

# HOUSE JOURNAL

EIGHTY-SECOND LEGISLATURE, REGULAR SESSION

## PROCEEDINGS

SIXTIETH DAY (CONTINUED) — THURSDAY, APRIL 21, 2011

The house met at 9 a.m. and was called to order by the speaker.

The roll of the house was called and a quorum was announced present (Record 501).

Present — Mr. Speaker; Aliseda; Allen; Alonzo; Alvarado; Anchia; Anderson, C.; Anderson, R.; Aycock; Beck; Berman; Bohac; Bonnen; Branch; Brown; Burkett; Burnam; Button; Cain; Callegari; Carter; Castro; Chisum; Christian; Coleman; Cook; Craddick; Creighton; Crownover; Darby; Davis, J.; Davis, S.; Davis, Y.; Deshotel; Driver; Dukes; Dutton; Eiland; Eissler; Elkins; Farias; Farrar; Fletcher; Flynn; Frullo; Gallego; Garza; Geren; Giddings; Gonzales, L.; Gonzales, V.; Gonzalez; Gooden; Guillen; Gutierrez; Hamilton; Hancock; Hardcastle; Harless; Harper-Brown; Hartnett; Hernandez Luna; Hilderbran; Hochberg; Hopson; Howard, C.; Howard, D.; Huberty; Hughes; Hunter; Isaac; Jackson; Johnson; Keffer; King, P.; King, S.; King, T.; Kleinschmidt; Kolkhorst; Kuempel; Landtroop; Larson; Laubenberg; Lavender; Legler; Lewis; Lozano; Lucio; Lyne; Madden; Mallory Caraway; Margo; Marquez; Martinez; Martinez Fischer; McClendon; Menendez; Miles; Miller, D.; Miller, S.; Morrison; Muñoz; Murphy; Naishtat; Nash; Oliveira; Orr; Otto; Parker; Patrick; Paxton; Peña; Perry; Phillips; Pickett; Pitts; Price; Quintanilla; Raymond; Reynolds; Riddle; Ritter; Rodriguez; Schwertner; Scott; Sheets; Sheffield; Shelton; Simpson; Smith, T.; Smith, W.; Smithee; Solomons; Strama; Taylor, L.; Taylor, V.; Thompson; Torres; Truitt; Turner; Veasey; Villarreal; Vo; Walle; Weber; White; Woolley; Workman; Zedler; Zerwas.

The invocation was offered by Bill Gravell, pastor, Sonterra Fellowship, Jarrell, as follows:

Dear Lord, thank you for allowing us to live in the great State of Texas. It is a privilege to call her our home. I pray this day for 25 million Texans, grant them your grace and understanding as they go through their everyday journeys. Please bring a gentle rain upon our state. Heavenly Father, calm the winds and douse the fires that are scorching our Texas. Bless and protect our men and women that are in harm's way protecting our freedom.

Father, I pray today for our governor; grant Governor Perry the grace and wisdom to lead our great state. Help him to have clear eyes to see the real motives of those that come before him this day. Give him the gift of discernment. Heavenly Father, I pray for wisdom for our speaker of the house as he deals with the difficult decisions because of our budget shortfall. Lord Jesus, our state budget shortfall is no surprise to you. Grant him the wisdom of Solomon to

know the proper areas to make budget cuts that would cause the least amount of heartache for Texas. Lord, I pray that our economy would continue to grow. As these representatives gather this day for another day of service to our state, grant them the wisdom and knowledge to make the right choices for Texas. Help these that fill this chamber to look deep within themselves and remember where they come from. Help them to remain humble and focused on your desires and will for the State of Texas.

Let them remember the many people back home that they represent. Let them remember the moms and dads who are just barely making ends meet. Let them remember the senior adult couple walking slowly down the aisle of Walmart because they just received sad medical news and these are their last days together. Let them remember the adult alone in her apartment dealing with mental illness, and the families who will receive horrible news about a son that has lost his life in Afghanistan. Help them to remember that they represent all the people of Texas. Not special interest, not personal interest, and not a political party, but the people. People from Beaumont to Bedias, Houston to Hutto, Waco to Wheeler, Lubbock to Lexington, Austin to Atlanta, and Jonestown to Jarrell. Big and small towns, old and new towns, most of all the people that fill these towns.

Dear Lord, help our representatives to remember that Jesus Christ is the Messiah. As they return home this weekend to their districts to celebrate Easter, help these that are before me to be true to you on a daily basis. Help our representatives discover how they can find comfort in you today. Help us all, dear Lord, to slow down and seek you for wisdom and guidance. Bless our governor, bless our speaker of the house, bless these representatives, and yes, Lord, bless the great State of Texas. It is in the powerful name of Jesus Christ, we pray. Amen.

The speaker recognized Representative Flynn who led the house in the pledges of allegiance to the United States and Texas flags.

### **REGULAR ORDER OF BUSINESS SUSPENDED**

On motion of Representative Flynn and by unanimous consent, the reading and referral of bills was postponed until just prior to adjournment.

### **CAPITOL PHYSICIAN**

The speaker recognized Representative Workman who presented Dr. James P. McCurdy of Marble Falls as the "Doctor for the Day."

The house welcomed Dr. McCurdy and thanked him for his participation in the Physician of the Day Program sponsored by the Texas Academy of Family Physicians.

### **HR 559 - PREVIOUSLY ADOPTED**

**(by Straus)**

The chair laid out and had read the following previously adopted resolution:

**HR 559**, Commemorating the 20th anniversary of the Caring for Children Foundation of Texas and commending all those associated with that organization.

On motion of Representative Hamilton, the names of all the members of the house were added to **HR 559** as signers thereof.

### INTRODUCTION OF GUESTS

The speaker recognized Representative Woolley who introduced Craig Jeffery and Darren Rodgers.

(McClendon in the chair)

### CONGRATULATORY AND MEMORIAL CALENDAR

The following congratulatory resolutions were laid before the house:

**HCR 104** (by Frullo and Perry), Congratulating Dr. Kitty Harris Wilkes on her selection as a 2011 YWCA of Lubbock Woman of Excellence.

**HCR 105** (by Frullo and Perry), Congratulating Beth Lawson on her selection as a 2011 YWCA of Lubbock Woman of Excellence.

**HCR 106** (by Frullo and Perry), Congratulating Aimée Dóane on being named a 2011 Lubbock YWCA Woman of Excellence.

**HCR 107** (by Frullo and Perry), Congratulating Dr. Kamlesh Varma on her selection as a 2011 YWCA of Lubbock Woman of Excellence.

**HCR 108** (by Frullo and Perry), Congratulating Dr. Kelly Overley on her selection as a 2011 Woman of Excellence by the YWCA of Lubbock.

**HCR 109** (by Workman), Recognizing the Junior Marine Corps of Bedichek Middle School in Austin.

**HCR 111** (by Frullo and Perry), Congratulating Yvonne Raczy Key on her selection as a 2011 YWCA of Lubbock Woman of Excellence.

**HCR 112** (by Frullo and Perry), Congratulating Sarah Jo Lambert on her selection as a 2011 YWCA of Lubbock Woman of Excellence.

**HCR 115** (by W. Smith), Honoring the Battleship Texas Foundation for its work to preserve the historic battleship.

**HCR 119** (by J. Davis), Congratulating James Alford Davis on being named the 2011 Citizen of the Year by the Menard County Chamber of Commerce.

**HCR 132** (by J. Davis), Honoring the Texas State Association of Parliamentarians on the occasion of their annual convention.

**HR 1180** was withdrawn.

**HR 1243** (by Raymond), Commending Harry Cabluck on his 50-year career as a photojournalist.

**HR 1244** (by Branch), Congratulating Charles W. Matthews on his receipt of the 2011 Fellows Award from the Dallas Bar Foundation.

**HR 1245** (by Johnson), Commending Louis Henry for serving as a Democratic Party precinct chair in Dallas County.

**HR 1246** (by Flynn), Congratulating Thomas and Ruth Taylor of Quinlan on their 60th wedding anniversary.

**HR 1247** (by Flynn), Congratulating Felix and Dorothy Frazier of Greenville on their 70th wedding anniversary.

**HR 1248** (by Flynn), Congratulating Bill and Kay Cleveland of Campbell on their 50th wedding anniversary.

**HR 1249** (by Jackson), Commemorating the 25th anniversary of the Farmers Branch Historical Park.

**HR 1250** (by Harper-Brown), Recognizing the Heritage Senior Center Permanent Art Collection in Irving.

**HR 1259** (by Sheets, Branch, Johnson, and Flynn), Commemorating the 100th anniversary of the creation of White Rock Lake in Dallas.

**HR 1262** (by Gallego), Commemorating the 100th anniversary of the founding of The Bank and Trust.

**HR 1263** (by Gallego), Congratulating Rogelio Hernandez Musquiz of Del Rio on his retirement from the Val Verde County Commissioners Court in 2010.

**HR 1265** (by Gallego), Honoring Second Lieutenant Jacob A. Fernandez for his service with the United States Marine Corps.

**HR 1268** (by Hunter, Scott, Torres, Aliseda, and Lozano), Commemorating the exhibition of The Wall That Heals in honor of Vietnam War veterans in Corpus Christi from April 12-14, 2011.

**HR 1270** (by Parker), Honoring all those who took part in the second annual Swing Time fund-raiser at Argyle United Methodist Church benefiting the fight against Duchenne muscular dystrophy.

**HR 1272** (by Laubenberg), Congratulating Jim Threadgill on his retirement from the Parker City Council in May 2011.

**HR 1273** (by McClendon), Commemorating the 69th anniversary of Harper's Chapel Baptist Church in San Antonio.

**HR 1276** (by C. Anderson), Congratulating members of the Greenbuilders Club at University Middle School in Waco on placing second in the School of the Future Design Competition regional jury event in Houston.

**HR 1277** (by C. Anderson), Congratulating Ashley Durham of Whitney on being named to the honor roll at Oklahoma State University.

**HR 1279** (by C. Anderson), Honoring the students of Castleman Creek Elementary in Hewitt for raising more than \$10,500 for the American Heart Association with their Jump Rope for Heart event.

**HR 1282** (by C. Anderson), Congratulating Bill and Mary Felkner of Robinson on their 50th wedding anniversary.

**HR 1288** (by C. Anderson), Congratulating Kaleb Nehring and Keeli Nehring on winning Division Reserve Champion Junior Bull at the 2011 Fort Worth Stock Show and Rodeo.

**HR 1289** (by C. Anderson), Congratulating Christina Swanson of the Waco Convention and Visitors Bureau on passing the Certified Meeting Professional exam.

**HR 1290** (by C. Anderson), Congratulating the baseball team of Midway High School in Waco on winning the 2011 Frisco Tournament of Champions.

**HR 1293** (by C. Anderson), Congratulating Robinson FFA members Matt Davis and Colton Moorhouse on winning blue ribbons at the San Angelo Stock Show & Rodeo's agricultural mechanics contest.

**HR 1295** (by C. Anderson), Congratulating Kendall Newman of Robinson High School for performing with the 2011 All-State Concert Band.

**HR 1298** (by C. Anderson), Congratulating Private Landus Hutyra of West on completing U.S. Army military police training.

**HR 1299** (by C. Anderson), Congratulating Rachel Nicoletti of Lorena on her induction into the National Society of High School Scholars.

**HR 1307** (by C. Anderson), Congratulating Jon and Ila Jean Carothers of Crawford on their 50th wedding anniversary.

**HR 1308** (by C. Anderson), Congratulating the West High School Trojan Band on winning its third consecutive Sweepstakes Award.

The resolutions were adopted.

The following memorial resolutions were laid before the house:

**HCR 103** (by Aliseda), In memory of U.S. Marine Corps Sergeant Jose Luis Saenz III of Pleasanton.

**HCR 116** (by J. Davis and Nash), In memory of the Reverend Clinton Roderick Dobson of Arlington.

**HCR 131** (by J. Davis), In memory of Howard Victor Reed of Austin.

**HR 926** (by L. Gonzales), In memory of Mayor David Begier of Hutto.

**HR 946** was previously adopted.

**HR 1035** (by Bonnen), In memory of Dr. Leo Windecker of Cedar Park.

**HR 1098** (by Lavender), In memory of Bob G. Ingram of Texarkana.

**HR 1252** (by Hunter), In memory of U.S. Marine Corps Lance Corporal Jose Luis Maldonado of Mathis.

**HR 1255** (by Bonnen), In memory of George Sam Saphos of Baytown.

**HR 1264** (by Gallego), In memory of Benjamin N. Matta of Pecos.

**HR 1267** (by Alonzo), Paying tribute to the life of Selena Quintanilla Perez on April 16, 2011, the 40th anniversary of her birth.

**HR 1274** (by Perry), In memory of Jake Shea Jenkins of Lubbock.

**HR 1275** (by C. Anderson), In memory of Brian Keith Brown of Waco.

**HR 1278** (by C. Anderson), In memory of Daryl Lee Farmer of Waco.

**HR 1280** (by C. Anderson), In memory of Anna D. Velin of Axtell.

**HR 1281** (by C. Anderson), In memory of Andrew "Chito" Garcia of Waco.

**HR 1283** (by C. Anderson), In memory of Randall Turnmire of China Spring.

**HR 1284** (by C. Anderson), In memory of James Douglas Ivy of Waco.

**HR 1285** (by C. Anderson), In memory of Barrett Neill Minor of Lorena.

**HR 1286** (by C. Anderson), In memory of Betty Marie Norsworthy of Waco.

**HR 1287** (by C. Anderson), In memory of William J. Bartosh of West.

**HR 1291** (by C. Anderson), In memory of Owen Defoor of Crawford.

**HR 1292** (by C. Anderson), In memory of Calistro Ramos of Waco.

**HR 1294** (by C. Anderson), In memory of Madge C. Bratton of Hewitt.

**HR 1296** (by C. Anderson), In memory of Elizabeth Jones Genovese of Woodway.

**HR 1297** (by C. Anderson), In memory of George Clyde Coppage, Jr., of Hewitt.

**HR 1300** (by C. Anderson), In memory of James Carlton Timmons.

**HR 1301** (by C. Anderson), In memory of Bobby Chastain of Woodway.

**HR 1302** (by C. Anderson), In memory of Lucy E. Guerra of Waco.

**HR 1303** (by C. Anderson), In memory of Judy Marie Hitt of Waco.

**HR 1305** (by C. Anderson), In memory of Kenneth Schroeder of Elm Mott.

**HR 1306** (by C. Anderson), In memory of Katherine Young Arrington of Waco.

The resolutions were unanimously adopted by a rising vote.

