

# HOUSE JOURNAL

---

EIGHTY-SECOND LEGISLATURE, REGULAR SESSION

---

## PROCEEDINGS

EIGHTY-FOURTH DAY — TUESDAY, MAY 24, 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 1344).

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 Michael Pender, pastor, Fallbrook Church, Houston.

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

### CAPITOL PHYSICIAN

The speaker recognized Representative D. Miller who presented Dr. Beverly Nuckols of New Braunfels as the "Doctor for the Day."

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

(Burkett in the chair)

**MESSAGE FROM THE SENATE**

A message from the senate was received at this time (see the addendum to the daily journal, Messages from the Senate, Message No. 1).

**BILLS AND RESOLUTIONS SIGNED BY THE SPEAKER**

Notice was given at this time that the speaker had signed bills and resolutions in the presence of the house (see the addendum to the daily journal, Signed by the Speaker, House List No. 36).

**HR 2072 - ADOPTED**

(by Muñoz)

Representative Muñoz moved to suspend all necessary rules to take up and consider at this time **HR 2072**.

The motion prevailed.

The following resolution was laid before the house:

**HR 2072**, Honoring Mario and Carlos Bracamontes for creating the Toros rugby program in Pharr.

**HR 2072** was read and was adopted.

On motion of Representative Guillen, the names of all the members of the house were added to **HR 2072** as signers thereof.

**INTRODUCTION OF GUESTS**

The chair recognized Representative Muñoz who introduced Mario and Carlos Bracamontes.

**HR 2089 - ADOPTED**

(by Guillen)

Representative Guillen moved to suspend all necessary rules to take up and consider at this time **HR 2089**.

The motion prevailed.

The following resolution was laid before the house:

**HR 2089**, Congratulating Lizbeth Martinez on her selection as the 2010-2011 U.S. Border Patrol Youth of the Year.

**HR 2089** was read and was adopted.

On motion of Representative Muñoz, the names of all the members of the house were added to **HR 2089** as signers thereof.

**INTRODUCTION OF GUESTS**

The chair recognized Representative Guillen who introduced Lizbeth Martinez and members of her family and friends.

**SB 681 - NOTICE GIVEN**

Pursuant to the provisions of Rule 7, Section 37(c) of the House Rules, at 9:35 a.m., Representative C. Anderson announced his intention to make the motion to reconsider the vote by which **SB 681**, as amended, failed to pass to third reading on May 23.

(Ritter in the chair)

**MAJOR STATE CALENDAR  
SENATE BILLS  
THIRD READING**

The following bills were laid before the house and read third time:

**SB 694 ON THIRD READING**

**(W. Smith, Cook, Dutton, Fletcher, et al. - House Sponsors)**

**SB 694**, A bill to be entitled An Act relating to the regulation of metal recycling entities; providing penalties.

**Amendment No. 1**

Representative Weber offered the following amendment to **SB 694**:

**SB 694** is amended by removing everything below the caption and replacing it with the following:

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

SECTION 1. Subdivision (10), Section 1956.001, Occupations Code, is amended to read as follows:

- (10) "Regulated metal" means:
- (A) manhole covers;
  - (B) guardrails;
  - (C) metal cylinders designed to contain compressed air, oxygen, gases, or liquids;
  - (D) beer kegs made from metal other than aluminum;
  - (E) historical markers or cemetery vases, receptacles, or memorials made from metal other than aluminum;
  - (F) unused rebar;
  - (G) street signs;
  - (H) drain gates;
  - (I) safes;
  - (J) communication, transmission, and service wire or cable;
  - (K) condensing or evaporator coils for central heating or air conditioning units;
  - (L) utility structures, including the fixtures and hardware;
  - (M) aluminum or stainless steel containers designed to hold propane for fueling forklifts; ~~and~~
  - (N) metal railroad equipment, including tie plates, signal houses, control boxes, signs, signals, traffic devices, traffic control devices, traffic control signals, switch plates, e-clips, and rail tie functions;
  - (O) catalytic converters not attached to a vehicle;

(P) fire hydrants;

(Q) metal bleachers or other seating facilities used in recreational areas or sporting arenas;

(R) any metal item clearly and conspicuously marked with any form of the name, initials, or logo of a governmental entity, utility, cemetery, or railroad;

(S) insulated utility, communications, or electrical wire that has been burned in whole or in part to remove the insulation;

(T) backflow valves; and

(U) metal in the form of commonly recognized products of the industrial metals recycling process, including bales, briquettes, billets, sows, ingots, pucks, and chopped or shredded metals.

SECTION 2. The heading to Section 1956.003, Occupations Code, is amended to read as follows:

Sec. 1956.003. LOCAL LAW; CRIMINAL PENALTY.

SECTION 3. Section 1956.003, Occupations Code, is amended by adding Subsections (a-1), (a-2), (f), (g), and (h) to read as follows:

(a-1) A county, municipality, or other political subdivision may require the record of purchase described under Section 1956.033 to contain a clear and legible thumbprint of a seller of regulated material.

(a-2) A county, municipality, or other political subdivision that, as authorized under Subsection (a), requires a metal recycling entity to report to the county, municipality, or political subdivision information relating to a sale of regulated material shall:

(1) include in any contract entered into by the county, municipality, or political subdivision relating to the reporting of the information a provision that:

(A) requires any contractor, subcontractor, or third party that has access to, comes into possession of, or otherwise obtains information relating to a sale of regulated material to maintain the confidentiality of all information received, including the name of the seller, the price paid for a purchase of regulated material, and the quantity of regulated material purchased; and

(B) allows the county, municipality, or political subdivision to terminate the contract of any contractor, subcontractor, or third party that violates the confidentiality provision required by Paragraph (A); and

(2) investigate a complaint alleging that a contractor, subcontractor, or third party has failed to maintain the confidentiality of information relating to a sale of regulated material.

(f) A person commits an offense if the person owns or operates a metal recycling entity and does not hold a license or permit required by a county, municipality, or other political subdivision as authorized under Subsection (b). An offense under this subsection is a Class B misdemeanor unless it is shown on the trial of the offense that the person has been previously convicted under this subsection, in which event the offense is a Class A misdemeanor.

(g) It is an exception to the application of Subsection (f) that:

(1) the person held a license or permit issued by the appropriate county, municipality, or other political subdivision at one point during the 12-month period preceding the date of the alleged offense; and

(2) the person obtains or submits an application for the appropriate license or permit not later than the 15th day after the date the person receives notice from the appropriate county, municipality, or other political subdivision informing the person that the metal recycling entity is operating without the required license or permit.

(h) This subsection and Subsection (g) expire March 1, 2013.

SECTION 4. Subchapter A, Chapter 1956, Occupations Code, is amended by adding Section 1956.004 to read as follows:

Sec. 1956.004. CIVIL PENALTY. (a) A person who owns or operates a metal recycling entity and does not hold a license or permit required by a county, municipality, or other political subdivision as authorized under Section 1956.003(b) is subject to a civil penalty of not more than \$1,000 for each violation. In determining the amount of the civil penalty, the court shall consider:

(1) any other violations by the person; and

(2) the amount necessary to deter future violations.

(b) A district attorney, county attorney, or municipal attorney may institute an action to collect the civil penalty provided by this section.

(c) Each day a violation occurs or continues to occur is a separate violation.

(d) The district attorney, county attorney, or municipal attorney may recover reasonable expenses incurred in obtaining a civil penalty under this section, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition expenses.

(e) It is an exception to the application of this section that:

(1) the person held a license or permit issued by the appropriate county, municipality, or other political subdivision at one point during the 12-month period preceding the date of the alleged violation; and

(2) the person obtains or submits an application for the appropriate license or permit not later than the 15th day after the date the person receives notice from the appropriate county, municipality, or other political subdivision informing the person that the metal recycling entity is operating without the required license or permit.

(f) This subsection and Subsection (e) expire March 1, 2013.

SECTION 5. Section 1956.015, Occupations Code, is amended by amending Subsection (d) and adding Subsections (e) and (f) to read as follows:

(d) Information provided under this section is not subject to disclosure under Chapter 552, Government Code. The department may use information provided under this section for law enforcement purposes. Except as provided by this subsection, the department shall maintain the confidentiality of all information provided under this section, including the name of the seller, the price paid for a purchase of regulated material, and the quantity of regulated material purchased ~~[that relates to the financial condition or business affairs of a~~

metal recycling entity or that is otherwise commercially sensitive. The confidential information is not subject to disclosure under Chapter 552, Government Code].

(e) The department may enter into contracts relating to the operation of the statewide electronic reporting system established by this section. A contract under this subsection must:

(1) require that any contractor, subcontractor, or third party that has access to, comes into possession of, or otherwise obtains information provided under this section maintain the confidentiality of all information provided under this section, including the name of the seller, the price paid for a purchase of regulated material, and the quantity of regulated material purchased; and

(2) provide that the department may terminate the contract of any contractor, subcontractor, or third party that violates the confidentiality provision required by Subdivision (1).

(f) The department shall investigate a complaint alleging that a contractor, subcontractor, or third party has failed to maintain the confidentiality of information relating to a sale of regulated material.

SECTION 6. Subchapter A-1, Chapter 1956, Occupations Code, is amended by adding Sections 1956.016 and 1956.017 to read as follows:

Sec. 1956.016. REGISTRATION DATABASE. The department shall make available on its Internet website a publicly accessible list of all registered metal recycling entities. The list must contain the following for each registered metal recycling entity:

(1) the entity's name;

(2) the entity's physical address; and

(3) the name of and contact information for a representative of the

entity.

Sec. 1956.017. ADVISORY COMMITTEE. (a) The department shall establish an advisory committee to advise the department on matters related to the department's regulation of metal recycling entities under this chapter.

(b) The advisory committee consists of 12 members appointed by the director as follows:

(1) one representative of the department;

(2) two representatives of local law enforcement agencies located in different municipalities, each with a population of 500,000 or more;

(3) two representatives of local law enforcement agencies located in different municipalities, each with a population of 200,000 or more but less than 500,000;

(4) one representative of a local law enforcement agency located in a municipality with a population of less than 200,000;

(5) four representatives of metal recycling entities; and

(6) two members who represent industries that are impacted by theft of regulated material.

(c) The director shall ensure that the members of the advisory committee reflect the diverse geographic regions of this state.

(d) The advisory committee shall elect a presiding officer from among its members to serve a two-year term. A member may serve more than one term as presiding officer.

(e) The advisory committee shall meet annually and at the call of the presiding officer or the director.

(f) An advisory committee member is not entitled to compensation or reimbursement of expenses.

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

SECTION 7. The heading to Section 1956.032, Occupations Code, is amended to read as follows:

Sec. 1956.032. INFORMATION REGARDING ~~[PROVIDED BY]~~ SELLER.

SECTION 8. Section 1956.032, Occupations Code, is amended by amending Subsection (a) and adding Subsection (g) to read as follows:

(a) Except as provided by Subsection (f), a person attempting to sell regulated material to a metal recycling entity shall:

(1) display to the metal recycling entity the person's personal identification document;

(2) provide to the metal recycling entity the make, model, color, and license plate number of the motor vehicle used to transport the regulated material and the name of the state issuing the license plate; ~~and~~

(3) either:

(A) present written documentation evidencing that the person is the legal owner or is lawfully entitled to sell the regulated material; or

(B) sign a written statement provided by the metal recycling entity that the person is the legal owner of or is lawfully entitled to sell the regulated material offered for sale; and

(4) if the regulated material includes condensing or evaporator coils for central heating or air conditioning units, display to the metal recycling entity:

(A) the person's air conditioning and refrigeration contractor license issued under Subchapter F or G, Chapter 1302;

(B) the person's air conditioning and refrigeration technician registration issued under Subchapter K, Chapter 1302;

(C) a receipt, bill of sale, or other documentation showing that the seller purchased the coils the seller is attempting to sell; or

(D) a receipt, bill of sale, or other documentation showing that the seller has purchased a replacement central heating or air conditioning unit.

(g) Notwithstanding Section 1956.002, the metal recycling entity shall verify the registration of a person attempting to sell regulated material who represents that the person is a metal recycling entity as follows:

(1) by using the database described by Section 1956.016; or

(2) by obtaining from the person a copy of the person's certificate of registration issued under Section 1956.022 in addition to the information required under Subsection (a).

SECTION 9. Section 1956.033, Occupations Code, is amended to read as follows:

Sec. 1956.033. RECORD OF PURCHASE. (a) Each metal recycling entity in this state shall keep an accurate electronic record or an accurate and legible written record of each purchase of regulated material made in the course of the entity's business from an individual ~~[of:~~

~~[(1) copper or brass material;~~

~~[(2) bronze material;~~

~~[(3) aluminum material; or~~

~~[(4) regulated metal].~~

(b) The record must be in English and include:

(1) the place and date of the purchase;

(2) the name and address of the seller in possession of ~~[each individual from whom]~~ the regulated material ~~[is]~~ purchased ~~[or obtained];~~

(3) the identifying number of the seller's personal identification document;

(4) a description made in accordance with the custom of the trade of the commodity type and quantity of regulated material purchased; ~~[and]~~

(5) the information required by Sections 1956.032(a)(2) and (3);

(6) as applicable:

(A) the identifying number of the seller's air conditioning and refrigeration contractor license displayed under Section 1956.032(a)(4)(A);

(B) a copy of the seller's air conditioning and refrigeration technician registration displayed under Section 1956.032(a)(4)(B);

(C) a copy of the documentation described by Section 1956.032(a)(4)(C); or

(D) a copy of the documentation described by Section 1956.032(a)(4)(D); and

(7) a copy of the documentation described by Section 1956.032(g) [Section 1956.032(a)(3)].

SECTION 10. Subchapter A-3, Chapter 1956, Occupations Code, is amended by adding Section 1956.0331 to read as follows:

Sec. 1956.0331. PHOTOGRAPH OR RECORDING REQUIREMENT FOR REGULATED METAL TRANSACTION. (a) In addition to the requirements of Sections 1956.032 and 1956.033, for each purchase by a metal recycling entity of an item of regulated metal, the entity shall obtain a digital photograph or video recording that accurately depicts the seller's entire face and each type of regulated metal purchased.

(b) A metal recycling entity shall preserve a photograph or recording required under Subsection (a) as follows:

(1) for a video recording, until the 91st day after the date of the transaction; and

(2) for a digital photograph, until the 181st day after the date of the transaction.

(c) The photograph or recording must be made available for inspection as provided by Section 1956.035 not later than 72 hours after the time of purchase.



SECTION 11. Section 1956.034, Occupations Code, is amended to read as follows:

Sec. 1956.034. PRESERVATION OF RECORDS. A metal recycling entity shall preserve each record required by Sections 1956.032 and 1956.033 until the second ~~third~~ anniversary of the date the record was made. The records must be kept in an easily retrievable format and must be available for inspection as provided by Section 1956.035 not later than 72 hours after the time of purchase.

SECTION 12. Section 1956.035, Occupations Code, is amended to read as follows:

Sec. 1956.035. INSPECTION OF RECORDS ~~[BY PEACE OFFICER]~~.  
(a) On request, a metal recycling entity shall permit a peace officer of this state, a representative of the department, or a representative of a county, municipality, or other political subdivision that issues a license or permit under Section 1956.003(b) to inspect, during the entity's usual business hours:

(1) a record required by Section 1956.033; ~~or~~

(2) a digital photograph or video recording required by Section 1956.0331; or

(3) regulated material in the entity's possession.

