Code of Criminal Procedure. The municipality or county shall continue to dispose of fees as otherwise provided by this section on

receipt of a written confirmation from the Office of Court Administration of the Texas Judicial System ~~[comptroller]~~ that the municipality or county is in compliance with Article 103.0033, Code of Criminal Procedure.

#### ARTICLE 53. CORRECTIONAL MANAGED HEALTH CARE

SECTION 53.01. Subsection (a), Section 501.133, Government Code, is amended to read as follows:

(a) The committee consists of five voting ~~[nine]~~ members and one nonvoting member ~~[appointed]~~ as follows:

(1) one member ~~[two members]~~ employed full-time by the department, ~~[at least one of whom is a physician,]~~ appointed by the executive director;

(2) one member who is a physician and ~~[two members]~~ employed full-time by The University of Texas Medical Branch at Galveston, ~~[at least one of whom is a physician,]~~ appointed by the president of the medical branch;

(3) one member who is a physician and ~~[two members]~~ employed full-time by the Texas Tech University Health Sciences Center, ~~[at least one of whom is a physician,]~~ appointed by the president of the university; ~~[and]~~

(4) two ~~[three]~~ public members appointed by the governor who are not affiliated with the department or with any entity with which the committee has contracted to provide health care services under this chapter, at least one ~~[two]~~ of whom is ~~[are]~~ licensed to practice medicine in this state; and

(5) the state Medicaid director, to serve ex officio as a nonvoting member.

SECTION 53.02. Subsection (b), Section 501.135, Government Code, is amended to read as follows:

(b) A person may not be an appointed ~~[a]~~ member of the committee and may not be a committee employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) and its subsequent amendments if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of health care or health care services; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of health care or health care services.

SECTION 53.03. Section 501.136, Government Code, is amended to read as follows:

Sec. 501.136. TERMS OF OFFICE FOR PUBLIC MEMBERS. Committee members appointed by the governor serve staggered four-year ~~[six year]~~ terms, with the term of one of those members expiring on February 1 of each odd-numbered year. Other committee members serve at the will of the appointing official or until termination of the member's employment with the entity the member represents.

SECTION 53.04. Section 501.147, Government Code, is amended to read as follows:

Sec. 501.147. DEPARTMENT ~~[COMMITTEE]~~ AUTHORITY TO CONTRACT. (a) The department ~~[committee]~~ may enter into a contract ~~[on behalf of the department]~~ to fully implement the managed health care plan under this subchapter. A contract entered into under this subsection must include provisions



necessary to ensure that The University of Texas Medical Branch at Galveston is eligible for and makes reasonable efforts to participate in the purchase of prescription drugs under Section 340B, Public Health Service Act (42 U.S.C. Section 256b).

(b) The department ~~[committee]~~ may~~[-, in addition to providing services to the department,]~~ contract with other governmental entities for similar health care services and integrate those services into the managed health care provider network.

(c) In contracting for implementation of the managed health care plan, the department ~~[committee]~~, to the extent possible, shall integrate the managed health care provider network with the public medical schools of this state and the component and affiliated hospitals of those medical schools. The contract must authorize The University of Texas Medical Branch at Galveston to contract directly with the Texas Tech University Health Sciences Center for the provision of health care services. The Texas Tech University Health Sciences Center shall cooperate with The University of Texas Medical Branch at Galveston in its efforts to participate in the purchase of prescription drugs under Section 340B, Public Health Service Act (42 U.S.C. Section 256b).

(d) For services that the public medical schools and their components and affiliates cannot provide, the department ~~[committee]~~ shall initiate a competitive bidding process for contracts with other providers for medical care to persons confined by the department.

(e) The department, in cooperation with the committee, may contract with an individual or firm for a biennial review of, and report concerning, expenditures under the managed health care plan. The review must be conducted by an individual or firm experienced in auditing the state's Medicaid expenditures and other medical expenditures. Not later than September 1 of each even-numbered year, the department shall submit a copy of a report under this section to the health care providers that are part of the managed health care provider network established under this subchapter, the Legislative Budget Board, the governor, the lieutenant governor, and the speaker of the house of representatives.

SECTION 53.05. Subsection (a), Section 501.148, Government Code, is amended to read as follows:

(a) The committee may ~~[shall]~~:

(1) develop statewide policies for the delivery of correctional health care;

(2) ~~[maintain contracts for health care services in consultation with the department and the health care providers;~~

~~[(3)]~~ communicate with the department and the legislature regarding the financial needs of the correctional health care system;

~~[(3)] in conjunction with the department, [(4) allocate funding made available through legislative appropriations for correctional health care;~~

~~[(5)]~~ monitor the expenditures of The University of Texas Medical Branch at Galveston and the Texas Tech University Health Sciences Center to ensure that those expenditures comply with applicable statutory and contractual requirements;

~~[(4) [(6)]~~ serve as a dispute resolution forum in the event of a disagreement relating to inmate health care services between:

(A) the department and the health care providers; or

(B) The University of Texas Medical Branch at Galveston and the Texas Tech University Health Sciences Center;

(5) [(7)] address problems found through monitoring activities by the department and health care providers, including requiring corrective action if care does not meet expectations as determined by those monitoring activities;

(6) [(8)] identify and address long-term needs of the correctional health care system; and

(7) [(9)] report to the Texas Board of Criminal Justice at the board's regularly scheduled meeting each quarter on the committee's policy recommendations [decisions], the financial status of the correctional health care system, and corrective actions taken by or required of the department or the health care providers.

SECTION 53.06. (a) The Correctional Managed Health Care Committee established under Section 501.133, Government Code, as that section existed before amendment by this article, is abolished effective November 30, 2011.

(b) An appointing official under Section 501.133, Government Code, shall appoint the members of the Correctional Managed Health Care Committee under Section 501.133, Government Code, as amended by this Act, not later than November 30, 2011. The governor shall appoint one public member to serve a term that expires February 1, 2013, and one public member to serve a term that expires February 1, 2015.

(c) The term of a person who is serving as a member of the Correctional Managed Health Care Committee immediately before the abolition of that committee under Subsection (a) of this section expires on November 30, 2011. Such a person is eligible for appointment by an appointing official to the new committee under Section 501.133, Government Code, as amended by this article.

#### ARTICLE 54. GENERAL HOUSING MATTERS

SECTION 54.01. Section 481.078, Government Code, is amended by amending Subsection (c) and adding Subsections (d-1) and (d-2) to read as follows:

(c) Except as provided by Subsections [(Subsection)] (d) and (d-1), the fund may be used only for economic development, infrastructure development, community development, job training programs, and business incentives.

(d-1) The fund may be used for the Texas homeless housing and services program administered by the Texas Department of Housing and Community Affairs. Subsections (e-1), (f), (g), (h), (i), and (j) and Section 481.080 do not apply to a grant awarded for a purpose specified by this subsection.

(d-2) Notwithstanding Subsection (e), during the state fiscal biennium that begins on September 1, 2011, the governor shall use not less than \$10 million from the fund for grants described by Subsection (d-1). This subsection expires September 1, 2013.

SECTION 54.02. Section 481.079, Government Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) For grants awarded for a purpose specified by Section 481.078(d-1), the report must include only the amount and purpose of each grant.

SECTION 54.03. Subchapter K, Chapter 2306, Government Code, is amended by adding Section 2306.2585 to read as follows:

Sec. 2306.2585. HOMELESS HOUSING AND SERVICES PROGRAM. (a) The department may administer a homeless housing and services program in each municipality in this state with a population of 285,500 or more to:

(1) provide for the construction, development, or procurement of housing for homeless persons; and

(2) provide local programs to prevent and eliminate homelessness.

(b) The department may adopt rules to govern the administration of the program, including rules that:

(1) provide for the allocation of any available funding; and

(2) provide detailed guidelines as to the scope of the local programs in the municipalities described by Subsection (a).

(c) The department may use any available revenue, including legislative appropriations, and shall solicit and accept gifts and grants for the purposes of this section. The department shall use gifts and grants received for the purposes of this section before using any other revenue.

SECTION 54.04. This article takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this article takes effect September 1, 2011.

#### ARTICLE 55. UNIFORM GRANT AND CONTRACT MANAGEMENT

SECTION 55.01. Section 783.004, Government Code, is amended to read as follows:

Sec. 783.004. OFFICE OF THE COMPTROLLER ~~[GOVERNOR'S OFFICE]~~. The office of the comptroller ~~[governor's office]~~ is the state agency for uniform grant and contract management.

SECTION 55.02. Subsections (a) and (b), Section 783.005, Government Code, are amended to read as follows:

(a) The comptroller ~~[governor's office]~~ shall develop uniform and concise language for any assurances that a local government is required to make to a state agency.

(b) The comptroller ~~[governor's office]~~ may:

(1) categorize assurances according to the type of grant or contract;

(2) designate programs to which the assurances are applicable; and

(3) revise the assurances.

SECTION 55.03. Section 783.006, Government Code, is amended to read as follows:

Sec. 783.006. STANDARD FINANCIAL MANAGEMENT CONDITIONS. (a) The comptroller ~~[governor's office]~~ shall compile and distribute to each state agency an official compilation of standard financial management conditions.

(b) The comptroller ~~[governor's office]~~ shall develop the compilation from Federal Management Circular A-102 or from a revision of that circular and from other applicable statutes and regulations.

(c) The comptroller ~~[governor's office]~~ shall include in the compilation official commentary regarding administrative or judicial interpretations that affect the application of financial management standards.

(d) The comptroller ~~[governor's office]~~ may:

- (1) categorize the financial management conditions according to the type of grant or contract;
- (2) designate programs to which the conditions are applicable; and
- (3) revise the conditions.

SECTION 55.04. Subsection (d), Section 783.007, Government Code, is amended to read as follows:

(d) The agency shall file a notice of each proposed rule that establishes a variation from uniform assurances or standard conditions with the comptroller ~~[governor's office]~~.

SECTION 55.05. Subsection (b), Section 783.008, Government Code, is amended to read as follows:

(b) On receipt of a request for a single audit or audit coordination, the comptroller ~~[governor's office]~~ in consultation with the state auditor shall not later than the 30th day after the date of the request designate a single state agency to coordinate state audits of the local government.

#### ARTICLE 56. FRANCHISE TAX APPLICABILITY AND EXCLUSIONS

SECTION 56.01. Section 171.0001, Tax Code, is amended by adding Subdivisions (1-a), (10-a), (10-b), and (11-b) to read as follows:

(1-a) "Artist" means a natural person or an entity that contracts to perform or entertain at a live entertainment event.

(10-a) "Live entertainment event" means an event that occurs on a specific date to which tickets are sold in advance by a third-party vendor and at which:

(A) a natural person or a group of natural persons, physically present at the venue, performs for the purpose of entertaining a ticket holder who is present at the event;

(B) a traveling circus or animal show performs for the purpose of entertaining a ticket holder who is present at the event; or

(C) a historical, museum-quality artifact is on display in an exhibition.

(10-b) "Live event promotion services" means services related to the promotion, coordination, operation, or management of a live entertainment event. The term includes services related to:

(A) the provision of staff for the live entertainment event; or

(B) the scheduling and promotion of an artist performing or entertaining at the live entertainment event.

(11-b) "Qualified live event promotion company" means a taxable entity that:

(A) receives at least 60 percent of the entity's annual total revenue from the provision or arrangement for the provision of three or more live event promotion services;

(B) maintains a permanent nonresidential office from which the live event promotion services are provided or arranged;

(C) employs 10 or more full-time employees during all or part of the period for which taxable margin is calculated;

(D) does not provide services for a wedding or carnival; and

(E) is not a movie theater.

SECTION 56.02. Subsection (c), Section 171.0002, Tax Code, is amended to read as follows:

(c) "Taxable entity" does not include an entity that is:

(1) a grantor trust as defined by Sections 671 and 7701(a)(30)(E), Internal Revenue Code, all of the grantors and beneficiaries of which are natural persons or charitable entities as described in Section 501(c)(3), Internal Revenue Code, excluding a trust taxable as a business entity pursuant to Treasury Regulation Section 301.7701-4(b);

(2) an estate of a natural person as defined by Section 7701(a)(30)(D), Internal Revenue Code, excluding an estate taxable as a business entity pursuant to Treasury Regulation Section 301.7701-4(b);

(3) an escrow;

(4) a real estate investment trust (REIT) as defined by Section 856, Internal Revenue Code, and its "qualified REIT subsidiary" entities as defined by Section 856(i)(2), Internal Revenue Code, provided that:

(A) a REIT with any amount of its assets in direct holdings of real estate, other than real estate it occupies for business purposes, as opposed to holding interests in limited partnerships or other entities that directly hold the real estate, is a taxable entity; and

(B) a limited partnership or other entity that directly holds the real estate as described in Paragraph (A) is not exempt under this subdivision, without regard to whether a REIT holds an interest in it;

(5) a real estate mortgage investment conduit (REMIC), as defined by Section 860D, Internal Revenue Code;

(6) a nonprofit self-insurance trust created under Chapter 2212, Insurance Code, or a predecessor statute;

(7) a trust qualified under Section 401(a), Internal Revenue Code; ~~or~~

(8) a trust or other entity that is exempt under Section 501(c)(9), Internal Revenue Code; or

(9) an unincorporated entity organized as a political committee under the Election Code or the provisions of the Federal Election Campaign Act of 1971 (2 U.S.C. Section 431 et seq.).

SECTION 56.03. Section 171.1011, Tax Code, is amended by adding Subsections (g-5) and (g-7) to read as follows:

(g-5) A taxable entity that is a qualified live event promotion company shall exclude from its total revenue, to the extent included under Subsection (c)(1)(A), (c)(2)(A), or (c)(3), a payment made to an artist in connection with the provision of a live entertainment event or live event promotion services.