#### **NAMES ADDED**

On motion of Representative Sheets, the names of all the members of the house were added to **HCR 103** and **HR 1252** as signers thereof.

(Branch in the chair)

#### **SAN JACINTO DAY 175TH ANNIVERSARY CELEBRATION RESOLUTIONS ADOPTED**

Representative Price moved to suspend all necessary rules to take up and consider at this time **HR 1363** and **HR 1462**.

The motion prevailed.

The following resolutions were laid before the house:

**HR 1363 (by Price)**

WHEREAS, Each year on April 21, people throughout the Lone Star State commemorate San Jacinto Day in honor of the decisive battlefield victory that brought about the independence of the Republic of Texas; and

WHEREAS, On that date in the year 1836, the Texan forces led by General Sam Houston faced a crucial moment in their revolutionary struggle against the rule of Mexican dictator Antonio Lopez de Santa Anna; over the course of the previous six weeks, Texan forces had been defeated at both the Alamo and Goliad, and General Houston's army had retreated steadily to the east; meanwhile, the Mexican troops commanded by General Santa Anna were determined to follow up their earlier victories by seizing the seaports along the Texas coast; by mid-April, the two armies were within a few miles of one another in the bayou country near the San Jacinto River; General Houston decided that the time for attack had arrived; and

WHEREAS, Moving into position on the afternoon of April 21, the Texans formed their battle lines, and with cries of "Remember the Alamo!" and "Remember Goliad!," they surged toward the Mexican encampment; when the guns went quiet less than 20 minutes later, the Mexican army had been routed, with more than 600 of its troops killed and more than 700 taken prisoner; only nine Texans were killed or mortally wounded in the fighting; and

WHEREAS, The following day, General Santa Anna was captured and, after meeting with General Houston, agreed to order all Mexican troops to leave Texas; later, he agreed to the Treaties of Velasco, which recognized the independence of Texas; with these steps, Mexican rule in Texas effectively came to an end, and the Republic of Texas was established; and

WHEREAS, Individuals from a range of backgrounds contributed to this epic battlefield victory; among them were a company of Tejano troops who served bravely under the command of the prominent revolutionary leader Juan Nepomuceno Seguin and are representative of the many Hispanics who took up arms in the independence movement; another Latino member of the Texan army was Lorenzo de Zavala, Jr., the son of the republic's vice president; as an aide to Sam Houston, he acted as a translator in the general's negotiations with Santa Anna; and

WHEREAS, Soldiers young and old were part of the fight for the Texans; there were teenagers such as 15-year-old William P. Zuber, 16-year-olds Thomas O'Conner and Cornelius DeVore, and 19-year-olds Alfonso Steele and Elijah Votaw; on the other end of the spectrum were James Curtis, Sr., and John S. Menifee, both 57 years old, and Asa Mitchell, the oldest person in the battle at age 60; in addition, General Houston's forces contained troops who had earlier taken part in the fighting at Goliad as well as individuals who had been present at the Alamo but had been ordered to leave the fort before its fall to carry out various missions; after surviving those engagements, they were able to assist in vanquishing the enemy force that had killed so many of their fellow Texans; and

WHEREAS, Demonstrating the courage and determination that are so much a part of the Texas character, the valiant members of Sam Houston's army charged across a grassy battlefield in April of 1836, intent on securing liberty and

avenging their fallen comrades; their steps set in motion a series of events that have made the State of Texas into the prosperous land that we enjoy today, and the momentous events of that day indeed deserve to be remembered and celebrated; now, therefore, be it

RESOLVED, That the House of Representatives of the 82nd Texas Legislature hereby commemorate San Jacinto Day in the year 2011.

**HR 1462** (by Branch, W. Smith, and Legler)

WHEREAS, April 21, 2011, marks the 175th anniversary of the Battle of San Jacinto, the culminating engagement of the Texas Revolution; and

WHEREAS, After a decade of sporadic clashes between Texas colonists and Mexican officials, the movement toward rebellion picked up increasing momentum in the fall of 1835; Antonio Lopez de Santa Anna, the president of Mexico, having abrogated the federalist Constitution of 1824 and assumed autocratic power, decided to reestablish troops at posts in Texas that had been evacuated in 1832; as part of that plan, General Martin Perfecto de Cos arrived in San Antonio with a battalion of infantry on October 9, 1835; an army of Texas volunteers quickly moved to lay siege to San Antonio, in what became the first major campaign of the revolution; General Cos finally capitulated on December 9, 1835, and he and his troops were allowed to withdraw to Mexico; and

WHEREAS, Determined to suppress the rebellion, General Santa Anna led an army of some 6,000 men into Texas in early 1836, crossing the Rio Grande near present-day Eagle Pass; at the same time, a second Mexican force, under General Jose de Urrea, advanced into Texas farther to the east; while General Santa Anna besieged some 180 Texas troops at the Alamo, a convention of Texas delegates convened at Washington-on-the-Brazos on March 1, 1836, and on March 2 adopted a declaration of independence; two days later, the convention appointed Sam Houston, one of the delegates, to take command of the Texas army; and

WHEREAS, General Houston left immediately to join Texas troops gathered in Gonzales; when he reached that town, he learned that the Alamo had fallen and that a division of General Santa Anna's army was marching in his direction; given that the effective strength of his own force numbered only 374, as well as the fact that his men were poorly provisioned and largely untrained, he began a withdrawal toward the northeast, playing for time; and

WHEREAS, Elsewhere, the Texans were meeting with successive defeats; the most shocking of those was the loss of James W. Fannin and some 400 men, who were captured and then executed on March 27 in what became known as the Goliad Massacre; and

WHEREAS, In April, General Houston halted his retreat at the Brazos River and spent two weeks drilling his troops; a short time later, on April 20, calculating that the time for battle had come at last, he staked out a position near the confluence of Buffalo Bayou and the San Jacinto River; later that same day, General Santa Anna and his army caught up to the Texans and established their own position; the following morning, General Cos arrived with an additional



body of soldiers, bringing the total strength of the Mexican army to perhaps 1,200 or more, as opposed to the approximately 900 men under General Houston's command; and

WHEREAS, Confident that he had the Texans on the defensive, General Santa Anna planned to launch an attack on April 22; on the afternoon of the 21st, however, while the Mexican army was resting, General Houston drew up his troops in battle formation; General Santa Anna had apparently posted no sentries, and a swell of land between the two armies hid the Texans from view; and

WHEREAS, At the given signal, the Texans advanced across a mile of open prairie toward the Mexican army, becoming visible only when they reached within about 200 yards of the Mexican camp; crying "Remember the Alamo" and "Remember Goliad," they took General Santa Anna's troops completely by surprise; the battle lasted 18 minutes, according to Sam Houston's report, but the killing continued for about an hour afterward; in the end, Texan losses stood at 9 dead and mortally wounded, with 630 Mexican soldiers killed and 730 taken prisoner; General Santa Anna himself was captured the following day; and

WHEREAS, With the Battle of San Jacinto, the long colonial period of Texas history, stretching as far back as the 16th century, came to an end; Texas would subsequently go on to be an independent republic for nine years before joining the Union in 1845; and

WHEREAS, The Battle of San Jacinto dramatically changed the course of Texas history, and the story of how an outnumbered army of volunteers ultimately prevailed against General Santa Anna and his troops continues to inspire a special sense of uniqueness and pride among Texans to this day; now, therefore, be it

RESOLVED, That the House of Representatives of the 82nd Texas Legislature hereby commemorate the 175th anniversary of the Battle of San Jacinto and pay tribute to all those whose courage and tenacity brought ultimate victory to the Texan cause.

REPRESENTATIVE PRICE: Members, today we celebrate San Jacinto Day, a great day in our state's history. In a battle that lasted approximately 18 minutes, General Houston and the Texans were victorious. Six hundred and thirty Mexican soldiers were killed and 730 taken prisoner, while only nine Texans were killed. General Houston's forces were far outnumbered at the start of the battle. Independence from Mexico ultimately led to annexation by the U.S. of Texas, and parts of New Mexico, Arizona, Nevada, California, Utah, Colorado, Wyoming, Kansas, and Oklahoma. Almost one-third of the present area of the American nation, nearly a million square miles of territory changed sovereignty. The inscription on the base of the San Jacinto Monument is especially telling, "Measured by its result, San Jacinto was one of the decisive battles of the world." This battle was one of the most important moments in our history. On this day, 175 years ago, we commemorate the great battle, as well as the courage and determination that are so much a part of Texas' character. The actions of Sam Houston's army across that grassy battlefield in April of 1836 set in motion a series of events that have made Texas the prosperous land that it is today. I join many others here today in celebration of this momentous day.

REPRESENTATIVE W. SMITH: Members, I want to tell you a little about a current story. Last year at San Jacinto Day, Representative Branch was in the district and we were celebrating it at the monument with the events that take place, that we're missing today, at the monument each and every year to celebrate San Jacinto Day. Last year was a particular treat because General Sam Houston's great-grandson was there, and on behalf of the governor, Representative Branch and I named him general of the Texas armies. So we were proud to do that, and thank General Sam Houston's great-grandson for carrying on the tradition of his great-grandfather.

REPRESENTATIVE LEGLER: It is an honor and a privilege today for myself and Wayne and the rest of all the session that is here today. In our district, my district and Wayne's district, we actually split the park down the middle—not quite down the middle, but we do split the park—and one side was the encampment of General Santa Ana and the other side was the encampment of General Sam Houston. So we have a special honor and special privilege being here and representing that, and I also have a special honor and privilege, I have a relationship in my office who, his great-great-great grandfather was actually at the battle of San Jacinto, and I was hoping, I don't see Ana Hernandez Luna here, but her district is actually in the city of Pasadena, at Vince's Bridge; it's where General Santa Anna was captured and was brought back to General Sam Houston, so we can have our great capitol and our freedom we have today.

REPRESENTATIVE V. TAYLOR: Mr. Speaker, members, it's a great privilege to talk about San Jacinto Day, today. My three greats grandfather, Frank Hardin, served in the first Texas volunteers as a lieutenant, first at the Battle of Bexar in 1835, and then, 175 years ago today, Frank Hardin and 500 Texans served under that banner, right there behind the speaker's dais. That is the banner that we fought under for freedom and liberty for Texas. This is a great day, and I hope you'll join us in celebrating San Jacinto Day.

REPRESENTATIVE SIMPSON: My relationship with Sam Houston is merely of love and respect. He did, with others, win, in the providence of God, a great victory 175 years ago today, which we will get to celebrate twice. But one of his greatest acts was when the state voted to secede from the Union and he chose to stick with his principles and resign as governor and do what he thought was right, and that would save this state from much turmoil. He is a great man, he had great principles, and even though he had some waywardness, he was known to walk around Houston drunk two weeks at a time, he was later converted through his wife, and made many reforms by the grace of God. It is a great privilege each day as we come here in this house and we say our pledge of allegiance to the Texas flag to look right next to it and to see his stately figure there right next to our Lone Star flag. May we honor him not only in our words, but in our actions.

CHAIR (Branch in the chair): I had a distant relative that served in the battle that ultimately came to this chamber, and was briefly speaker for 10 days. It was a scary week and a half, Ms. Riddle, but—

The resolutions were adopted.

On motion of Representatives Legler, Price, Simpson, W. Smith, and V. Taylor, the names of all the members of the house were added to **HR 1363** and **HR 1462** as signers thereof.

CHAIR: Members at this time, in honor of the independence, this 175th anniversary of the independence of Texas and the 18 minute battle, if we could have all members rise in an 18 second moment of silence. Thank you, members. God save the great State of Texas.

**HR 1309 - ADOPTED**  
**(by Orr and Zedler)**

Representative Orr moved to suspend all necessary rules to take up and consider at this time **HR 1309**.

The motion prevailed.

The following resolution was laid before the house:

**HR 1309**, Welcoming members of the Burleson Rotary Club and guests from the Open World Delegation from Ukraine to the State Capitol on April 21, 2011.

**HR 1309** was read and was adopted.

On motion of Representative Zedler, the names of all the members of the house were added to **HR 1309** as signers thereof.

**INTRODUCTION OF GUESTS**

The chair recognized Representatives Orr and Zedler who introduced members of the Burleson Rotary Club and guests from the Open World Delegation from Ukraine.

(Speaker pro tempore in the chair)

**HCR 137 - ADOPTED**  
**(by Craddick)**

Representative Craddick moved to suspend all necessary rules to take up and consider at this time **HCR 137**.

The motion prevailed.

The following resolution was laid before the house:

**HCR 137**, Designating April 2011 as Parkinson's Awareness Month.

**HCR 137** was adopted.

**COMMITTEE GRANTED PERMISSION TO MEET**

Representative L. Taylor requested permission for the Committee on Elections to meet while the house is in session, at 11 a.m. today, in 1W.14, to consider pending business.

Permission to meet was granted.

**COMMITTEE MEETING ANNOUNCEMENT**

The following committee meeting was announced:

Elections, 11 a.m. today, 1W.14, for a formal meeting, to consider pending business.

**COMMITTEE GRANTED PERMISSION TO MEET**

Representative Hochberg requested permission for the Committee on Public Education to meet while the house is in session, at 10:45 a.m. today, in 3W.9, to consider pending business.

Permission to meet was granted.

**COMMITTEE MEETING ANNOUNCEMENT**

The following committee meeting was announced:

Public Education, 10:45 a.m. today, 3W.9, for a formal meeting, to consider pending business.

**HR 931 - ADOPTED**

(by Isaac)

Representative Isaac moved to suspend all necessary rules to take up and consider at this time **HR 931**.

The motion prevailed.

The following resolution was laid before the house:

**HR 931**, In memory of Guillermo Hernandez, Sr., of San Marcos.

**HR 931** was unanimously adopted by a rising vote.

**ADDRESS BY REPRESENTATIVE THOMPSON  
ON A MATTER OF PERSONAL PRIVILEGE**

The chair recognized Representative Thompson who addressed the house on a matter of personal privilege, speaking as follows:

Madam Speaker, members, we know, those of us who have been here for a while, personal privilege speeches are very rare. I think this is probably the third or fourth one I've ever given since I've been a member of this august body. I don't mind being attacked personally, I don't mind my legislation that I'm carrying being attacked, but the integrity of my members of the Local and Consent Calendars has been impugned.