(b) The person seeking to inspect a record or material ~~[inspecting officer]~~ shall:

(1) inform the entity of the officer's status as a peace officer; or

(2) if the person is a representative of the department or a representative of a county, municipality, or other political subdivision, inform the entity of the person's status and display to the entity an identification document or other appropriate documentation establishing the person's status as a representative of the department or of the appropriate county, municipality, or political subdivision.

SECTION 13. Section 1956.036, Occupations Code, is amended by amending Subsections (a) and (b) and adding Subsections (d) and (e) to read as follows:

(a) Except as provided by Subsections ~~[Subsection]~~ (b) and (d), not later than the close of business on a metal recycling entity's second working ~~[seventh]~~ day after the date of the purchase or other acquisition of material for which a record is required under Section 1956.033, the ~~[a metal recycling]~~ entity shall send an electronic transaction report to the department via the department's Internet website. The ~~[by facsimile or electronic mail to or file with the department a]~~ report must contain ~~[containing]~~ the information required to be recorded under Section 1956.033 ~~[that section]~~.

(b) If a metal recycling entity purchases bronze material that is a cemetery vase, receptacle, memorial, or statuary or a pipe that can reasonably be identified as aluminum irrigation pipe, the entity shall:

(1) not later than the close of business on the entity's first working day after the purchase date, notify the department by telephone, by e-mail, or via the department's Internet website; and

(2) not later than the close of business on the entity's second working ~~five~~ day after the purchase date, submit to the department electronically via the department's Internet website ~~mail to~~ or file with the department a report containing the information required to be recorded under Section 1956.033.

(d) A metal recycling entity may submit the transaction report required under Subsection (a) by facsimile if:

(1) the entity submits to the department annually:

(A) an application requesting an exception to the electronic reporting requirement; and

(B) an affidavit stating that the entity does not have an available and reliable means of submitting the transaction report electronically; and

(2) the department approves the entity's application under this subsection.

(e) The department, after notice and an opportunity for a hearing, may prohibit a metal recycling entity from paying cash for a purchase of regulated material for a period determined by the department if the department finds that the entity has failed to comply with this section.

SECTION 14. Section 1956.038, Occupations Code, is amended to read as follows:

Sec. 1956.038. PROHIBITED ACTS. (a) A person may not, with the intent to deceive:

(1) display to a metal recycling entity a false or invalid personal identification document in connection with the person's attempted sale of regulated material;

(2) make a false, material statement or representation to a metal recycling entity in connection with:

(A) that person's execution of a written statement required by Section 1956.032(a)(3); or

(B) the entity's efforts to obtain the information required under Section 1956.033(b); ~~or~~

(3) display or provide to a metal recycling entity any information required under Section 1956.032 that the person knows is false or invalid; or

(4) display another individual's personal identification document in connection with the sale of regulated material.

(b) A metal recycling entity may not pay for a purchase of regulated material in cash if:

(1) the entity does not hold a certificate of registration under Subchapter A-2 and, if applicable, a license or permit required by a county, municipality, or other political subdivision as authorized under Section 1956.003(b); or

(2) the entity has been prohibited by the department from paying cash under Section 1956.036(e).

(c) Notwithstanding Section 1956.003(a) or any other law, a county, municipality, or other political subdivision may not adopt or enforce a rule, charter, or ordinance or issue an order or impose standards that limit the use of cash by a metal recycling entity in a manner more restrictive than that provided by Subsection (b).

(d) Subsection (c) does not apply to a rule, charter, ordinance, or order of a county, municipality, or other political subdivision in effect on January 1, 2011.

(d-1) Not later than January 1, 2012, the department shall issue a notice to each known owner or operator of a metal recycling entity in this state informing the owner or operator of the requirement to obtain a certificate of registration under Subchapter A-2 and, if applicable, to obtain a license or permit required by a county, municipality, or other political subdivision under Section 1956.003. The notice must also state:

(1) that the owner or operator shall submit an application for a certificate of registration and the appropriate license or permit required by a county, municipality, or other political subdivision on or before March 1, 2012; and

(2) the penalties under this chapter for failure to comply with Subdivision (1).

(d-2) This subsection and Subsection (d-1) expire March 1, 2012.

(e) The department or a county, municipality, or other political subdivision may bring an action in the county in which a metal recycling entity is located to enjoin the business operations of the owner or operator of the metal recycling entity for a period of not less than 30 days and not more than 90 days if the owner or operator has not submitted an application for a certificate of registration or the appropriate license or permit required by a county, municipality, or other political subdivision.

(f) An action under Subsection (e) must be brought in the name of the state. If judgment is in favor of the state, the court shall:

(1) enjoin the owner or operator from maintaining or participating in the business of a metal recycling entity for a definite period of not less than 30 days and not more than 90 days, as determined by the court; and

(2) order that the place of business of the owner or operator be closed for the same period.

SECTION 15. Section 1956.040, Occupations Code, is amended by adding Subsections (a-1), (a-2), (a-3), and (a-4) to read as follows:

(a-1) A person commits an offense if the person knowingly violates Section 1956.021, 1956.023(d), 1956.036(a), or 1956.039.

(a-2) An offense under Subsection (a-1) is a misdemeanor punishable by a fine not to exceed \$10,000, unless it is shown on trial of the offense that the person has previously been convicted of a violation of Subsection (a-1), in which event the offense is a state jail felony.

(a-3) It is an affirmative defense to prosecution of a violation of Section 1956.021 or 1956.023(d) that the person made a diligent effort to obtain or renew a certificate of registration at the time of the violation.

(a-4) A municipality or county may retain 10 percent of the money collected from a fine for a conviction of an offense under Subsection (a-1) as a service fee for that collection and the clerk of the court shall remit the remainder of the fine collected for conviction of an offense under Subsection (a-1) to the comptroller in the manner provided for the remission of fees to the comptroller under Subchapter B, Chapter 133, Local Government Code. The comptroller shall deposit proceeds received under this subsection to the credit of an account in the general revenue fund, and those proceeds may be appropriated only to the department and used to:

(1) finance the department's administration of Subchapters A, A-1, A-2, and A-3; and

(2) fund grants distributed under the prevention of scrap metal theft grant program established under Subchapter N, Chapter 411, Government Code.

SECTION 16. Subsection (a), Section 1956.103, Occupations Code, is amended to read as follows:

(a) A person may not sell or otherwise transfer to a metal recycling entity:

(1) a lead-acid battery, fuel tank, or PCB-containing capacitor that is included with another type of scrap, used, or obsolete metal without first obtaining from the metal recycling entity a written and signed acknowledgment that the scrap, used, or obsolete metal includes one or more lead-acid batteries, fuel tanks, or PCB-containing capacitors;

(2) any of the following items that contain or enclose a lead-acid battery, fuel tank, or PCB-containing capacitor or of which a lead-acid battery, fuel tank, or PCB-containing capacitor is a part:

(A) a motor vehicle;

(B) a motor vehicle that has been junked, flattened, dismantled, or changed so that it has lost its character as a motor vehicle;

(C) an appliance; or

(D) any other item of scrap, used, or obsolete metal; ~~or~~

(3) a motor vehicle or a motor vehicle that has been junked, flattened, dismantled, or changed so that it has lost its character as a motor vehicle if the motor vehicle includes, contains, or encloses a tire or scrap tire; or

(4) a metal alcoholic beverage keg, regardless of condition, unless the seller is the manufacturer of the keg, the brewer or distiller of the beverage that was contained in the keg, or an authorized representative of the manufacturer, brewer, or distiller.

SECTION 17. Section 1956.151, Occupations Code, is amended to read as follows:

Sec. 1956.151. DENIAL OF CERTIFICATE; DISCIPLINARY ACTION. The department shall deny an application for a certificate of registration, suspend or revoke a certificate of registration, or reprimand a person who is registered under this chapter if the person:

(1) obtains a certificate of registration by means of fraud, misrepresentation, or concealment of a material fact;

(2) sells, barter, or offers to sell or barter a certificate of registration;

(3) violates a provision of this chapter or a rule adopted under this chapter; or

(4) violates Section 1956.021.

SECTION 18. Subsection (d), Section 1956.202, Occupations Code, is amended to read as follows:

(d) A civil penalty may not be assessed under this section for conduct described by Section 1956.021, 1956.023(d), 1956.036(a), 1956.038, or 1956.039.

SECTION 19. Chapter 411, Government Code, is amended by adding Subchapter N to read as follows:

SUBCHAPTER N. PREVENTION OF SCRAP METAL THEFT GRANT PROGRAM

Sec. 411.421. DEFINITION. In this subchapter, "regulated material" has the meaning assigned by Section 1956.001, Occupations Code.

Sec. 411.422. GRANTS TO FUND SCRAP METAL THEFT PREVENTION. (a) From fines collected and distributed to the department under Sections 1956.040(a-2) and (a-4), Occupations Code, the commission by rule shall establish and implement a grant program to provide funding to assist local law enforcement agencies in preventing the theft of regulated material.

(b) To be eligible for a grant, a recipient must be a local law enforcement agency that has established a program designed to prevent the theft of regulated material.

(c) Rules adopted under this section must:

(1) include accountability measures for grant recipients and provisions for loss of eligibility for grant recipients that fail to comply with the measures; and

(2) require grant recipients to provide to the department information on program outcomes.

SECTION 20. Subsection (e), Section 31.03, Penal Code, is amended to read as follows:

(e) Except as provided by Subsection (f), an offense under this section is:

(1) a Class C misdemeanor if the value of the property stolen is less than:

(A) \$50; or

(B) \$20 and the defendant obtained the property by issuing or passing a check or similar sight order in a manner described by Section 31.06;

(2) a Class B misdemeanor if:

(A) the value of the property stolen is:

(i) \$50 or more but less than \$500; or

(ii) \$20 or more but less than \$500 and the defendant obtained the property by issuing or passing a check or similar sight order in a manner described by Section 31.06;

(B) the value of the property stolen is less than:

(i) \$50 and the defendant has previously been convicted of any grade of theft; or

(ii) \$20, the defendant has previously been convicted of any grade of theft, and the defendant obtained the property by issuing or passing a check or similar sight order in a manner described by Section 31.06; or

(C) the property stolen is a driver's license, commercial driver's license, or personal identification certificate issued by this state or another state;

(3) a Class A misdemeanor if the value of the property stolen is \$500 or more but less than \$1,500;

(4) a state jail felony if:

(A) the value of the property stolen is \$1,500 or more but less than \$20,000, or the property is less than 10 head of sheep, swine, or goats or any part thereof under the value of \$20,000;

(B) regardless of value, the property is stolen from the person of another or from a human corpse or grave, including property that is a military grave marker;

(C) the property stolen is a firearm, as defined by Section 46.01;

(D) the value of the property stolen is less than \$1,500 and the defendant has been previously convicted two or more times of any grade of theft;

(E) the property stolen is an official ballot or official carrier envelope for an election; or

(F) the value of the property stolen is less than \$20,000 and the property stolen is [~~insulated or noninsulated tubing, rods, water gate stems, wire, or cable that consists of at least 50 percent~~];

(i) aluminum;

(ii) bronze; [~~or~~]

(iii) copper; or

(iv) brass;

(5) a felony of the third degree if the value of the property stolen is \$20,000 or more but less than \$100,000, or the property is:

(A) cattle, horses, or exotic livestock or exotic fowl as defined by Section 142.001, Agriculture Code, stolen during a single transaction and having an aggregate value of less than \$100,000; or

(B) 10 or more head of sheep, swine, or goats stolen during a single transaction and having an aggregate value of less than \$100,000;

(6) a felony of the second degree if the value of the property stolen is \$100,000 or more but less than \$200,000; or

(7) a felony of the first degree if the value of the property stolen is \$200,000 or more.

SECTION 21. (a) The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before that date.

(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

(c) The enhancement of the punishment of an offense provided under Subsection (a-2), Section 1956.040, Occupations Code, as added by this Act, applies only to an offense committed on or after January 1, 2012. For purposes of this subsection, an offense is committed before January 1, 2012, if any element of the offense occurs before that date. An offense committed before January 1, 2012, is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

(d) Not later than January 1, 2012, the public safety director of the Department of Public Safety of the State of Texas shall appoint the members of the advisory committee established under Section 1956.017, Occupations Code, as added by this Act, and designate the time and place of the committee's first meeting.

SECTION 22. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2011.

(b) Subsection (f), Section 1956.003, Section 1956.004, and Subsections (b) and (e), Section 1956.038, Occupations Code, as added by this Act, take effect March 1, 2012.

Representative Cook moved to table Amendment No. 1.

The motion to table prevailed by (Record 1345): 81 Yeas, 58 Nays, 2 Present, not voting.

Yeas — Aliseda; Allen; Alvarado; Anchia; Aycock; Bohac; Brown; Button; Chisum; Coleman; Cook; Creighton; Crownover; Darby; Davis, J.; Davis, S.; Deshotel; Driver; Dutton; Eissler; Farrar; Fletcher; Gallego; Garza; Giddings; Gonzales, L.; Gonzales, V.; Gonzalez; Hancock; Harper-Brown; Hilderbran; Hopson; Howard, C.; Howard, D.; Huberty; Hunter; Isaac; Jackson; Keffer; King, S.; Lavender; Lewis; Lozano; Lucio; Lyne; Madden; Mallory Caraway; Margo; Marquez; Menendez; Miles; Miller, D.; Muñoz; Murphy; Oliveira; Orr; Otto; Parker; Patrick; Peña; Phillips; Pickett; Pitts; Quintanilla; Raymond; Schwertner; Scott; Sheffield; Shelton; Smith, T.; Smith, W.; Solomons; Taylor, L.; Taylor, V.; Truitt; Turner; Veasey; Vo; Walle; Woolley; Zerwas.

Nays — Alonzo; Anderson, C.; Anderson, R.; Beck; Berman; Bonnen; Branch; Burkett; Burnam; Cain; Callegari; Carter; Christian; Craddick; Davis, Y.; Elkins; Farias; Flynn; Frullo; Gooden; Guillen; Gutierrez; Hamilton; Hardcastle; Harless; Hartnett; Hochberg; Hughes; Johnson; King, P.; King, T.; Kleinschmidt; Kuempel; Landtroop; Larson; Laubenberg; Legler; Martinez Fischer; Miller, S.; Morrison; Naishtat; Nash; Paxton; Perry; Price; Reynolds; Riddle; Rodriguez; Sheets; Simpson; Smithee; Strama; Thompson; Torres; Weber; White; Workman; Zedler.

Present, not voting — Mr. Speaker; Ritter(C).

Absent — Castro; Dukes; Eiland; Geren; Hernandez Luna; Kolkhorst; Martinez; McClendon; Villarreal.

### STATEMENTS OF VOTE

I was shown voting no on Record No. 1345. I intended to vote yes.

Callegari

When Record No. 1345 was taken, I was temporarily out of the house chamber. I would have voted no.

Eiland

I was shown voting no on Record No. 1345. I intended to vote yes.