(g-7) A taxable entity that is a qualified courier and logistics company shall exclude from its total revenue, to the extent included under Subsection (c)(1)(A), (c)(2)(A), or (c)(3), subcontracting payments made by the taxable entity to nonemployee agents for the performance of delivery services on behalf of the taxable entity. For purposes of this subsection, "qualified courier and logistics company" means a taxable entity that:

(1) receives at least 80 percent of the taxable entity's annual total revenue from its entire business from a combination of at least two of the following courier and logistics services:

(A) expedited same-day delivery of an envelope, package, parcel, roll of architectural drawings, box, or pallet;

(B) temporary storage and delivery of the property of another entity, including an envelope, package, parcel, roll of architectural drawings, box, or pallet; and

(C) brokerage of same-day or expedited courier and logistics services to be completed by a person or entity under a contract that includes a contractual obligation by the taxable entity to make payments to the person or entity for those services;

(2) during the period on which margin is based, is registered as a motor carrier under Chapter 643, Transportation Code, and if the taxable entity operates on an interstate basis, is registered as a motor carrier or broker under the unified carrier registration system, as defined by Section 643.001, Transportation Code, during that period;

(3) maintains an automobile liability insurance policy covering individuals operating vehicles owned, hired, or otherwise used in the taxable entity's business, with a combined single limit for each occurrence of at least \$1 million;

(4) maintains at least \$25,000 of cargo insurance;

(5) maintains a permanent nonresidential office from which the courier and logistics services are provided or arranged;

(6) has at least five full-time employees during the period on which margin is based;

(7) is not doing business as a livery service, floral delivery service, motor coach service, taxicab service, building supply delivery service, water supply service, fuel or energy supply service, restaurant supply service, commercial moving and storage company, or overnight delivery service; and

(8) is not delivering items that the taxable entity or an affiliated entity sold.

SECTION 56.04. This article applies only to a report originally due on or after January 1, 2012.

SECTION 56.05. This article takes effect January 1, 2012.

#### ARTICLE 57. ENTERPRISE AND EMERGING TECHNOLOGY FUNDS

SECTION 57.01. Section 481.078, Government Code, is amended by amending Subsections (e) and (j) and adding Subsections (f-1), (f-2), and (h-1) to read as follows:

(e) The administration of the fund is considered to be a trustee program within the office of the governor. The governor may negotiate on behalf of the state regarding awarding, by grant, money appropriated from the fund. The governor may award money appropriated from the fund only with the ~~[express-written]~~ prior approval of the lieutenant governor and speaker of the house of representatives. For purposes of this subsection, an award of money appropriated from the fund is considered disapproved by the lieutenant governor or speaker of the house of representatives if that officer does not approve the proposal to award the grant before the 91st day after the date of receipt of the proposal from the governor. The lieutenant

governor or the speaker of the house of representatives may extend the review deadline applicable to that officer for an additional 14 days by submitting a written notice to that effect to the governor before the expiration of the initial review period.

(f-1) A grant agreement must contain a provision:

(1) requiring the creation of a minimum number of jobs in this state; and

(2) specifying the date by which the recipient intends to create those jobs.

(f-2) A grant agreement must contain a provision providing that if the recipient does not meet job creation performance targets as of the dates specified in the agreement, the recipient shall repay the grant in accordance with Subsection (j).

(h-1) At least 14 days before the date the governor intends to amend a grant agreement, the governor shall notify and provide a copy of the proposed amendment to the speaker of the house of representatives and the lieutenant governor.

(j) Repayment of a grant under Subsection (f)(1)(A) shall ~~may~~ be prorated to reflect a partial attainment of job creation performance targets, and may be prorated for a partial attainment of other performance targets.

SECTION 57.02. Subsections (a) and (b), Section 490.005, Government Code, are amended to read as follows:

(a) Not later than January 31 ~~[4]~~ of each year, the governor shall submit to the lieutenant governor, the speaker of the house of representatives, and the standing committee of each house of the legislature with primary jurisdiction over economic development matters and post on the office of the governor's Internet website a report that includes the following information regarding awards made under the fund during each ~~[for the]~~ preceding ~~[three]~~ state fiscal year ~~[years]~~:

(1) the total number and amount of awards made;

(2) the number and amount of awards made under Subchapters D, E, and F;

(3) the aggregate total of private sector investment, federal government funding, and contributions from other sources obtained in connection with awards made under each of the subchapters listed in Subdivision (2);

(4) the name of each award recipient and the amount of the award made to the recipient; and

(5) a brief description of the equity position that the governor, on behalf of the state, may take in companies receiving awards and the names of the companies in which the state has taken an equity position.

(b) The annual report must also contain:

(1) the total number of jobs actually created by each project receiving funding under this chapter;

(2) an analysis of the number of jobs actually created by each project receiving funding under this chapter; and

(3) a brief description regarding:

(A) the methodology used to determine the information provided under Subdivisions (1) and (2), which may be developed in consultation with the comptroller's office;

(B) ~~[4]~~ the intended outcomes of projects funded under Subchapter D during each ~~[the]~~ preceding ~~[two]~~ state fiscal year ~~[years]~~; and

(C) ~~[(2)]~~ the actual outcomes of all projects funded under Subchapter D during each preceding state fiscal year ~~[the fund's existence]~~, including any financial impact on the state resulting from a liquidity event involving a company whose project was funded under that subchapter.

SECTION 57.03. Subchapter A, Chapter 490, Government Code, is amended by adding Section 490.006 to read as follows:

Sec. 490.006. VALUATION OF INVESTMENTS; INCLUSION IN ANNUAL REPORT. To the maximum extent practicable, the office of the governor shall annually perform a valuation of the equity positions taken by the governor, on behalf of the state, in companies receiving awards under the fund and of other investments made by the governor, on behalf of the state, in connection with an award under the fund. The valuation must:

(1) be based on a methodology that:

(A) may be developed in consultation with the comptroller's office; and

(B) is consistent with generally accepted accounting principles; and

(2) be included with the annual report required under Section 490.005.

SECTION 57.04. The heading to Section 490.052, Government Code, is amended to read as follows:

Sec. 490.052. APPOINTMENT TO COMMITTEE ~~[BY GOVERNOR];~~ NOMINATIONS.

SECTION 57.05. Section 490.052, Government Code, is amended by amending Subsection (a) and adding Subsections (a-1) and (a-2) to read as follows:

(a) The governor shall appoint to the committee 13 individuals nominated as provided by Subsection (b).

(a-1) The lieutenant governor shall appoint two individuals to the committee.

(a-2) The speaker of the house of representatives shall appoint two individuals to the committee.

SECTION 57.06. Subchapter B, Chapter 490, Government Code, is amended by adding Section 490.0521 to read as follows:

Sec. 490.0521. FINANCIAL STATEMENT REQUIRED. (a) Each member of the committee shall file with the office of the governor a verified financial statement complying with Sections 572.022 through 572.0252 as is required of a state officer by Section 572.021.

(b) All information obtained and maintained pursuant to Subsection (a), including information derived from the financial statements, is confidential and is not subject to disclosure under Chapter 552.

(c) The governor, on request or in the normal course of official business, shall provide information that is confidential under Subsection (b) to the state auditor's office.

(d) This section does not affect release of information for legislative purposes pursuant to Section 552.008.

SECTION 57.07. Section 490.054, Government Code, is amended to read as follows:

Sec. 490.054. TERMS. (a) Members of the committee appointed by the governor serve staggered two-year terms, subject to the pleasure of the governor.



(b) Members of the committee appointed by the lieutenant governor or the speaker of the house of representatives serve two-year terms.

SECTION 57.08. Section 490.056, Government Code, is amended by adding Subsections (c), (d), and (e) to read as follows:

(c) Each entity recommended by the committee for an award of money from the fund as provided by this chapter shall obtain and provide the following information to the office of the governor:

(1) a federal criminal history background check for each principal of the entity;

(2) a state criminal history background check for each principal of the entity;

(3) a credit check for each principal of the entity;

(4) a copy of a government-issued form of photo identification for each principal of the entity; and

(5) information regarding whether the entity or a principal of the entity has ever been subject to a sanction imposed by the Securities and Exchange Commission for a violation of applicable federal law.

(d) For purposes of Subsection (c), "principal" means:

(1) an officer of an entity; or

(2) a person who has at least a 10 percent ownership interest in an entity.

(e) With each proposal to award funding submitted by the governor to the lieutenant governor and speaker of the house of representatives for purposes of obtaining prior approval, the governor shall provide each officer with a copy of the information provided by the appropriate entity under Subsection (c).

SECTION 57.09. Section 490.057, Government Code, is amended to read as follows:

Sec. 490.057. CONFIDENTIALITY. (a) Except as provided by Subsection (b), information [information] collected by the governor's office, the committee, or the committee's advisory panels concerning the identity, background, finance, marketing plans, trade secrets, or other commercially or academically sensitive information of an individual or entity being considered for, receiving, or having received an award from the fund is confidential unless the individual or entity consents to disclosure of the information.

(b) The following information collected by the governor's office, the committee, or the committee's advisory panels under this chapter is public information and may be disclosed under Chapter 552:

(1) the name and address of an individual or entity receiving or having received an award from the fund;

(2) the amount of funding received by an award recipient;

(3) a brief description of the project that is funded under this chapter;

(4) if applicable, a brief description of the equity position that the governor, on behalf of the state, has taken in an entity that has received an award from the fund; and

(5) any other information designated by the committee with the consent of:

(A) the individual or entity receiving or having received an award from the fund, as applicable;

- (B) the governor;
- (C) the lieutenant governor; and
- (D) the speaker of the house of representatives.

SECTION 57.10. Section 490.101, Government Code, is amended by amending Subsection (f) and adding Subsection (f-1) to read as follows:

(f) The administration of the fund is considered to be a trustee program within the office of the governor. The governor may negotiate on behalf of the state regarding awards from the fund. The governor may award money appropriated from the fund only with the ~~[express written]~~ prior approval of the lieutenant governor and speaker of the house of representatives.

(f-1) For purposes of Subsection (f), an award of money appropriated from the fund is considered disapproved by the lieutenant governor or speaker of the house of representatives if that officer does not approve the proposal to award funding before the 91st day after the date of receipt of the proposal from the governor. The lieutenant governor or the speaker of the house of representatives may extend the review deadline applicable to that officer for an additional 14 days by submitting a written notice to that effect to the governor before the expiration of the initial review period.

SECTION 57.12. Subchapter D, Chapter 490, Government Code, is amended by adding Section 490.1521 to read as follows:

Sec. 490.1521. MINUTES OF CERTAIN MEETINGS. (a) Each regional center of innovation and commercialization established under Section 490.152, including the Texas Life Science Center for Innovation and Commercialization, shall keep minutes of each meeting at which applications for funding under this subchapter are evaluated. The minutes must:

(1) include the name of each applicant recommended by the regional center of innovation and commercialization to the committee for funding; and

(2) indicate the vote of each member of the governing body of the regional center of innovation and commercialization, including any recusal by a member and the member's reason for recusal, with regard to each application reviewed.

(b) Each regional center of innovation and commercialization shall retain a copy of the minutes of each meeting to which this section applies for at least three years.

SECTION 57.13. Section 203.021, Labor Code, is amended by adding Subsection (e) to read as follows:

(e) Money in the compensation fund may not be transferred to the:

(1) Texas Enterprise Fund created under Section 481.078, Government Code; or

(2) Texas emerging technology fund established under Section 490.101, Government Code.

SECTION 57.14. Section 204.123, Labor Code, is amended to read as follows:

Sec. 204.123. ~~TRANSFER TO [TEXAS ENTERPRISE FUND,]~~ SKILLS DEVELOPMENT FUND, TRAINING STABILIZATION FUND, AND COMPENSATION FUND. (a) If, on September 1 of a year, the commission determines that the amount in the compensation fund will exceed 100 percent of its floor as computed under Section 204.061 on the next October 1 computation date, the commission shall transfer from the holding fund created under Section 204.122:

(1) ~~[from the first \$160 million deposited in the holding fund in any state fiscal biennium;~~

~~[(A) during the state fiscal biennium ending August 31, 2007:~~

~~[(i) 67 percent to the Texas Enterprise Fund created under Section 481.078, Government Code, except that the amount transferred under this paragraph may not exceed the amount appropriated by the legislature to the Texas Enterprise Fund in that biennium; and~~

~~[(ii) 33 percent to the skills development fund created under Section 303.003, except that the amount transferred under this paragraph may not exceed the amount appropriated by the legislature to the skills development program strategies and activities in that biennium; and~~

~~[(B) during any state fiscal biennium beginning on or after September 1, 2007, 100 ]\*~~

~~[(i) 75 percent to the Texas Enterprise Fund created under Section 481.078, Government Code, except that the amount transferred under this paragraph may not exceed the amount appropriated by the legislature to the Texas Enterprise Fund in that biennium; and~~

~~[(ii) 25] percent to the skills development fund created under Section 303.003, except that the amount transferred under this subdivision [paragraph] may not exceed the amount appropriated by the legislature to the skills development program strategies and activities in that biennium; and~~

(2) any remaining amount in the holding fund after the distribution under Subdivision (1) to the training stabilization fund created under Section 302.101.

(b) If, on September 1 of a year, the commission determines that the amount in the compensation fund will be at or below 100 percent of its floor as computed under Section 204.061 on the next October 1 computation date, the commission shall transfer to the compensation fund as much of the amount in the holding fund as is necessary to raise the amount in the compensation fund to 100 percent of its floor, up to and including the entire amount in the holding fund. The commission shall transfer any remaining balance in the holding fund to the ~~[Texas Enterprise Fund, the]~~ skills development fund~~[-]~~ and the training stabilization fund in the manner [in the percentages] prescribed by Subsection (a).

SECTION 57.15. Subsections (b) and (c), Section 302.101, Labor Code, are amended to read as follows:

(b) Money in the training stabilization fund may be used in a year in which the amounts in the employment and training investment holding fund are insufficient to meet the legislative appropriation for that fiscal year for ~~[either the Texas Enterprise Fund or]~~ the skills development program strategies and activities.