I want to just tell you something about the people that the speaker saw fit to appoint. I have a vice-chair, workaholic, but who assists me and the rest of us on that committee to be sure that the bills meet the criteria of the rules of the house, Rule 6, Section 7(5), Rule 6, Section 23. You may have remembered that at the commencement of the session, when King Solomon was talking about the rules and some of you had the opportunity to go and listen to the discussion of the rules, and we adopted those rules back in January to govern this body. And those of us who have been here, and new members as well, have agreed to follow those rules.

I've inherited about a couple of new members on this committee—Connie Scott, Representative Larson. They picked up their rule book, they come to the committee, and they work like Trojans, and they work to be sure that we do the right thing. We don't set the bills on this committee according to democrats nor republicans. We set the bill according to Rule 6, Section 7(5), Rule 6, Section 23. And let me just say this, we have had bills on this committee, sunset bills, and I have a bill now, and my vice-chair is kind enough to be wading through that 440 page bill that we're going to set on the Local and Consent Calendar, because it falls within the ambit of this rule. Every bill on the calendar, today and before now, has met the criteria, the matrix, that has been established by the rules of this house. We do not set bills with fiscal notes. We rely upon the LBB, a body that we employ to give us adequate information, so that we could be able to rely on information, be guided by, to set these bills.

Anybody has a right to object to a bill on this calendar, and you know if this bill doesn't make it today, you know I'll be back. Because, of those of you who know, when I passed alimony, it took 16 years, but I got it done. But the key thing is, is the integrity of this house, and how this body is viewed by our constituents and by the people of this state. We come here to make policies, to pass bills, to do things to enhance our state. And we come here to work hard, every member on the Local and Consent Calendars works out here to be sure that you are up at the mic and that your bill is being heard. What they work twice, and sometimes, three times harder to be sure that your bill is set, that your bill meets the matrix of the calendar, and I applaud the committee that works so hard to make sure that this happens.

I want this body to know how much I appreciate the institution that I serve in. And I want to make sure we reserve this institution, so that it can be passed along to generations to come. When I walked in this morning, people began to say, "Are you afraid, are you scared?" And just let me just tell you this, that the Lord is my light, and he's my salvation, whom shall I fear? The Lord is the strength of my life, and whom shall I be afraid? And as long as man walks on two feet on this earth, I'll never have a fear of him.

**REMARKS ORDERED PRINTED**

Representative Y. Davis moved to print remarks by Representative Thompson.

The motion prevailed.

**LOCAL, CONSENT, AND RESOLUTIONS CALENDAR  
SECOND READING**

The following bills were laid before the house, read second time, and passed to third reading, and the following resolutions were laid before the house on committee report and adopted (members registering votes are shown following the caption):

**CSHB 1451** (by Thompson, Pitts, Rodriguez, Lucio, Branch, et al.), A bill to be entitled An Act relating to the licensing and regulation of certain dog and cat breeders; providing penalties.

**CSHB 1451** was withdrawn. The chair ordered the bill analysis and fiscal note to be printed in the journal as follows:

**BILL ANALYSIS**

**CSHB 1451**

By: Thompson  
Licensing & Administrative Procedures  
Committee Report (Substituted)

**BACKGROUND AND PURPOSE**

Many retail and Internet pet sellers acquire their animals from breeding facilities, which also sell directly to the public through newspaper and Internet ads. These facilities often times do not provide adequate and humane care for the animals they are breeding, many times failing to keep animals properly sheltered or to provide adequate veterinary attention. Currently, there is little to no regulation requiring these facilities to provide a minimum standard of care for these animals.

**CSHB 1451** would require the licensing and regulation of dog and cat breeders. This bill is not intended to impact hobby breeders and it is not prohibiting or hindering the breeding or the selling of dogs and cats.

**RULEMAKING AUTHORITY**

It is the opinion of the committee that rulemaking authority is expressly granted to the Texas Commission of Licensing and Regulation in SECTIONS 2 and 4 of this bill.

**ANALYSIS**

**SECTION 1.** Amends the heading for Title 4 of the Occupations Code to read as, "Title 4. PROFESSIONS RELATED TO ANIMALS."

**SECTION 2.** Amends Title 4 of the Occupations Code by adding Chapter 802. DOG OR CAT BREEDERS.

**SUBCHAPTER A. GENERAL PROVISIONS**

**Sec. 802.001. SHORT TITLE.** Chapter may be cited as the Dog or Cat Breeders Act.

**Sec. 802.002. DEFINITIONS.** Defines "Adult animal," "Animal," "Cat," "Commission," "Controlling person," "Department," "Dog," "Dog or cat breeder," "Facility," "Federal regulations," "Intact female animal," "Kitten," "Licensed breeder," "Possess," "Primary enclosure," "Puppy," "Third-party inspector," and "Veterinarian."

**Sec. 802.003. APPLICABILITY OF CHAPTER.** This chapter does not affect any other law, rule, order, ordinance, or other legal requirement of the federal government, this state, or a political subdivision of this state. This chapter does not prevent a municipality or county from prohibiting or further regulating by order or ordinance the possession, breeding, or selling of dog or cats. This chapter does not apply to an animal regulated under the Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes).

**Sec. 802.004. PRESUMPTION OF USE FOR BREEDING.** For purposes of this chapter, each adult intact female animal possessed by a person engaged in the business of breeding for direct or indirect sale or for exchange in return for

consideration is presumed to be used for breeding purposes unless the person establishes to the department, based on records or other reasonably acceptable evidence, that the animal is not used for breeding.

[Sections 802.005-802.050 reserved for expansion]

#### SUBCHAPTER B. POWERS AND DUTIES OF COMMISSION AND DEPARTMENT

Sec. 802.051. GENERAL POWERS AND DUTIES; RULES. The department shall administer and enforce this chapter. The commission shall adopt rules necessary to administer and enforce this chapter.

Sec. 802.052. FEES. The commission by rule shall establish reasonable and necessary fees sufficient to cover the costs of administering and enforcing this chapter. In setting the fee for inspecting or licensing a facility the commission may the commission may consider the number of adult intact female animals used for breeding at the facility.

Sec. 802.053. PERSONNEL. The department may employ necessary personnel to carry out functions and duties under this chapter.

Sec. 802.054. EXPENSES. The department may authorize disbursements necessary to implement this chapter, including disbursements for office expenses, equipment costs, and other necessary facilities.

Sec. 802.055. CRIMINAL BACKGROUND CHECKS. The department shall conduct a criminal background check on each applicant who submits an application for a license and on any controlling person of the applicant. The department may, as permitted by law, examine any criminal conviction, guilty plea, or deferred adjudication of the applicant or controlling person; and obtain any criminal history or record.

Sec. 802.056. DIRECTORY. The department shall maintain a directory of licensed breeders and third-party inspectors registered under this chapter and shall make the directory available to the public.

Sec. 802.057. DISCIPLINARY DATABASE. The department shall maintain a database of dog or cat breeders who have been subject to disciplinary action as provided by Subchapter F and shall make the database available to the public.

Sec. 802.058. CONSUMER INTEREST INFORMATION. The department shall prepare information of consumer interest describing functions performed by the department and rights of the consumer affected by this chapter. The information must describe the procedure by which a consumer complaint is filed with and resolved by the department. The department shall make the information available to the public.

Sec. 802.059. DOG OR CAT BREEDER TRAINING AND ENFORCEMENT ACCOUNT. The cat or dog breeder training and enforcement account is an account in the general revenue fund. Administrative penalties collected under Subchapter F shall be deposited to the credit of the account. Funds in the account may be appropriated only to the department for promoting consumer awareness and rules of this chapter; supporting educational seminars, training activities, or other projects designed to benefit the department's ability to administer this chapter; paying for information resulting in disciplinary action

under Subchapter F against a person for acting as a dog or cat breeder without a license; and taking any other action to improve the department's ability to investigate violations of and enforce this chapter.

The commission by rule may provide for a system to pay for information resulting in disciplinary action against a person under (b)(3). Rules adopted under this subsection must ensure that a public purpose is accomplished through the use of the payment system. The department may solicit and accept gifts, grants, and other donations from any source for deposit into the account which is exempt from the application of Section 403.095 of the Government Code.

Sec. 802.060. REGULATION OF THIRD-PARTY INSPECTORS. The commission by rule shall establish training requirements for third party inspectors, registration procedures, and policies governing the acts in conducting an inspection or investigation.

Sec. 802.061. REGISTRATION OF CERTAIN EMPLOYEES OF LICENSED BREEDERS. The commission by rule may establish registration procedures for any person whose duties and responsibilities include the handling of or caring for an animal in a licensed breeder's facility.

Sec. 802.062. CONTRACTS FOR ENFORCEMENT. The department may contract with a third-party inspector to enforce or assist in the enforcement of this chapter and rules adopted under this chapter, including the performance of inspections and investigations.

Sec. 802.063. INSPECTIONS. The department shall inspect each facility of a licensed breeder at least once in every 18-month period and at other times as necessary to ensure compliance with this chapter and rules adopted under this chapter. Inspections must be conducted during the facility's normal business hours, and the licensed breeder or a representative may be present. The department or third-party inspector may not provide advance notice to the licensed breeder or a representative before arriving at the facility. The licensed breeder or representative shall, on request, assist the inspector in performing the inspection. In conducting an inspection under this section, the inspector may not enter or access any portion of a private residence of a licensed breeder except as necessary to access animals, documents, records, or other property relevant to the inspection. The inspector shall submit an inspection report to the department, on a form prescribed by the department, not later than the 10th day after the inspection and provide a copy of the report to the licensed breeder or its representative.

Sec. 802.064. INVESTIGATIONS. On receipt of a complaint alleging a violation of this chapter or a rule adopted under this chapter, the department or a third-party inspector designated by the department shall investigate the alleged violation.

Sec. 802.065. REPORTING ANIMAL CRUELTY. A person conducting an inspection under Section 802.063 or 802.103 or an investigation under Section 802.064 shall notify the appropriate local law enforcement agency not later than 24 hours after discovering evidence of animal cruelty or neglect during the inspection or investigation.



Sec. 802.066. **ADVISORY COMMITTEE.** The commission shall establish an advisory committee to advise the commission and make recommendations on matters related to the administration and enforcement of this chapter, including licensing fees and standards adopted under Subchapter E. The advisory committee consists of nine members appointed by the presiding officer of the commission with approval of the commission and will include: two licensed breeders; two veterinarians; two animal welfare organization representatives; two public members; and one animal control officer as defined in Section 829.001 of the Health and Safety Code. Members of the advisory committee serve staggered four-year terms. The terms of four or five members expire on February 1 of each odd-numbering year. If vacancy occurs during a member's term, the presiding officer of the commission, with approval of the commission, shall appoint a replacement member to serve remainder of the unexpired term. The presiding officer of the commission shall designate one member of the advisory committee to serve as presiding officer of the advisory committee for a two-year term and that member may serve more than one term. The advisory committee shall meet annually and at the call of the presiding officer of the advisory committee, the presiding officer of the commission, or the executive director of the department. Except for the members described by Subsection (b) (1): a person may not be a member of the advisory committee if the person or a member of the person's household is required to be licensed under this chapter; an officer, employee or paid consultant of an entity required to be licensed under this chapter; owns or controls, directly or indirectly, more than 10 percent interest in an entity required to be licensed under this chapter; or is required to register as a lobbyist under Chapter 305 of the Government Code, because of the person's activities for compensation on behalf of an entity required to be licensed under this chapter. The presiding officer of the commission may remove a member of the advisory committee who is ineligible for membership under Subsection (f). A member may not receive compensation for service on the advisory committee. Subject to the department's budget and any limitation provided by the General Appropriations Act, a member may receive reimbursement for the actual and necessary expenses incurred while performing advisory committee duties. A decision of the advisory committee is effective only on a majority vote of the members present. Chapter 2110 of the 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.

[Sections 802.067-802.100 reserved for expansion]

**SUBCHAPTER C. LICENSING OF DOG OR CAT BREEDERS**

Sec. 802.101. **LICENSE REQUIRED.** A person may not act as, offer to act as, or represent that the person is a dog or cat breeder in this state unless the person holds a license under this chapter for each facility the person owns or operates in this state. A license for a single facility may cover more than one building on the same premises. The commission by rule may establish requirements for issuance or renewal of a license issued to a dog or cat breeder under this chapter.

Sec. 802.102. APPLICATION. An applicant for a license under this chapter must: submit to the department a completed application on a form prescribed by the department; any other information regarding the applicant's facilities and operations requested by the department; demonstrate that the applicant has satisfied the requirements of this chapter and rules adopted; and pay to the department the required fee.

Sec. 802.103. PRELICENSE INSPECTION. Except as provided by Subsection (e), the department must inspect a facility before a license is issued for the facility. The department may not issue a license to a dog or cat breeder until the department receives a prelicense inspection report from the inspector, in a format approved by the department certifying that the facility meets the requirements of this chapter and rules. Before the prelicense inspection may be conducted, each applicant must pay to the department the required inspection fee to be used to pay third-party inspectors and the reasonable expenses of the department related to its licensing and inspection duties under this chapter. An applicant whose facility does not meet the requirements of this chapter and rules adopted under this chapter as revealed by a prelicense inspection may, after correcting deficiencies noted in the inspection report, request another prelicense inspection by paying the required fee to the department. The department may not require a prelicense inspection of a facility for an applicant who holds a current Class A animal dealers license issued under the Animal Welfare Act (7 U.S.C. Section 2131 et seq.) and submits to the department a copy of the license and a statement certifying that the facility meets the requirements of this chapter and rules adopted under this chapter on a form prescribed by the department.

Sec. 802.104. INITIAL LICENSE. The department shall issue a license to each dog or cat breeder who meets the requirements of this chapter and rules adopted under this chapter, applies to the department on the form prescribed by the department, and pays the required fee.

Sec. 802.105. TERM; NONTRANSFERABILITY. A license under this chapter is valid until the first anniversary of the date of issuance and is nontransferable. The department shall include the expiration date on each license issued.

Sec. 802.106. LICENSE RENEWAL. A licensed breeder may renew the person's license by submitting a renewal application to the department, on a form prescribed by the department, complying with any other renewal requirements adopted by the department, and paying the required fee. A person whose license has expired may not engage in activities that require a license until the license has been renewed. The department may not renew the license of a person if the person is in violation of this chapter or any rule adopted under this chapter at the time of renewal.