Nash

#### Amendment No. 2

Representative Hancock offered the following amendment to **SB 694**:

Amend **SB 694** on third reading in SECTION 3 of the bill by adding subsection (h) to read as follows:

(h) Notwithstanding any other law, a governmental entity shall provide a minimum 30 day notice followed by a public hearing prior to enacting a prohibition on the sale or use of a recyclable product.

Amendment No. 2 was adopted.

**SB 694**, as amended, was passed by (Record 1346): 106 Yeas, 29 Nays, 3 Present, not voting.

Yeas — Aliseda; Allen; Alonzo; Alvarado; Anchia; Bohac; Branch; Brown; Button; Cain; Callegari; Castro; Chisum; Cook; Craddick; Creighton; Davis, J.; Davis, S.; Davis, Y.; Deshotel; Driver; Dukes; Dutton; Eiland; Eissler; Farrar; Fletcher; Frullo; Gallego; Giddings; Gonzales, L.; Gonzales, V.; Gonzalez; Guillen; Gutierrez; Hamilton; Hancock; Hardcastle; Harper-Brown; Hartnett; Hilderbran; Hochberg; Hopson; Howard, C.; Howard, D.; Huberty; Hunter; Jackson; Johnson; Keffer; King, S.; Kolkhorst; Lavender; Legler; Lewis; Lozano; Lucio; Lyne; Madden; Mallory Caraway; Margo; Marquez; Martinez; Martinez Fischer; McClendon; Menendez; Miles; Miller, D.; Muñoz; Murphy; Naishtat; Nash; Oliveira; Orr; Otto; Parker; Patrick; Peña; Phillips; Pickett; Pitts; Price; Quintanilla; Raymond; Reynolds; Riddle; Schwertner; Scott; Sheets; Sheffield; Shelton; Smith, T.; Smith, W.; Solomons; Strama; Taylor, V.; Thompson; Torres; Truitt; Turner; Villarreal; Vo; Walle; White; Woolley; Zerwas.

Nays — Anderson, C.; Anderson, R.; Beck; Berman; Bonnen; Burkett; Carter; Christian; Elkins; Flynn; Gooden; Hughes; Isaac; King, P.; King, T.; Kleinschmidt; Kuempel; Landtroop; Larson; Laubenberg; Morrison; Paxton; Perry; Rodriguez; Simpson; Smithee; Weber; Workman; Zedler.

Present, not voting — Mr. Speaker; Harless; Ritter(C).

Absent — Aycock; Burnam; Coleman; Crownover; Darby; Farias; Garza; Geren; Hernandez Luna; Miller, S.; Taylor, L.; Veasey.



**STATEMENTS OF VOTE**

When Record No. 1346 was taken, I was in the house but away from my desk. I would have voted yes.

Crownover

When Record No. 1346 was taken, I was in the house but away from my desk. I would have voted yes.

Garza

When Record No. 1346 was taken, I was in the house but away from my desk. I would have voted yes.

L. Taylor

When Record No. 1346 was taken, I was in the house but away from my desk. I would have voted yes.

Veasey

I was shown voting yes on Record No. 1346. I intended to vote no because I feel it's too onerous on the economic freedom of small business.

White

**HR 1982 - ADOPTED  
(by Sheets)**

Representative Sheets moved to suspend all necessary rules to take up and consider at this time **HR 1982**.

The motion prevailed.

The following resolution was laid before the house:

**HR 1982**, Congratulating Sarah Mason Thomas, Ashley Stallard, Nicole Johnson, and Savannah Still of Faith Academy in Marble Falls on winning titles at the 2010 and 2011 TAPPS Tennis State Championships.

**HR 1982** was read and was adopted.

On motion of Representative Fletcher, the names of all the members of the house were added to **HR 1982** as signers thereof.

**INTRODUCTION OF GUESTS**

The chair recognized Representative Sheets who introduced Sarah Mason Thomas, Ashley Stallard, Nicole Johnson, and Savannah Still.

**COMMITTEE GRANTED PERMISSION TO MEET**

Representative Guillen requested permission for the Committee on Culture, Recreation, and Tourism to meet while the house is in session, at 11 a.m. today, in 3W.9, to consider **HR 1955**.

Permission to meet was granted.

**COMMITTEE MEETING ANNOUNCEMENT**

The following committee meeting was announced:

Culture, Recreation, and Tourism, 11 a.m. today, 3W.9, for a formal meeting, to consider **HR 1955**.

**SB 1717 ON THIRD READING**  
**(Lewis and Jackson - House Sponsors)**

**SB 1717**, A bill to be entitled An Act relating to the operation and administration of the judicial branch of state government.

**Amendment No. 1**

Representative Hartnett offered the following amendment to **SB 1717**:

Amend Amendment No. 8 by Harnett, as added on second reading, to **CCSSB 1717** on third reading by striking Subsection (c) (page 1, lines 29-30) and substituting the following:

(c) Statistical information collected under this section may not include:

- (1) the name of the judge or court that issued the order;
- (2) the minor's name; and
- (3) any other confidential information of the minor.

Amendment No. 1 was adopted.

**SB 1717**, as amended, was passed by (Record 1347): 117 Yeas, 28 Nays, 2 Present, not voting.

Yeas — Aliseda; Allen; Anderson, C.; Anderson, R.; Aycock; Beck; Berman; Bohac; Bonnen; Branch; Brown; Burkett; Button; Cain; Callegari; Chisum; Christian; Cook; Craddick; Creighton; Crownover; Darby; Davis, J.; Davis, S.; Deshotel; Driver; Eiland; Eissler; Elkins; Fletcher; Flynn; Frullo; Gallego; Garza; Geren; Giddings; Gonzalez; Gooden; Guillen; Hamilton; Hancock; Hardcastle; Harless; Harper-Brown; Hartnett; Hilderbran; Hopson; Howard, C.; Huberty; Hughes; Hunter; Isaac; Jackson; Keffer; King, P.; King, S.; King, T.; Kleinschmidt; Kolkhorst; Kuempel; Landtroop; Larson; Laubenberg; Lavender; Legler; Lewis; Lozano; Lucio; Lyne; Madden; Margo; Martinez; Miller, D.; Miller, S.; Morrison; Muñoz; Murphy; Naishtat; Nash; Oliveira; Orr; Otto; Parker; Patrick; Paxton; Peña; Perry; Phillips; Pickett; Pitts; Price; Quintanilla; Raymond; Riddle; Rodriguez; Scott; Sheets; Sheffield; Shelton; Simpson; Smith, T.; Smith, W.; Smithee; Solomons; Taylor, L.; Taylor, V.; Thompson; Torres; Truitt; Turner; Villarreal; Weber; White; Woolley; Workman; Zedler; Zerwas.

Nays — Alonzo; Alvarado; Anchia; Burnam; Carter; Castro; Davis, Y.; Dukes; Farias; Farrar; Gonzales, L.; Gonzales, V.; Gutierrez; Hernandez Luna; Hochberg; Howard, D.; Johnson; Mallory Caraway; Marquez; Martinez Fischer; McClendon; Menendez; Reynolds; Schwertner; Strama; Veasey; Vo; Walle.

Present, not voting — Mr. Speaker; Ritter(C).

Absent — Coleman; Dutton; Miles.

**HR 1835 - PREVIOUSLY ADOPTED**  
**(by Menendez)**

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

**HR 1835**, Honoring Michael Gerber for his service as executive director of the Texas Department of Housing and Community Affairs.

On motion of Representative Murphy, the names of all the members of the house were added to **HR 1835** as signers thereof.

### INTRODUCTION OF GUESTS

The chair recognized Representative Menendez who introduced Michael Gerber and members of his family.

### GENERAL STATE CALENDAR SENATE BILLS THIRD READING

The following bills were laid before the house and read third time:

#### **SB 271 ON THIRD READING (Menendez and Larson - House Sponsors)**

**SB 271**, A bill to be entitled An Act relating to the board of directors of the Bexar Metropolitan Water District.

**SB 271** was passed by (Record 1348): 137 Yeas, 8 Nays, 3 Present, not voting.

Yeas — Aliseda; Allen; Alonzo; Alvarado; Anchia; Anderson, C.; Anderson, R.; Aycock; Berman; Bohac; Bonnen; Branch; Brown; Burkett; Burnam; Button; Callegari; Carter; Castro; Chisum; Christian; Coleman; Cook; Craddick; Creighton; Crownover; Darby; Davis, J.; Davis, S.; Davis, Y.; Deshotel; Driver; Dukes; Dutton; 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; Hunter; Isaac; Jackson; Johnson; Keffer; King, P.; King, S.; King, T.; Kleinschmidt; Kolkhorst; Kuempel; Larson; Laubenberg; Lavender; Legler; Lewis; Lozano; Lucio; Lyne; Madden; Mallory Caraway; Margo; Marquez; Martinez; Martinez Fischer; McClendon; Menendez; Miles; Miller, D.; Morrison; Muñoz; Murphy; Naishtat; Nash; Oliveira; Orr; Parker; Patrick; Paxton; Peña; Phillips; Pickett; Pitts; Price; Quintanilla; Raymond; Reynolds; Riddle; Rodriguez; Schwertner; Scott; Sheets; Sheffield; Shelton; Simpson; Smith, T.; Smith, W.; Smithee; Solomons; Strama; Taylor, L.; Taylor, V.; Thompson; Torres; Truitt; Turner; Veasey; Vo; Walle; Weber; Woolley; Workman; Zerwas.

Nays — Beck; Cain; Hughes; Landtroop; Miller, S.; Perry; White; Zedler.

Present, not voting — Mr. Speaker; Otto; Ritter(C).

Absent — Eiland; Villarreal.

**STATEMENT OF VOTE**

When Record No. 1348 was taken, I was temporarily out of the house chamber. I would have voted yes.

Eiland

**SB 773 ON THIRD READING**  
**(Gallego and Muñoz - House Sponsors)**

**SB 773**, A bill to be entitled An Act relating to telecommunications service discounts for educational institutions, libraries, hospitals, and telemedicine centers.

**SB 773** was passed by (Record 1349): 111 Yeas, 28 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Alvarado; Anchia; Anderson, C.; Aycock; Beck; Branch; Brown; Burkett; Button; Callegari; Castro; Chisum; Christian; Cook; Craddick; Crownover; Darby; Davis, J.; Davis, S.; Davis, Y.; Deshotel; Driver; Dukes; Dutton; Eiland; Eissler; Farias; Farrar; Fletcher; Frullo; Gallego; Geren; Giddings; Gonzales, L.; Gonzales, V.; Gonzalez; Gooden; Guillen; Hamilton; Hancock; Hardcastle; Harless; Harper-Brown; Hernandez Luna; Hilderbran; Hochberg; Hopson; Howard, C.; Howard, D.; Huberty; Hunter; Isaac; Jackson; Johnson; Keffer; King, P.; King, S.; King, T.; Kuempel; Lavender; Lewis; Lucio; Lyne; Mallory Caraway; Margo; Marquez; Martinez; Martinez Fischer; McClendon; Menendez; Miles; Miller, D.; Miller, S.; Morrison; Muñoz; Murphy; Naishtat; Nash; Orr; Otto; Patrick; Peña; Perry; Pickett; Pitts; Price; Quintanilla; Raymond; Reynolds; Riddle; Rodriguez; Scott; Shelton; Smith, T.; Smith, W.; Smithee; Solomons; Strama; Taylor, L.; Thompson; Torres; Truitt; Turner; Veasey; Villarreal; Vo; Walle; Woolley; Zerwas.

Nays — Aliseda; Anderson, R.; Berman; Bohac; Bonnen; Cain; Carter; Creighton; Elkins; Flynn; Hughes; Landtroop; Larson; Laubenberg; Legler; Madden; Parker; Paxton; Phillips; Schwertner; Sheets; Sheffield; Simpson; Taylor, V.; Weber; White; Workman; Zedler.

Present, not voting — Mr. Speaker; Ritter(C).

Absent — Burnam; Coleman; Garza; Gutierrez; Hartnett; Kleinschmidt; Kolkhorst; Lozano; Oliveira.

**STATEMENTS OF VOTE**

I was shown voting no on Record No. 1349. I intended to vote yes.

Bohac

I was shown voting no on Record No. 1349. I intended to vote yes.

Bonnen

When Record No. 1349 was taken, I was in the house but away from my desk. I would have voted yes.

Garza

I was shown voting yes on Record No. 1349. I intended to vote no.

Harper-Brown

When Record No. 1349 was taken, I was in the house but away from my desk. I would have voted yes.

Kolkhorst

I was shown voting no on Record No. 1349. I intended to vote yes.

Sheffield

**SB 17 ON THIRD READING**  
**(Truitt - House Sponsor)**

**SB 17**, A bill to be entitled An Act relating to the regulation of residential mortgage loan servicers; providing an administrative penalty.

**SB 17** was passed by (Record 1350): 143 Yeas, 1 Nays, 2 Present, not voting.

Yeas — 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; Cook; Craddick; Creighton; Crownover; Darby; Davis, J.; Davis, S.; Davis, Y.; Deshotel; Driver; Dukes; Dutton; Eiland; Eissler; Elkins; Farias; Farrar; Fletcher; Flynn; Frullo; Gallego; Geren; Giddings; 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.; 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; Rodriguez; Schwertner; Scott; Sheets; Sheffield; Shelton; Simpson; Smith, T.; Smith, W.; Smithee; Solomons; Strama; Taylor, L.; Thompson; Torres; Truitt; Turner; Veasey; Villarreal; Vo; Walle; Weber; White; Woolley; Workman; Zedler; Zerwas.

Nays — Taylor, V.

Present, not voting — Mr. Speaker; Ritter(C).

Absent — Coleman; Garza; Gonzales, L.; Kleinschmidt.

**STATEMENT OF VOTE**

When Record No. 1350 was taken, I was in the house but away from my desk. I would have voted yes.

Garza

**SB 731 ON THIRD READING**  
**(Kolkhorst - House Sponsor)**

**SB 731**, A bill to be entitled An Act relating to the attorney general's legal sufficiency review of a comprehensive development agreement.

**SB 731** was passed by (Record 1351): 139 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Aliseda; Allen; Alonzo; Anchia; Anderson, C.; Anderson, R.; Aycock; Beck; Berman; Bohac; Bonnen; Branch; Brown; Burkett; Button; Cain; Callegari; Carter; Castro; Chisum; Christian; 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.; Gooden; Guillen; Gutierrez; Hamilton; Harless; Harper-Brown; Hartnett; Hernandez Luna; Hilderbran; Hochberg; Hopson; Howard, C.; Howard, D.; Huberty; Hughes; Hunter; Isaac; Jackson; 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; Rodriguez; Schwertner; Scott; Sheets; Sheffield; Shelton; Simpson; Smith, T.; Smithee; Solomons; Strama; Taylor, L.; Taylor, V.; Thompson; Torres; Truitt; Turner; Veasey; Villarreal; Vo; Walle; Weber; White; Woolley; Workman; Zedler; Zerwas.

Present, not voting — Mr. Speaker; Ritter(C).

Absent — Alvarado; Burnam; Coleman; Cook; Gonzalez; Hancock; Hardcastle; Johnson; Smith, W.

**STATEMENT OF VOTE**

When Record No. 1351 was taken, I was in the house but away from my desk. I would have voted yes.

Alvarado

**SB 223 ON THIRD READING**  
**(Gonzalez - House Sponsor)**

**SB 223**, A bill to be entitled An Act relating to certain facilities and care providers, including providers under the state Medicaid program; providing penalties.