(c) Money in the training stabilization fund shall be transferred to the ~~[Texas Enterprise Fund and the]~~ skills development fund under Subsection (b) not later than September 30. ~~[The transfer under Subsection (b) shall consist of transferring 67 percent of the money in the training stabilization fund to the Texas Enterprise Fund and 33 percent of the money in the training stabilization fund to the skills development fund.]~~ The amount transferred from the training stabilization fund may

not exceed the amounts appropriated to the [~~Texas Enterprise Fund and~~] skills development program strategies and activities in the fiscal year in which the transfer is made.

SECTION 57.16. Sections 481.078(e) and 490.101(f), Government Code, as amended by this article, and Section 490.101(f-1), Government Code, as added by this article, apply only to a proposal for an award from the Texas Enterprise Fund or Texas emerging technology fund submitted by the governor to the lieutenant governor or speaker of the house of representatives for prior approval on or after the effective date of this article. A proposal submitted by the governor for prior approval before the effective date of this article is governed by the law in effect on the date the proposal was submitted for that approval, and the former law is continued in effect for that purpose.

SECTION 57.17. Section 481.078(j), Government Code, as amended by this article, and Sections 481.078(f-1) and (f-2), Government Code, as added by this article, apply only to a grant agreement that is entered into on or after the effective date of this article. A grant agreement that is entered into before the effective date of this article is governed by the law in effect on the date the agreement was entered into, and the former law is continued in effect for that purpose.

SECTION 57.18. (a) The terms of the members of the Texas Emerging Technology Advisory Committee serving immediately before the effective date of this article expire September 1, 2011.

(b) As soon as practicable after this article takes effect, the governor, lieutenant governor, and speaker of the house of representatives shall appoint members to the Texas Emerging Technology Advisory Committee established under Subchapter B, Chapter 490, Government Code, in a manner that complies with that subchapter, as amended by this article.

(c) At the first meeting of members of the Texas Emerging Technology Advisory Committee established under Subchapter B, Chapter 490, Government Code, as amended by this article, occurring on or after September 1, 2011, the members appointed by the governor shall draw lots to determine which six members will serve a term expiring September 1, 2012, and which seven members will serve a term expiring September 1, 2013.

#### ARTICLE 58. AD VALOREM TAXATION OF LAND USED TO RAISE OR KEEP BEES

SECTION 58.01. Subdivision (2), Section 23.51, Tax Code, is amended to read as follows:

(2) "Agricultural use" includes but is not limited to the following activities: cultivating the soil, producing crops for human food, animal feed, or planting seed or for the production of fibers; floriculture, viticulture, and horticulture; raising or keeping livestock; raising or keeping exotic animals for the production of human food or of fiber, leather, pelts, or other tangible products having a commercial value; planting cover crops or leaving land idle for the purpose of participating in a governmental program, provided the land is not used for residential purposes or a purpose inconsistent with agricultural use; and planting cover crops or leaving land idle in conjunction with normal crop or livestock rotation procedure. The term also includes the use of land to produce or harvest logs and posts for the use in

constructing or repairing fences, pens, barns, or other agricultural improvements on adjacent qualified open-space land having the same owner and devoted to a different agricultural use. The term also includes the use of land for wildlife management. The term also includes the use of land to raise or keep bees for pollination or for the production of human food or other tangible products having a commercial value, provided that the land used is not less than 5 or more than 20 acres.

SECTION 58.02. This article applies only to the appraisal of land for ad valorem tax purposes for a tax year that begins on or after the effective date of this Act.

#### ARTICLE 59. PLACE OF BUSINESS OF A RETAILER FOR SALES TAX PURPOSES

SECTION 59.01. Subdivision (3), Subsection (a), Section 321.002, Tax Code, is amended to read as follows:

(3) "Place of business of the retailer" means an established outlet, office, or location operated by the retailer or the retailer's agent or employee for the purpose of receiving orders for taxable items and includes any location at which three or more orders are received by the retailer during a calendar year. A warehouse, storage yard, or manufacturing plant is not a "place of business of the retailer" unless at least three orders are received by the retailer during the calendar year at the warehouse, storage yard, or manufacturing plant. An outlet, office, facility, or any location that contracts with a retail or commercial business [engaged in activities to which this chapter applies] to process for that business invoices, purchase orders, [or] bills of lading, or other equivalent records onto which sales tax is added, including an office operated for the purpose of buying and selling taxable goods to be used or consumed by the retail or commercial business, is not a "place of business of the retailer" if the comptroller determines that the outlet, office, facility, or location functions or exists to avoid the tax imposed by this chapter or to rebate a portion of the tax imposed by this chapter to the contracting business. Notwithstanding any other provision of this subdivision, a kiosk is not a "place of business of the retailer." In this subdivision, "kiosk" means a small stand-alone area or structure that:

(A) is used solely to display merchandise or to submit orders for taxable items from a data entry device, or both;

(B) is located entirely within a location that is a place of business of another retailer, such as a department store or shopping mall; and

(C) at which taxable items are not available for immediate delivery to a customer.

SECTION 59.02. This article takes effect September 1, 2011.

#### ARTICLE 60. TEXAS FARM AND RANCH LANDS CONSERVATION PROGRAM

SECTION 60.01. Subsection (b), Section 183.059, Natural Resources Code, is amended to read as follows:

(b) To receive a grant from the fund under this subchapter, an applicant who is qualified to be an easement holder under this subchapter must submit an application to the council. The application must:

(1) set out the parties' clear conservation goals consistent with the program;

(2) include a site-specific estimate-of-value appraisal by a licensed appraiser qualified to determine the market value of the easement; and

(3) ~~[demonstrate that the applicant is able to match 50 percent of the amount of the grant being sought, considering that the council may choose to allow a donation of part of the appraised value of the easement to be considered as in-kind matching funds; and~~

~~(4)~~ include a memorandum of understanding signed by the landowner and the applicant indicating intent to sell an agricultural conservation easement and containing the terms of the contract for the sale of the easement.

#### ARTICLE 61. CERTAIN CONTRIBUTION RATE COMPUTATIONS

SECTION 61.01. Section 815.402, Government Code, is amended by adding Subsections (a-1) and (h-1) to read as follows:

(a-1) Notwithstanding Subsection (a)(1), if the state contribution to the retirement system is computed using a percentage less than 6.5 percent for the state fiscal year beginning September 1, 2011, the member's contribution is not required to be computed using a percentage equal to the percentage used to compute the state contribution for that biennium. This subsection expires September 1, 2012.

(h-1) Notwithstanding Subsection (h), if the state contribution to the law enforcement and custodial officer supplemental retirement fund is computed using a percentage less than 0.5 percent for the state fiscal year beginning September 1, 2011, the member's contribution is not required to be computed using a percentage equal to the percentage used to compute the state contribution for that biennium. This subsection expires September 1, 2012.

#### ARTICLE 62. QUINQUENNIAL REPORTING OF CERTAIN INFORMATION FOR UNCLAIMED PROPERTY

SECTION 62.01. Subsection (a), Section 411.0111, Government Code, is amended to read as follows:

(a) Not later than June 1 of every fifth ~~[each]~~ year, the department shall provide to the comptroller, for the purpose of assisting the comptroller in the identification of persons entitled to unclaimed property reported to the comptroller, the name, address, social security number, date of birth, and driver's license or state identification number of each person about whom the department has such information in its records.

SECTION 62.02. Subsection (a), Section 811.010, Government Code, as added by Chapter 232 (S.B. 1589), Acts of the 81st Legislature, Regular Session, 2009, is amended to read as follows:

(a) Not later than June 1 of every fifth ~~[each]~~ year, the retirement system shall provide to the comptroller, for the purpose of assisting the comptroller in the identification of persons entitled to unclaimed property reported to the comptroller, the name, address, social security number, and date of birth of each member, retiree, and beneficiary from the retirement system's records.

SECTION 62.03. Subsection (a), Section 821.010, Government Code, is amended to read as follows:

(a) Not later than June 1 of every fifth ~~[each]~~ year, the retirement system shall provide to the comptroller, for the purpose of assisting the comptroller in the identification of persons entitled to unclaimed property reported to the comptroller, the name, address, social security number, and date of birth of each member, retiree, and beneficiary from the retirement system's records.

SECTION 62.04. Subsection (a), Section 301.086, Labor Code, is amended to read as follows:

(a) Not later than June 1 of every fifth ~~[each]~~ year, the commission shall provide to the comptroller, for the purpose of assisting the comptroller in the identification of persons entitled to unclaimed property reported to the comptroller, the name, address, social security number, and date of birth of each person about whom the commission has such information in its records.

SECTION 62.05. The Department of Public Safety, the Employees Retirement System of Texas, the Teacher Retirement System of Texas, and the Texas Workforce Commission shall provide information to the comptroller as required by Sections 411.0111(a), 811.010(a), and 821.010(a), Government Code, and Section 301.086(a), Labor Code, as amended by this article, beginning in 2016.

#### ARTICLE 63. AD VALOREM TAXATION OF CERTAIN STORED PROPERTY

SECTION 63.01. Subsection (a), Section 11.253, Tax Code, is amended by amending Subdivision (2) and adding Subdivisions (5) and (6) to read as follows:

(2) "Goods-in-transit" means tangible personal property that:

(A) is acquired in or imported into this state to be forwarded to another location in this state or outside this state;

(B) is stored under a contract of bailment by a public warehouse operator ~~[detained]~~ at one or more public warehouse facilities ~~[a location]~~ in this state that are not in any way owned or controlled by ~~[in which]~~ the owner of the personal property ~~[does not have a direct or indirect ownership interest]~~ for the account of ~~[assembling, storing, manufacturing, processing, or fabricating purposes by]~~ the person who acquired or imported the property;

(C) is transported to another location in this state or outside this state not later than 175 days after the date the person acquired the property in or imported the property into this state; and

(D) does not include oil, natural gas, petroleum products, aircraft, dealer's motor vehicle inventory, dealer's vessel and outboard motor inventory, dealer's heavy equipment inventory, or retail manufactured housing inventory.

(5) "Bailee" and "warehouse" have the meanings assigned by Section 7.102, Business & Commerce Code.

(6) "Public warehouse operator" means a person that:

(A) is both a bailee and a warehouse; and

(B) stores under a contract of bailment, at one or more public warehouse facilities, tangible personal property that is owned by other persons solely for the account of those persons and not for the operator's account.

SECTION 63.02. Section 11.253, Tax Code, is amended by amending Subsections (e) and (h) and adding Subsections (j-1) and (j-2) to read as follows:

(e) In determining the market value of goods-in-transit that in the preceding year were ~~[assembled,]~~ stored~~[-manufactured, processed, or fabricated]~~ in this state, the chief appraiser shall exclude the cost of equipment, machinery, or materials that entered into and became component parts of the goods-in-transit but were not themselves goods-in-transit or that were not transported to another location in this state or outside this state before the expiration of 175 days after the date they were brought into this state by the property owner or acquired by the property owner in this state. For component parts held in bulk, the chief appraiser may use the average length of time a component part was held by the owner of the component parts during the preceding year at a location in this state that was not owned by or under the control of the owner of the component parts in determining whether the component parts were transported to another location in this state or outside this state before the expiration of 175 days.

(h) The chief appraiser by written notice delivered to a property owner who claims an exemption under this section may require the property owner to provide copies of property records so the chief appraiser can determine the amount and value of goods-in-transit and that the location in this state where the goods-in-transit were detained for storage ~~[assembling, storing, manufacturing, processing, or fabricating purposes]~~ was not owned by or under the control of the owner of the goods-in-transit. If the property owner fails to deliver the information requested in the notice before the 31st day after the date the notice is delivered to the property owner, the property owner forfeits the right to claim or receive the exemption for that year.

(j-1) Notwithstanding Subsection (j) or official action that was taken under that subsection before September 1, 2011, to tax goods-in-transit exempt under Subsection (b) and not exempt under other law, a taxing unit may not tax such goods-in-transit in a tax year that begins on or after January 1, 2012, unless the governing body of the taxing unit takes action on or after September 1, 2011, in the manner required for official action by the governing body, to provide for the taxation of the goods-in-transit. The official action to tax the goods-in-transit must be taken before January 1 of the first tax year in which the governing body proposes to tax goods-in-transit. Before acting to tax the exempt property, the governing body of the taxing unit must conduct a public hearing as required by Section 1-n(d), Article VIII, Texas Constitution. If the governing body of a taxing unit provides for the taxation of the goods-in-transit as provided by this subsection, the exemption prescribed by Subsection (b) does not apply to that unit. The goods-in-transit remain subject to taxation by the taxing unit until the governing body of the taxing unit, in the manner required for official action, rescinds or repeals its previous action to tax goods-in-transit or otherwise determines that the exemption prescribed by Subsection (b) will apply to that taxing unit.

(j-2) Notwithstanding Subsection (j-1), if under Subsection (j) the governing body of a taxing unit, before September 1, 2011, took action to provide for the taxation of goods-in-transit and pledged the taxes imposed on the goods-in-transit for the payment of a debt of the taxing unit, the tax officials of the taxing unit may continue to impose the taxes against the goods-in-transit until the debt is discharged, if cessation of the imposition would impair the obligation of the contract by which the debt was created.



SECTION 63.03. Subdivision (2), Subsection (a), Section 11.253, Tax Code, as amended by this article, applies only to an ad valorem tax year that begins on or after January 1, 2012.

SECTION 63.04. (a) Except as provided by Subsection (b) of this section, this article takes effect January 1, 2012.

(b) Section 63.02 of this article takes effect September 1, 2011.