Sec. 802.107. LICENSE DENIAL, REVOCATION, AND SUSPENSION. The department shall deny issuance of a license to, or refuse to renew the license of a person if the person or a controlling person of the dog or cat breeder has pled guilty to, been convicted of, or received deferred adjudication for animal cruelty or neglect in this state or any other jurisdiction in the five years preceding the person's initial or renewal application for a license. The department shall revoke

a license if, after the license is issued, the person or a controlling person of the dog or cat breeder pleads guilty to, is convicted of, or receives deferred adjudication for animal cruelty or neglect in this state or any other jurisdiction. The department may deny issuance of a license to, refuse to renew, or revoke or suspend a license held by a person who: fails to meet the requirements of this chapter and rules adopted; has had a similar license issued by a federal, state, or local authority denied, revoked, or suspended; has falsified any material information requested by the department; failed to meet a standard adopted by rule under this chapter; or failed to comply with any corrective action required under an inspection report in the time provided by the report.

[Sections 802.108-802.150 reserved for expansion]

**SUBCHAPTER D. PRACTICE BY LICENSED BREEDER**

**Sec. 802.151. DISPLAY OF LICENSE; APPLICABLE LAWS AND RULES; INCLUSION OF LICENSE NUMBER AND DEPARTMENT INFORMATION.** A licensed breeder shall: prominently display a copy of the license at the breeder's facility; maintain at the breeder's facility a printed copy of this chapter and rules adopted under this chapter as made available by the department; include the license number in each advertisement of the licensed breeder; and include in each contract for the sale or transfer of an animal by the licensed breeder: the license number; and the statement specified by this chapter or a similar statement adopted by commission rule including the department's name, mailing address, telephone, and Internet website address.

**Sec. 802.152. CHANGE IN LICENSE INFORMATION.** A licensed breeder shall notify the department in a manner prescribed by the department no later than the 10th day after the date any change occurs in the address, name, management, or controlling person of the business or operation.

**Sec. 802.153. ANNUAL INVENTORY.** Not later than February 1 of each year, a licensed breeder shall submit to the department on a form prescribed by the department, an accounting of all animals held at the facility at any time during the preceding calendar year. The licensed breeder shall keep copies of the items described by Subsection (a) at the licensed breeder's facility and shall make them available on request to the department or a third-party inspector designated by the department. A licensed breeder that has more than one facility shall: keep separate records for each facility and submit a separate accounting of animals for each facility.

**Sec. 802.154. ANIMAL RECORDS.** A licensed breeder shall maintain a separate record for each animal in the breeder's facility documenting the animal's care. The record must include: the date the animal entered the facility; if applicable, the name, address, and telephone number of the person from whom the animal was purchased or obtained; a description of the animal, including the animal's breed, sex, color, identifying marks, and weight; the date of birth of the animal or approximate age if the date of birth is unknown; any tattoo, microchip, or other identification number carried by or on the animal. If the animal is a breeding female the breeding dates; dates the animal gave birth to a litter; number of puppies or kittens for each litter; and the name and identification of the sire or tom from each litter. The record must also include all veterinary care provided

for the animal, including a record of all inoculations, medications and other veterinary medical treatment received by the animal while in the possession of the licensed breeder. For an animal that was at the facility but is no longer at the facility the record must include the date of disposition or death and as applicable, the name and address of the person to whom the animal was transferred, or the animal's cause of death. The licensed breeder shall make the records available upon request to the department or a third-party inspector. The commission by rule shall establish the retention period for the records required under this section.

[Sections 802.155-802.200 reserved for expansion]

#### SUBCHAPTER E. STANDARDS OF CARE AND CONFINEMENT

Sec. 802.201. ADOPTION OF STANDARDS. The commission shall adopt rules establishing minimum standards for the humane handling, care, housing, and transportation of dogs and cats by a dog or cat breeder to ensure the overall health, safety and well-being of each animal in the breeder's possession. The standards adopted under this section must at a minimum meet federal regulations and require that, unless otherwise certified by a veterinarian in the manner prescribed by the department, each dog 12 weeks of age and older be provided with at least one hour of daily exercise in an area that has a surface that has adequate drainage and that will not adversely affect the dog's health or well-being, and may be composed of natural turf or soil. The area must provide adequate protection against harsh weather, including exposure to the sun, and be at least three times more square feet than the dog's primary enclosure. Standards require that an adequate period consistent with breed standards elapse between the breeding cycles of each adult intact female; basic grooming, including bathing and nail trimming, as needed to prevent any condition that adversely affects the animal's health and cleanliness; all primary enclosures be composed of materials that are safe for the animal based on the animal's breed, size, and age; have adequate space to allow the animal to comfortably stand, sit, turn around, and lie down in a natural position; have adequate drainage; and if any portion of the floor is composed of wire or slatted material, it must be free from any protruding, sharp surfaces and be designed so the animal's paws are unable to extend through, or become caught in, the floor. Standards must prohibit the placement of a primary enclosure of an animal on top of another primary enclosure of an animal unless an impervious barrier, designed to prevent the transfer of any liquid or animal waste from one enclosure to the other, is placed between the enclosures. Prohibits the stacking of the primary enclosures of dogs above three vertical levels. Requires at least one regular veterinary examination a year for a breeding animal; require that a dog or cat breeder maintain at each facility a written health care management protocol that addresses routine and preventative care; ensure that necessary routine and preventative care is provided to each animal and that each animal receives appropriate care and treatment for any disease or illness that affects that animal's health or well-being; prohibit a person from euthanizing an animal or performing a surgical birth of an animal or performing a surgical birth of an animal unless the person is a veterinarian. Requires appropriate training for any person whose duties and responsibilities include the handling of or caring for an animal in a dog or cat breeder's facility and prohibit a dog or cat breeder from

selling, trading, or giving away an animal before the animal is eight weeks of age. The commission by rule may modify existing standards and establish additional standards or requirements as necessary.

[Sections 802.202-802.250 reserved for expansion]

#### SUBCHAPTER F. ENFORCEMENT

Sec. 802.251. **DISCIPLINARY ACTION; ADMINISTRATIVE PENALTY.** If a person violates this chapter or a rule adopted under this chapter, the person is subject to any action or penalty under Subchapter F or G, Chapter 51.

SECTION 3. Not later than January 1, 2012, the presiding officer of the Texas Commission of Licensing and Regulation shall appoint the members of the advisory committee established under Section 802.066 of the Occupations Code, as added by this Act.

SECTION 4. Not later than March 31, 2012, the Texas Commission of Licensing and Regulation shall adopt the rules, standards, procedures, and fees necessary to implement Chapter 802, Occupation Code, as added by this Act, and Section 5 of this Act.

SECTION 5. Notwithstanding Chapter 802, Occupations Code, as added by this Act, a dog or cat breeder is not required to hold a license under this chapter to act as a dog or cat breeder before September 1, 2012 or comply with the standards adopted under Subchapter E, Chapter 802, Occupations Code, as added by this Act, before September 1, 2012.

#### EFFECTIVE DATE

This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house as provided by the Texas Constitution, if not, this Act takes effect September 1, 2011.

#### COMPARISON OF ORIGINAL TO SUBSTITUTE

**CSHB 1451** makes conforming changes in accordance to changes in the language of the bill. The relating clause is changed from "commercial dog and cat breeders" to "certain dog and cat breeders", Chapter 802 is renamed "Dog or Cat Breeder", and the short title is changed to "Dog or Cat Breeder Act."

**CSHB 1451** removes the definition for "commercial breeder" and adds the definition for "Dog or cat breeder" and adds the definition for "Licensed breeder". Makes conforming changes using the new terms.

Adds the governing code for the definitions of the "Commission" and the "Department." Removes "Local animal control agency" from the definition of "Third-party inspector".

Adds Sec. 802.004, presumption of use for breeding, to clarify the definition of "dog or cat breeder".

Clarifies in Sec. 802.052 that the number of adult intact female animals used for breeding at the facility may be considered in setting of fees.

Clarifies in Sec. 802.059 (b) (3), that only information resulting in disciplinary action against a person for acting as a dog or cat breeder without holding a license issued under this chapter is eligible for pay.

Clarifies in Sec. 802.059 (c) that the commission by rule may provide for a system to pay for information described by Subsection (b) (3).

Changes in Sec. 802.060 that the commission "shall" establish regulation for third-party inspectors.

Changes in Sec. 802.063, the inspection time from "12-month period" to an "18-month period."

In Sec. 802.065 removes "local animal control agency."

Adds Sec. 802.066 which creates an advisory committee to advise the commission and make recommendations. Makes conforming changes.

In Sec. 802.102 and Sec. 802.153 removes all references to sales taxes.

Deleted Sec. 802.155 which was the limit of 50 intact females and appeal process. Makes conforming changes.

Changes Sec. 802.201 by adding "housing" to the list of areas the commission must consider when adopting rules. The standards must, at a minimum, meet federal regulations. The requirements for surface and flooring for both exercise areas and primary enclosures are further clarified. Clarifies that an adequate period of time, consistent with breed standards, elapse between breeding cycles. More clearly defines impervious barriers to be placed between primary enclosures if stacking. Allows for the stacking of dog primary enclosure but only 3 vertical. Clarifies the vet requirements, routine and preventive care, and requires the dog or cat breeder to maintain written health care management protocol that addresses routine and preventive care. Removes the requirement for background checks for those other than the applicant for a license. Makes conforming changes.

Requires the presiding officer of the Texas Commission of Licensing and Regulation appoint members to the advisory committee not later than January 1, 2012.

## LEGISLATIVE BUDGET BOARD

Austin, Texas

### FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

Revision 2

April 15, 2011

TO: Honorable Mike Hamilton, Chair, House Committee on Licensing & Administrative Procedures

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: **HB 1451** by Thompson (Relating to the licensing and regulation of certain dog and cat breeders; providing penalties.), Committee Report 1st House, Substituted

Estimated Two-year Net Impact to General Revenue Related Funds for **HB 1451**, Committee Report 1st House, Substituted: an impact of \$0 through the biennium ending August 31, 2013.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2012	\$0
2013	\$0
2014	\$0
2015	\$0
2016	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable/(Cost) from General Revenue Fund 1	Probable Revenue Gain/(Loss) from General Revenue Fund 1	Change in Number of State Employees From FY 2011
2012	(\$1,342,755)	\$1,342,755	14.5
2013	(\$1,258,403)	\$1,258,403	14.5
2014	(\$1,258,403)	\$1,258,403	14.5
2015	(\$1,258,403)	\$1,258,403	14.5
2016	(\$1,258,403)	\$1,258,403	14.5

Fiscal Analysis

The bill would require the Texas Department of Licensing and Regulation (TDLR) to license and regulate dog and cat breeders and dealers, defined as a person who possesses 11 or more adult intact female animals. The bill would require TDLR to establish eligibility requirements for licenses, to conduct criminal background checks on applicants, and to annually inspect each facility of a licensed breeder. The bill would require TDLR to establish qualifications and training for registered breeder inspectors employed by the agency. The bill would also require TDLR to inspect a facility before an initial breeder license is issued for the facility. The bill would establish an advisory committee. The bill would authorize TDLR to set a licensing fee and a nonrefundable inspection fee. Licensing fees generated under the provisions of the bill for the purposes of funding the regulation of licensed dog and cat breeders and dealers would be deposited to the credit of the General Revenue Fund.

The bill would establish a new Dog or Cat Breeder Training and Enforcement Account as a separate account in the General Revenue Fund for the purposes defined in the bill. The bill would require administrative penalties collected under Chapter 51, Subchapter F, related to the regulation of dog and cat breeders and dealers to be deposited to the credit of the new account.

This legislation would do one or more of the following: create or recreate a dedicated account in the General Revenue Fund, create or recreate a special or trust fund either with or outside of the Treasury, or create a dedicated revenue source. Legislative policy, implemented as Government Code 403.094, consolidated special funds (except those affected by constitutional, federal, or other restrictions) into the General Revenue Fund as of August 31, 1993 and eliminated all applicable statutory revenue dedications as of August 31, 1995.

Each subsequent legislature has reviewed bills that affect funds consolidation. The fund, account, or revenue dedication included in this bill would be subject to funds consolidation review by the current legislature.

The bill would require TDLR to maintain a directory of licensed breeders to prepare information of consumer interest regarding the regulation of licensed breeders and the rights of a consumer. The bill would require TDLR to adopt, with the advice of the advisory committee, standards of care to ensure the overall health and welfare of each animal in the licensed breeder's facility. The bill would establish a civil penalty for any violation and would authorize the executive director of TDLR to issue a cease and desist or emergency order as necessary to enforce the regulations.

The bill would take effect immediately upon receiving a vote of two-thirds of all the members elected to each house; otherwise, the bill would take effect September 1, 2011.

#### Methodology

Based on information provided by TDLR, the estimated population of commercial dog and cat breeders within the state of Texas is 1,000 and the estimated population of controlling persons who are the employees of breeders is estimated to be 2,000. Also based on the analysis of TDLR, it is assumed that an additional 14.5 FTEs would be required to license, regulate and enforce the provisions of the bill. This would include: 2.0 - Investigator IV: to investigate and document complaints; 1.5 - Attorney IV: to finalize Notices of Alleged Violations and prosecute complaints; 3.0 - Legal Assistant III: to assist the prosecutor and issue Notices of Alleged Violations; 1.5 - Administrative Assistant III: to field general enforcement questions and process initial submission of complaints; 2.0 - Legal Assistant II: to review complaints to determine if jurisdiction applies; 1.0 - Program Specialist IV: to determine compliance with statute and rules; interact with industry, municipalities, and public, and to coordinate and improve program; 2.0 - Inspector IV: to answer inquiries; assist with enforcement investigations; audit the Third party inspectors and conduct inspections; 0.5 - Systems Analyst IV: to create and maintain computer program to process new and renewal licenses; 1.0 - General Counsel III: to draft rules and provide legal interpretations to the agency and the public. For purposes of this analysis, it is assumed that required inspections and investigations would be performed by state employees of TDLR that qualify as registered breeder inspectors.

TDLR also anticipates receiving 1,000 complaints per year resulting in 45 hearings per year and conducting 965 pre-licensure inspections in fiscal year 2012. In addition, TDLR anticipates a cost of \$2,000 for each controlling person requiring a criminal history background check and \$2,181 in costs for issuing plastic credit card type licenses for the controlling persons and third party inspectors. TDLR assumes 181 inspectors, who are either employed by a state agency, local law enforcement or local fire department would register as third party inspectors. Based on information provided by TDLR, this analysis also



assumes that the agency would contract with third party inspectors in the amounts of \$223,000 in 2012 and \$230,000 in each subsequent year to implement the provisions of the bill.