**Amendment No. 1**

Representative Callegari offered the following amendment to **SB 223**:

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

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

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

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

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

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

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

Amendment No. 1 was adopted.

**SB 223**, as amended, was passed by (Record 1352): 146 Yeas, 0 Nays, 2 Present, not voting.

Yeas — 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; 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; Schwertner; Scott; Sheets; Sheffield; Shelton; Simpson; Smith, T.; Smith, W.; Smithee; Solomons; Strama; Taylor, L.; Taylor, V.; Thompson; Torres; Truitt; Turner; Veasey; Villarreal; Yo; Walle; Weber; White; Woolley; Workman; Zedler; Zerwas.

Present, not voting — Mr. Speaker; Ritter(C).

Absent — Coleman; Rodriguez.

**SB 1909 ON THIRD READING**  
**(Oliveira - House Sponsor)**

**SB 1909**, A bill to be entitled An Act relating to The University of Texas at Brownsville, including its partnership agreement with the Texas Southmost College District.

**SB 1909** was passed by (Record 1353): 144 Yeas, 0 Nays, 2 Present, not voting.

Yeas — 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; 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; 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; 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; 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.

Present, not voting — Mr. Speaker; Ritter(C).

Absent — Coleman; Hughes; Menendez; Miles.

**SB 370 ON THIRD READING**  
**(Ritter - House Sponsor)**

**SB 370**, A bill to be entitled An Act relating to the authority of the Texas Water Development Board to provide financial assistance for certain projects if the applicant has failed to complete a request for information relevant to the project.

**SB 370** was passed by (Record 1354): 146 Yeas, 0 Nays, 2 Present, not voting.

Yeas — 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; 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; 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; 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.

Present, not voting — Mr. Speaker; Ritter(C).

Absent — Coleman; McClendon.

**SB 781 ON THIRD READING**  
**(Cook - House Sponsor)**

**SB 781**, A bill to be entitled An Act relating to the repeal of certain legislative oversight committees.

**Amendment No. 1**

Representative Hartnett offered the following amendment to **SB 781**:

Amend **SB 781** on third reading, as amended on second reading, in SECTION 1 of the bill as follows:

- (1) At the end of Subdivision (2), strike "and".
- (2) At the end of Subdivision (3), strike the period and substitute "; and".
- (3) Immediately following Subdivision (3), insert the following:
  - (4) Section 2059.060, Government Code.

Amendment No. 1 was adopted.

**SB 781**, as amended, was passed by (Record 1355): 146 Yeas, 1 Nays, 2 Present, not voting.

Yeas — Aliseda; Allen; Alonzo; Alvarado; Anderson, C.; Anderson, R.; Aycock; Beck; Berman; Bohac; Bonnen; Branch; Brown; Burkett; Burnam; Button; Cain; Callegari; Carter; Castro; Chisum; Christian; 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; 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.

Nays — Anchia.

Present, not voting — Mr. Speaker; Ritter(C).

Absent — Coleman.

**SB 1799 ON THIRD READING**  
**(Branch and Alonzo - House Sponsors)**

**SB 1799**, A bill to be entitled An Act relating to the student loan program administered by the Texas Higher Education Coordinating Board; authorizing the issuance of bonds.

**SB 1799** was passed by (Record 1356): 133 Yeas, 13 Nays, 2 Present, not voting.

Yeas — Aliseda; Allen; Alonzo; Alvarado; Anchia; Anderson, C.; Anderson, R.; Aycock; Bohac; Branch; Brown; Burkett; Burnam; Button; Carter; Castro; Chisum; Christian; Cook; Craddick; Creighton; Crownover; Darby; Davis, J.; Davis, S.; Davis, Y.; Deshotel; Driver; Dukes; Dutton; Eiland; Eissler; Farias; Farrar; Fletcher; 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; Lewis; Lozano; Lucio; Lyne; Madden; Mallory Caraway; Margo; Marquez; Martinez; Martinez Fischer; McClendon; Menendez; Miles; Miller, D.; Morrison; Muñoz; Murphy; Naishtat; Nash; Oliveira; Orr; Otto; Parker; Patrick; Peña; Perry; Phillips; Pickett; Pitts; Price; Quintanilla; Raymond; Reynolds; Riddle; Rodriguez; Schwertner; Scott; Sheets; Sheffield; Shelton; Simpson; Smith, T.; Smith, W.; Solomons; Strama; Taylor, L.; Thompson; Torres; Turner; Veasey; Villarreal; Vo; Walle; Weber; White; Woolley; Workman; Zedler; Zerwas.

Nays — Beck; Berman; Bonnen; Cain; Callegari; Elkins; Flynn; Lavender; Legler; Miller, S.; Paxton; Smithee; Taylor, V.

Present, not voting — Mr. Speaker; Ritter(C).

Absent — Coleman; Truitt.

**STATEMENTS OF VOTE**

I was shown voting no on Record No. 1356. I intended to vote yes.

Elkins

I was shown voting yes on Record No. 1356. I intended to vote no.

Kolkhorst

**SB 1714 ON THIRD READING**  
**(Chisum - House Sponsor)**

**SB 1714**, A bill to be entitled An Act relating to certain actions against an employer by an employee who is not covered by workers' compensation insurance.

**SB 1714 - STATEMENT OF LEGISLATIVE INTENT**

**REPRESENTATIVE BRANCH:** Is the reference in the new language in 406.034(d) to an "agreement" intended to cover any agreement, plan, or practice by an employer to provide benefits outside of workers' compensation to employees that waive workers' compensation coverage?

**REPRESENTATIVE CHISUM:** Yes.

**BRANCH:** Is the intent in Section 3 of the bill, relating to the applicability section, that Section (3)(a)(2)(B) only refers to those benefits payable by an employer in exchange for a pre-injury waiver of the employee's right of action?

**CHISUM:** Yes.

**REMARKS ORDERED PRINTED**

Representative Chisum moved to print remarks between Representative Branch and Representative Chisum.

The motion prevailed.

**REPRESENTATIVE GIDDINGS:** Mr. Chisum, I'm sorry, I'm trying to figure out exactly—in a thumbnail sketch—what your bill does. Does this affect nonsubscribers?

**CHISUM:** This only affects one nonsubscriber, and I'll just tell you their name is Cargill, they're a very large employer in my and Mr. Smithee's district and around Lubbock, Texas, all the way up to the northern parts of the Panhandle. It allows them, because they have an agreement with their employees, to be a nonsubscriber. We grandfather them in and we just say that you cannot any longer have an alternative to workers' comp that requires the employee to waive their right to sue, and so, we don't want to continue those because that's a very large place where they could abuse the privilege. This company has not abused it—their employee representatives are just fine with the way we—so we did not want to change that at all. We want them to be allowed to go forward, but we don't want to proliferate this with some bad actors, so that's—but if you want to be a nonsubscriber, you can do that.

**GIDDINGS:** Okay. So, to be sure I get this correct, your bill is only intended to affect this one employer in your area, and you're grandfathering them?

**CHISUM:** We are grandfathering them in, yes.

**GIDDINGS:** They have an agreement—a non-sue agreement with their workers?

**CHISUM:** They do.

GIDDINGS: And so, what is their history? Have their workers been taken care of—you know—

CHISUM: They have a long history. They've had only one complaint that we're aware of, and it seems to be a program that is working for them, and they continue to be a large employer in that area of the state.

GIDDINGS: Okay, so this is just grandfathering this one particular company in your area and has no effect on the rest of the state?

CHISUM: Absolutely.

### REMARKS ORDERED PRINTED

Representative Giddings moved to print remarks between Representative Chisum and Representative Giddings.

The motion prevailed.

**SB 1714** was passed by (Record 1357): 145 Yeas, 0 Nays, 2 Present, not voting.

Yeas — 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; Cook; Craddick; Creighton; Crownover; Darby; Davis, J.; Davis, S.; Davis, Y.; Deshotel; Driver; Dukes; Dutton; Eiland; 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; Lyle; 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; Phillips; Pickett; Pitts; Price; Quintanilla; Raymond; Reynolds; Riddle; 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.

Present, not voting — Mr. Speaker; Ritter(C).

Absent — Coleman; Eissler; Perry.

### STATEMENT OF VOTE

When Record No. 1357 was taken, I was in the house but away from my desk. I would have voted yes.

Perry

**SB 542 ON THIRD READING**  
**(Fletcher - House Sponsor)**

**SB 542**, A bill to be entitled An Act relating to the regulation of law enforcement officers by the Commission on Law Enforcement Officer Standards and Education.

**SB 542** was passed by (Record 1358): 147 Yeas, 0 Nays, 2 Present, not voting. (The vote was reconsidered later today, and **SB 542** was amended and passed by Record No. 1395.)

Yeas — 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; 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; 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.

Present, not voting — Mr. Speaker; Ritter(C).

Absent — Coleman.

**SB 332 ON THIRD READING**  
**(Ritter - House Sponsor)**

**SB 332**, A bill to be entitled An Act relating to the ownership of groundwater below the surface of land, the right to produce that groundwater, and the management of groundwater in this state.

**SB 332** was passed by (Record 1359): 147 Yeas, 0 Nays, 2 Present, not voting.

Yeas — 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; 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; Rodriguez; Schwertner; Scott; Sheets; Sheffield; 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.

Present, not voting — Mr. Speaker; Ritter(C).

Absent — Coleman.

**LOCAL, CONSENT, AND RESOLUTIONS CALENDAR**  
**SENATE BILLS**  
**THIRD READING**

The following bills were laid before the house and read third time:

**SB 303 ON THIRD READING**  
**(Scott and White - House Sponsors)**

**SB 303**, A bill to be entitled An Act relating to health care services provided or paid by a hospital district.

**SB 303** was passed by (Record 1360): 144 Yeas, 1 Nays, 3 Present, not voting.

Yeas — 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; 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; 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; Rodriguez; Schwertner; Scott; Sheets; Sheffield; Simpson; Smith, T.; Smith, W.; Smithee; Solomons; Strama; Taylor, L.; Taylor, V.; Thompson; Torres; Turner; Veasey; Villarreal; Vo; Walle; Weber; White; Woolley; Workman; Zedler; Zerwas.

Nays — Shelton.

Present, not voting — Mr. Speaker; Ritter(C); Truitt.

Absent — Coleman; Lucio.

**SB 1543 ON THIRD READING**  
(Larson - House Sponsor)

**SB 1543**, A bill to be entitled An Act relating to the authority of an independent school district to invest in corporate bonds.

**SB 1543** was passed by (Record 1361): 126 Yeas, 20 Nays, 2 Present, not voting.

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

Nays — Beck; Berman; Cain; Elkins; Flynn; Geren; Gooden; Kolkhorst; Landtroop; Laubenberg; Madden; Miller, S.; Paxton; Perry; Sheets; Simpson; Solomons; Taylor, V.; White; Zedler.

Present, not voting — Mr. Speaker; Ritter(C).

Absent — Hughes; Lucio.

**STATEMENTS OF VOTE**

I was shown voting no on Record No. 1361. I intended to vote yes.

Laubenberg

I was shown voting yes on Record No. 1361. I intended to vote no.

Weber

**SB 1816 ON THIRD READING**  
(Raymond - House Sponsor)

**SB 1816**, A bill to be entitled An Act relating to county and municipal land development regulation.

**Amendment No. 1**

Representative Guillen offered the following amendment to **SB 1816**:

Amend **SB 1816** on third reading as follows:

(1) In SECTION 2 of the bill, in the recital, strike "Subsections (a) and (d), Section 232.022, Local Government Code, are" and substitute "Subsection (d), Section 232.022, Local Government Code, is".

(2) In SECTION 2 of the bill, strike amended Section 232.022(a), Local Government Code.

(3) Add the following appropriately numbered SECTIONS to the bill:

SECTION \_\_\_\_\_. Section 232.0031, Local Government Code, is amended to read as follows:

Sec. 232.0031. STANDARD FOR ROADS IN SUBDIVISION. A county may not impose under Section 232.003 a higher standard for streets or roads in a subdivision than the county imposes on itself for the construction of new streets or roads with a similar type and amount of traffic.

SECTION \_\_\_\_\_. Section 232.033, Local Government Code, is amended by amending Subsections (a) and (h) and adding Subsections (a-1), (a-2), (a-3), (a-4), and (a-5) to read as follows:

(a) Brochures, publications, ~~[and]~~ advertising of any form, and earnest money contracts relating to ~~[subdivided]~~ land required to be platted under this subchapter:

(1) may not contain any misrepresentation; ~~[and]~~

(2) except for a for-sale sign posted on the property that is no larger than three feet by three feet, must accurately describe the availability of water and sewer service facilities and electric and gas utilities; and

(3) if a plat for the land has not been finally approved and recorded, must include a notice that:

(A) subject to Subsection (a-1), a contract for the sale of any portion of the land may not be entered into until the land receives final plat approval under Section 232.024; and

(B) the land may not be possessed or occupied until:

(i) the land receives final plat approval under Section 232.024;

and

(ii) all water and sewer service facilities for the lot are connected or installed in compliance with the model rules adopted under Section 16.343, Water Code.

(a-1) This subsection applies in addition to other applicable law and prevails to the extent of a conflict with that other law. This subsection applies only to a person who is a seller or subdivider and who is a licensed, registered, or otherwise credentialed residential mortgage loan originator under applicable state law, federal law, and the Nationwide Mortgage Licensing System and Registry. A person may, before a plat has been finally approved and recorded for the land:

(1) enter into an earnest money contract with a potential purchaser and accept payment under the contract in an amount of \$250 or less; and

(2) advertise in accordance with this section.

(a-2) An earnest money contract entered into under Subsection (a-1) is void if the plat for the land has not been finally approved and recorded before the 91st day after the date the earnest money contract is signed by the potential purchaser,



unless the potential purchaser agrees in writing to extend the period for plat approval and recording for an additional 90-day period. Only one extension may be granted under this subsection.

(a-3) If an earnest money contract is void under Subsection (a-2), the seller shall refund all earnest money paid to the potential purchaser not later than the 30th day after the date the earnest money contract becomes void under Subsection (a-2). If the seller fails to refund the earnest money to the potential purchaser in violation of this subsection, the potential purchaser, in a suit to recover the earnest money, may recover an amount equal to three times the amount of the earnest money required to be refunded, plus reasonable attorney's fees.

(a-4) Before entering into an earnest money contract with a potential purchaser and before a plat has been finally approved and recorded for the land as permitted under Subsection (a-1), a person must provide written notice to the attorney general and to the local government responsible for approving the plat. The notice must include:

(1) a statement of intent to enter into an earnest money contract under Subsection (a-1);

(2) a legal description of the land to be included in the subdivision;

(3) each county in which all or part of the subdivision is located; and

(4) the number of proposed individual lots to be included in the subdivision.

(a-5) The attorney general may adopt rules regarding the notice to be provided under Subsection (a-4).

(h) A person who is a seller of lots for which a plat is required under this subchapter ~~[in a subdivision]~~, or a subdivider or an agent of a seller or subdivider, commits an offense if the person knowingly authorizes or assists in the publication, advertising, distribution, or circulation of any statement or representation that the person knows is false concerning any ~~[subdivided]~~ land offered for sale or lease. An offense under this section is a Class A misdemeanor.