#### ARTICLE 64. FISCAL MATTERS CONCERNING ADVANCED PLACEMENT

SECTION 64.01. Subsection (h), Section 28.053, Education Code, is amended to read as follows:

(h) The commissioner may enter into agreements with the college board and the International Baccalaureate Organization to pay for all examinations taken by eligible public school students. An eligible student is a student ~~[one]~~ who:

(1) takes a college advanced placement or international baccalaureate course at a public school or who is recommended by the student's principal or teacher to take the test; and

(2) demonstrates financial need as determined in accordance with guidelines adopted by the board that are consistent with the definition of financial need adopted by the college board or the International Baccalaureate Organization.

#### ARTICLE 65. FISCAL MATTERS CONCERNING TUITION EXEMPTIONS

SECTION 65.01. Subsection (c), Section 54.214, Education Code, is amended to read as follows:

(c) To be eligible for an exemption under this section, a person must:

(1) be a resident of this state;

(2) be a school employee serving in any capacity;

(3) for the initial term or semester for which the person receives an exemption under this section, have worked as an educational aide for at least one school year during the five years preceding that term or semester;

(4) establish financial need as determined by coordinating board rule;

(5) be enrolled at the institution of higher education granting the exemption in courses required for teacher certification in one or more subject areas determined by the Texas Education Agency to be experiencing a critical shortage of teachers at the public schools in this state ~~[at the institution of higher education granting the exemption];~~

(6) maintain an acceptable grade point average as determined by coordinating board rule; and

(7) comply with any other requirements adopted by the coordinating board under this section.

SECTION 65.02. The change in law made by this article applies beginning with tuition and fees charged for the 2011 fall semester. Tuition and fees charged for a term or semester before the 2011 fall semester are covered by the law in effect during the term or semester for which the tuition and fees are charged, and the former law is continued in effect for that purpose.

#### ARTICLE 66. FISCAL MATTERS CONCERNING DUAL HIGH SCHOOL AND JUNIOR COLLEGE CREDIT

SECTION 66.01. Subsection (c), Section 130.008, Education Code, is amended to read as follows:

(c) The contact hours attributable to the enrollment of a high school student in a course offered for joint high school and junior college credit under this section, excluding a course for which the student attending high school may receive course credit toward the physical education curriculum requirement under Section 28.002(a)(2)(C), shall be included in the contact hours used to determine the junior college's proportionate share of the state money appropriated and distributed to public junior colleges under Sections 130.003 and 130.0031, even if the junior college waives all or part of the tuition or fees for the student under Subsection (b).

SECTION 66.02. This article applies beginning with funding for the 2011 fall semester.

#### ARTICLE 67. CLASSIFICATION OF ENTITIES AS ENGAGED IN RETAIL TRADE FOR PURPOSES OF THE FRANCHISE TAX

SECTION 67.01. Subdivision (12), Section 171.0001, Tax Code, is amended to read as follows:

(12) "Retail trade" means:

(A) the activities described in Division G of the 1987 Standard Industrial Classification Manual published by the federal Office of Management and Budget; and

(B) apparel rental activities classified as Industry 5999 or 7299 of the 1987 Standard Industrial Classification Manual published by the federal Office of Management and Budget.

SECTION 67.02. This article applies only to a report originally due on or after the effective date of this Act.

SECTION 67.03. This article takes effect January 1, 2012.

#### ARTICLE 68. RETENTION OF CERTAIN FOUNDATION SCHOOL FUND PAYMENTS

SECTION 68.01. Subchapter E, Chapter 42, Education Code, is amended by adding Section 42.2511 to read as follows:

Sec. 42.2511. AUTHORIZATION FOR CERTAIN DISTRICTS TO RETAIN ADDITIONAL STATE AID. (a) This section applies only to a school district that was provided with state aid under former Section 42.2516 for the 2009-2010 or 2010-2011 school year based on the amount of aid to which the district would have been entitled under that section if Section 42.2516(g), as it existed on January 1, 2009, applied to determination of the amount to which the district was entitled for that school year.

(b) Notwithstanding any other law, a district to which this section applies may retain the state aid provided to the district as described by Subsection (a).

(c) This section expires September 1, 2013.

SECTION 68.02. It is the intent of the legislature that the authorization provided by Section 42.2511, Education Code, as added by this article, to retain state aid described by that section is not affected by the expiration of that provision on September 1, 2013.

#### ARTICLE 69. THE STATE COMPRESSION PERCENTAGE

SECTION 69.01. Section 42.2516, Education Code, is amended by adding Subsection (b-2) to read as follows:

(b-2) If a school district adopts a maintenance and operations tax rate that is below the rate equal to the product of the state compression percentage multiplied by the maintenance and operations tax rate adopted by the district for the 2005 tax year, the commissioner shall reduce the district's entitlement under this section in proportion to the amount by which the adopted rate is less than the rate equal to the product of the state compression percentage multiplied by the rate adopted by the district for the 2005 tax year. The reduction required by this subsection applies beginning with the maintenance and operations tax rate adopted for the 2009 tax year.

ARTICLE 70. TEXAS GUARANTEED STUDENT LOAN CORPORATION;  
BOARD OF DIRECTORS

SECTION 70.01. Subsections (a) and (b), Section 57.13, Education Code, are amended to read as follows:

(a) The corporation is governed by a board of nine ~~[[~~ directors in accordance with this section.

(b) The governor, with the advice and consent of the senate, shall appoint the ~~[[10]]~~ members of ~~[[10]]~~ the board as follows:

(1) four ~~[[five]]~~ members who must have knowledge of or experience in finance, including management of funds or business operations;

(2) one member who must be a student enrolled at a postsecondary educational institution for the number of credit hours required by the institution to be classified as a full-time student of the institution; and

(3) four members who must be members the faculty or administration of a ~~[[an eligible]]~~ postsecondary educational institution that is an eligible institution for purposes of the Higher Education Act of 1965, as amended, ~~[[as defined by Section 57.46]].~~

SECTION 70.02. Section 57.17, Education Code, is amended to read as follows:

Sec. 57.17. OFFICERS. The governor shall designate the chairman from among the board's membership. The board shall elect from among its members a ~~[[chairman,]]~~ vice-chairman, ~~[[,]]~~ and other officers that the board considers necessary. The chairman and vice-chairman serve for a term of one year and may be redesignated or reelected, as applicable.

SECTION 70.03. Subsection (d), Section 57.13, Education Code, is repealed.

ARTICLE 71. DRIVER'S LICENSES AND PERSONAL IDENTIFICATION  
CERTIFICATES

SECTION 71.01. Subchapter A, Chapter 521, Transportation Code, is amended by adding Section 521.007 to read as follows:

Sec. 521.007. SECURITY, VALIDITY, AND EFFICIENCY STUDY. (a) Notwithstanding any other law, the commission shall study procedures and requirements necessary or advisable to ensure the security, validity, and efficiency of driver's licenses and personal identification certificates issued under this chapter. The study must include an analysis of potential cost savings, revenue issues, and other fiscal matters related to the issuance of the license and certificates. The commission shall adopt rules to implement any procedures or requirements the commission finds are necessary or advisable.

(b) Notwithstanding any other law, the commission by rule may specify the term of a driver's license or personal identification certificate issued under this chapter.

SECTION 71.02. The legislature declares that the Department of Public Safety had the statutory authority to adopt the rules regarding driver's licenses and personal identification certificates that are in effect on the effective date of this article and that the rules are valid.

SECTION 71.03. This article takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for this article to have immediate effect, this article takes effect September 1, 2011.

#### ARTICLE 72. FISCAL MATTERS CONCERNING LEASES OF PUBLIC LAND FOR MINERAL DEVELOPMENT

SECTION 72.01. Subsections (a) and (c), Section 85.66, Education Code, are amended to read as follows:

(a) If oil or other minerals are developed on any of the lands leased by the board, the royalty or money as stipulated in the sale shall be paid to the general land office at Austin on or before the last day of each month for the preceding month during the life of the rights purchased, and shall be set aside ~~[in the state treasury]~~ as specified in Section 85.70 ~~[of this code]~~. The royalty or money paid to the general land office shall be accompanied by the sworn statement of the owner, manager, or other authorized agent showing the gross amount of oil, gas, sulphur, mineral ore, and other minerals produced and saved since the last report, the amount of oil, gas, sulphur, mineral ore, and other minerals produced and sold off the premises, and the market value of the oil, gas, sulphur, mineral ore, and other minerals, together with a copy of all daily gauges, or vats, tanks, gas meter readings, pipeline receipts, gas line receipts and other checks and memoranda of the amounts produced and put into pipelines, tanks, vats, or pool and gas lines, gas storage, other places of storage, and other means of transportation.

(c) The commissioner of the general land office shall tender to the board on or before the 10th day of each month a report of all receipts that are collected from the lease or sale of oil, gas, sulphur, mineral ore, and other minerals and that are deposited ~~[turned into the state treasury,]~~ as provided by Section 85.70 during ~~[of this code, of]~~ the preceding month.

SECTION 72.02. Section 85.69, Education Code, is amended to read as follows:

Sec. 85.69. PAYMENTS; DISPOSITION. Payments under this subchapter shall be made to the commissioner of the general land office at Austin, who shall transmit to the board ~~[comptroller]~~ all royalties, lease fees, rentals for delay in drilling or mining, and all other payments, including all filing assignments and relinquishment fees, to be deposited ~~[in the state treasury]~~ as provided by Section 85.70 ~~[of this code]~~.

SECTION 72.03. Section 85.70, Education Code, is amended to read as follows:

Sec. 85.70. CERTAIN MINERAL LEASES; DISPOSITION OF MONEY; SPECIAL FUNDS; INVESTMENT. (a) Except as provided by Subsection (c) ~~[of this section]~~, all money received under and by virtue of this subchapter shall be deposited in ~~[the state treasury to the credit of]~~ a special fund managed by the board to be

known as The Texas A&M University System Special Mineral Investment Fund. Money in the fund is considered to be institutional funds, as defined by Section 51.009, of the system and its component institutions. The ~~[With the approval of the comptroller, the board of regents of The Texas A&M University System may appoint one or more commercial banks, depository trust companies, or other entities to serve as custodian or custodians of the Special Mineral Investment Fund's securities with authority to hold the money realized from those securities pending completion of an investment transaction if the money held is reinvested within one business day of receipt in investments determined by the board of regents. Money not reinvested within one business day of receipt shall be deposited in the state treasury not later than the fifth day after the date of receipt. In the judgment of the board, this]~~ special fund may be invested so as to produce ~~[an]~~ income which may be expended under the direction of the board for the general use of any component of The Texas A&M University System, including erecting permanent improvements and in payment of expenses incurred in connection with the administration of this subchapter. The unexpended income likewise may be invested as ~~[herein]~~ provided by this section.

(b) The income from the investment of the special mineral investment fund created by ~~[under]~~ Subsection (a) ~~[of this section]~~ shall be deposited in ~~[to the credit of]~~ a fund managed by the board to be known as The Texas A&M University System Special Mineral Income Fund, and is considered to be institutional funds, as defined by Section 51.009, of the system and its component institutions ~~[shall be appropriated by the legislature exclusively for the university system for the purposes herein provided].~~

(c) The board shall lease for oil, gas, sulphur, or other mineral development, as prescribed by this subchapter, all or part of the land under the exclusive control of the board owned by the State of Texas and acquired for the use of Texas A&M University-Kingsville and its divisions. Any money received by the board concerning such land under this subchapter shall be deposited in ~~[the state treasury to the credit of]~~ a special fund managed by the board to be known as the Texas A&M University-Kingsville special mineral fund. Money in the fund is considered to be institutional funds, as defined by Section 51.009, of the university and ~~is[.]~~ to be used exclusively for the university ~~[Texas A&M University Kingsville]~~ and its branches and divisions. ~~[Money may not be expended from this fund except as authorized by the general appropriations act.]~~

(d) All deposits in and investments of the fund under this section shall be made in accordance with Section 51.0031.

(e) Section 34.017, Natural Resources Code, does not apply to funds created by this section.

SECTION 72.04. Subsection (b), Section 95.36, Education Code, is amended to read as follows:

(b) Except as provided in Subsection (c) of this section, any money received by virtue of this section and the income from the investment of such money shall be deposited in ~~[the State Treasury to the credit of]~~ a special fund managed by the board to be known as the Texas State University System special mineral fund. Money in the fund is considered to be institutional funds, as defined by Section 51.009, of the system and its component institutions and ~~is[.]~~ to be used exclusively for those

entities. All deposits in and investments of the fund shall be made in accordance with Section 51.0031. Section 34.017, Natural Resources Code, does not apply to the fund ~~[the university system and the universities in the system. However, no money shall ever be expended from this fund except as authorized by the General Appropriations Act].~~

SECTION 72.05. Subsection (b), Section 109.61, Education Code, is amended to read as follows:

(b) Any money received by virtue of this section shall be deposited in ~~[the state treasury to the credit of]~~ a special fund managed by the board to be known as the Texas Tech University special mineral fund. Money in the fund is considered to be institutional funds, as defined by Section 51.009, of the university and ~~is[;]~~ to be used exclusively for the university and its branches and divisions. All deposits in and investments of the fund shall be made in accordance with Section 51.0031. Section 34.017, Natural Resources Code, does not apply to the fund. ~~[However, no money shall ever be expended from this fund except as authorized by the general appropriations act.]~~

SECTION 72.06. Subsections (a) and (c), Section 109.75, Education Code, are amended to read as follows:

(a) If oil or other minerals are developed on any of the lands leased by the board, the royalty as stipulated in the sale shall be paid to the general land office in Austin on or before the last day of each month for the preceding month during the life of the rights purchased. The royalty payments shall be set aside ~~[in the state treasury]~~ as specified in Section 109.61 ~~[of this code]~~ and used as provided in that section.

(c) The commissioner of the general land office shall tender to the board on or before the 10th day of each month a report of all receipts that are collected from the lease or sale of oil, gas, sulphur, or other minerals and that are deposited in ~~[turned into]~~ the special fund as provided by Section 109.61 ~~[in the state treasury]~~ during the preceding month.