In addition to salary and benefit costs in the amount of \$937,446 each year, it is assumed that the agency would incur other costs of \$39,150 each year in rent for space for the additional FTEs in non state-owned buildings, \$25,875 each year in annual travel costs, \$91,352.50 in FY 2012 for equipment costs, \$4,181 each year in professional services, and \$21,750 each year for other operating expenses.

This analysis assumes that any increased costs to the agency, which is statutorily required to generate sufficient revenue to cover its costs of operation, would be offset by an increase in fee generated revenue. For the purposes of this analysis, no estimate is included for revenue gains or costs to the newly created Dog or Cat Breeder Training and Enforcement Account in the General Revenue Fund because administrative penalties that would be assessed subsequent to the implementation of the bill cannot be determined.

#### Local Government Impact

No significant fiscal implication to units of local government is anticipated. Source Agencies: 452 Department of Licensing and Regulation, 304 Comptroller of Public Accounts

LBB Staff: JOB, AG, MW, CWS, SD

**CSHB 34** (by Branch, Lewis, et al.), A bill to be entitled An Act relating to including in the public high school curriculum instruction in methods of paying for postsecondary education and training. (Garza recorded voting no.)

**HB 157** (by Raymond), A bill to be entitled An Act relating to the filing of an application for a place on the general primary election ballot. (Flynn recorded voting no.)

**CSHB 240** (by Parker), A bill to be entitled An Act relating to requiring the Texas Commission on Environmental Quality to adopt rules preventing accidental or unintentional access to on-site sewage disposal systems. (Garza, Kolkhorst, and Phillips recorded voting no.)

**HB 260** (by Hilderbran), A bill to be entitled An Act relating to the prosecution and punishment of unlawful transport of a person.

**CSHB 384** (by Menendez), A bill to be entitled An Act relating to the proper identification of boats and outboard motors; creating an offense.

**HB 385** (by Menendez), A bill to be entitled An Act relating to the punishment for theft and certain fraud offenses committed against a disabled individual. (Frullo, Legler, and Shelton recorded voting no.)

**CSHB 438** (by Thompson, Chisum, Hunter, Dukes, and Hopson), A bill to be entitled An Act relating to health benefit plan coverage for orally administered anticancer medications. (Frullo, Legler, and Shelton recorded voting no.)

**CSHB 559** (by Sheffield, S. Miller, and Aycock), A bill to be entitled An Act relating to Bronze Star Medal specialty license plates.

**Amendment No. 1**

Representative Sheffield offered the following amendment to **CSHB 559**:

Amend **CSHB 559** (house committee printing) as follows:

(1) Strike SECTION 1 of the bill (page 1, lines 4-13).

(2) On page 1, line 17, between "Medal" and the period, add "and Bronze Star Medal with Valor".

(3) On page 1, line 19, immediately following the period, add "License plates issued under this subsection to recipients of the Bronze Star Medal with Valor that are not personalized must also include the letter "V" as a prefix or suffix to the numerals on each plate."

(4) Renumber subsequent SECTIONS of the bill appropriately.

Amendment No. 1 was adopted.

**HB 649** (by Gallego), A bill to be entitled An Act relating to the issuance and duration of certain protective orders for victims of sexual assault.

**HB 772** (by Riddle), A bill to be entitled An Act relating to the applicability of certain laws to certain sex offenders.

**CSHB 787** (by Kuempel), A bill to be entitled An Act relating to abandoned, wrecked, dismantled, discarded, and inoperable aircraft and vessels.

**Amendment No. 1**

Representative Kuempel offered the following amendment to **CSHB 787**:

Amend **CSHB 787** (house committee report) on page 9 by striking lines 26-27 and substituting the following:

(3) a watercraft that:

(A) does not have lawfully on board an unexpired certificate of number; and

(B) is not a watercraft described by Section 31.055, Parks and Wildlife Code.

Amendment No. 1 was adopted.

**HB 938** (by Smithee), A bill to be entitled An Act relating to the issuance of specialty license plates for women veterans.

**HB 1053** (by Patrick), A bill to be entitled An Act relating to the tuition exemption offered by public institutions of higher education to firefighters enrolled in certain courses.

**HB 1070** (by Scott, et al.), A bill to be entitled An Act relating to the taking of a defendant's bail bond by county jailers.

**CSHB 1146** (by Kuempel, et al.), A bill to be entitled An Act relating to the registration and regulation of appraisal management companies and the composition of the Texas Appraiser Licensing and Certification Board; providing penalties.

**CSHB 1146** was withdrawn. The chair ordered the bill analysis and fiscal note to be printed in the journal as follows:

**BILL ANALYSIS**

**CSHB 1146**

By: Kuempel

Licensing & Administrative Procedures  
Committee Report (Substituted)

**BACKGROUND AND PURPOSE**

Appraisal management companies are businesses that administer networks of independent appraisers to fulfill real estate appraisal assignments on behalf of lenders. Currently, oversight or regulation of such companies in Texas is inadequate. Certain concerned parties believe that the Texas Appraiser Licensing and Certification Board is the most appropriate entity to provide such oversight. **CSHB 1146** provides the board with the statutory authority to develop and implement registration requirements for appraisal management companies operating in Texas and to investigate and adjudicate complaints against such companies.

**RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Appraiser Licensing and Certification Board in SECTIONS 3 and 4 of this bill.

**ANALYSIS**

**CSHB 1146** amends the Occupations Code to prohibit a person, effective March 1, 2012, from acting or attempting to act as an appraisal management company, providing or attempting to provide appraisal management services, or advertising or representing or attempting to advertise or represent the person as an appraisal management company unless the person is registered in accordance with the bill's provisions relating to the regulation of appraisal management companies. The bill provides a short title, the Texas Appraisal Management Company Registration and Regulation Act, for purposes of citing these provisions and specifies that the purpose of the act is to establish and enforce standards related to appraisal management services for appraisal reports on residential properties located in Texas with fewer than five units.

**CSHB 1146** makes provisions of the act inapplicable to a person who exclusively employs appraisers on an employer and employee basis for the performance of appraisals; a person acting as an appraisal firm as defined by rule of the Texas Appraiser Licensing and Certification Board that at all times during a calendar year employs on an exclusive basis as independent contractors not more than 15 appraisers for the performance of appraisals; a department or unit within certain financial institutions under specific circumstances; a person who enters into an agreement with an appraiser for the performance of an appraisal that on completion results in a report signed by both the appraiser who completed the appraisal and the appraiser who requested completion of the appraisal under certain circumstances; an appraisal management company that has an appraisal panel of not more than 15 appraisers at all times during a calendar year; or an appraisal management company that is a subsidiary owned and controlled by a financial institution that is subject to appraisal independence standards at least as

stringent as those under provisions of the bill relating to prohibited practices or under the federal Truth in Lending Act through direct regulation by a federal financial institution regulatory agency.

**CSHB 1146** prohibits an appraisal management company from requiring an employee of the company who is an appraiser to sign an appraisal that is completed by another appraiser who contracts with the appraisal management company in order to avoid the requirements of the act.

**CSHB 1146** authorizes the board to adopt rules necessary to administer the act and requires the board by rule to establish application, renewal, and other fees for an appraisal management company to register under provisions of the act in amounts so that the sum of the fees paid by all companies seeking registration under those provisions are sufficient for administering the act. The bill provides for the annual collection by the board of a national registry fee from each registered appraisal management company and for the deposit and disbursement of those fees. The bill establishes eligibility requirements and application requirements for original and renewal registrations, specifies a date of expiration for a registration that is not renewed, and requires the board to adopt rules regarding the renewal of a registration under the act.

**CSHB 1146** requires an appraisal management company applying for registration to designate one controlling person as the primary contact for all communication between the board and the company and sets forth eligibility requirements for that primary contact. The bill authorizes the board to deny a registration under certain circumstances, requires the board to immediately provide written notice to an applicant whose registration is denied, and provides for an appeal of a denial. The bill requires the board to issue a unique registration number to each company registered under the bill's provisions and publish annually a list of the registered companies and each company's registration number.

**CSHB 1146** prohibits a registered appraisal management company from knowingly employing a person in a position involving certain responsibilities relating to appraisals who has had a license or certificate to act as an appraiser denied, revoked, or surrendered in lieu of revocation in any state; entering into any independent contract arrangement with such a person; or entering into a business relationship with any entity that employs or has entered into a business relationship with such a person. The bill establishes that an appraisal management company is not in violation of such prohibitions if the person whose license or certification was denied, revoked, or surrendered in lieu of revocation has since had a license or certificate granted or reinstated and the person maintains the license or certificate in good standing.

**CSHB 1146** requires a registered appraisal management company to verify that an individual to whom the company is making an assignment for the completion of an appraisal is licensed or certified under the Texas Appraiser Licensing and Certification Act and has not had such a license or certificate denied, revoked, or surrendered since the last time the company assigned an appraisal to that appraiser. The bill requires a person who performs an appraisal review for an appraisal management company to be licensed or certified under

the Texas Appraiser Licensing and Certification Act with at least the same certification for the property type as the appraiser who completed the report being reviewed. The bill sets forth requirements for an appraisal management company to verify the competency of an appraiser before making an assignment to that appraiser and to perform a periodic appraisal review of the work of appraisers performing appraisal services for the company to ensure that such services comply with specified standards of professional appraisal practice in effect at the time of the appraisal or other standards prescribed by board rule. The bill establishes recordkeeping requirements for a registered company or applicant for registration and specifies that, under such requirements, a written record of all substantive communications between a registered company and an appraiser relating to inclusion on an appraisal panel or to an appraisal assignment is required to be maintained. The bill authorizes the board to audit the records of a registered appraisal management company to ensure compliance with the act, board rules, and the Uniform Standards of Professional Appraisal Practice and to maintain certain records.

**CSHB 1146** requires an appraisal management company to meet certain requirements relating to the timeliness and the amount of appraiser compensation, and authorizes an appraiser who is aggrieved relating to such compensation to file a complaint with the board under certain conditions. The bill sets out requirements and prohibitions relating to an appraisal management company's statement of the fees it pays to an appraiser for the completion of an appraisal and the fees it charges for appraisal management services and requires the company to disclose its registration number on all print and electronic advertising. The bill requires an appraisal management company that has a reasonable basis to believe an appraiser is failing to comply with the Uniform Standards of Professional Appraisal Practice in a manner that materially affects a value conclusion, violating applicable laws, or otherwise engaging in unethical or unprofessional conduct to refer the matter to the board. The bill sets out terms and procedures for removing an appraiser from the appraisal panel of an appraisal management company, authorizes an appraiser removed for an alleged violation to file a complaint with the board for a review of the company's decision if the matter remains unresolved after the appraiser completed the company's dispute resolution process under the bill's provisions, and establishes procedures for the board's consideration and resolution of such a complaint.

**CSHB 1146** requires an appraisal management company to make an internal independent or external third-party dispute resolution process available on written request of an appraiser who is dismissed from the company's appraisal panel for certain reasons, is aggrieved relating to compensation, or alleges a violation of one or more prohibited practices of an appraisal management company. The bill prohibits an appraisal management company from charging an appraiser for using the dispute resolution process except under certain conditions and authorizes the board by rule to establish requirements for a company's dispute resolution process.

**CSHB 1146** establishes the disciplinary powers of the board if the board determines that an appraisal management company has committed certain actions and authorizes the board to probate the suspension or revocation of a registration under reasonable terms determined by the board. The bill authorizes the board to impose an administrative penalty against a person who violates the provisions of the Texas Appraisal Management Company Registration and Regulation Act or a rule adopted under those provisions, sets a cap of \$10,000 on the penalty for each violation, and establishes bases for determining the amount of the penalty. The bill prohibits an appraisal management company or an employee, director, officer, or agent of a company from performing certain acts or engaging in certain business practices relating to the appraisal of property, and authorizes the board to institute a disciplinary action or impose an administrative penalty against an appraiser who, while acting as an employee, officer, or agent of a company, engages in such prohibited conduct. The bill authorizes any person, including a member of the board, to file a written complaint with the board; authorizes the board, on its own motion, to file a complaint against a registered appraisal management company; and establishes procedures for reviewing and investigating such complaints.

**CSHB 1146** establishes the general subpoena authority of the board; sets forth requirements relating to the report submitted to the board by an investigator at the conclusion of the investigation of a complaint; and authorizes the board to take certain actions based on that report, including proceeding as the complainant with a contested case hearing under the Administrative Procedure Act. The bill authorizes the board by rule to delegate any of its authority relating to taking such actions based on that report to the commissioner of the Texas Appraiser Licensing and Certification Board. The bill provides requirements relating to the written notification of an alleged violation and proposed penalty and provisions relating to paying the penalty or requesting a hearing on the board's determination. The bill establishes procedures relating to the temporary suspension of a person's registration by a disciplinary panel appointed by the presiding officer of the board and provides for the automatic expiration of such a suspension under certain conditions. The bill sets out terms relating to a notice of a contested case hearing involving an appraisal management company and provides that such a hearing is subject to the Administrative Procedure Act. The bill requires the administrative law judge of a contested case hearing, on the conclusion of the hearing, to make findings of fact and conclusions of law and to issue to the board a proposal for decision that the board take one or more specified actions. The bill sets out options for the board's decision and requirements for notice of the board's order to the person who requested the hearing. The bill establishes procedures for an application for a rehearing of a contested case after a final decision in the case has been issued, restrictions on the qualifications for a rehearing, and other terms and conditions for a rehearing. The bill makes its provisions relating to disciplinary actions and procedures and administrative penalties effective March 1, 2012.

**CSHB 1146** authorizes the board to institute an action in its own name against any person to enjoin a violation of the act or of a rule adopted by the board under the act and sets out requirements relating to such an injunction. The bill provides that a person who receives consideration for engaging in an activity for which registration is required under the act and who is not registered is liable for a civil penalty and sets out provisions relating to the amount and recovery of such a penalty. The bill makes it a Class A misdemeanor offense to engage in an activity for which registration is required under the act without being registered. The bill makes its provisions relating to an injunction and civil and criminal penalties effective March 1, 2012.

**CSHB 1146** defines "appraisal management company," "appraisal management service," "appraisal panel," "appraisal review," "appraiser," "controlling person," "financial institution," and "Uniform Standards of Professional Appraisal Practice." The bill makes definitions in provisions of law relating to the regulation of real estate appraisers applicable to the act.

**CSHB 1146**, in provisions of law relating to the composition of the nine-member Texas Appraiser Licensing and Certification Board, decreases from four to three the number of members who are public members who qualify for board appointment based on their recognized business ability and adds one member who is a controlling person of a registered appraisal management company. The bill establishes that the terms of one or two public members, as appropriate, rather than two public members, expire on January 31 of each year. The bill makes its provisions relating to board members effective January 31, 2012.