SECTION \_\_\_\_\_. Subchapter B, Chapter 232, Local Government Code, is amended by adding Section 232.0375 to read as follows:

Sec. 232.0375. NOTICE AND OPPORTUNITY TO CURE REQUIRED BEFORE FILING ENFORCEMENT ACTION. (a) Before a civil enforcement action may be filed against a subdivider under this subchapter, the subdivider must be notified in writing about the general nature of the alleged violation and given 90 days from the notification date to cure the violation. After the 90th day after the date of the notification, the enforcement action may proceed.

(b) This section does not apply to a civil enforcement action if the attorney general, district attorney, or county attorney asserts that:

(1) an alleged violation or threatened violation poses a threat to a consumer or to the health and safety of any person; or

(2) a delay in bringing an enforcement action may result in financial loss or increased costs to any person, including the county.

(c) This section does not apply if an enforcement action has previously been filed against the subdivider for the same or another alleged violation.

(d) This section does not apply to an action filed by a private individual.

SECTION \_\_\_\_. Subchapter B, Chapter 232, Local Government Code, is amended by adding Section 232.045 to read as follows:

Sec. 232.045. EARNEST MONEY CONTRACTS. (a) An earnest money contract entered into under Section 232.033(a-1) must contain the following statement:

"NOTICE: THIS IS AN EARNEST MONEY CONTRACT ONLY. THE MAXIMUM AMOUNT THAT THE SELLER MAY COLLECT UNDER THIS CONTRACT IS \$250. THE SELLER MAY NOT DEMAND ANY ADDITIONAL PAYMENT UNTIL A PLAT OF THE SUBDIVISION HAS BEEN APPROVED."

(b) An earnest money contract entered into under Section 232.033(a-1) must contain the notice required by Section 232.033.

SECTION \_\_\_\_. Subchapter C, Chapter 232, Local Government Code, is amended by adding Sections 232.0805 and 232.0806 to read as follows:

Sec. 232.0805. NOTICE AND OPPORTUNITY TO CURE REQUIRED BEFORE FILING ENFORCEMENT ACTION. (a) In this section, "subdivider" has the meaning assigned by Section 232.021.

(b) Before a civil enforcement action may be filed against a subdivider under this subchapter, the subdivider must be notified in writing about the general nature of the alleged violation and given 90 days from the notification date to cure the violation. After the 90th day after the date of the notification, the enforcement action may proceed.

(c) This section does not apply to a civil enforcement action if the attorney general, district attorney, or county attorney asserts that:

(1) an alleged violation or threatened violation poses a threat to a consumer or to the health and safety of any person; or

(2) a delay in bringing an enforcement action may result in financial loss or increased costs to any person, including the county.

(d) This section does not apply if an enforcement action has previously been filed against the subdivider for the same or another alleged violation.

(e) This section does not apply to an action filed by a private individual.

Sec. 232.0806. SUIT BY PRIVATE PERSON IN ECONOMICALLY DISTRESSED AREA. A person who has purchased or is purchasing a lot in a subdivision for residential purposes that does not have water and sewer services as required by this subchapter and is located in an economically distressed area, as defined by Section 17.921, Water Code, from a subdivider may bring suit in the district court in which the property is located or in a district court in Travis County to:

(1) declare the sale of the property void, require the subdivider to return the purchase price of the property, and recover from the subdivider:

(A) the market value of any permanent improvements the person placed on the property;

(B) actual expenses incurred as a direct result of the failure to provide adequate water and sewer facilities;

(C) court costs; and

(D) reasonable attorney's fees; or

(2) enjoin a violation or threatened violation of Section 232.072, require the subdivider to plat or amend an existing plat under Sections 232.011 and 232.081, and recover from the subdivider:

(A) actual expenses incurred as a direct result of the failure to provide adequate water and sewer facilities;

(B) court costs; and

(C) reasonable attorney's fees.

SECTION \_\_\_\_\_. Section 233.152, Local Government Code, is amended to read as follows:

Sec. 233.152. APPLICABILITY. (a) Except as provided by Subsection (b), this [This] subchapter applies only to new residential construction in a county that has adopted a resolution or order requiring the application of the provisions of this subchapter and that:

(1) is located within 50 miles of an international border; or

(2) has a population of more than 100.

(b) This subchapter 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).

SECTION \_\_\_\_\_. Subchapter F, Chapter 233, Local Government Code, is amended by adding Section 233.1546 to read as follows:

Sec. 233.1546. CERTIFICATION OF COMPLIANCE; CONNECTION OF UTILITIES. (a) A county may require the issuance of a certificate of compliance as a precondition to obtaining utility services as provided by this section.

(b) The county shall, not later than the fifth business day after the date a request is received under this subsection, issue the requesting party a written certificate of compliance if:

(1) the county receives a written request from a person who builds new residential construction subject to this section, the person for whom the new residential construction is built, or an entity that provides utility service; and

(2) the requesting party demonstrates that the new residential construction has complied with all requirements applicable under this subchapter.

(c) An electric, gas, water, or sewer service utility may not permanently serve or connect new residential construction subject to this section with electricity, gas, water, sewer, or other utility service unless the utility receives a certificate issued by the county that states that compliance with all requirements applicable under this subchapter was demonstrated as provided by Subsection (b).

(d) Subsection (c) does not prevent the temporary use or connection of utilities necessary to complete new residential construction, including temporary use or connection of utilities to pass an inspection under this subchapter.

SECTION \_\_\_\_\_. Subchapter J, Chapter 16, Water Code, is amended by adding Section 16.3541 to read as follows:

Sec. 16.3541. NOTICE AND OPPORTUNITY TO CURE REQUIRED BEFORE FILING ENFORCEMENT ACTION. (a) In this section, "subdivider" has the meaning assigned by Section 232.021, Local Government Code.

(b) Before a civil enforcement action may be filed against a subdivider under this subchapter, the subdivider must be notified in writing about the general nature of the alleged violation and given 90 days from the notification date to cure the violation. After the 90th day after the date of the notification, the enforcement action may proceed.

(c) This section does not apply to a civil enforcement action if the attorney general, district attorney, or county attorney asserts that:

(1) an alleged violation or threatened violation poses a threat to a consumer or to the health and safety of any person; or

(2) a delay in bringing an enforcement action may result in financial loss or increased costs to any person, including the county.

(d) This section does not apply if an enforcement action has previously been filed against the subdivider for the same or another alleged violation.

SECTION \_\_\_\_\_. Section 232.021(9), Local Government Code, is repealed.

SECTION \_\_\_\_\_. This Act applies only to an enforcement action filed on or after the effective date of this Act. An enforcement action filed before the effective date of this Act is governed by the law as it existed when the action was filed, and the former law is continued in effect for that purpose.

SECTION \_\_\_\_\_. The changes in law made by this Act to Chapter 233, Local Government Code, apply only to new residential construction that commences on or after the effective date of this Act, except that if the county requires notice under Section 233.154(b), Local Government Code, this Act applies only to new residential construction for which notice was given on or after the effective date of this Act.

(4) Renumber the SECTIONS of the bill accordingly.

Amendment No. 1 was adopted.

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

On behalf of Representative Marquez, Representative Gonzalez offered the following amendment to **SB 1816**:

Amend **SB 1816** by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 233.152, Local Government Code, is amended to read as follows:

Sec. 233.152. APPLICABILITY. (a) Except as provided by Subsection (b), this [This] subchapter applies only to new residential construction in a county that has adopted a resolution or order requiring the application of the provisions of this subchapter and that:

- (1) is located within 50 miles of an international border; or
- (2) has a population of more than 100.

(b) This subchapter 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).

SECTION \_\_\_\_\_. Subchapter F, Chapter 233, Local Government Code, is amended by adding Section 233.1546 to read as follows:

Sec. 233.1546. CERTIFICATION OF COMPLIANCE; CONNECTION OF UTILITIES. (a) A county may require the issuance of a certificate of compliance as a precondition to obtaining utility services as provided by this section.

(b) The county shall, not later than the fifth business day after the date a request is received under this subsection, issue the requesting party a written certificate of compliance if:

(1) the county receives a written request from a person who builds new residential construction subject to this section, the person for whom the new residential construction is built, or an entity that provides utility service; and

(2) the requesting party demonstrates that the new residential construction has complied with all requirements applicable under this subchapter.

(c) An electric, gas, water, or sewer service utility may not permanently serve or connect new residential construction subject to this section with electricity, gas, water, sewer, or other utility service unless the utility receives a certificate issued by the county that states that compliance with all requirements applicable under this subchapter was demonstrated as provided by Subsection (b).

(d) Subsection (c) does not prevent the temporary use or connection of utilities necessary to complete new residential construction, including temporary use or connection of utilities to pass an inspection under this subchapter.

SECTION \_\_\_\_\_. The changes in law made by Section 233.152, Local Government Code, as amended by this Act, and Section 233.1546, Local Government Code, as added by this Act, apply only to new residential construction that commences on or after the effective date of this Act, except that if the county requires notice under Section 233.154(b), Local Government Code, the changes in law described by this section apply only to new residential construction for which notice was given on or after the effective date of this Act.

Amendment No. 2 was adopted.

**AMENDMENT NO. 1 - STATEMENT OF LEGISLATIVE INTENT**

REPRESENTATIVE HANCOCK: Yes, Representative Guillen, we talked about it a little bit. You brought up the fact that this bill did pass the house, but this bill actually failed the house originally, did it not?

REPRESENTATIVE GUILLEN: I don't remember.

HANCOCK: The amendment.

GUILLEN: Yes.

HANCOCK: And then it was brought back up—

GUILLEN: Back up, and we added, I think—well, we amended it, and it failed. It was brought back up in the same form and passed.

HANCOCK: Okay. My questions is, as you bring this as an amendment to this bill, did you address in this amendment the concerns with the original bill?

GUILLEN: Oh yes. We included the exact amendment that we applied on the house floor at that time.

HANCOCK: So, this is the amended version of the original bill, corrected, and no changes from that.

GUILLEN: Right.

**REMARKS ORDERED PRINTED**

Representative Hancock moved to print remarks between Representative Guillen and Representative Hancock.

The motion prevailed.

**SB 1816**, as amended, was passed by (Record 1362): 76 Yeas, 68 Nays, 2 Present, not voting.

Yeas — Aliseda; Allen; Alonzo; Anchia; Burnam; Callegari; Castro; Chisum; Coleman; Cook; Davis, J.; Davis, Y.; Deshotel; Driver; Dukes; Dutton; Eiland; Eissler; Farias; Gallego; Garza; Giddings; Gonzales, V.; Gonzalez; Guillen; Gutierrez; Hamilton; Hardcastle; Hartnett; Hilderbran; Hochberg; Howard, D.; Hunter; Isaac; Jackson; Johnson; Keffer; King, T.; Kuempel; Larson; Lozano; Lucio; Lyne; Mallory Caraway; Margo; Marquez; Martinez; Martinez Fischer; McClendon; Menendez; Miller, D.; Muñoz; Naishtat; Nash; Oliveira;

Otto; Peña; Pickett; Pitts; Quintanilla; Raymond; Reynolds; Rodriguez; Scott; Shelton; Solomons; Strama; Taylor, V.; Thompson; Torres; Turner; Villarreal; Vo; Walle; Woolley; Workman.

Nays — Anderson, C.; Anderson, R.; Aycock; Beck; Berman; Bohac; Bonnen; Branch; Brown; Burkett; Button; Cain; Carter; Christian; Craddick; Creighton; Crownover; Darby; Davis, S.; Elkins; Farrar; Fletcher; Flynn; Frullo; Geren; Gonzales, L.; Gooden; Hancock; Harless; Harper-Brown; Hernandez Luna; Hopson; Howard, C.; Huberty; King, P.; King, S.; Kleinschmidt; Kolkhorst; Landtroop; Laubenberg; Lavender; Legler; Lewis; Madden; Miller, S.; Morrison; Murphy; Orr; Parker; Patrick; Paxton; Perry; Phillips; Price; Riddle; Schwertner; Sheets; Sheffield; Simpson; Smith, T.; Smith, W.; Smithee; Taylor, L.; Truitt; Weber; White; Zedler; Zerwas.

Present, not voting — Mr. Speaker; Ritter(C).

Absent — Alvarado; Hughes; Miles; Veasey.

#### STATEMENTS OF VOTE

When Record No. 1362 was taken, I was in the house but away from my desk. I would have voted yes.

Alvarado

I was shown voting yes on Record No. 1362. I intended to vote no.

Kuempel

I was shown voting yes on Record No. 1362. I intended to vote no.

Otto

When Record No. 1362 was taken, I was in the house but away from my desk. I would have voted yes.

Veasey

#### POSTPONED BUSINESS

The following bills were laid before the house as postponed business:

#### **SB 738 ON SECOND READING** **(Villarreal - House Sponsor)**

**SB 738**, A bill to be entitled An Act relating to a parental role in determining sanctions applied to a public school campus under certain circumstances.

**SB 738** was read second time on May 21 and was passed to third reading, as amended. The vote was later reconsidered on May 23, amendments were offered and disposed of, and **SB 738** was postponed until later that day.

#### **Amendment No. 2 - Vote Reconsidered**

Representative Villarreal moved to reconsider the vote by which Amendment No. 2 was adopted.

The motion to reconsider prevailed.

Amendment No. 2 was withdrawn.

**SB 738** was passed to third reading. (Christian and Weber recorded voting no.)

**SB 173 ON SECOND READING**  
**(Dutton - House Sponsor)**

**SB 173**, A bill to be entitled An Act relating to civil remedy of violations of certain municipal health and safety ordinances.

**SB 173** was read second time on May 23 and was postponed until 11:30 p.m. May 23.

**SB 173** was passed to third reading.

**CSSJR 5 ON SECOND READING**  
**(Pitts - House Sponsor)**

**CSSJR 5**, A joint resolution proposing a constitutional amendment relating to increasing the market value of the permanent school fund for the purpose of allowing increased distributions from the available school fund.

**CSSJR 5** was read second time on May 23 and was postponed until 8 a.m. today.

Representative Pitts moved to postpone consideration of **CSSJR 5** until 8 a.m. Sunday, January 1, 2012.

The motion prevailed.

**SB 542 - NOTICE GIVEN**

Pursuant to the provisions of Rule 7, Section 37(c) of the House Rules, at 11:20 a.m., Representative Walle announced his intention to make the motion to reconsider the vote by which **SB 542** was passed earlier today.

**POSTPONED BUSINESS**  
**(consideration continued)**

**SB 499 ON SECOND READING**  
**(Guillen - House Sponsor)**

**SB 499**, A bill to be entitled An Act relating to the identification of breeder deer by microchips.

**SB 499** was read second time on May 20, postponed until May 23, and was again postponed until 8 a.m. today.

**SB 499** was withdrawn and, pursuant to Rule 6, Section 24 of the House Rules, was returned to the Committee on Calendars.

**MAJOR STATE CALENDAR**  
**SENATE BILLS**  
**SECOND READING**

The following bills were laid before the house and read second time:



**CSSB 142 ON SECOND READING**  
**(Solomons - House Sponsor)**

**CSSB 142**, A bill to be entitled An Act relating to real property that is subject to restrictive covenants, including the operation of property owners' associations of subdivisions that are subject to restrictive covenants, and to certain foreclosure actions.