SECTION 72.07. Subsection (b), Section 109.78, Education Code, is amended to read as follows:

(b) Payment of all royalties, lease fees, rentals for delay in drilling or mining, filing fees for assignments and relinquishments, and all other payments shall be made to the commissioner of the general land office at Austin. The commissioner shall transmit all payments received to the board ~~[comptroller]~~ for deposit to the credit of the Texas Tech University special mineral fund as provided by Section 109.61.

SECTION 72.08. Section 85.72, Education Code, is repealed.

SECTION 72.09. This article takes effect September 1, 2011.

#### ARTICLE 73. FOUNDATION SCHOOL PROGRAM FINANCING; CERTAIN TAX INCREMENT FUND REPORTING MATTERS

SECTION 73.01. (a) This section applies only to a school district that, before May 1, 2011, received from the commissioner of education a notice of a reduction in state funding for the 2004-2005, 2005-2006, 2006-2007, 2007-2008, and 2008-2009 school years based on the district's reporting related to deposits of taxes into a tax increment fund under Chapter 311, Tax Code.

(b) Notwithstanding any other law, including Section 42.302(b)(2), Education Code, the commissioner of education shall reduce by one-half the amounts of the reduction of entitlement amounts computed for purposes of adjusting entitlement amounts to account for taxes deposited into a tax increment fund for any of the school years described by Subsection (a) of this section.

(c) This section expires September 1, 2013.

#### ARTICLE 74. CRIMINAL BACKGROUND CHECKS FOR CERTAIN INTERSCHOLASTIC SPORTS OFFICIALS

SECTION 74.01. Subchapter D, Chapter 33, Education Code, is amended by adding Section 33.085 to read as follows:

Sec. 33.085. CRIMINAL BACKGROUND CHECKS FOR SPORTS OFFICIALS; COST RECOVERY. (a) In this section, "sports official" means a person who officiates, judges, or otherwise enforces contest rules in an official capacity for athletic competition. The term includes a referee, umpire, linesman, side judge, and back judge.

(b) The University Interscholastic League by rule may require a person to have a criminal background check conducted by the league as a precondition of acting as a sports official for interscholastic athletic competition.

(c) The University Interscholastic League may refuse to allow a person to act as a sports official for interscholastic athletic competition if a criminal background check conducted under league rules reveals a conviction of:

(1) an offense involving moral turpitude;

(2) an offense involving a form of sexual or physical abuse of a minor or student or other illegal conduct in which the victim is a minor or student;

(3) a felony offense involving the possession, transfer, sale, or distribution of or conspiracy to possess, transfer, sell, or distribute a controlled substance, as defined by Chapter 481, Health and Safety Code, or by 21 U.S.C. Section 801 et seq.;

(4) an offense involving the illegal transfer, appropriation, or use of school district funds or other district property; or

(5) an offense involving an attempt by fraudulent or unauthorized means to obtain or alter registration to serve as a sports official for interscholastic athletic competition.

(d) An interscholastic athletic league by rule may establish a cost recovery program to offset any costs the league incurs as a result of the implementation of this section.

#### ARTICLE 75. FISCAL MATTERS RELATING TO PUBLIC SCHOOL FINANCE

SECTION 75.01. Effective September 1, 2011, Section 12.106, Education Code, is amended by amending Subsection (a) and adding Subsection (a-3) to read as follows:

(a) A charter holder is entitled to receive for the open-enrollment charter school funding under Chapter 42 equal to the greater of:

(1) the percentage specified by Section 42.2516(i) multiplied by the amount of funding per student in weighted average daily attendance, excluding enrichment funding under Sections 42.302(a-1)(2) and (3), as they existed on January 1, 2009, that would have been received for the school during the 2009-2010 school year under

Chapter 42 as it existed on January 1, 2009, and an additional amount of the percentage specified by Section 42.2516(i) multiplied by \$120 for each student in weighted average daily attendance; or

(2) the amount of funding per student in weighted average daily attendance, excluding enrichment funding under Section 42.302(a), to which the charter holder would be entitled for the school under Chapter 42 if the school were a school district without a tier one local share for purposes of Section 42.253 and without any local revenue for purposes of Section 42.2516.

(a-3) In determining funding for an open-enrollment charter school under Subsection (a), the commissioner shall apply the regular program adjustment factor provided under Section 42.101 to calculate the regular program allotment to which a charter school is entitled.

SECTION 75.02. Effective September 1, 2017, Subsection (a), Section 12.106, Education Code, is amended to read as follows:

(a) A charter holder is entitled to receive for the open-enrollment charter school funding under Chapter 42 equal to [the greater of:

~~[(1) the amount of funding per student in weighted average daily attendance, excluding enrichment funding under Sections 42.302(a 1)(2) and (3), as they existed on January 1, 2009, that would have been received for the school during the 2009-2010 school year under Chapter 42 as it existed on January 1, 2009, and an additional amount of \$120 for each student in weighted average daily attendance; or~~

~~[(2)] the amount of funding per student in weighted average daily attendance, excluding enrichment funding under Section 42.302(a), to which the charter holder would be entitled for the school under Chapter 42 if the school were a school district without a tier one local share for purposes of Section 42.253 [and without any local revenue for purposes of Section 42.2516].~~

SECTION 75.03. Effective September 1, 2011, Section 21.402, Education Code, is amended by amending Subsections (a), (b), (c), and (c-1) and adding Subsection (i) to read as follows:

(a) Except as provided by Subsection (d)~~[-(e)]~~ or (f), a school district must pay each classroom teacher, full-time librarian, full-time counselor certified under Subchapter B, or full-time school nurse not less than the minimum monthly salary, based on the employee's level of experience in addition to other factors, as determined by commissioner rule, determined by the following formula:

$$MS = SF \times FS$$

where:

"MS" is the minimum monthly salary;

"SF" is the applicable salary factor specified by Subsection (c); and

"FS" is the amount, as determined by the commissioner under Subsection (b), of the basic allotment as provided by Section 42.101 (a) or (b) for a school district with a maintenance and operations tax rate at least equal to the state maximum compressed tax rate, as defined by Section 42.101 (a) [state and local funds per weighted student, including funds provided under Section 42.2516, available to a district eligible to receive state assistance under Section 42.302 with a maintenance and operations tax rate per \$100 of taxable value equal to the product of the state compression percentage, as determined under Section 42.2516, multiplied by \$1.50, except that the



~~amount of state and local funds per weighted student does not include the amount attributable to the increase in the guaranteed level made by Chapter 1187, Acts of the 77th Legislature, Regular Session, 2001].~~

(b) Not later than June 1 of each year, the commissioner shall determine the basic allotment and resulting monthly salaries to be paid by school districts as ~~provided by Subsection (a) [amount of state and local funds per weighted student available, for purposes of Subsection (a), to a district described by that subsection for the following school year].~~

(c) The salary factors per step are as follows:

Years Experience	0	1	2	3	4					
Salary Factor	<u>.5464</u>	<del>[.6226]</del>	<u>.5582</u>	<del>[.6260]</del>	<u>.5698</u>	<del>[.6492]</del>	<u>.5816</u>	<del>[.6627]</del>	<u>.6064</u>	<del>[.6909]</del>
Years Experience	5	6	7	8	9					
Salary Factor	<u>.6312</u>	<del>[.7492]</del>	<u>.6560</u>	<del>[.7474]</del>	<u>.6790</u>	<del>[.7737]</del>	<u>.7008</u>	<del>[.7985]</del>	<u>.7214</u>	<del>[.8220]</del>
Years Experience	10	11	12	13	14					
Salary Factor	<u>.7408</u>	<del>[.8444]</del>	<u>.7592</u>	<del>[.8650]</del>	<u>.7768</u>	<del>[.8854]</del>	<u>.7930</u>	<del>[.9035]</del>	<u>.8086</u>	<del>[.9213]</del>
Years Experience	15	16	17	18	19					
Salary Factor	<u>.8232</u>	<del>[.9380]</del>	<u>.8372</u>	<del>[.9539]</del>	<u>.8502</u>	<del>[.9687]</del>	<u>.8626</u>	<del>[.9828]</del>	<u>.8744</u>	<del>[.9963]</del>
Years Experience	20	and	over							
Salary Factor	.8854	<del>[1.000]</del>								

(c-1) Notwithstanding ~~Subsections [Subsection] (a) and (b)~~~~[, for the 2009-2010 and 2010-2011 school years]~~, each school district shall pay a monthly salary to ~~[increase the monthly salary of]~~ each classroom teacher, full-time speech pathologist, full-time librarian, full-time counselor certified under Subchapter B, and full-time school nurse that is at least equal to the following monthly salary or the monthly salary determined by the commissioner under Subsections (a) and (b), whichever is ~~[by the] greater [of]~~:

<u>Years of Experience</u>	<u>Monthly Salary</u>
0	<u>2,732</u>
1	<u>2,791</u>
2	<u>2,849</u>
3	<u>2,908</u>
4	<u>3,032</u>
5	<u>3,156</u>
6	<u>3,280</u>
7	<u>3,395</u>
8	<u>3,504</u>
9	<u>3,607</u>

<u>10</u>	<u>3,704</u>
<u>11</u>	<u>3,796</u>
<u>12</u>	<u>3,884</u>
<u>13</u>	<u>3,965</u>
<u>14</u>	<u>4,043</u>
<u>15</u>	<u>4,116</u>
<u>16</u>	<u>4,186</u>
<u>17</u>	<u>4,251</u>
<u>18</u>	<u>4,313</u>
<u>19</u>	<u>4,372</u>
<u>20 &amp; Over</u>	<u>4,427</u>

~~[(1) \$80; or~~

~~[(2) the maximum uniform amount that, when combined with any resulting increases in the amount of contributions made by the district for social security coverage for the specified employees or by the district on behalf of the specified employees under Section 825.405, Government Code, may be provided using an amount equal to the product of \$60 multiplied by the number of students in weighted average daily attendance in the school during the 2009-2010 school year.]~~

(i) Not later than January 1, 2013, the commissioner shall submit to the governor, the lieutenant governor, the speaker of the house of representatives, and the presiding officer of each legislative standing committee with primary jurisdiction over primary and secondary education a written report that evaluates and provides recommendations regarding the salary schedule. This subsection expires September 1, 2013.

SECTION 75.04. Effective September 1, 2017, Section 21.402, Education Code, is amended by amending Subsection (a) and adding Subsection (e-1) to read as follows:

(a) Except as provided by Subsection (d), ~~(e-1) [(e)],~~ or (f), a school district must pay each classroom teacher, full-time librarian, full-time counselor certified under Subchapter B, or full-time school nurse not less than the minimum monthly salary, based on the employee's level of experience in addition to other factors, as determined by commissioner rule, determined by the following formula:

$$MS = SF \times FS$$

where:

"MS" is the minimum monthly salary;

"SF" is the applicable salary factor specified by Subsection (c); and

"FS" is the amount, as determined by the commissioner under Subsection (b), of the basic allotment as provided by Section 42.101(a) or (b) for a school district with a maintenance and operation tax rate at least equal to the state maximum compressed tax rate, as defined by Section 42.101(a) ~~[state and local funds per weighted student, including funds provided under Section 42.2516, available to a district eligible to receive state assistance under Section 42.302 with a maintenance and operations tax rate per \$100 of taxable value equal to the product of the state compression percentage, as determined under Section 42.2516, multiplied by \$1.50, except that the~~

~~amount of state and local funds per weighted student does not include the amount attributable to the increase in the guaranteed level made by Chapter 1187, Acts of the 77th Legislature, Regular Session 2001].~~

(e-1) If the minimum monthly salary determined under Subsection (a) for a particular level of experience is less than the minimum monthly salary for that level of experience in the preceding year, the minimum monthly salary is the minimum monthly salary for the preceding year.

SECTION 75.05. Subsection (a), Section 41.002, Education Code, is amended to read as follows:

(a) A school district may not have a wealth per student that exceeds:

(1) the wealth per student that generates the amount of maintenance and operations tax revenue per weighted student available to a district with maintenance and operations tax revenue per cent of tax effort equal to the maximum amount provided per cent under Section 42.101(a) or (b) ~~[42.101]~~, for the district's maintenance and operations tax effort equal to or less than the rate equal to the product of the state compression percentage, as determined under Section 42.2516, multiplied by the maintenance and operations tax rate adopted by the district for the 2005 tax year;

(2) the wealth per student that generates the amount of maintenance and operations tax revenue per weighted student available to the Austin Independent School District, as determined by the commissioner in cooperation with the Legislative Budget Board, for the first six cents by which the district's maintenance and operations tax rate exceeds the rate equal to the product of the state compression percentage, as determined under Section 42.2516, multiplied by the maintenance and operations tax rate adopted by the district for the 2005 tax year, subject to Section 41.093(b-1); or

(3) \$319,500, for the district's maintenance and operations tax effort that exceeds the first six cents by which the district's maintenance and operations tax effort exceeds the rate equal to the product of the state compression percentage, as determined under Section 42.2516, multiplied by the maintenance and operations tax rate adopted by the district for the 2005 tax year.

SECTION 75.06. The heading to Section 42.101, Education Code, is amended to read as follows:

Sec. 42.101. BASIC AND REGULAR PROGRAM ALLOTMENTS ~~[ALLOTMENT]~~.

SECTION 75.07. Section 42.101, Education Code, is amended by amending Subsections (a) and (b) and adding Subsections (c) and (c-1) to read as follows:

(a) The basic ~~[For each student in average daily attendance, not including the time students spend each day in special education programs in an instructional arrangement other than mainstream or career and technology education programs, for which an additional allotment is made under Subchapter C, a district is entitled to an]~~ allotment is an amount equal to the lesser of \$4,765 or the amount that results from the following formula:

$$A = \$4,765 \times (DCR/MCR)$$

where:

"A" is the resulting amount for ~~[allotment to which]~~ a district ~~[is entitled]~~;

"DCR" is the district's compressed tax rate, which is the product of the state compression percentage, as determined under Section 42.2516, multiplied by the maintenance and operations tax rate adopted by the district for the 2005 tax year; and

"MCR" is the state maximum compressed tax rate, which is the product of the state compression percentage, as determined under Section 42.2516, multiplied by \$1.50.