**CSHB 1146** requires the board, not later than January 1, 2012, to adopt all rules, fees, and forms as required by the bill.

#### EFFECTIVE DATE

Except as otherwise provided, September 1, 2011.

#### COMPARISON OF ORIGINAL AND SUBSTITUTE

**CSHB 1146** contains a provision not included in the original decreasing from four to three the number of public members of the Texas Appraiser Licensing and Certification Board, and adding one public member who is a controlling person of a registered appraisal management company. The substitute contains provisions not included in the original establishing that the terms of one or two public members, as appropriate, expire on January 31 of each year, and establishing that these provisions relating to board members and their terms are effective January 31, 2012.

**CSHB 1146** contains a provision not included in the original establishing the purpose of the Texas Appraisal Management Company Registration and Regulation Act.

**CSHB 1146** differs from the original by establishing that definitions in provisions of law relating to the regulation of real estate appraisers apply to the act, whereas the original includes in the act the definitions from those provisions of law for "appraisal," "Appraisal Foundation," "Appraisal Standards Board,"

"appraisal subcommittee," "board," and "federal financial institution regulatory agency." The substitute contains definitions for "appraisal review" and "financial institution" not included in the original.

**CSHB 1146** contains a provision not included in the original making the provisions of the act inapplicable to a person acting as an appraisal firm that at all times during a calendar year employs on an exclusive basis as independent contractors not more than 15 appraisers for the performance of appraisals. The substitute, in the provision making the act inapplicable to a department or unit within a financial institution that is subject to direct regulation by an agency of this state or the United States government, differs from the original by specifying that the department or unit is subject to appraisal independence standards at least as stringent as those under provisions of the bill relating to prohibited practices or under the federal Truth in Lending Act through such direct regulation.

**CSHB 1146** differs from the original, in the provision making the act inapplicable to an appraisal management company with an appraisal panel of not more than 15 appraisers, by specifying that the company meets that limitation requirement at all times during a calendar year. The substitute differs from the original, in the provision making the act inapplicable to certain appraisal management companies that are subsidiaries owned and controlled by a financial institution, by specifying that such a financial institution is subject to appraisal independence standards at least as stringent as those under provisions of the act relating to prohibited practices or under the federal Truth in Lending Act and that the regulation of that financial institution by a federal financial institution regulatory agency is direct regulation, whereas the original omits those specifications.

**CSHB 1146** differs from the original by requiring the board by rule to establish application, renewal, and other fees in amounts so that the sum of the fees paid by all appraisal management companies seeking registration under the act are sufficient for the administration of the act, whereas the original requires the board by rule to establish only an application fee in an amount that meets that requirement. The substitute omits a provision included in the original setting the cap for the application fee at \$2,500. The substitute differs from the original, in the provision requiring the annual collection of a national registry fee from each registered appraisal management company for each person who is on the appraisal panel of the company, by specifying that each such person is licensed or certified as an appraiser in Texas, whereas the original omits that specification.

**CSHB 1146** contains provisions not included in the original making provisions prohibiting a person not registered in accordance with the act from acting as an appraisal management company, providing appraisal management services, or advertising or representing the person as an appraisal management company applicable to a person attempting to perform such activities.

**CSHB 1146** contains a provision not included in the original requiring an application for or renewal of registration as an appraisal management company to contain the name and contact information of at least one appraiser designated by the company to respond to and communicate with appraisers on the company's appraisal panel regarding appraisal assignments. The substitute differs from the



original by requiring such an application to contain a certification that the entity has a system in place to ensure compliance with provisions of the act relating to the practice by an appraisal management company, whereas the original required the certification to ensure compliance only with provisions relating to verification of licensure or certification, professional standards, and business records.

**CSHB 1146** contains provisions not included in the original requiring the controlling person designated as the primary contact for all communication between the board and the company to be certified as an appraiser in at least one state at all times during the designation, to have completed the 15-hour national Uniform Standards of Professional Appraisal Practice course, and to complete the seven-hour national Uniform Standards of Professional Appraisal Practice course every two years, in addition to meeting other requirements.

**CSHB 1146** differs from the original by providing as grounds for the board to deny a registration the board's determination that there is probable cause to believe that any person who owns more than 10 percent of the appraisal management company has violated a provision of the bill to which a registrant would be subject within the 12 months preceding the date of the application, whereas the original sets the threshold for such ownership at five percent. The substitute differs from the original by establishing that a registration expires on the second anniversary of the date the registration is issued unless renewed, rather than on the first anniversary of that date as in the original.

**CSHB 1146** contains a provision not included in the original specifying that, under certain conditions, an appraisal management company is not in violation of the prohibition against employing certain persons who have had a license or certification denied, revoked, or surrendered. The substitute, in the bill provision requiring a person who performs an appraisal review for an appraisal management company to be licensed or certified under the bill's provisions, differs from the original by requiring such certification to be at least the same certification for the property type as the appraiser who completed the report being reviewed.

**CSHB 1146** omits a provision included in the original requiring a registered appraisal management company to ensure the compliance of appraisals with certain federal appraisal independence standards. The substitute differs from the original by requiring the periodic appraisal review of the work of appraisers to be performed to ensure that the services performed comply with the edition of the Uniform Standards of Professional Appraisal Practice in effect at the time of the appraisal or other standards prescribed by board rule, whereas the original requires the review to ensure services comply with the most current edition of the uniform standards or other standards prescribed by board rule that are at least as stringent as the Uniform Standards of Professional Appraisal Practice.

**CSHB 1146** contains provisions not included in the original establishing a minimum time requirement of five years for an appraisal management company that is registered or has applied for registration to retain certain business records, authorizing the board to audit the records of a registered appraisal management

company, and requiring a written record of all substantive communications between a registered company and an appraiser relating to inclusion on an appraisal panel or to an appraisal assignment to be maintained.

**CSHB 1146** contains a provision not included in the original authorizing an appraiser who is aggrieved relating to the appraiser's compensation to file a complaint with the board under certain conditions. The substitute differs from the original by specifying that an appraisal management company's separate statement of fees is provided in reports to the board, to a client, or for inclusion in a settlement statement, whereas the original omits the specification of where the statement of fees is provided. The substitute differs from the original by prohibiting an appraisal management company from including any fees for company services performed in the amount the company reports as charges for the actual completion of an appraisal by an appraiser, rather than in the amount the company charges for such completion, as in the original. The substitute differs from the original, in the provision requiring an appraisal management company that has a reasonable basis to believe an appraiser is failing to comply with the Uniform Standards of Professional Appraisal Practice to refer the matter to the board, by specifying that the failure to comply to those standards is in a manner that materially affects a value conclusion, whereas the original omits the specification of the manner of the failure to comply.

**CSHB 1146** differs from the original, in the provision relating to the removal of an appraiser from an appraisal panel or the refusal to assign requests for appraisal services to an appraiser under certain conditions, by requiring the company to provide an opportunity for the appraiser to respond in writing to the notification of the reason for removal from the company's panel, whereas the original does not specify that the response be in writing. The substitute differs from the original, in the provision authorizing an appraiser who is removed from the appraisal panel for certain reasons to file a complaint with the board for a review of the decision of the company, by establishing as a condition for that authorization that the matter remains unresolved after the appraiser completes the company's dispute resolution process.

**CSHB 1146** contains a provision not included in the original authorizing the board to enter an order requiring the appraiser to reimburse the appraisal management company for the actual cost of a third-party dispute resolution process if after opportunity for hearing and review the board determines that the appraiser committed the alleged violation. The substitute contains provisions not included in the original requiring an appraisal management company to make an internal independent or external third-party dispute resolution process available on written request of certain appraisers, prohibiting an appraisal management company from charging an appraiser for using the dispute resolution process except under certain conditions, and authorizing the board by rule to establish requirements for a company's dispute resolution process.

**CSHB 1146** differs from the original by authorizing the board to reprimand an appraisal management company, whereas the original authorizes the board to censure such a company. The substitute contains a provision not included in the original authorizing the board to probate the suspension or revocation of a

↑ registration. The substitute differs from the original, in the provision authorizing the board to impose an administrative penalty, by specifying that such authorization is in addition to any other disciplinary action under the act. The substitute differs from the original by setting a cap for the administrative penalty at \$10,000 for each violation, whereas the original sets the cap at \$25,000 for each violation.

**CSHB 1146** differs from the original, in provisions establishing prohibited practices of an appraisal management company or an employee, director, officer, or agent of a company, by prohibiting the alteration or removal of the appraiser's signature or seal, whereas the original prohibits the permanent removal of those items. The substitute differs from the original, in the prohibited practice of adding information to or removing information from an appraisal report, by also prohibiting the changing of information contained in a report and including in the applicable information any disclosure submitted by an appraiser in or with the report, whereas the original prohibits adding information to or removing information from the report with an intent to change the valuation conclusion.

**CSHB 1146** substitute contains an exception not included in the original to the prohibited practice of obtaining, using, or paying for a second or subsequent appraisal or ordering an automated valuation model in connection with a mortgage financing transaction that the subsequent appraisal or automated valuation model is otherwise required or permitted by federal or state law. The substitute differs from the original by prohibiting the prohibition or inhibition of communication between the appraiser, the lender, a real estate license holder, and an appraiser designated by the company to respond to appraisers regarding appraisal assignments, whereas the original does not include the appraiser designated by the company in that prohibition.

**CSHB 1146** omits a prohibited practice included in the original prohibiting a request, for the purpose of facilitating a mortgage loan transaction, of a broker price opinion or any other real property price or value estimation that does not qualify as an appraisal. The substitute contains a provision not included in the original prohibiting the refusal to accept an appraisal report prepared by more than one appraiser if an appraiser provides substantial assistance to another appraiser in the preparation of the report, unless the appraisal assignment names an individual appraiser or the statement of work requires an unassisted report.

**CSHB 1146** differs from the original, in the prohibition against requiring an appraiser to modify any aspect of an appraisal report, by specifying that the modification is without the appraiser's agreement that the modification is appropriate. The substitute contains as prohibited practices not included in the original requiring an appraiser to enter into an agreement to not serve on the panel of another appraisal management company, to indemnify or hold harmless the appraisal management company against liability except liability for errors and omissions by the appraiser, and to pay an application or renewal fee imposed on the appraisal management company.

**CSHB 1146** contains provisions not included in the original establishing that the prohibited practices set out in the act may not be construed as prohibiting an appraiser from reimbursing an appraisal management company for the actual

cost of discretionary services provided to the appraiser or prohibiting an appraisal management company from requiring an appraiser to provide advance notice of and an opportunity for the appraisal management company to participate in any communications between the appraiser and a lender. The substitute differs from the original by specifying, in the provision establishing that those prohibited practices may not be construed as prohibiting an appraisal management company from asking an appraiser to take certain actions in regard to an appraisal, that the request is made after a report is delivered, whereas the original does not include that specification. The substitute contains a provision not included in the original authorizing the board to institute a disciplinary action or impose an administrative penalty against certain appraisers who engage in conduct prohibited for an appraisal management company or an employee, director, officer, or agent of a company.

**CSHB 1146** differs from the original by authorizing the board, based on the report submitted on the conclusion of the investigation of a complaint, to enter into an agreed order with the respondent if the board determines that there is probable cause to believe that a violation occurred as an alternative to proceeding as the complainant with a contested case hearing under such circumstances, whereas the original does not include an agreed order as an alternative to a contested case hearing. The substitute contains a provision not in the original authorizing the board by rule to delegate certain authority to the commissioner of the board.

**CSHB 1146** differs from the original by requiring the notice of violation to the person alleged to have committed a violation to include a summary of the alleged violation, rather than a brief summary of the alleged violation as in the original, and to state the recommended sanction, including the amount of the proposed administrative penalty, rather than stating the amount of the proposed administrative penalty as in the original. The substitute differs from the original by establishing that the deadline by which a person who receives a notice of violation and penalty is authorized to take certain action is not later than the 20th day after the date the person receives the notice, rather than not later than the 30th day after that date as in the original.

**CSHB 1146** differs from the original, in the provision requiring the board by order to approve the board's determination and impose the proposed penalty if the person accepts the board's determination, by also making that requirement applicable if the person fails to respond to the notice in a timely manner. The substitute contains provisions not included in the original establishing procedures and requirements relating to the temporary suspension of a person's registration.

**CSHB 1146** differs from the original, in the requirement that the administrative law judge issue to the board a proposal for decision that the board take one or more actions on the conclusion of a contested case hearing, by omitting from the action of dismissal of the charges the inclusion of an order declaring that the case file is confidential, and by including as such an action the imposing of an administrative penalty.

**CSHB 1146** omits provisions included in the original setting out procedures for a hearing in a contested case. The substitute differs from the original by authorizing the board by order to determine a violation has occurred and to impose an administrative penalty or other sanction based on certain facts, conclusions, and the recommendations of the hearings examiner, whereas the original authorizes the board by order to determine a violation has occurred and to impose only an administrative penalty based on those same conditions. The substitute differs from the original by requiring the notice of the board's determination by order to include either the amount of any penalty imposed or a description of any sanction imposed, rather than including only the amount of any penalty imposed, as in the original.

**CSHB 1146** contains provisions not included in the original establishing procedures for an application for a rehearing of a contested case after a final decision in the case has been issued and provisions relating to the decision on a rehearing. The substitute contains provisions not included in the original relating to an injunction by the board against a person who violates the provisions of the act or a rule under those provisions and establishing civil and criminal penalties for engaging in certain activities without the registration required under those provisions.

**CSHB 1146** omits provisions included in the original establishing the options of a person who requests a contested case hearing following the board's decision in the hearing; setting out provisions relating to the collection of any penalty and the handling of any expenses and costs assessed against the person; authorizing the board, if the person does not pay the administrative penalty and the enforcement of the penalty is not stayed, to refer the matter to the attorney general for collection and authorizing the attorney general, if the attorney general brings an action against the person to enforce the administrative penalty and the person is found liable for the penalty, to recover reasonable expenses and costs on behalf of the attorney general and the board; and specifying that a proceeding under the provisions of the act is subject to the Administrative Procedure Act.

**CSHB 1146** differs from the original by making the provisions of the act relating to disciplinary actions and procedures, administrative penalties, an injunction, and civil and criminal penalties effective March 1, 2012, whereas the original makes only the provisions relating to administrative penalties effective on that date. The substitute differs from the original by making conforming changes and differs from the original in nonsubstantive ways.