(Schwertner in the chair)

**Amendment No. 1**

Representative Solomons offered the following amendment to **CSSB 142**:

Amend **CSSB 142** (house committee printing) in SECTION 1 of the bill in amended Section 5.006(a), Property Code (page 1, lines 10-12), by striking "or a statute pertaining to real property subject to a restrictive covenant or to restrictive covenants to which real property is subject".

Amendment No. 1 was adopted.

**Amendment No. 2**

Representative Solomons offered the following amendment to **CSSB 142**:

Amend **CSSB 142** (house committee printing) in SECTION 15 of the bill, in added Section 209.0051(e), Property Code (page 22, line 18), by striking "emergency".

Amendment No. 2 was adopted.

**Amendment No. 3**

Representative Solomons offered the following amendment to **CSSB 142**:

Amend **CSSB 142** (house committee printing) in SECTION 9 of the bill, in added Section 202.012(e), Property Code (page 8, line 22), between "instrument" and the period, by inserting "and that has been approved by all adjoining property owners".

Amendment No. 3 was adopted.

**Amendment No. 4**

Representative Solomons offered the following amendment to **CSSB 142**:

Amend **CSSB 142** (house committee printing), in SECTION 10 of the bill, in amended Section 207.003(c), Property Code (page 12, lines 16-18), by striking the following:

The prescribed charges shall be presumed to be reasonable if they do not exceed costs that would be applicable for an item under 1 T.A.C. Section 70.3.

Amendment No. 4 was adopted.

**Amendment No. 5**

Representative Vo offered the following amendment to **CSSB 142**:

Amend **CSSB 142** (house committee printing) as follows:

(1) In SECTION 15 of the bill, in added Section 209.0051(e)(1), Property Code (page 22, line 22), between "mailed" and "to each", insert "or delivered".

(2) In SECTION 21 of the bill, in added Section 209.014(b), Property Code (page 38, line 12), between "must be sent" and "to each", insert "or delivered".

Amendment No. 5 was adopted.

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

Representative Kuempel offered the following amendment to **CSSB 142**:

Amend **CSSB 142** (house committee printing) in SECTION 13 of the bill as follows:

(1) In the recital (page 13, line 14), strike "Section 209.0041" and substitute "Sections 209.0041 and 209.0042".

(2) Following added Section 209.0041, Property Code (page 14, between lines 15 and 16), insert the following:

Sec. 209.0042. VARIANCE FOR COMMERCIAL DEVELOPMENT.

(a) This section applies to a residential subdivision in which property owners are subject to mandatory membership in a property owners' association.

(b) This section does not apply to a property owners' association that is subject to Chapter 552, Government Code, by application of Section 552.0036, Government Code.

(c) Notwithstanding any provision in a dedicatory instrument, a property owners' association board may grant a variance to a restrictive covenant to permit the commercial development of a lot restricted to residential development by the restrictive covenant if:

(1) the lot is adjacent to a US highway with four or more lanes;

(2) the lot is substantially similar to other lots in the subdivision that are not subject to a restrictive covenant requiring residential development and for which commercial use is permitted; and

(3) the lot is not adjacent to a road in the subdivision that accesses the interior portion of the subdivision.

(d) A property owners' association board that grants a variance under Subsection (c) may impose reasonable conditions on the commercial activity permitted by the variance.

(e) A variance granted by the board for a lot under Subsection (c) is not a waiver of the association's authority to enforce the restrictive covenant with respect to other lots that do not qualify for a variance under that subsection.

Amendment No. 6 was adopted.

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

Representative Workman offered the following amendment to **CSSB 142**:

Amend **CSSB 142** by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Chapter 202, Property Code, is amended by adding Section 202.015 to read as follows:

Sec. 202.015. RESTRICTIONS REQUIRING USE OF LIQUID PROPANE GAS. A property owners' association may not adopt or enforce a dedicatory instrument provision that requires a property owner to use liquid propane gas as a sole fuel source for the owner's property.

Amendment No. 7 was adopted.

**Amendment No. 8**

Representative Menendez offered the following amendment to **CSSB 142**:

Amend **CSSB 142** (house committee printing) as follows:

(1) In SECTION 21 of the bill, in the recital (page 37, line 26), strike "Sections 209.014 and 209.015" and substitute "Sections 209.0121, 209.014, and 209.015".

(2) In SECTION 21 of the bill, between the recital and added Section 209.014, Property Code (page 37, between lines 26 and 27), insert the following:

Sec. 209.0121. REGULATION OF LAND USE: RESIDENTIAL PURPOSE. (a) In this section:

(1) "Adjacent lot" means:

(A) a lot that is contiguous to another lot that fronts on the same street;

(B) with respect to a corner lot, a lot that is contiguous to the corner lot either by a side or back property line; or

(C) if permitted by the dedicatory instrument, any lot that is contiguous to another lot at the back property line.

(2) "Residential purpose" with respect to the use of a lot:

(A) means the location on the lot of any building, structure, or other improvement customarily appurtenant to a residence, as opposed to use for a business or commercial purpose; and

(B) includes the location on the lot of a garage, sidewalk, driveway, parking area, children's swing or playscape, fence, septic system, swimming pool, utility line, or water well and, if otherwise specifically permitted by the provisions of the dedicatory instrument, the parking or storage of a recreational vehicle.

(b) A property owners' association may not adopt or enforce a provision in a dedicatory instrument that prohibits or restricts the owner of a lot on which a residence is located from using for residential purposes an adjacent lot owned by the property owner.

(c) An owner must obtain the approval of the property owners' association or, if applicable, an architectural committee established by the association, based on criteria prescribed by the dedicatory instruments specific to the use of a lot for residential purposes, including reasonable restrictions regarding size, location, shielding, and aesthetics of the residential purpose, before the owner begins the construction, placement, or erection of a building, structure, or other improvement for the residential purpose on an adjacent lot.

(d) An owner who elects to use an adjacent lot for residential purposes under this section shall, on the sale or transfer of the lot containing the residence:

(1) include the adjacent lot in the sales agreement and transfer the lot to the new owner under the same dedicatory conditions; or

(2) restore the adjacent lot to the original condition before the addition of the improvements allowed under this section to the extent that the lot would again be suitable for the construction of a separate residence as originally platted and provided for in the conveyance to the owner.

(e) An owner may sell the adjacent lot separately only for the purpose of the construction of a new residence that complies with existing requirements in the dedicatory instrument unless the lot has been restored as described by Subsection (d)(2).

(f) A provision in a dedicatory instrument that violates this section is void.

### MESSAGE FROM THE SENATE

A message from the senate was received at this time (see the addendum to the daily journal, Messages from the Senate, Message No. 2).

#### CSSB 142 - (consideration continued)

Amendment No. 8 was adopted.

#### Amendment No. 9

Representative Veasey offered the following amendment to **CSSB 142**:

Amend **CSSB 142** (house committee printing) in SECTION 9 of the bill as follows:

(1) In the recital (page 6, line 9), between "Sections" and "202.011," insert "202.010,".

(2) Following the recital (page 6, between lines 9 and 10), insert the following:

Sec. 202.010. SELECTION OF CONTRACTORS FOR PROPERTY ALTERATION, MAINTENANCE, AND REPAIR. (a) Except as otherwise provided by this section, a property owners' association may not enforce or adopt a restrictive covenant that requires a property owner to use a contractor selected by the property owners' association when contracting for alteration, maintenance, or repair of the property owner's property.

(b) This section does not prohibit enforcement or adoption of a restrictive covenant that allows the property owners' association to designate a specific contractor to:

(1) alter, maintain, or repair property that the property owners' association is required to maintain; or

(2) provide services to or for the benefit of all members of the property owners' association.

Amendment No. 9 was adopted.

#### Amendment No. 10

Representative McClendon offered the following amendment to **CSSB 142**:

Amend **CSSB 142** (house committee printing) by adding the following appropriately numbered SECTIONS and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 1101.151(a), Occupations Code, is amended to read as follows:

- (a) The commission shall:
- (1) administer this chapter and Chapter 1102;
  - (2) adopt rules and establish standards relating to permissible forms of advertising by a license holder acting as a residential rental locator;
  - (3) maintain a registry of certificate holders; ~~and~~
  - (4) design and adopt a seal; and
  - (5) administer Sections 82.1031, 82.1032, 209.0041, and 209.0042, Property Code.

SECTION \_\_\_\_\_. Section 1101.152, Occupations Code, is amended by adding Subsection (d) to read as follows:

(d) The commission shall adopt rules to set and collect fees in amounts reasonable and necessary to cover the costs of administering the filing of an application for registration under Sections 82.1031 and 209.0041, Property Code, and a renewal of registration under Sections 82.1032 and 209.0042, Property Code.

SECTION \_\_\_\_\_. Section 82.003(a), Property Code, is amended by adding Subdivision (4-a) to read as follows:

(4-a) "Commission" means the Texas Real Estate Commission.

SECTION \_\_\_\_\_. Subchapter C, Chapter 82, Property Code, is amended by adding Sections 82.1031, 82.1032, and 82.1033 to read as follows:

Sec. 82.1031. BOARD REGISTRATION REQUIRED. (a) A board of a unit owners' association may not act on behalf of the association unless the board is registered with the commission as provided by this section.

(b) An application for registration must contain:

(1) the information required to be included in a management certificate under Section 82.116; and

(2) any other information required by the commission by rule.

(c) An applicant shall promptly supplement or amend an application to report any material mistake or omission or any actual or expected change in any document or information contained in the application.

(d) The application must be sworn to and accompanied by an initial registration fee in an amount set by the commission by rule as provided by Section 1101.152(d), Occupations Code.

Sec. 82.1032. RENEWAL OF REGISTRATION. A unit owners' association board must renew the board's registration annually by filing a report with the commissioner. The report must:

(1) be in a form prescribed by the commission by rule; and

(2) be accompanied by a renewal fee in an amount set by the commission by rule as provided by Section 1101.152(d), Occupations Code.

Sec. 82.1033. EXEMPTION. Sections 82.1031 and 82.1032 do not apply to a unit owners' association that consists of 15 or fewer units.

SECTION \_\_\_\_\_. Section 209.002, Property Code, is amended by adding Subdivision (2-a) to read as follows:

(2-a) "Commission" means the Texas Real Estate Commission.

SECTION \_\_\_\_\_. Chapter 209, Property Code, is amended by adding Sections 209.0041, 209.0042, and 209.0043 to read as follows:

Sec. 209.0041. BOARD REGISTRATION REQUIRED. (a) A board of a property owners' association may not act on behalf of the association unless the board is registered with the commission as provided by this section.

(b) An application for registration must contain:

(1) the information required to be included in a management certificate under Section 209.004; and

(2) any other information required by the commission by rule.

(c) An applicant shall promptly supplement or amend an application to report any material mistake or omission or any actual or expected change in any document or information contained in the application.

(d) The application must be sworn to and accompanied by an initial registration fee in an amount set by the commission by rule as provided by Section 1101.152(d), Occupations Code.

Sec. 209.0042. RENEWAL OF REGISTRATION. A property owners' association board must renew the board's registration annually by filing a report with the commissioner. The report must:

(1) be in a form prescribed by the commission by rule; and

(2) be accompanied by a renewal fee in an amount set by the commission by rule as provided by Section 1101.152(d), Occupations Code.

Sec. 209.0043. EXEMPTION. Sections 209.0041 and 209.0042 do not apply to a property owners' association that consists of 15 or fewer lots or units.

SECTION \_\_\_\_\_. (a) Sections 82.1031, 82.1032, 82.1033, 209.0041, 209.0042, and 209.0043, Property Code, as added by this Act, apply to a unit owners' association or property owners' association regardless of whether the unit owners' association or property owners' association was created before, on, or after the effective date of this Act.

(b) The changes in law made by this Act apply to a unit owners' association or property owners' association beginning January 1, 2012.

(c) Not later than December 1, 2011, the Texas Real Estate Commission shall adopt rules necessary to implement Sections 82.1031, 82.1032, 82.1033, 209.0041, 209.0042, and 209.0043, Property Code, as added by this Act.

Amendment No. 10 was adopted.

#### **Amendment No. 11**

Representative Bohac offered the following amendment to **CSSB 142**:

Amend **CSSB 142** (house committee printing) as follows:

(1) In SECTION 7 of the bill, strike the recital (page 5, lines 14-15) and substitute the following:

Section 202.004, Property Code, is amended by amending Subsection (c) and adding Subsections (d), (e), (f), and (g) to read as follows:

(2) In SECTION 7 of the bill, after amended Section 202.004(c), Property Code (page 5, between lines 22 and 23), insert the following:

(d) In evaluating an alleged or potential violation of a restrictive covenant, a property owners' association board shall make a reasonable accommodation with respect to a person with a disability that has been evidenced by a written report by a physician. In the absence of clear and convincing evidence that the accommodation will create a substantial and imminent risk to public safety or require a substantial expenditure by the property owners' association for physical improvements, the board may not enforce a restrictive covenant in a manner that is inconsistent with the physician's report or that imposes an undue hardship on the person.

(e) A determination by the property owners' association board to not enforce a restrictive covenant under Subsection (d) may not be considered a waiver of the association's authority to enforce any dedicatory instrument provision in the future.

(f) A property owners' association board shall document the following information in the minutes of the board meeting and provide a copy of the minutes to a person subject to an enforcement of a restrictive covenant under circumstances described by Subsection (d):

(1) the specific facts and circumstances constituting a public safety risk or requiring a substantial expenditure under Subsection (d);

(2) the person subjected to the enforcement of the covenant; and

(3) the board members voting for and against the enforcement of the covenant.

(g) A determination made in violation of Subsection (d) or (f) is void and unenforceable.

Amendment No. 11 was adopted.

#### **Amendment No. 12**

Representative Gallego offered the following amendment to **CSSB 142**:

Amend **CSSB 142** (house committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Subsection (a), Section 202.007, Property Code, is amended to read as follows:

(a) A property owners' association may not include or enforce a provision in a dedicatory instrument that prohibits or restricts a property owner from:

(1) implementing measures promoting solid-waste composting of vegetation, including grass clippings, leaves, or brush, or leaving grass clippings uncollected on grass;

(2) installing rain barrels or a rainwater harvesting system; ~~or~~

(3) implementing efficient irrigation systems, including underground drip or other drip systems; or

(4) implementing landscaping design, including xeriscaping, that promotes water conservation.

Amendment No. 12 was adopted.

**Amendment No. 13**

Representative P. King offered the following amendment to **CSSB 142**:

Amend **CSSB 142** by striking all below the enacting clause and substituting the following:

SECTION 1. Subsection (a), Section 5.006, Property Code, is amended to read as follows:

(a) In an action based on breach of a restrictive covenant pertaining to real property, the court shall allow to a prevailing party ~~[who asserted the action]~~ reasonable attorney's fees in addition to the party's costs and claim.