(b) A greater amount for any school year for the basic allotment under Subsection (a) may be provided by appropriation.

(c) A school district is entitled to a regular program allotment equal to the amount that results from the following formula:

$$\text{RPA} = \text{ADA} \times \text{AA} \times \text{RPAF}$$

where:

"RPA" is the regular program allotment to which the district is entitled;

"ADA" is the number of students in average daily attendance in a district, not including the time students spend each day in special education programs in an instructional arrangement other than mainstream or career and technology education programs, for which an additional allotment is made under Subchapter C;

"AA" is the district's adjusted basic allotment, as determined under Section 42.102 and, if applicable, as further adjusted under Section 42.103; and

"RPAF" is the regular program adjustment factor, which is an amount established by appropriation.

(c-1) Notwithstanding Subsection (c), the regular program adjustment factor ("RPAF") is 0.9239 for the 2011-2012 school year and 0.98 for the 2012-2013 school year. This subsection expires September 1, 2013.

SECTION 75.08. Section 42.105, Education Code, is amended to read as follows:

Sec. 42.105. SPARSITY ADJUSTMENT. Notwithstanding Sections 42.101, 42.102, and 42.103, a school district that has fewer than 130 students in average daily attendance shall be provided a regular program ~~[an adjusted basic]~~ allotment on the basis of 130 students in average daily attendance if it offers a kindergarten through grade 12 program and has preceding or current year's average daily attendance of at least 90 students or is 30 miles or more by bus route from the nearest high school district. A district offering a kindergarten through grade 8 program whose preceding or current year's average daily attendance was at least 50 students or which is 30 miles or more by bus route from the nearest high school district shall be provided a regular program ~~[an adjusted basic]~~ allotment on the basis of 75 students in average daily attendance. An average daily attendance of 60 students shall be the basis of providing the regular program ~~[adjusted basic]~~ allotment if a district offers a kindergarten through grade 6 program and has preceding or current year's average daily attendance of at least 40 students or is 30 miles or more by bus route from the nearest high school district.

SECTION 75.09. Subsection (a), Section 42.251, Education Code, is amended to read as follows:

(a) The sum of the regular program ~~[basic]~~ allotment under Subchapter B and the special allotments under Subchapter C, computed in accordance with this chapter, constitute the tier one allotments. The sum of the tier one allotments and the guaranteed yield allotments under Subchapter F, computed in accordance with this chapter, constitute the total cost of the Foundation School Program.

SECTION 75.10. Subchapter E, Chapter 42, Education Code, is amended by adding Section 42.2514 to read as follows:

Sec. 42.2514. ADDITIONAL STATE AID FOR TAX INCREMENT FINANCING PAYMENTS. For each school year, a school district, including a school district that is otherwise ineligible for state aid under this chapter, is entitled to state aid in an amount equal to the amount the district is required to pay into the tax increment fund for a reinvestment zone under Section 311.013(n), Tax Code.

SECTION 75.11. Effective September 1, 2011, Section 42.2516, Education Code, is amended by amending Subsections (a), (b), (d), and (f-2) and adding Subsection (i) to read as follows:

(a) In this title ~~[section]~~, "state compression percentage" means the percentage~~[-, as determined by the commissioner,]~~ of a school district's adopted maintenance and operations tax rate for the 2005 tax year that serves as the basis for state funding ~~[for tax rate reduction under this section]~~. If the state compression percentage is not established by appropriation for a school year, the ~~[The]~~ commissioner shall determine the state compression percentage for each school year based on the percentage by which a district is able to reduce the district's maintenance and operations tax rate for that year, as compared to the district's adopted maintenance and operations tax rate for the 2005 tax year, as a result of state funds appropriated for distribution under this section for that year from the property tax relief fund established under Section 403.109, Government Code, or from another funding source available for school district property tax relief.

(b) Notwithstanding any other provision of this title, a school district that imposes a maintenance and operations tax at a rate at least equal to the product of the state compression percentage multiplied by the maintenance and operations tax rate adopted by the district for the 2005 tax year is entitled to at least the amount of state revenue necessary to provide the district with the sum of:

(1) the percentage specified by Subsection (i) of the amount, as calculated under Subsection (e), ~~[the amount]~~ of state and local revenue per student in weighted average daily attendance for maintenance and operations that the district would have received during the 2009-2010 school year under Chapter 41 and this chapter, as those chapters existed on January 1, 2009, at a maintenance and operations tax rate equal to the product of the state compression percentage for that year multiplied by the maintenance and operations tax rate adopted by the district for the 2005 tax year;

(2) the percentage specified by Subsection (i) of an amount equal to the product of \$120 multiplied by the number of students in weighted average daily attendance in the district; and

(3) ~~[an amount equal to the amount the district is required to pay into the tax increment fund for a reinvestment zone under Section 311.013(n), Tax Code, in the current tax year; and~~

~~[(4)]~~ any amount to which the district is entitled under Section 42.106.

(d) In determining the amount to which a district is entitled under Subsection (b)(1), the commissioner shall:

(1) include the percentage specified by Subsection (i) of any amounts received by the district during the 2008-2009 school year under Rider 86, page III-23, Chapter 1428 (H.B. 1), Acts of the 80th Legislature, Regular Session, 2007 (the General Appropriations Act); and

(2) for a school district that paid tuition under Section 25.039 during the 2008-2009 school year, reduce the amount to which the district is entitled by the amount of tuition paid during that school year.

(f-2) The rules adopted by the commissioner under Subsection (f-1) must:

(1) require the commissioner to determine, as if this section did not exist, the effect under Chapter 41 and this chapter of a school district's action described by Subsection (f-1)(1), (2), (3), or (4) on the total state revenue to which the district would be entitled or the cost to the district of purchasing sufficient attendance credits to reduce the district's wealth per student to the equalized wealth level; and

(2) require an increase or reduction in the amount of state revenue to which a school district is entitled under Subsection (b)(1) ~~[(b)]~~ that is substantially equivalent to any change in total state revenue or the cost of purchasing attendance credits that would apply to the district if this section did not exist.

(i) The percentage to be applied for purposes of Subsections (b)(1) and (2) and Subsection (d)(1) is 100.00 percent for the 2011-2012 school year and 92.35 percent for the 2012-2013 school year. For the 2013-2014 school year and each subsequent school year, the legislature by appropriation shall establish the percentage reduction to be applied.

SECTION 75.12. Effective September 1, 2017, the heading to Section 42.2516, Education Code, is amended to read as follows:

Sec. 42.2516. STATE COMPRESSION PERCENTAGE ~~[ADDITIONAL STATE AID FOR TAX REDUCTION]~~.

SECTION 75.13. Effective September 1, 2017, Subsection (a), Section 42.2516, Education Code, is amended to read as follows:

(a) In this title ~~[section]~~, "state compression percentage" means the percentage~~;~~ ~~as determined by the commissioner,~~ of a school district's adopted maintenance and operations tax rate for the 2005 tax year that serves as the basis for state funding ~~[for tax rate reduction under this section]~~. If the state compression percentage is not established by appropriation for a school year, the ~~[The]~~ commissioner shall determine the state compression percentage for each school year based on the percentage by which a district is able to reduce the district's maintenance and operations tax rate for that year, as compared to the district's adopted maintenance and operations tax rate for the 2005 tax year, as a result of state funds appropriated for ~~[distribution under this section for]~~ that year from the property tax relief fund established under Section 403.109, Government Code, or from another funding source available for school district property tax relief.

SECTION 75.14. Effective September 1, 2011, Subsection (a), Section 42.25161, Education Code, is amended to read as follows:

(a) The commissioner shall provide South Texas Independent School District with the amount of state aid necessary to ensure that the district receives an amount of state and local revenue per student in weighted average daily attendance that is at least the percentage specified by Section 42.2516(i) of \$120 greater than the amount the district would have received per student in weighted average daily attendance during the 2009-2010 school year under this chapter, as it existed on January 1, 2009, at a maintenance and operations tax rate equal to the product of the state compression percentage multiplied by the maintenance and operations tax rate adopted by the district for the 2005 tax year, provided that the district imposes a maintenance and operations tax at that rate.

SECTION 75.15. Subchapter E, Chapter 42, Education Code, is amended by adding Section 42.2525 to read as follows:

Sec. 42.2525. ADJUSTMENTS FOR CERTAIN DEPARTMENT OF DEFENSE DISTRICTS. The commissioner is granted the authority to ensure that Department of Defense school districts do not receive more than an eight percent reduction should the federal government reduce appropriations to those schools.

SECTION 75.16. Effective September 1, 2011, Subsections (h) and (i), Section 42.253, Education Code, are amended to read as follows:

(h) If the amount appropriated for the Foundation School Program for the second year of a state fiscal biennium is less than the amount to which school districts are entitled for that year, the commissioner shall certify the amount of the difference to the Legislative Budget Board not later than January 1 of the second year of the state fiscal biennium. The Legislative Budget Board shall propose to the legislature that the certified amount be transferred to the foundation school fund from the economic stabilization fund and appropriated for the purpose of increases in allocations under this subsection. If the legislature fails during the regular session to enact the proposed transfer and appropriation and there are not funds available under Subsection (j), the commissioner shall adjust [reduce] the total amounts due to each school district under this chapter and the total amounts necessary for each school district to comply with the requirements of Chapter 41 [amount of state funds allocated to each district] by an amount determined by applying to each district, including a district receiving funds under Section 42.2516, the same percentage adjustment so that the total amount of the adjustment to all districts [a method under which the application of the same number of cents of increase in tax rate in all districts applied to the taxable value of property of each district, as determined under Subchapter M, Chapter 403, Government Code,] results in an amount [a total levy] equal to the total adjustment necessary. A school district is not entitled to reimbursement in a subsequent fiscal year of the amount resulting from the adjustment authorized by this subsection [reduction. The following fiscal year, a district's entitlement under this section is increased by an amount equal to the reduction made under this subsection].

(i) Not later than March 1 each year, the commissioner shall determine the actual amount of state funds to which each school district is entitled under the allocation formulas in this chapter for the current school year, as adjusted in accordance with Subsection (h), if applicable, and shall compare that amount with the amount of the warrants issued to each district for that year. If the amount of the warrants differs from

the amount to which a district is entitled because of variations in the district's tax rate, student enrollment, or taxable value of property, the commissioner shall adjust the district's entitlement for the next fiscal year accordingly.

SECTION 75.17. Effective September 1, 2017, Subsection (h), Section 42.253, Education Code, is amended to read as follows:

(h) If the amount appropriated for the Foundation School Program for the second year of a state fiscal biennium is less than the amount to which school districts are entitled for that year, the commissioner shall certify the amount of the difference to the Legislative Budget Board not later than January 1 of the second year of the state fiscal biennium. The Legislative Budget Board shall propose to the legislature that the certified amount be transferred to the foundation school fund from the economic stabilization fund and appropriated for the purpose of increases in allocations under this subsection. If the legislature fails during the regular session to enact the proposed transfer and appropriation and there are not funds available under Subsection (j), the commissioner shall adjust ~~reduce~~ the total amounts due to each school district under this chapter and the total amounts necessary for each school district to comply with the requirements of Chapter 41 ~~[amount of state funds allocated to each district]~~ by an amount determined by applying to each district the same percentage adjustment so that the total amount of the adjustment to all districts ~~[a method under which the application of the same number of cents of increase in tax rate in all districts applied to the taxable value of property of each district, as determined under Subchapter M, Chapter 403, Government Code,]~~ results in an amount ~~[a total levy]~~ equal to the total adjustment necessary. A school district is not entitled to reimbursement in a subsequent fiscal year of the amount resulting from the adjustment authorized by this subsection ~~[reduction. The following fiscal year, a district's entitlement under this section is increased by an amount equal to the reduction made under this subsection].~~

SECTION 75.18. Section 42.258, Education Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a) If a school district has received an overallocation of state funds, the agency shall, by withholding from subsequent allocations of state funds for the current or subsequent school year or by requesting and obtaining a refund, recover from the district an amount equal to the overallocation.

(a-1) Notwithstanding Subsection (a), the agency may recover an overallocation of state funds over a period not to exceed the subsequent five school years if the commissioner determines that the overallocation was the result of exceptional circumstances reasonably caused by statutory changes to Chapter 41 or 46 or this chapter and related reporting requirements.

SECTION 75.19. Subsection (b), Section 42.260, Education Code, is amended to read as follows:

(b) For each year, the commissioner shall certify to each school district or participating charter school the amount of[-

~~(+)]~~ additional funds to which the district or school is entitled due to the increase made by H.B. No. 3343, Acts of the 77th Legislature, Regular Session, 2001, to:

(1) ~~(A)~~ the equalized wealth level under Section 41.002; or



(2) ~~[(B)]~~ the guaranteed level of state and local funds per weighted student per cent of tax effort under Section 42.302~~[-or~~

~~[(2) additional state aid to which the district or school is entitled under Section 42.2513].~~

SECTION 75.20. Section 44.004, Education Code, is amended by adding Subsection (g-1) to read as follows:

(g-1) If the rate calculated under Subsection (c)(5)(A)(ii)(b) decreases after the publication of the notice required by this section, the president is not required to publish another notice or call another meeting to discuss and adopt the budget and the proposed lower tax rate.