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION**

**April 6, 2011**

TO: Honorable Mike Hamilton, Chair, House Committee on Licensing & Administrative Procedures

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: **HB 1146** by Kuempel (Relating to the registration and regulation of appraisal management companies and the composition of the Texas Appraiser Licensing and Certification Board; providing penalties.), Committee Report 1st House, Substituted

Estimated Two-year Net Impact to General Revenue Related Funds for **HB 1146**, Committee Report 1st House, Substituted: an impact of \$0 through the biennium ending August 31, 2013.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2012	\$0
2013	\$0
2014	\$0
2015	\$0
2016	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable (Cost) from General Revenue Fund 1	Probable Revenue Gain from General Revenue Fund 1	Change in Number of State Employees From FY 2011
2012	(\$454,579)	\$454,579	5.0
2013	(\$376,628)	\$376,628	5.0
2014	(\$376,637)	\$376,637	5.0
2015	(\$376,646)	\$376,646	5.0
2016	(\$376,655)	\$376,655	5.0

Fiscal Analysis

The bill amends the Occupations Code relating to the registration and regulation of appraisal management companies and the composition of the Texas Appraiser Licensing and Certification Board; providing administrative penalties.

The bill would establish the Texas Appraiser Licensing and Certification Board (TALCB) to oversee appraisal management companies, which the bill defines as a party, authorized either by a creditor of a loan secured by a consumer's principal dwelling or by an underwriter or other principal in the secondary mortgage markets, that performs appraisal management services in connection with valuing properties collateralizing mortgage loans or mortgages incorporated in a securitization. The TALCB would register and regulate appraisal management companies; levy and collect a registration or renewal application fee sufficient to cover administrative costs but not more than \$2,500; and collect a national registry fee annually from each registered company, deposit the fees to new GR Account- Appraiser Registry, and send the fees to the appraisal subcommittee of the Federal Financial Institutions Examination Council. The bill would require the agency to issue a unique registration number

to each appraisal management company and publish annually a list of the registered companies. The bill would allow the agency to assess an administrative penalty not to exceed \$25,000 per violation.

The bill would also require the Texas Appraiser Licensing and Certification Board to adopt rules, fees, and forms no later than January 1, 2012. The bill would take effect September 1, 2011. Sections 1103.052(a) and 1103.55(a), Occupations Code would take effect January 31, 2012. Section 1104.101 and Subchapter E and F, Chapter 1104, Occupations Code would take effect March 1, 2012 under the provisions of the bill.

#### Methodology

For the purposes of this analysis, TALCB estimates that 180 appraisal management companies (AMCs) would be registered in Texas. The agency estimates that the base registration fee for each AMC to cover costs of administering the program would be approximately \$2,081 in FY2012 and \$2,065 in subsequent years. In addition, companies would pay a \$20 fee for each panelist. This analysis assumes that 4,000 panelists will be registered in FY2012 and that 250 additional panelists would added in each subsequent year.

To implement the provisions of the bill TALCB estimates it would need five additional FTEs which include: 1 Attorney IV, 2 Appraiser III, 1 Legal Assistant and 1 Administrative Assistant IV, totaling \$279,715 in salaries in fiscal years 2012-16. Additional operating costs would total \$174,864 in fiscal year 2012 and \$96,913 in fiscal years 2013-16 for professional fees, equipment, and employee benefits. Based on the analysis of the agency, it is assumed that the TALCB would adjust license fees to cover any additional costs associated with the implementation of this bill.

Based on the analysis of the State Office of Administrative Hearings and the Office of the Attorney General, duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

#### Technology

According to the analysis of the agency, implementation of this legislation would require changes to the agency's licensing system. TALCB indicates that in FY2012, the licensing computer system would require programming to accommodate registration and renewal of appraisal management companies. It will also require programming to track persons owning more than ten percent of the appraisal management company and the designated controlling person or primary contact. The analysis submitted by TALCB estimates a technology cost of \$65,835 in fiscal year 2012 and \$5,985 in each subsequent year.

#### Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 329 Real Estate Commission, 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 360 State Office of Administrative Hearings

LBB Staff: JOB, NV, KKR, AG, MW

**HB 1163** (by Keffer), A bill to be entitled An Act relating to tuition and fee exemptions at public institutions of higher education for certain peace officers and firefighters.

**HB 1174** (by Workman), A bill to be entitled An Act relating to the expiration of a county burn ban.

**HB 1207** (by S. Davis), A bill to be entitled An Act relating to adoption of the Uniform Child Abduction Prevention Act.

**HB 1381** (by Madden), A bill to be entitled An Act relating to the service of civil process on an inmate of the Texas Department of Criminal Justice.

**HB 1486** (by Gutierrez and Pitts), A bill to be entitled An Act relating to signs posted under the memorial sign program for victims of certain vehicle accidents.

**HB 1541** (by McClendon), A bill to be entitled An Act relating to the prevention of automobile burglary and theft. (Garza recorded voting no.)

**CSHB 1649** (by Marquez and Muñoz), A bill to be entitled An Act relating to the enforcement of building code standards for new residential construction in the unincorporated area of a county; providing a fee. (Aycock, Garza, C. Howard, Landtroop, Legler, Parker, Paxton, Perry, and Weber recorded voting no.) (The vote was reconsidered later today, and **CSHB 1649** was withdrawn.)

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

Representative Marquez offered the following amendment to **CSHB 1649**:

Amend **CSHB 1649** on page 2, line 1, by striking "as determined by the county".

Amendment No. 1 was adopted.

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

Representative Marquez offered the following amendment to **CSHB 1649**:

Amend **CSHB 1649** on page 2, between lines 12 and 13, by inserting the following:

(e) This section does not apply to new residential construction if:

(1) the property on which the new residential construction is located is appraised for ad valorem tax purposes as land for agricultural use or open-space land under Subchapter C or D, Chapter 23, Tax Code;

(2) the new residential construction will not be located within 1,000 feet of a platted subdivision;

(3) the new residential construction is intended to be used as the primary residence of an individual who is the builder of, or acts as the general contractor for, the construction; and

(4) the new residential construction is:

(A) the first residential construction, as described by Section 233.151(a)(1), to be built on the property; or

(B) an addition to an existing single-family house or duplex, as described by Section 233.151(a)(2).



Amendment No. 2 was adopted.

**HB 1658** (by Y. Davis), A bill to be entitled An Act relating to the refund of a cash bond to a defendant in a criminal case.

**CSHB 1754** (by Gallego), A bill to be entitled An Act relating to the reorganization of powers and duties among agencies in this state that provide representation to indigent defendants in criminal cases and to the reorganization of funding sources for indigent defense. (Kolkhorst, Lewis, Parker, and Phillips recorded voting no.)

**HB 1822** (by Harless), A bill to be entitled An Act relating to the withdrawal of security by a bail bond surety.

**CSHB 1853** (by Hamilton), A bill to be entitled An Act relating to the licensing and regulation of certain employees of fire protection sprinkler system contractors; providing a penalty.

**CSHB 1853** was withdrawn. The chair ordered the bill analysis and fiscal note to be printed in the journal as follows:

**BILL ANALYSIS**

**CSHB 1853**

By: Hamilton

Licensing & Administrative Procedures  
Committee Report (Substituted)

**BACKGROUND AND PURPOSE**

According to interested parties, there is a need to license fire protection sprinkler technicians in Texas for the installation, servicing, or maintenance of only the specific type of fire protection sprinkler system for which the individual's license or the individual's direct supervisor's license has been issued. **CSHB 1853** makes certain changes relating to the licensing and regulation of certain employees of fire protection sprinkler system contractors.

**RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the commissioner of insurance in SECTIONS 3 and 6 and to the commissioner of insurance and the state fire marshal in SECTION 11 of this bill.

**ANALYSIS**

**CSHB 1853** amends the Insurance Code to create a fire protection sprinkler technician license that authorizes the holder to install, service, or maintain only the specified type of fire protection sprinkler system for which the individual's license or the individual's direct supervisor's license has been issued. The bill defines those types of licenses as a "general technician license," which means a license authorizing the holder to install, service, or maintain any fire protection sprinkler system; a "dwelling technician license," which means a license authorizing the holder to install, service, or maintain a fire protection sprinkler system located in a one-family or two-family residence; and an "underground fire

main technician license," which means a license authorizing the holder to install, service, or maintain an assembly of underground piping or conduits that convey water, with or without other agents, as part of a fire protection system.

**CSHB 1853** requires the Texas Department of Insurance (TDI), under rules issued by the commissioner of insurance necessary to administer provisions of law relating to fire protection sprinkler system service and installation through the state fire marshal, to create a specialized licensing program for fire protection sprinkler technicians. The bill establishes the number of hours of experience and the examination requirements for each type of license and requires the issuance of a fire protection sprinkler technician license to be conditioned on the successful completion of the appropriate license examination and compliance with the requirements of any applicable rules adopted under the bill's provisions.

**CSHB 1853** requires each fire protection sprinkler system contractor to ensure that at least one person who holds a fire protection sprinkler technician license or a responsible managing employee license is present at a location where a fire protection sprinkler system is being installed, maintained, repaired, or tested by an employee of the contractor. The bill specifies that the home address, home telephone number, driver's license number, and social security number of a license holder or an applicant for a license under the bill's provisions are confidential and not subject to disclosure under state open records law.

**CSHB 1853** prohibits an individual from acting as a fire protection sprinkler technician unless the individual holds a license issued by TDI as a fire protection sprinkler technician or as a responsible managing employee of a company that plans, sells, installs, maintains, or services fire protection sprinkler systems or unless the person is directly supervised by an individual who holds such a license and authorizes a license holder to install, service, or maintain only the type of fire protection sprinkler system for which the individual's license or the individual's direct supervisor's license has been issued. The bill prohibits an individual from using the term "licensed fire protection sprinkler technician" in the person's contracts or advertising materials unless the individual holds such a license. The bill makes it a Class B misdemeanor offense to violate these provisions.

**CSHB 1853** requires the state fire marshal to develop the required license examinations under the bill's provisions based on the most recent applicable guidelines published by the National Fire Protection Association.

**CSHB 1853** requires a person who holds a license as a fire protection sprinkler technician or a responsible managing employee to annually complete at least eight hours of continuing education in accordance with commissioner rules and removes a provision making licensee participation voluntary in the continuing education programs relating to fire protection sprinkler system service and installation.

**CSHB 1853** requires, rather than authorizes, TDI to waive any license requirement for an applicant for a license issued under provisions of law relating to fire protection sprinkler service and installation who holds a license issued by another state if the other state has license requirements substantially equivalent to those of Texas and adds as a requirement for waiving the license requirement for such an applicant that the other state has a reciprocal license statute that is

substantially equivalent to statutory provisions governing such a license for individuals licensed in Texas. The bill prohibits an individual who holds a fire protection sprinkler technician license or a responsible managing employee license from installing, servicing, or maintaining a fire protection sprinkler system unless the license holder is employed by a fire protection sprinkler system contractor and prohibits such an individual from being employed by more than one such contractor at the same time.

**CSHB 1853** requires the commissioner of insurance and the state fire marshal, as soon as possible after the bill's effective date, and not later than September 1, 2012, to adopt the rules and establish the procedures and examination requirements necessary to implement the licensing of fire protection sprinkler technicians, as amended by the bill. The bill specifies that a fire protection sprinkler technician is not required to hold a license in accordance with the bill's provisions before September 1, 2013. The bill requires TDI to issue a license to a qualified applicant who applies for a fire protection sprinkler technician license under the bill's provisions or a responsible managing employee license, not later than September 1, 2013, and meets other specified requirements set forth in the bill.

**CSHB 1853** defines "dwelling technician license," "fire protection sprinkler technician," "general technician license," and "underground fire main technician license"; redefines "license" to make conforming changes; and makes other conforming changes.

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

**CSHB 1853** differs from the original by requiring a person licensed by the Texas Department of Insurance (TDI) as a fire protection sprinkler technician or a responsible managing employee of a company that plans, sells, installs, maintains, or services fire protection sprinkler systems to annually complete at least eight hours of continuing education in accordance with commissioner rules, whereas the original makes that requirement applicable only to a person licensed as a fire protection sprinkler technician. The substitute differs from the original by removing the provision of law making licensee participation voluntary in the continuing education programs relating to fire protection sprinkler system service and installation, whereas the original retains that statutory provision and adds an exception to it.

**CSHB 1853** differs from the original by prohibiting the holder of a fire protection sprinkler technician license or a responsible managing employee license from installing, servicing, or maintaining a fire protection sprinkler system unless the license holder is employed by a fire protection sprinkler system contractor and prohibits such an individual from being employed by more than one such contractor at the same time, whereas the original makes those prohibitions applicable only to a fire protection sprinkler technician.

**CSHB 1853** differs from the original by prohibiting a person from acting as a fire protection sprinkler technician unless the person holds a fire protection sprinkler technician license or a responsible managing employee license or unless

the person is directly supervised by an individual who holds such a license and by authorizing a license holder to install, service, or maintain only the type of fire protection sprinkler system for which the individual's license or the individual's direct supervisor's license has been issued, whereas the original makes that prohibition and authorization applicable only to a person acting as a fire protection sprinkler technician.

**CSHB 1853** differs from the original, in the certification requirements for a fire protection sprinkler technician license, by requiring the applicant to pass the National Institute for Certification in Engineering Technologies Level II test for inspection and testing of water-based systems, whereas the original permits the applicant to pass the institute's Level III test as an alternative to that requirement.

**CSHB 1853** contains a provision not included in the original requiring each fire protection sprinkler system contractor to ensure that at least one person who holds a fire protection sprinkler technician license or a responsible managing employee license is present at a location where a fire protection sprinkler system is being installed, maintained, repaired, or tested by an employee of the contractor.

**CSHB 1853** differs from the original by requiring the commissioner of insurance and the state fire marshal to adopt the rules and establish the procedures and examination requirements necessary to implement the licensing of fire protection sprinkler technicians, as amended by the substitute, not later than September 1, 2012, whereas the original specifies that date as not later than January 1, 2012.

**CSHB 1853** differs from the original by specifying that a fire protection sprinkler technician is not required to hold a license in accordance with the substitute's provisions before September 1, 2013, whereas the original specifies that date to be before July 1, 2012.

**CSHB 1853** differs from the original by requiring TDI to issue a license to a qualified applicant who, in addition to meeting other specified requirements set forth in the substitute, applies for a license under the substitute's provisions or a responsible managing employee license not later than September 1, 2013, whereas the original specifies that date as not later than September 1, 2012. The substitute differs from the original by making a conforming change.