SECTION 2. Section 5.012, Property Code, is amended by amending Subsection (a) and adding Subsections (a-1), (f), and (g) to read as follows:

(a) A seller of residential real property that is subject to membership in a property owners' association and that comprises not more than one dwelling unit located in this state shall give to the purchaser of the property a written notice that reads substantially similar to the following:

**NOTICE OF MEMBERSHIP IN PROPERTY OWNERS' ASSOCIATION  
CONCERNING THE PROPERTY AT (street address) (name of residential community)**

As a purchaser of property in the residential community in which this property is located, you are obligated to be a member of a property owners' association. Restrictive covenants governing the use and occupancy of the property and all [a] dedicatory instruments [instrument] governing the establishment, maintenance, or [and] operation of this residential community have been or will be recorded in the Real Property Records of the county in which the property is located. Copies of the restrictive covenants and dedicatory instruments [instrument] may be obtained from the county clerk.

You are obligated to pay assessments to the property owners' association. The amount of the assessments is subject to change. Your failure to pay the assessments could result in enforcement of the association's [a] lien on and the foreclosure of your property.

Section 207.003, Property Code, entitles an owner to receive copies of any document that governs the establishment, maintenance, or operation of a subdivision, including, but not limited to, restrictions, bylaws, rules and regulations, and a resale certificate from a property owners' association. A resale certificate contains information including, but not limited to, statements specifying the amount and frequency of regular assessments and the style and cause number of lawsuits to which the property owners' association is a party, other than lawsuits relating to unpaid ad valorem taxes of an individual member of the association. These documents must be made available to you by the property owners' association or the association's agent on your request.

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature of Purchaser



(a-1) The second paragraph of the notice prescribed by Subsection (a) must be in bold print and underlined.

(f) On the purchaser's request for a resale certificate from the property owners' association or the association's agent, the association or its agent shall promptly deliver a copy of the most recent resale certificate issued for the property under Chapter 207 so long as the resale certificate was prepared not earlier than the 60th day before the date the resale certificate is delivered to the purchaser and reflects any special assessments approved before and due after the resale certificate is delivered. If a resale certificate that meets the requirements of this subsection has not been issued for the property, the seller shall request the association or its agent to issue a resale certificate under Chapter 207, and the association or its agent shall promptly prepare and deliver a copy of the resale certificate to the purchaser.

(g) The purchaser shall pay the fee to the property owners' association or its agent for issuing the resale certificate unless otherwise agreed by the purchaser and seller of the property. The property owners' association may not process a payment for a resale certificate requested under Chapter 207 until the certificate is available for delivery. The association may not charge a fee if the certificate is not provided in the time prescribed by Section 207.003(a).

SECTION 3. Section 51.002, Property Code, is amended by adding Subsection (i) to read as follows:

(i) Notice served under Subsection (b)(3) or (d) must state the name and address of the sender of the notice and contain a statement that is conspicuous, printed in boldface or underlined type, and substantially similar to the following: "Assert and protect your rights as a member of the armed forces of the United States. If you are or your spouse is serving on active military duty, including active military duty as a member of the Texas National Guard or the National Guard of another state or as a member of a reserve component of the armed forces of the United States, please send written notice of the active duty military service to the sender of this notice immediately."

SECTION 4. Subsection (a), Section 51.015, Property Code, is amended by adding Subdivision (1-a) to read as follows:

(1-a) "Assessment" and "assessments" have the meanings assigned by Sections 82.113(a) and 209.002, as applicable.

SECTION 5. Subsection (b), Section 51.015, Property Code, is amended to read as follows:

(b) This section applies only to an obligation:

(1) that is secured by a mortgage, deed of trust, or other contract lien, including a lien securing payment of an assessment or assessments, as applicable, on real property or personal property that is a dwelling owned by a military servicemember;

(2) that originates before the date on which the servicemember's active duty military service commences; and

(3) for which the servicemember is still obligated.

SECTION 6. Subdivision (1), Section 202.001, Property Code, is amended to read as follows:

(1) "Dedictory instrument" means each document governing ~~[instrument covering]~~ the establishment, maintenance, or ~~[and]~~ operation of a residential subdivision, planned unit development, condominium or townhouse regime, or any similar planned development. The term includes a declaration or similar instrument subjecting real property to:

(A) restrictive covenants, bylaws, or similar instruments governing the administration or operation of a property owners' association;

(B)~~[-to]~~ properly adopted rules and regulations of the property owners' association; or

(C)~~[-or to]~~ all lawful amendments to the covenants, bylaws, instruments, rules, or regulations.

SECTION 7. Subsection (c), Section 202.004, Property Code, is amended to read as follows:

(c) For a violation of a restrictive covenant of a property owners' association that is a mixed-use master association that existed before January 1, 1974, and that does not have the authority under a dedictory instrument or other governing document to impose fines, a ~~[A]~~ court may assess civil damages ~~[for the violation of a restrictive covenant]~~ in an amount not to exceed \$200 for each day of the violation.

SECTION 8. Section 202.006, Property Code, is amended to read as follows:

Sec. 202.006. PUBLIC RECORDS. (a) A property owners' association shall file all ~~[the]~~ dedictory instruments ~~[instrument]~~ in the real property records of each county in which the property to which the dedictory instruments relate ~~[instrument relates]~~ is located.

(b) A dedictory instrument has no effect until the instrument is filed in accordance with this section.

SECTION 9. Chapter 202, Property Code, is amended by adding Sections 202.011, 202.012, and 202.013 to read as follows:

Sec. 202.011. RIGHT OF FIRST REFUSAL PROHIBITED. (a) In this section, "development period" means a period stated in a declaration during which a declarant reserves:

(1) a right to facilitate the development, construction, and marketing of the subdivision; and

(2) a right to direct the size, shape, and composition of the subdivision.

(b) To the extent a restrictive covenant provides a right of first refusal for the sale or lease of a residential unit or residential lot in favor of the property owners' association or the association's members, the covenant is void.

(c) This section does not apply to a restrictive covenant that provides a right of first refusal in favor of a developer or builder during the development period.

Sec. 202.012. REGULATION OF SOLAR ENERGY DEVICES. (a) In this section, "solar energy device" has the meaning assigned by Section 171.107, Tax Code.

(b) Except as otherwise provided by this section, a property owners' association may not include or enforce a provision in a dedictory instrument that prohibits or restricts a property owner from installing a solar energy device.

- (c) A provision that violates Subsection (b) is void.
- (d) A property owners' association may include or enforce a provision in a dedicatory instrument that prohibits a solar energy device that:
- (1) as adjudicated by a court:
    - (A) threatens the public health or safety; or
    - (B) violates a law;
  - (2) is located on property owned or maintained by the property owners' association;
  - (3) is located on property owned in common by the members of the property owners' association;
  - (4) is located in an area on the property owner's property other than:
    - (A) on the roof of the home or of another structure allowed under a dedicatory instrument; or
    - (B) in a fenced yard or patio owned and maintained by the property owner;
  - (5) if mounted on the roof of the home:
    - (A) extends higher than or beyond the roofline;
    - (B) is located in an area other than an area designated by the property owners' association, unless the alternate location increases the estimated annual energy production of the device, as determined by using a publicly available modeling tool provided by the National Renewable Energy Laboratory, by more than 10 percent above the energy production of the device if located in an area designated by the property owners' association;
    - (C) does not conform to the slope of the roof and has a top edge that is not parallel to the roofline; or
    - (D) has a frame, a support bracket, or visible piping or wiring that is not in a silver, bronze, or black tone commonly available in the marketplace;
  - (6) if located in a fenced yard or patio, is taller than the fence line;
  - (7) as installed, voids material warranties; or
  - (8) was installed without prior approval by the property owners' association or by a committee created in a dedicatory instrument for such purposes that provides decisions within a reasonable period or within a period specified in the dedicatory instrument.
- (e) A property owners' association or the association's architectural review committee may not withhold approval for installation of a solar energy device if the provisions of the dedicatory instruments, to the extent authorized by this section, are met or exceeded, unless the association or committee, as applicable, determines in writing that placement of the device as proposed by the property owner constitutes a condition that substantially interferes with the use and enjoyment of land by causing unreasonable discomfort or annoyance to persons of ordinary sensibilities.

Sec. 202.013. RESTRICTIONS REQUIRING CAPITAL IMPROVEMENTS. (a) A dedicatory instrument may not be amended to retroactively require a person who owns property subject to the dedicatory instrument at the time the amendment is adopted to make a capital improvement to the owner's property that is not required before the amendment.

(b) For the purposes of this section, "capital improvement" means items such as additional tree plantings, additional sodding, fence construction, hardscape installation, new construction, or any similar capital improvement. The term does not include repair or maintenance of existing improvements or the removal of conditions that are in violation of a dedicatory instrument.

SECTION 10. Subsections (a), (b), and (c), Section 207.003, Property Code, are amended to read as follows:

(a) Not later than the 10th day after the date a written request for subdivision information is received from an owner, owner's agent, or title insurance company or its agent acting on behalf of the owner, the property owners' association shall deliver to the owner, owner's agent, or title insurance company or its agent:

- (1) a current copy of the restrictions applying to the subdivision;
- (2) a current copy of the bylaws and rules of the property owners' association; and
- (3) a resale certificate prepared not earlier than the 60th day before the date the certificate is delivered that complies with Subsection (b).

(b) A resale certificate under Subsection (a) must contain:

(1) a statement of any right of first refusal, other than a right of first refusal that is prohibited by statute, and any [or] other restraint contained in the restrictions or restrictive covenants that restricts the owner's right to transfer the owner's property;

(2) the frequency and amount of any regular assessments;

(3) the amount and purpose of any special assessment that has been approved before and is due after [the date] the resale certificate is delivered [prepared];

(4) the total of all amounts due and unpaid to the property owners' association that are attributable to the owner's property;

(5) capital expenditures, if any, approved by the property owners' association for the property owners' association's current fiscal year;

(6) the amount of reserves, if any, for capital expenditures;

(7) the property owners' association's current operating budget and balance sheet;

(8) the total of any unsatisfied judgments against the property owners' association;

(9) the style and cause number of any pending lawsuit in which the property owners' association is a party, other than a lawsuit relating to unpaid ad valorem taxes of an individual member of the association [defendant];

(10) a copy of a certificate of insurance showing the property owners' association's property and liability insurance relating to the common areas and common facilities;

(11) a description of any conditions on the owner's property that the property owners' association board has actual knowledge are in violation of the restrictions applying to the subdivision or the bylaws or rules of the property owners' association;

(12) a summary or copy of notices received by the property owners' association from any governmental authority regarding health or housing code violations existing on the preparation date of the certificate relating to the owner's property or any common areas or common facilities owned or leased by the property owners' association;

(13) the amount of any administrative transfer fee charged by the property owners' association for a change of ownership of property in the subdivision;

(14) the name, mailing address, and telephone number of the property owners' association's managing agent, if any; ~~and~~

(15) a statement indicating whether the restrictions allow foreclosure of a property owners' association's lien on the owner's property for failure to pay assessments; and

(16) a statement of all fees associated with the transfer of ownership, including a description of each fee, to whom each fee is paid, and the amount of each fee.

(c) A property owners' association may charge a reasonable fee to assemble, copy, and deliver the information required by this section and may charge a reasonable fee to prepare and deliver an update of a resale certificate under Subsection (f). A purchaser requesting a resale certificate under Section 5.012 or on whose behalf the resale certificate is requested shall pay the fees charged under this subsection unless otherwise agreed by the purchaser and seller of the property.

SECTION 11. Chapter 207, Property Code, is amended by adding Section 207.006 to read as follows:

Sec. 207.006. ONLINE SUBDIVISION INFORMATION REQUIRED. A property owners' association shall make dedicatory instruments relating to the association or subdivision and filed in the county deed records available on a website if the association has, or a management company on behalf of the association maintains, a publicly accessible website.

SECTION 12. Section 209.003, Property Code, is amended by adding Subsections (e) and (f) to read as follows:

(e) The following provisions of this chapter do not apply to a property owners' association that is a mixed-use master association that existed before January 1, 1974, and that does not have the authority under a dedicatory instrument or other governing document to impose fines:

- (1) Section 209.005(c);
- (2) Section 209.0056;
- (3) Section 209.0057;
- (4) Section 209.0058;
- (5) Section 209.00592; and
- (6) Section 209.0062.

(f) The following provisions of this chapter do not apply to a property owners' association for owners of residential property in a development that includes a timeshare association subject to Chapter 221 and in which residential property owners share amenities with the timeshare interest owners:

- (1) Section 209.0041;
- (2) Section 209.0059;
- (3) Section 209.00591; and
- (4) Section 209.00593.

SECTION 13. Chapter 209, Property Code, is amended by adding Section 209.0041 to read as follows:

Sec. 209.0041. ADOPTION OR AMENDMENT OF CERTAIN DEDICATORY INSTRUMENTS. (a) This section applies to a residential subdivision in which property owners are subject to mandatory membership in a property owners' association.

(b) This section does not apply to a property owners' association that is subject to Chapter 552, Government Code, by application of Section 552.0036, Government Code.

(c) This section does not apply to the amendment of a declaration during a development period, as defined by Section 202.011.

(d) This section applies to a dedicatory instrument regardless of the date on which the dedicatory instrument was created.

(e) This section supersedes any contrary requirement in a dedicatory instrument.

(f) To the extent of any conflict with another provision of this title, this section prevails.

(g) Except as provided by this subsection, a declaration may be amended only by a vote of 67 percent of the total votes allocated to property owners in the property owners' association, in addition to any governmental approval required by law. If the declaration contains a lower percentage, the percentage in the declaration controls.

(h) A bylaw may not be amended to conflict with the declaration.

SECTION 14. Section 209.005, Property Code, is amended to read as follows:

Sec. 209.005. ASSOCIATION RECORDS. (a) Except as provided by Subsection (b), this section applies to all property owners' associations and controls over other law not specifically applicable to a property owners' association.

(b) This section does not apply to a property owners' association that is subject to Chapter 552, Government Code, by application of Section 552.0036, Government Code.

(c) Notwithstanding a provision in a dedicatory instrument, a [A] property owners' association shall make the books and records of the association, including financial records, open to and reasonably available for examination by [te] an owner, or a person designated in a writing signed by the owner as the owner's agent, attorney, or certified public accountant, in accordance with this section. An owner is entitled to obtain from the association copies of information contained in the books and records [Section B, Article 2.23, Texas Non-Profit Corporation Act (Article 1396 2.23, Vernon's Texas Civil Statutes)].

~~(d) Except as provided by this subsection, an [(a-1) A property owners' association described by Section 552.0036(2), Government Code, shall make the books and records of the association, including financial records, reasonably available to any person requesting access to the books or records in accordance with Chapter 552, Government Code. Subsection (a) does not apply to a property owners' association to which this subsection applies.~~

~~[(b) An] attorney's files and records relating to the property owners' association, excluding invoices requested by an owner under Section 209.008(d), are not[~~;~~~~

~~[(1)] records of the association and are not[~~;~~~~

~~[(2)] subject to inspection by the owner[~~;~~] or~~

~~[(3) subject to] production in a legal proceeding. If a document in an attorney's files and records relating to the association would be responsive to a legally authorized request to inspect or copy association documents, the document shall be produced by using the copy from the attorney's files and records if the association has not maintained a separate copy of the document. This subsection does not require production of a document that constitutes attorney work product or that is privileged as an attorney-client communication.~~

~~(e) An owner or the owner's authorized representative described by Subsection (c) must submit a written request for access or information under Subsection (c) by certified mail, with sufficient detail describing the property owners' association's books and records requested, to the mailing address of the association or authorized representative as reflected on the most current management certificate filed under Section 209.004. The request must contain an election either to inspect the books and records before obtaining copies or to have the property owners' association forward copies of the requested books and records and:~~

~~(1) if an inspection is requested, the association, on or before the 10th business day after the date the association receives the request, shall send written notice of dates during normal business hours that the owner may inspect the requested books and records to the extent those books and records are in the possession, custody, or control of the association; or~~

~~(2) if copies of identified books and records are requested, the association shall, to the extent those books and records are in the possession, custody, or control of the association, produce the requested books and records for the requesting party on or before the 10th business day after the date the association receives the request, except as otherwise provided by this section.~~

~~(f) If the property owners' association is unable to produce the books or records requested under Subsection (e) on or before the 10th business day after the date the association receives the request, the association must provide to the requestor written notice that:~~

~~(1) informs the requestor that the association is unable to produce the information on or before the 10th business day after the date the association received the request; and~~

(2) states a date by which the information will be sent or made available for inspection to the requesting party that is not later than the 15th business day after the date notice under this subsection is given.