SECTION 75.21. Subsection (a), Section 26.05, Tax Code, is amended to read as follows:

(a) The governing body of each taxing unit, before the later of September 30 or the 60th day after the date the certified appraisal roll is received by the taxing unit, shall adopt a tax rate for the current tax year and shall notify the assessor for the unit of the rate adopted. The tax rate consists of two components, each of which must be approved separately. The components are:

(1) for a taxing unit other than a school district, the rate that, if applied to the total taxable value, will impose the total amount published under Section 26.04(e)(3)(C), less any amount of additional sales and use tax revenue that will be used to pay debt service, or, for a school district, the rate calculated ~~[published]~~ under Section 44.004(c)(5)(A)(ii)(b), Education Code; and

(2) the rate that, if applied to the total taxable value, will impose the amount of taxes needed to fund maintenance and operation expenditures of the unit for the next year.

SECTION 75.22. Effective September 1, 2017, Subsection (i), Section 26.08, Tax Code, is amended to read as follows:

(i) For purposes of this section, the effective maintenance and operations tax rate of a school district is the tax rate that, applied to the current total value for the district, would impose taxes in an amount that, when added to state funds that would be distributed to the district under Chapter 42, Education Code, for the school year beginning in the current tax year using that tax rate, ~~[including state funds that will be distributed to the district in that school year under Section 42.2516, Education Code,]~~ would provide the same amount of state funds distributed under Chapter 42, Education Code, ~~[including state funds distributed under Section 42.2516, Education Code,]~~ and maintenance and operations taxes of the district per student in weighted average daily attendance for that school year that would have been available to the district in the preceding year if the funding elements for Chapters 41 and 42, Education Code, for the current year had been in effect for the preceding year.

SECTION 75.23. Subsection (n), Section 311.013, Tax Code, is amended to read as follows:

(n) This subsection applies only to a school district whose taxable value computed under Section 403.302(d), Government Code, is reduced in accordance with Subdivision (4) of that subsection. In addition to the amount otherwise required to be paid into the tax increment fund, the district shall pay into the fund an amount equal to the amount by which the amount of taxes the district would have been

required to pay into the fund in the current year if the district levied taxes at the rate the district levied in 2005 exceeds the amount the district is otherwise required to pay into the fund in the year of the reduction. This additional amount may not exceed the amount the school district receives in state aid for the current tax year under Section 42.2514, Education Code. The school district shall pay the additional amount after the district receives the state aid to which the district is entitled for the current tax year under Section 42.2514, Education Code.

SECTION 75.24. Effective September 1, 2011, the following provisions of the Education Code are repealed:

- (1) Subsections (c-2), (c-3), and (e), Section 21.402;
- (2) Section 42.008; and
- (3) Subsections (a-1) and (a-2), Section 42.101.

SECTION 75.25. (a) Effective September 1, 2017, the following provisions of the Education Code are repealed:

- (1) Section 41.0041;
- (2) Subsections (b), (b-1), (b-2), (c), (d), (e), (f), (f-1), (f-2), (f-3), and (i), Section 42.2516;
- (3) Section 42.25161;
- (4) Subsection (c), Section 42.2523;
- (5) Subsection (g), Section 42.2524;
- (6) Subsection (c-1), Section 42.253; and
- (7) Section 42.261.

(b) Effective September 1, 2017, Subsections (i-1) and (j), Section 26.08, Tax Code, are repealed.

SECTION 75.26. (a) The speaker of the house of representatives and the lieutenant governor shall establish a joint legislative interim committee to conduct a comprehensive study of the public school finance system in this state.

(b) Not later than January 15, 2013, the committee shall make recommendations to the 83rd Legislature regarding changes to the public school finance system.

(c) The committee is dissolved September 1, 2013.

SECTION 75.27. It is the intent of the legislature, between fiscal year 2014 and fiscal year 2018, to continue to reduce the amount of Additional State Aid For Tax Reduction (ASATR) to which a school district is entitled under Section 42.2516, Education Code, and to increase the basic allotment to which a school district is entitled under Section 42.101, Education Code.

SECTION 75.28. Except as otherwise provided by this Act, the changes in law made by this Act to Chapter 42, Education Code, apply beginning with the 2011-2012 school year.

SECTION 75.29. The change in law made by Subsection (g-1), Section 44.004, Education Code, as added by this Act, applies beginning with adoption of a tax rate for the 2011 tax year.

#### ARTICLE 76. MIXED BEVERAGE TAX REIMBURSEMENTS

Section 76.01. Effective September 1, 2013, Section 183.051 (b), Tax Code, is amended to read as follows:

(b) The comptroller shall issue to each county described in Subsection (a) a warrant drawn on the general revenue fund in an amount appropriated by the legislature that may not be less ~~[greater]~~ than 10.7143 percent of receipts from permittees within the county during the quarter and shall issue to each incorporated municipality described in Subsection (a) a warrant drawn on that fund in an amount appropriated by the legislature that may not be less ~~[greater]~~ than 10.7143 percent of receipts from permittees within the incorporated municipality during the quarter.

#### ARTICLE 77. EFFECTIVE DATE

SECTION 77.01. Except as otherwise provided by this Act, this Act takes effect September 1, 2011.

The Conference Committee Report on **SB 1811** was filed with the Secretary of the Senate.

#### CONFERENCE COMMITTEE REPORT ON HOUSE BILL 3459

Senator Whitmire submitted the following Conference Committee Report:

Austin, Texas  
May 28, 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 3459** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

WHITMIRE  
HINOJOSA  
OGDEN

On the part of the Senate

EILAND  
MADDEN  
PERRY

On the part of the House

The Conference Committee Report on **HB 3459** was filed with the Secretary of the Senate.

#### CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2365

Senator Shapiro submitted the following Conference Committee Report:

Austin, Texas  
May 28, 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 2365** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

SHAPIRO  
BIRDWELL  
CARONA  
HUFFMAN  
NELSON

On the part of the Senate

EISSLER  
HUBERTY  
HANCOCK  
HOCHBERG  
STRAMA

On the part of the House

The Conference Committee Report on **HB 2365** was filed with the Secretary of the Senate.

### **CONFERENCE COMMITTEE REPORT ON HOUSE BILL 6**

Senator Shapiro submitted the following Conference Committee Report:

Austin, Texas  
May 28, 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 6** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

SHAPIRO  
CARONA  
DUNCAN  
NELSON

On the part of the Senate

EISSLER  
BRANCH  
HUBERTY

On the part of the House

The Conference Committee Report on **HB 6** was filed with the Secretary of the Senate.

### **CONFERENCE COMMITTEE REPORT ON SENATE BILL 40**

Senator Zaffirini submitted the following Conference Committee Report:

Austin, Texas  
May 27, 2011

Honorable David Dewhurst  
President of the Senate

Honorable Joe Straus  
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 40** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

ZAFFIRINI  
CARONA  
DUNCAN  
ELTIFE  
WATSON

On the part of the Senate

CALLEGARI  
FRULLO  
MENENDEZ  
S. MILLER  
ORR

On the part of the House

A BILL TO BE ENTITLED  
AN ACT

relating to the composition and functions of the Texas Guaranteed Student Loan Corporation.

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

SECTION 1. Sections 57.01 and 57.11, Education Code, are amended to read as follows:

Sec. 57.01. DECLARATION OF POLICY. The legislature, giving due consideration to the historical and continuing interest of the people of the State of Texas in encouraging deserving and qualified persons to realize their aspirations for education beyond high school, finds and declares that postsecondary education for qualified Texans ~~[those]~~ who desire to pursue such ~~[an]~~ education ~~[and are properly qualified therefor]~~ is important to the welfare and security of this state and the nation and, consequently, is an important public purpose. The legislature finds and declares that the state can achieve its full economic and social potential only if every individual has the opportunity to contribute to the full extent of the individual's ~~[his or her]~~ capabilities and only when financial barriers to the individual's ~~[his or her]~~ economic, social, and educational goals are removed. It is, therefore, the purpose of this chapter to establish the Texas Guaranteed Student Loan Corporation to:

(1) administer a guaranteed student loan program, student financial aid programs, and other student loan programs to assist qualified ~~[Texas]~~ students in this state and across the nation in receiving a postsecondary education in this state or elsewhere in the nation; ~~[and]~~

(2) assist institutions of higher education by providing ~~[provide]~~ necessary and desirable services related to financial aid and student ~~[the]~~ loan programs; and

(3) participate in revenue-generating activities related to higher education student financial aid and student loan programs to the extent the activities support the corporation's primary purposes under Subdivisions (1) and (2) ~~[program, including cooperative awareness efforts with appropriate educational and civic associations]~~

~~designed to disseminate postsecondary education awareness information, including information regarding student financial aid and the Federal Family Education Loan Program, and other relevant topics including the prevention of student loan default].~~

Sec. 57.11. TEXAS GUARANTEED STUDENT LOAN CORPORATION.

(a) The Texas Guaranteed Student Loan Corporation is created to administer the programs authorized by this chapter.

(b) The corporation is a public nonprofit corporation and, except as otherwise provided in this chapter, has all the powers and duties incident to a nonprofit corporation under Chapter 22, Business Organizations Code ~~[the Texas Non-Profit Corporation Act (Article 1396 1.01 et seq., Vernon's Texas Civil Statutes)].~~

(c) ~~(b)~~ Except as otherwise provided by law, all expenses of the corporation shall be paid from revenue ~~[income]~~ of the corporation.

(d) ~~(c)~~ The corporation is subject to Chapters ~~[Chapter]~~ 551 and 552, Government Code.

(e) ~~(d)~~ Student loan borrower information collected, assembled, or maintained by the corporation is confidential and is not subject to disclosure under Chapter 552, Government Code.

SECTION 2. Subsection (a), Section 57.12, Education Code, is amended to read as follows:

(a) The Texas Guaranteed Student Loan Corporation is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the corporation is abolished and this chapter expires September 1, 2013 ~~[2017]~~.

SECTION 3. Subsection (b), Section 57.13, Education Code, is amended to read as follows:

(b) The governor, with the advice and consent of the senate, shall appoint 10 members to the board as follows:

(1) five members who must have knowledge of or experience in finance, including management of funds or business operations;

(2) one member who must be a student enrolled at a postsecondary educational institution for the number of credit hours required by the institution to be classified as a full-time student of the institution; and

(3) four members who must be members of the faculty or administration of a [an eligible] postsecondary educational institution that is an eligible institution for purposes of the Higher Education Act of 1965, as amended ~~[as defined by Section 57.46]~~.

SECTION 4. Subsection (b), Section 57.1311, Education Code, is amended to read as follows:

(b) The training program must provide the person with information regarding:

(1) the provisions of this chapter, including the policies developed under Section 57.19(i) regarding the separation of policymaking and management responsibilities, and the corporation's programs, functions, rules, and budget;

(2) the results of the most recent formal audit of the corporation;

(3) the requirements of laws relating to open meetings, public information, and conflicts of interest; and

(4) any applicable ethics policies adopted by the corporation or the Texas Ethics Commission.

SECTION 5. Section 57.17, Education Code, is amended to read as follows:

Sec. 57.17. OFFICERS. The governor shall designate the chairman from among the board's membership. The board shall elect from among its members a [chairman,] vice-chairman[;] and other officers that the board considers necessary. The chairman and vice-chairman serve for a term of one year and may be redesignated or reelected, as applicable.

SECTION 6. Subchapter B, Chapter 57, Education Code, is amended by adding Section 57.181 to read as follows:

Sec. 57.181. MEETING BY TELEPHONE CONFERENCE CALL; QUORUM PRESENT AT ONE LOCATION REQUIRED. (a) Notwithstanding Chapter 551, Government Code, the board or a board committee may hold a meeting by telephone conference call only if a quorum of the board or board committee, as applicable, is physically present at one location of the meeting.

(b) A telephone conference call meeting is subject to the notice requirements applicable to other meetings, except that the meeting notice must also specify:

(1) the location of the meeting where a quorum of the board or board committee, as applicable, will be physically present; and

(2) the intent to have a quorum present at that location.

(c) The meeting location where a quorum is physically present must be open to the public during the open portions of a telephone conference call meeting. The open portions of the meeting must be audible to the public at the location where the quorum is present and be tape-recorded at that location. The tape recording must be made available to the public.

(d) The meeting location where a quorum is physically present must provide two-way communication during the entire telephone conference call meeting, and the identification of each party to the telephone conference call must be clearly stated before the party speaks.

(e) A member of the board who participates in a board or board committee meeting by telephone conference call but is not physically present at the meeting location where a quorum is physically present is not considered to be absent from the meeting for any purpose. The vote of a member of the board who participates in a board or board committee meeting by telephone conference call is counted for the purpose of determining the number of votes cast on a motion or other proposition before the board or board committee.

(f) A member of the board may participate remotely by telephone conference call instead of by being physically present at the location of a board meeting for not more than one board meeting per calendar year. A board member who participates remotely in any portion of a board meeting by telephone conference call is considered to have participated in the entire board meeting by telephone conference call. For purposes of this subsection, remote participation by telephone conference call in a meeting of a board committee does not count as remote participation by telephone conference call in a board meeting regardless of whether:

(1) a quorum of the full board attends the board committee meeting; or

(2) notice of the board committee meeting is also posted as notice of a board meeting.

(g) A person who is not a member of the board may not speak at the board or board committee meeting from a remote location by telephone conference call, except as provided by Section 551.129, Government Code.

(h) The authority provided by this section is in addition to the authority provided by Section 551.125, Government Code.

SECTION 7. Subsection (d), Section 57.19, Education Code, is amended to read as follows:

(d) The president or the president's designee shall develop a career ladder program for the corporation. The program shall require internal corporate ~~[an intra-agency]~~ postings of all nonentry level positions concurrently with any public posting.

SECTION 8. Subsection (a), Section 57.20, Education Code, is amended to read as follows:

(a) The corporation shall appoint an ombudsman ~~[maintain a system]~~ to promptly and efficiently act on complaints filed with the corporation. The ombudsman ~~[corporation]~~ shall maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition.