## **LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

### **FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION**

**April 11, 2011**

TO: Honorable Mike Hamilton, Chair, House Committee on Licensing & Administrative Procedures

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: **HB 1853** by Hamilton (Relating to the licensing and regulation of certain employees of fire protection sprinkler system contractors; providing a penalty.), Committee Report 1st House, Substituted

Estimated Two-year Net Impact to General Revenue Related Funds for **HB 1853**, Committee Report 1st House, Substituted: an impact of \$0 through the biennium ending August 31, 2013.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2012	\$0
2013	\$0
2014	\$0
2015	\$0
2016	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain/ (Loss) from General Revenue - Insurance Maint Tax and Fees	Probable (Cost) from General Revenue - Insurance Maint Tax and Fees
2012	\$800,000	(\$168,012)
2013	\$832,000	(\$166,922)
2014	\$64,000	(\$64,000)
2015	\$864,000	(\$166,922)
2016	\$96,000	(\$96,000)

Fiscal Year	Change in Number of State Employees from FY 2011
2012	2.5
2013	3.0
2014	3.0
2015	3.0
2016	3.0

Fiscal Analysis

The bill would amend the Insurance Code relating to the licensing and regulation of fire protection sprinkler technicians and providing a penalty. The bill would require the State Fire Marshal's Office (SFMO) at the Texas Department of Insurance (TDI) to add three new Fire Protection Sprinkler Technician licenses: a Dwelling Technicians License, an underground Fire Main Technician License, and a General Technicians License. The bill would require the SFMO to administer the licensing function including receipt of the licensing fees, approval or acceptance of certification organizations, draft rules for the three new licenses, create and coordinate state examinations, and establish a continuing education program.

The requirement of a fire protection sprinkler technician to hold a license would take effect on July 1, 2012.

The bill would take effect on September 1, 2011.

#### Methodology

Based on the analysis by TDI, it is estimated that 4,000 new licenses would be issued in fiscal year 2012, and 160 new licenses each year of 2013-2016. Additionally, there would be renewals of 4,000 licenses in fiscal year 2013, 160 in fiscal year 2014, 4,160 in fiscal year 2015, and 320 in fiscal year 2016. The cost per license issued would be \$200. Per the Insurance Code, the revenue from the new license fees would be deposited to the credit of General Revenue - Dedicated Fund 36 Texas Department of Insurance Operating Account (GR-D Fund 36). The SFMO is funded by license fees deposited to GR-D Fund 36 and by General Revenue - Insurance Maintenance Tax. Since insurance maintenance tax is self-leveling, this analysis assumes that the Insurance Maintenance Tax would be set to offset the increases and decreases to GR-D Fund 36. In fiscal years 2012, 2013, and 2015, the insurance maintenance tax would be set to recover a lower amount of revenue, resulting in a loss to General Revenue - Insurance Maintenance Tax. In fiscal years 2014 and 2016, the fee revenue to GRD Fund 36 would not be enough to cover the costs of the program so General Revenue - Insurance Maintenance Tax would be set to produce an increase of revenue to cover the costs.

The agency indicates that implementation of this bill would require 2.0 FTEs, administrative assistant IIIs, in each fiscal year of 2012-2016 to perform all the licensing program functions. Additionally, the agency indicates that it would require an investigator III to investigate complaints of unlicensed individuals or installation violations. The FTE would be hired in the third quarter of fiscal year 2012 and be full-time in fiscal years 2013-2016. In fiscal year 2012, the 2.5 FTEs would cost \$93,449 for salaries and wages with associated benefit costs of \$26,035, travel costs of \$1,400, other operating expenses of \$26,812, equipment costs of \$14,116, and telephone, fuel, and consumables cost of \$6,200. In each fiscal year of 2013-2015, the 3.0 FTEs would cost \$114,889 for salaries and wages with associated benefit costs of \$32,008, travel costs of \$2,800, other operating expenses of \$9,175, and telephone, fuel, and consumables cost of \$8,050.

In fiscal years 2012, 2013, and 2015, the FTE costs would be fully funded by license fees deposited to GR-D Fund 36. In fiscal years 2014 and 2016, the FTE costs would be funded by license fees deposited to GR-D Fund 36 and by General Revenue - Insurance Maintenance Tax. Since insurance maintenance tax is self-leveling, this analysis assumes that the costs to implement this bill would come from fund balances or the maintenance tax would be set to recover a higher level of revenue.

#### Technology

The technology impact would be \$3,675 in fiscal year 2012.

#### Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 454 Department of Insurance  
LBB Staff: JOB, AG, CH, MW

**CSHB 1854** (by Rodriguez and Naishtat), A bill to be entitled An Act relating to certain arrangements to provide care for a child during an investigation of abuse or neglect. (Phillips recorded voting no.)

**HB 1859** was deferred until the end of today's local, consent, and resolutions calendar.

**HB 2138** (by Guillen), A bill to be entitled An Act relating to the search for and rescue of victims of water-oriented accidents.

**CSHB 2139** (by Guillen), A bill to be entitled An Act relating to the establishment of an Adopt-A-Library program and state employee charitable contributions to the program.

**CSHB 2170** (by Raymond), A bill to be entitled An Act relating to assisting a foster child in obtaining the child's credit report. (Aycock, Chisum, Frullo, C. Howard, Shelton, L. Taylor, and Weber recorded voting no.)

**HB 2315** (by Coleman), A bill to be entitled An Act relating to a county's general revenue levy for indigent health care. (Chisum, Frullo, Harper-Brown, C. Howard, Kolkhorst, Legler, Parker, Sheffield, Shelton, Simpson, and Weber recorded voting no.)

**CSHB 2325** (by McClendon), A bill to be entitled An Act relating to the competitive bidding and notice requirements for contracts of certain mass transportation authorities. (Brown, Flynn, Harless, Solomons, and Truitt recorded voting no.)

**CSHB 2354** (by Madden), A bill to be entitled An Act relating to the installation and use of a pen register, ESN reader, trap and trace device, mobile tracking device, or similar equipment in a correctional facility operated by or under contract with the Texas Department of Criminal Justice. (Garza and Simpson recorded voting no.)

**CSHB 2457** (by J. Davis and Reynolds), A bill to be entitled An Act relating to the amendment of Texas Enterprise Fund grant agreements.

**CSHB 2469** (by Phillips), A bill to be entitled An Act relating to a memorial sign program for victims of motorcycle accidents.

**HB 2488** (by Scott), A bill to be entitled An Act relating to access to a child's medical records by the child's attorney ad litem, guardian ad litem, or amicus attorney.

**SB 1846** (Lewis - House Sponsor), in lieu of **HB 2508**, A bill to be entitled An Act relating to organizations that are covered by the Charitable Immunity and Liability Act of 1987.

Representative Lewis moved to lay **HB 2508** on the table subject to call, and the motion prevailed.

**HB 2538** (by Vo), A bill to be entitled An Act relating to the confidentiality of certain identifying information regarding students of career schools or colleges and other educational entities; providing a criminal penalty. (Brown, Harless, Solomons, and Truitt recorded voting no.)

**HB 2551** was withdrawn.

**HB 2600** (by Ritter), A bill to be entitled An Act relating to the records and reports required for purposes of the taxes imposed on cigars and other tobacco products. (Landtroop, Legler, Parker, and Perry recorded voting no.)

**SB 439** (Sheets - House Sponsor), in lieu of **HB 2654**, A bill to be entitled An Act relating to an exclusion from unemployment compensation chargebacks for certain employers of uniformed service members.

Representative Sheets moved to lay **HB 2654** on the table subject to call, and the motion prevailed.

**HB 2662** (by Hochberg and Parker), A bill to be entitled An Act relating to child abduction.

**CSHB 2717** (by Darby), A bill to be entitled An Act relating to the duties and responsibilities of certain county officials and the functions of county government. (Chisum, Harper-Brown, C. Howard, Kolkhorst, Paxton, Phillips, and Weber recorded voting no.)

**HB 2734** (by Madden), A bill to be entitled An Act relating to certain mandatory conditions of parole or mandatory supervision for illegal criminal aliens and the revocation of parole or mandatory supervision as a result of violating those conditions.

**CSHB 2806** (by Phillips), A bill to be entitled An Act relating to the marketing, hosting, and sale of specialty and personalized license plates.

**CSHB 2857** (by Gallego), A bill to be entitled An Act relating to regulation of outdoor lighting in certain areas; providing a criminal penalty and for injunctive relief. (C. Howard, Kolkhorst, Landtroop, Perry, and Phillips recorded voting no.)

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

Representative Gallego offered the following amendment to **CSHB 2857**:

Amend **CSHB 2857** (house committee printing) on page 1 by striking lines 15-20 and substituting the following:

(b) This subchapter does not apply to:

(1) outdoor lighting in existence or under construction on September 1, 2011; or

(2) the installation, maintenance, repair, or replacement of outdoor lighting owned or operated by an electric utility as defined by Section 31.002, Utilities Code.

Amendment No. 1 was adopted.



**CSHB 2870** (by Harper-Brown and Price), A bill to be entitled An Act relating to the elimination of certain required reports prepared by state agencies and institutions of higher education.

**HB 2908** (by Branch and S. Davis), A bill to be entitled An Act relating to providing graduate medical education positions for Texas medical school graduates.

**HB 2910** (by Branch), A bill to be entitled An Act relating to agreements between the Texas Higher Education Coordinating Board and certain organizations for increasing degree completion rates. (Aycock, Frullo, and Shelton recorded voting no.)

**HB 2959** (by Price), A bill to be entitled An Act relating to the required transfer of records to a new county chair of a political party; providing a penalty.

**HB 3065** (by Sheffield), A bill to be entitled An Act relating to the requirement that certain food service establishments post a sign depicting the Heimlich maneuver.

**CSHB 3141** (by Hartnett), A bill to be entitled An Act relating to the registration and protection of trademarks.

**HB 3302** (by Reynolds and Zerwas), A bill to be entitled An Act relating to the authority of certain Type A economic development corporations to undertake certain categories of projects. (Laubenberg recorded voting no.)

**HB 3336** (by Coleman), A bill to be entitled An Act relating to information regarding pertussis for parents of newborn children. (Garza, Legler, and Phillips recorded voting no.)

**HB 3404** (by Naishtat), A bill to be entitled An Act relating to establishing a child care advisory committee to advise the Texas Facilities Commission. (Brown, Frullo, C. Howard, Landtroop, Lavender, Legler, Perry, Phillips, and Shelton recorded voting no.)

**CSHB 3510** (by Hamilton), A bill to be entitled An Act relating to the regulation of the towing, booting, and storage of vehicles. (Aycock, Crownover, P. King, and L. Taylor recorded voting no.)

**HB 3577** (by L. Gonzales), A bill to be entitled An Act relating to eligibility requirements for the Texas Educational Opportunity Grant.

**CSHB 91** (by Cook), A bill to be entitled An Act relating to the extent of extraterritorial jurisdiction for certain municipalities.

**HB 398** was withdrawn.

**CSHB 602** (by Farrar, et al.), A bill to be entitled An Act relating to authorizing certain brewers and manufacturers to conduct tours of their premises after which beer or ale is provided to ultimate consumers for off-premises consumption.

**HB 692** (by Farias), A bill to be entitled An Act relating to high school graduation requirements for a student who is unable to participate in physical activity due to disability or illness.

**SB 527** (Geren, Nash, and Parker - House Sponsors), in lieu of **HB 1145**, A bill to be entitled An Act relating to projects funded through the Texas emissions reduction plan. (Aycock recorded voting no.)

Representative Geren moved to lay **HB 1145** on the table subject to call, and the motion prevailed.

**HB 1162** (by Bonnen), A bill to be entitled An Act relating to the provision of notice to vacate to certain commercial tenants in an eviction suit.

**CSHB 1179** (by Flynn and Pitts), A bill to be entitled An Act relating to certification requirements for certain property tax professionals.

**CSHB 1795** (by Aliseda), A bill to be entitled An Act relating to permits issued for moving certain oil well servicing or drilling machinery.

**CSHB 1887** (by Villarreal), A bill to be entitled An Act relating to the procedures for property tax protests and appeals.

**CSHB 2040** (by Hamilton), A bill to be entitled An Act relating to critical incident stress management and crisis response services.

#### **CSHB 2040 - STATEMENT OF LEGISLATIVE INTENT**

REPRESENTATIVE S. MILLER: I have a question for you. What is the purpose or the legislative intent of your bill, Representative Hamilton?

REPRESENTATIVE HAMILTON: The purpose or the legislative intent, for the sake of the clarity of the meeting questions between the CISM counseling and first responders who are directly involved in critical incidents. The content which is counseling in nature of these discussions is privileged, therefore the meetings themselves should be closed.

#### **REMARKS ORDERED PRINTED**

Representative S. Miller moved to print remarks between Representative Hamilton and Representative S. Miller.

The motion prevailed.

**CSHB 2337** (by Gallego), A bill to be entitled An Act relating to the admissibility of certain statements made by a child in a juvenile justice or criminal proceeding.

**HB 3314** (by Carter), A bill to be entitled An Act relating to a requirement that an attorney ad litem appointed for a child file a statement with the court regarding the attorney ad litem's meeting with the child or other specified person.

**CSHB 3726** (by Guillen), A bill to be entitled An Act relating to the private entity granted care and custody of the Alamo.

**CSHB 1859** (by Hochberg), A bill to be entitled An Act relating to the applicability of architectural barrier standards. (Brown, Flynn, Harless, Solomons, and Truitt recorded voting no.)

**Amendment No. 1**

Representative Hochberg offered the following amendment to **CSHB 1859**:

Amend **CSHB 1859** (house committee report) as follows:

(1) On page 1, line 12, between "12187" and the period, insert ", if the religious organization or entity applies to the department for this exemption"

(2) Add a new SECTION 2 to the bill to read as follows and renumber the subsequent SECTION accordingly:

SECTION 2. Section 469.054(c), Government Code, is amended to read as follows:

(c) The commission may charge a fee for:

- (1) the review of the plans or specifications of a building or facility;
- (2) the inspection of a building or facility; and

(3) the processing of an application for a variance from accessibility standards for a building or facility, or for an exemption from the standards under Section 469.003(c).

Amendment No. 1 was adopted.

**ADJOURNMENT**

At 11:36 a.m., the speaker pro tempore announced that the house would stand adjourned until 11:40 a.m. today