SECTION 9. Subsections (a) and (c), Section 57.21, Education Code, are amended to read as follows:

(a) The corporation shall take an active role in coordinating, facilitating, promoting, and providing assistance and support to:

(1) programs that focus on and disseminate information regarding ~~[designed to make available to the residents of this state]~~ [concerning] postsecondary education awareness and the availability of student financial aid~~[, including the Federal Family Education Loan Program,]~~ and that ~~[to]~~ assist families in obtaining [needed] postsecondary education financing;

(2) programs designed to assist students, families, borrowers, and schools in preventing ~~[prevent]~~ student loan default throughout the life of the loan, provided that such programs are required as a part of a guaranty agency's obligation under the Federal Family Education Loan Program established by the Higher Education Act of 1965 (20 U.S.C. Section 1071 et seq.), or are funded by statutory or regulatory mandate, compensation, grant, contract, award, or other appropriate means; and

(3) programs designed to increase student retention and graduation rates in postsecondary education.

(c) To the extent practicable, each ~~[Each]~~ state agency that conducts higher education and financial aid outreach activities shall enter into a memorandum of understanding with the corporation. The memorandum of understanding may ~~[must]~~ outline how the corporation and the state agency will coordinate outreach activities to maximize resources and avoid duplication.

SECTION 10. The heading to Section 57.22, Education Code, is amended to read as follows:

Sec. 57.22. APPLICATION OF BUSINESS ORGANIZATIONS CODE ~~[THE TEXAS NON PROFIT CORPORATION ACT].~~



SECTION 11. Subsection (a), Section 57.22, Education Code, is amended to read as follows:

(a) The corporation is subject to Chapter 22, Business Organizations Code ~~[the Texas Non-Profit Corporation Act (Article 1396 1.01 et seq., Vernon's Texas Civil Statutes)]~~, except that:

- (1) the corporation may not make donations for the public welfare or for charitable or scientific purposes or in aid of war activities;
- (2) the corporation is not required to file articles of incorporation;
- (3) the corporation is not subject to voluntary or involuntary dissolution;
- (4) the corporation may not be placed in receivership; and
- (5) the corporation is not required to make reports to the secretary of state under Section 22.357, Business Organizations Code ~~[Article 9.01 of that Act]~~.

SECTION 12. Section 57.24, Education Code, is amended to read as follows:

Sec. 57.24. AUTHORITY TO PARTICIPATE IN OTHER REVENUE-GENERATING ACTIVITIES; LIMITATIONS. (a) The corporation may participate in a revenue-generating activity ~~[that is consistent with the corporation's purposes]~~ if the board determines that ~~[the]~~ revenue from the activity:

- (1) is sufficient to cover the costs of the activity; and
- (2) will enable the corporation to support educational purposes under Section 57.211 ~~[may contribute to a reduction in the insurance premium paid by students under Section 57.43 of this code]~~.

(b) If, under Subsection (a) ~~[of this section]~~, the board authorizes the corporation to perform additional services, the corporation may not require postsecondary educational institutions or students to use those services unless required by state or federal law.

SECTION 13. Subsection (a), Section 57.41, Education Code, is amended to read as follows:

(a) The corporation shall serve as the designated guarantee agency under the Federal Family Education Loan Program in accordance with ~~[loans made to eligible borrowers by eligible lenders as provided by the federal guaranteed student loan program under]~~ the Higher Education Act of 1965, 20 U.S.C. Section ~~[Sec.]~~ 1001 et seq., as amended, regulations adopted under that Act, and other applicable federal law.

SECTION 14. Section 57.461, Education Code, is amended to read as follows:

Sec. 57.461. ~~[POSTSECONDARY EDUCATIONAL INSTITUTIONS AND LENDER]~~ ADVISORY COMMITTEES. ~~[(a)]~~ The corporation shall establish advisory committees as the board considers appropriate~~[-~~

~~[(1) an advisory committee that is composed of 15 members who represent the postsecondary educational institutions that participate in the corporation's guaranteed student loan program; and~~

~~[(2) an advisory committee that is composed of 12 members including:  
    (A) one member who represents the Texas Higher Education Coordinating Board; and~~

~~(B) 11 members who represent lenders that participate in the corporation's guaranteed student loan program].~~

~~[(b) The board shall appoint advisory committee members on the recommendation of the president.~~

~~[(c) The board may establish other advisory committees as the board considers necessary.~~

~~[(d) The board shall:~~

~~[(1) specify each advisory committee's purpose and duties; and~~

~~[(2) require each committee to report to the board in a manner specified by the board relating to each committee's activities and work results.]~~

SECTION 15. Subsections (a), (b), and (d), Section 57.47, Education Code, are amended to read as follows:

(a) If a student borrower defaults on a loan and the corporation is required to honor the guarantee, the corporation may ~~[or the Texas Higher Education Coordinating Board shall]~~ bring suit against the defaulting party in accordance with the requirements of the Higher Education Act of 1965, 20 U.S.C. Section ~~[See.]~~ 1001 et seq., as amended.

(b) A suit against a defaulting party under this section may be brought in the county in which the defaulting person resides, in which the lender is located, or in Travis or Williamson County.

(d) Notwithstanding any other law, if the corporation ~~[or the Texas Higher Education Coordinating Board]~~ brings suit against a defaulting party under this section, the corporation ~~[or the coordinating board, as appropriate,]~~ shall pay 50 percent of the filing fee or other costs of court taxed and collected in advance that are in effect on the date on which the suit is filed. If the defaulting borrower prevails in the suit filed under this section, the corporation ~~[or the coordinating board, as appropriate,]~~ shall pay the remaining 50 percent of the statutory filing fee on the date of the final disposition of the suit. If the corporation ~~[or coordinating board]~~ prevails in the suit:

(1) the judgment shall find the defaulting borrower liable to the corporation ~~[or the coordinating board, as appropriate,]~~ for the amount of the filing fee; and

(2) the corporation ~~[or coordinating board, as appropriate,]~~ shall pay the remaining 50 percent of the statutory filing fee not later than one week after the date on which the defaulting borrower pays to the corporation ~~[or coordinating board, as appropriate,]~~ the full amount, including the filing fee, for which the borrower is liable to the corporation ~~[or coordinating board]~~.

SECTION 16. Subsections (a), (b), and (c), Section 57.481, Education Code, are amended to read as follows:

(a) ~~[In this section, "loan default rate" means the rate at which student borrowers default on loans guaranteed by the corporation as determined by the corporation in compliance with federal guidelines.~~

~~[(b)]~~ The corporation shall take a comprehensive and [an] active role in coordinating, facilitating, and providing technical assistance on guaranteed student loan default prevention and reduction initiatives and programs that promote responsible borrowing, financial literacy, debt management, research, and informed policymaking [in the state] and shall work with the appropriate state agencies and other entities inside and outside this state, including eligible postsecondary educational institutions, eligible lenders, servicers, secondary markets, the Texas

Higher Education Coordinating Board, the Texas [Central] Education Agency, [and] state professional and occupational licensing agencies, and the United States Department of Education.

(b) [(e)] The corporation shall maintain a system of communication among the appropriate state agencies and entities to address student [reduce] loan default prevention issues [claims].

SECTION 17. Section 57.49, Education Code, is amended to read as follows:

Sec. 57.49. COOPERATION OF STATE AGENCIES AND SUBDIVISIONS. Each agency and political subdivision of the state shall cooperate with the corporation in providing information to the agency's or political subdivision's clients concerning student financial aid, including information about delinquency, default prevention, and life-of-loan issues. Each agency and political subdivision shall provide information to the corporation on request to assist the corporation in curing delinquent loans, [and] collecting defaulted loans, and developing information and reports concerning responsible borrowing.

SECTION 18. Sections 57.50 and 57.71, Education Code, are amended to read as follows:

Sec. 57.50. NONDISCRIMINATION. Neither the corporation nor an eligible lender may discriminate against an eligible student in making a loan or loan guarantee on the basis of race, age, religion, or sex or any other basis prohibited by applicable law.

Sec. 57.71. FEDERAL [RESERVE] AND OPERATING FUNDS. The corporation shall maintain a federal fund [establish reserve] and operating fund [funds] in accordance with Sections [Section] 422, 422A, and 422B of the Higher Education Act of 1965 (20 U.S.C. Sections [Section] 1072, 1072a, and 1072b), as amended.

SECTION 19. Subchapter D, Chapter 57, Education Code, is amended by adding Section 57.762 to read as follows:

Sec. 57.762. REVIEW BY STATE AUDITOR. In addition to any other audit required by law, the state auditor shall periodically review the corporation's activities in a manner consistent with the state auditor's audit plan under Chapter 321, Government Code. The corporation shall reimburse the state auditor for all reasonable costs incurred by the state auditor in conducting a review under this section.

SECTION 20. Section 57.77, Education Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) The corporation shall include in its annual report under this section a description of the corporation's participation in revenue-generating activities under Section 57.24. The description must:

(1) include the amounts of revenue from and expenses associated with the activities;

(2) demonstrate how that revenue is used for the support of educational purposes under Section 57.211; and

(3) certify:

(A) the reasonable and necessary amount of operating funds under Section 57.71 required to fulfill the corporation's responsibilities under Section 57.41(a); and

(B) the amount of excess operating funds under Section 57.71.

SECTION 21. Section 57.78, Education Code, is amended to read as follows:

Sec. 57.78. INVESTMENTS. The federal fund maintained by the corporation under Section 57.71 shall ~~[All money of the corporation may]~~ be invested in accordance with Section 422A of the Higher Education Act of 1965 (20 U.S.C. Section 1072a), as amended. The operating fund maintained by the corporation under Section 57.71 may be invested only in accordance with Chapter 2256, Government Code. Authority to invest the operating fund in accordance with Chapter 2256, Government Code, complies with Section 422B of the Higher Education Act of 1965 (20 U.S.C. Section 1072b), as amended.

SECTION 22. The following provisions of the Education Code are repealed:

- (1) Subsections (c), (g), and (h), Section 57.19;
- (2) Subsections (c) and (d), Section 57.41;
- (3) Section 57.42;
- (4) Section 57.43;
- (5) Section 57.44;
- (6) Section 57.45;
- (7) Section 57.46; and
- (8) Subsections (d), (e), (f), (g), and (h), Section 57.481.

SECTION 23. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2011.

The Conference Committee Report on **SB 40** was filed with the Secretary of the Senate on Saturday, May 28, 2011.

### **CONFERENCE COMMITTEE REPORT ON HOUSE BILL 335**

Senator Birdwell submitted the following Conference Committee Report:

Austin, Texas  
May 28, 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 335** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

BIRDWELL  
ELLIS  
PATRICK  
NELSON

SHELTON  
THOMPSON  
CREIGHTON  
BRANCH

On the part of the Senate

DARBY

On the part of the House

The Conference Committee Report on **HB 335** was filed with the Secretary of the Senate.

### **RESOLUTIONS OF RECOGNITION**

The following resolutions were adopted by the Senate:

#### **Memorial Resolutions**

**SR 1243** by Watson, In memory of Duard Desmond Linam of Austin.

**SR 1244** by Watson, In memory of Kent Butler of Austin.

#### **Congratulatory Resolutions**

**SR 1241** by Watson, Recognizing Jayme Mathias for his service as pastor of Cristo Rey Catholic Church.

**SR 1242** by Watson, Congratulating Tex Mitchell IV for receiving the Heroism Award from the Boy Scouts of America.

**SR 1245** by Watson and Ellis, Congratulating Susan Harry and Lisa Durnal on the birth of their daughter, Olivia Claire Durnal-Harry.

### **ADJOURNMENT**

On motion of Senator Whitmire, the Senate at 7:21 p.m. adjourned, in memory of Kenneth Gary Vann, until 1:00 p.m. tomorrow.

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## **APPENDIX**

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### **BILLS AND RESOLUTIONS ENROLLED**

May 27, 2011

**SB 5, SB 49, SB 71, SB 76, SB 78, SB 197, SB 209, SB 221, SB 222, SB 303, SB 321, SB 322, SB 332, SB 385, SB 391, SB 407, SB 425, SB 462, SB 469, SB 480, SB 498, SB 502, SB 573, SB 594, SB 629, SB 663, SB 731, SB 736, SB 760, SB 767, SB 776, SB 803, SB 809, SB 844, SB 859, SB 924, SB 932, SB 942, SB 943, SB 978, SB 981, SB 988, SB 993, SB 1003, SB 1035, SB 1048, SB 1068, SB 1094, SB 1170, SB 1178, SB 1179, SB 1185, SB 1196, SB 1209, SB 1216, SB 1233, SB 1234, SB 1250, SB 1271, SB 1285, SB 1286, SB 1413, SB 1416, SB 1422, SB 1449, SB 1546, SB 1551, SB 1605, SB 1616, SB 1620, SB 1636, SB 1649, SB 1732, SB 1733, SB 1736, SB 1760, SB 1796, SB 1810, SB 1909, SB 1920, SR 1177, SR 1220, SR 1221, SR 1222, SR 1223, SR 1224, SR 1225, SR 1226, SR 1228, SR 1229, SR 1230, SR 1232, SR 1233, SR 1234, SR 1235, SR 1236, SR 1237, SR 1238, SR 1239**

**SIGNED BY GOVERNOR**May 28, 2011

**SB 118, SB 132, SB 248, SB 328, SB 331, SB 356, SB 403, SB 420, SB 509, SB 533, SB 604, SB 628, SB 816, SB 977, SB 1125, SB 1140, SB 1150, SB 1165, SB 1217, SB 1229, SB 1241, SB 1242, SB 1327, SB 1353, SB 1356, SB 1357, SB 1385, SB 1433, SB 1496, SB 1608, SB 1693, SB 1806, SB 1886, SCR 25**

**FILED WITHOUT SIGNATURE OF GOVERNOR**May 28, 2011

**SB 564, SB 1121, SB 1492**