(g) If an inspection is requested or required, the inspection shall take place at a mutually agreed on time during normal business hours, and the requesting party shall identify the books and records for the property owners' association to copy and forward to the requesting party.

(h) A property owners' association may produce books and records requested under this section in hard copy, electronic, or other format reasonably available to the association.

(i) A property owners' association board must adopt a records production and copying policy that prescribes the costs the association will charge for the compilation, production, and reproduction of information requested under this section. The prescribed charges may include all reasonable costs of materials, labor, and overhead but may not exceed costs that would be applicable for an item under 1 T.A.C. Section 70.3. The policy required by this subsection must be recorded as a dedicatory instrument in accordance with Section 202.006. An association may not charge an owner for the compilation, production, or reproduction of information requested under this section unless the policy prescribing those costs has been recorded as required by this subsection. An owner is responsible for costs related to the compilation, production, and reproduction of the requested information in the amounts prescribed by the policy adopted under this subsection. The association may require advance payment of the estimated costs of compilation, production, and reproduction of the requested information. If the estimated costs are lesser or greater than the actual costs, the association shall submit a final invoice to the owner on or before the 30th business day after the date the information is delivered. If the final invoice includes additional amounts due from the owner, the additional amounts, if not reimbursed to the association before the 30th business day after the date the invoice is sent to the owner, may be added to the owner's account as an assessment. If the estimated costs exceeded the final invoice amount, the owner is entitled to a refund, and the refund shall be issued to the owner not later than the 30th business day after the date the invoice is sent to the owner.

(j) A property owners' association must estimate costs under this section using amounts prescribed by the policy adopted under Subsection (i).

(k) Except as provided by Subsection (l) and to the extent the information is provided in the meeting minutes, the property owners' association is not required to release or allow inspection of any books or records that identify the dedicatory instrument violation history of an individual owner of an association, an owner's personal financial information, including records of payment or nonpayment of amounts due the association, an owner's contact information, other than the owner's address, or information related to an employee of the association, including personnel files. Information may be released in an aggregate or summary manner that would not identify an individual property owner.

(l) The books and records described by Subsection (k) shall be released or made available for inspection if:



(1) the express written approval of the owner whose records are the subject of the request for inspection is provided to the property owners' association; or

(2) a court orders the release of the books and records or orders that the books and records be made available for inspection.

(m) A property owners' association composed of more than 14 lots shall adopt and comply with a document retention policy that includes, at a minimum, the following requirements:

(1) certificates of formation, bylaws, restrictive covenants, and all amendments to the certificates of formation, bylaws, and covenants shall be retained permanently;

(2) financial books and records shall be retained for seven years;

(3) account records of current owners shall be retained for five years;

(4) contracts with a term of one year or more shall be retained for four years after the expiration of the contract term;

(5) minutes of meetings of the owners and the board shall be retained for seven years; and

(6) tax returns and audit records shall be retained for seven years.

(n) A member of a property owners' association who is denied access to or copies of association books or records to which the member is entitled under this section may file a petition with the justice of the peace of a justice precinct in which all or part of the property that is governed by the association is located requesting relief in accordance with this subsection. If the justice of the peace finds that the member is entitled to access to or copies of the records, the justice of the peace may grant one or more of the following remedies:

(1) a judgment ordering the property owners' association to release or allow access to the books or records;

(2) a judgment against the property owners' association for court costs and attorney's fees incurred in connection with seeking a remedy under this section; or

(3) a judgment authorizing the owner or the owner's assignee to deduct the amounts awarded under Subdivision (2) from any future regular or special assessments payable to the property owners' association.

(o) If the property owners' association prevails in an action under Subsection (n), the association is entitled to a judgment for court costs and attorney's fees incurred by the association in connection with the action.

(p) On or before the 10th business day before the date a person brings an action against a property owners' association under this section, the person must send written notice to the association of the person's intent to bring the action. The notice must:

(1) be sent certified mail, return receipt requested, or delivered by the United States Postal Service with signature confirmation service to the mailing address of the association or authorized representative as reflected on the most current management certificate filed under Section 209.004; and

(2) describe with sufficient detail the books and records being requested.

(q) For the purposes of this section, "business day" means a day other than Saturday, Sunday, or a state or federal holiday.

SECTION 15. Chapter 209, Property Code, is amended by adding Sections 209.0051, 209.0056, 209.0057, 209.0058, 209.0059, 209.00591, 209.00592, and 209.00593 to read as follows:

Sec. 209.0051. OPEN BOARD MEETINGS. (a) This section does not apply to a property owners' association that is subject to Chapter 551, Government Code, by application of Section 551.0015, Government Code.

(b) In this section, "board meeting" means a deliberation between a quorum of the voting board of the property owners' association, or between a quorum of the voting board and another person, during which property owners' association business is considered and the board takes formal action. The term does not include the gathering of a quorum of the board at a social function unrelated to the business of the association or the attendance by a quorum of the board at a regional, state, or national convention, ceremonial event, or press conference, if formal action is not taken and any discussion of association business is incidental to the social function, convention, ceremonial event, or press conference.

(c) Regular and special board meetings must be open to owners, subject to the right of the board to adjourn a board meeting and reconvene in closed executive session to consider actions involving personnel, pending or threatened litigation, contract negotiations, enforcement actions, confidential communications with the property owners' association's attorney, matters involving the invasion of privacy of individual owners, or matters that are to remain confidential by request of the affected parties and agreement of the board. Following an executive session, any decision made in the executive session must be summarized orally and placed in the minutes, in general terms, without breaching the privacy of individual owners, violating any privilege, or disclosing information that was to remain confidential at the request of the affected parties. The oral summary must include a general explanation of expenditures approved in executive session.

(c-1) Except for a meeting held by electronic or telephonic means under Subsection (h), a board meeting must be held in a county in which all or part of the property in the subdivision is located or in a county adjacent to that county.

(d) The board shall keep a record of each regular or special board meeting in the form of written minutes of the meeting. The board shall make meeting records, including approved minutes, available to a member for inspection and copying on the member's written request to the property owners' association's managing agent at the address appearing on the most recently filed management certificate or, if there is not a managing agent, to the board.

(e) Members shall be given notice of the date, hour, place, and general subject of a regular or special board meeting, including a general description of any matter to be brought up for deliberation in executive session. The notice shall be:

(1) mailed to each property owner not later than the 10th day or earlier than the 60th day before the date of the meeting; or

(2) provided at least 72 hours before the start of the meeting by:

(A) posting the notice in a conspicuous manner reasonably designed to provide notice to property owners' association members:

(i) in a place located on the association's common property or, with the property owner's consent, on other conspicuously located privately owned property within the subdivision; or

(ii) on any Internet website maintained by the association or other Internet media; and

(B) sending the notice by e-mail to each owner who has registered an e-mail address with the association.

(f) It is an owner's duty to keep an updated e-mail address registered with the property owners' association under Subsection (e)(2)(B).

(g) If the board recesses a regular or special board meeting to continue the following regular business day, the board is not required to post notice of the continued meeting if the recess is taken in good faith and not to circumvent this section. If a regular or special board meeting is continued to the following regular business day, and on that following day the board continues the meeting to another day, the board shall give notice of the continuation in at least one manner prescribed by Subsection (e)(2)(A) within two hours after adjourning the meeting being continued.

(h) A board may meet by any method of communication, including electronic and telephonic, without prior notice to owners under Subsection (e), if each director may hear and be heard by every other director, or the board may take action by unanimous written consent to consider routine and administrative matters or a reasonably unforeseen emergency or urgent necessity that requires immediate board action. Any action taken without notice to owners under Subsection (e) must be summarized orally, including an explanation of any known actual or estimated expenditures approved at the meeting, and documented in the minutes of the next regular or special board meeting. The board may not, without prior notice to owners under Subsection (e), consider or vote on:

(1) fines;

(2) damage assessments;

(3) initiation of foreclosure actions;

(4) initiation of enforcement actions, excluding temporary restraining orders or violations involving a threat to health or safety;

(5) increases in assessments;

(6) levying of special assessments;

(7) appeals from a denial of architectural control approval; or

(8) a suspension of a right of a particular owner before the owner has an opportunity to attend a board meeting to present the owner's position, including any defense, on the issue.

(i) This section applies to a meeting of a property owners' association board during the development period, as defined by Section 202.011, only if the meeting is conducted for the purpose of:

(1) adopting or amending the governing documents, including declarations, bylaws, rules, and regulations of the association;

(2) increasing the amount of regular assessments of the association or adopting or increasing a special assessment;

(3) electing non-developer board members of the association or establishing a process by which those members are elected; or

(4) changing the voting rights of members of the association.

Sec. 209.0056. NOTICE OF ELECTION OR ASSOCIATION VOTE.

(a) Not later than the 10th day or earlier than the 60th day before the date of an election or vote, a property owners' association shall give written notice of the election or vote to:

(1) each owner of property in the property owners' association, for purposes of an association-wide election or vote; or

(2) each owner of property in the property owners' association entitled under the dedicatory instruments to vote in a particular representative election, for purposes of a vote that involves election of representatives of the association who are vested under the dedicatory instruments of the property owners' association with the authority to elect or appoint board members of the property owners' association.

(b) This section supersedes any contrary requirement in a dedicatory instrument.

(c) This section does not apply to a property owners' association that is subject to Chapter 552, Government Code, by application of Section 552.0036, Government Code.

Sec. 209.0057. RECOUNT OF VOTES. (a) This section does not apply to a property owners' association that is subject to Chapter 552, Government Code, by application of Section 552.0036, Government Code.

(b) Any owner may, not later than the 15th day after the date of the meeting at which the election was held, require a recount of the votes. A demand for a recount must be submitted in writing either:

(1) by certified mail, return receipt requested, or by delivery by the United States Postal Service with signature confirmation service to the property owners' association's mailing address as reflected on the most current management certificate filed under Section 209.004; or

(2) in person to the property owners' association's managing agent as reflected on the most current management certificate filed under Section 209.004 or to the address to which absentee and proxy ballots are mailed.

(c) The property owners' association shall, at the expense of the owner requesting the recount, retain for the purpose of performing the recount, the services of a person qualified to tabulate votes under this subsection. The association shall enter into a contract for the services of a person who:

(1) is not a member of the association or related to a member of the association board within the third degree by consanguinity or affinity, as determined under Chapter 573, Government Code; and

(2) is:

(A) a current or former:

(i) county judge;

(ii) county elections administrator;

- (iii) justice of the peace; or
- (iv) county voter registrar; or

(B) a person agreed on by the association and the persons requesting the recount.

(d) Any recount under Subsection (b) must be performed on or before the 30th day after the date of receipt of a request and payment for a recount in accordance with Subsections (b) and (c). If the recount changes the results of the election, the property owners' association shall reimburse the requesting owner for the cost of the recount. The property owners' association shall provide the results of the recount to each owner who requested the recount. Any action taken by the board in the period between the initial election vote tally and the completion of the recount is not affected by any recount.

Sec. 209.0058. BALLOTS. (a) Any vote cast in an election or vote by a member of a property owners' association must be in writing and signed by the member.

(b) Electronic votes cast under Section 209.00592 constitute written and signed ballots.

(c) In an association-wide election, written and signed ballots are not required for uncontested races.

Sec. 209.0059. RIGHT TO VOTE. (a) A provision in a dedicatory instrument that would disqualify a property owner from voting in a property owners' association election of board members or on any matter concerning the rights or responsibilities of the owner is void.

(b) This section does not apply to a property owners' association that is subject to Chapter 552, Government Code, by application of Section 552.0036, Government Code.

Sec. 209.00591. BOARD MEMBERSHIP. (a) Except as provided by this section, a provision in a dedicatory instrument that restricts a property owner's right to run for a position on the board of the property owners' association is void.

(b) If a board is presented with written, documented evidence from a database or other record maintained by a governmental law enforcement authority that a board member has been convicted of a felony or crime involving moral turpitude, the board member is immediately ineligible to serve on the board of the property owners' association, automatically considered removed from the board, and prohibited from future service on the board.

(c) The declaration may provide for a period of declarant control of the association during which a declarant, or persons designated by the declarant, may appoint and remove board members and the officers of the association, other than board members or officers elected by members of the property owners' association. Regardless of the period of declarant control provided by the declaration, on or before the 120th day after the date 75 percent of the lots that may be created and made subject to the declaration are conveyed to owners other than a declarant, at least one-third of the board members must be elected by owners other than the declarant. If the declaration does not include the number of

lots that may be created and made subject to the declaration, at least one-third of the board members must be elected by owners other than the declarant not later than the 10th anniversary of the date the declaration was recorded.

Sec. 209.00592. VOTING; QUORUM. (a) The voting rights of an owner may be cast or given:

(1) in person or by proxy at a meeting of the property owners' association;

(2) by absentee ballot in accordance with this section;

(3) by electronic ballot in accordance with this section; or

(4) by any method of representative or delegated voting provided by a dedicatory instrument.

(b) An absentee or electronic ballot:

(1) may be counted as an owner present and voting for the purpose of establishing a quorum only for items appearing on the ballot;

(2) may not be counted, even if properly delivered, if the owner attends any meeting to vote in person, so that any vote cast at a meeting by a property owner supersedes any vote submitted by absentee or electronic ballot previously submitted for that proposal; and

(3) may not be counted on the final vote of a proposal if the motion was amended at the meeting to be different from the exact language on the absentee or electronic ballot.

(c) A solicitation for votes by absentee ballot must include:

(1) an absentee ballot that contains each proposed action and provides an opportunity to vote for or against each proposed action;

(2) instructions for delivery of the completed absentee ballot, including the delivery location; and

(3) the following language: "By casting your vote via absentee ballot you will forgo the opportunity to consider and vote on any action from the floor on these proposals, if a meeting is held. This means that if there are amendments to these proposals your votes will not be counted on the final vote on these measures. If you desire to retain this ability, please attend any meeting in person. You may submit an absentee ballot and later choose to attend any meeting in person, in which case any in-person vote will prevail."

(d) For the purposes of this section, "electronic ballot" means a ballot:

(1) given by:

(A) e-mail;

(B) facsimile; or

(C) posting on an Internet website;

(2) for which the identity of the property owner submitting the ballot can be confirmed; and

(3) for which the property owner may receive a receipt of the electronic transmission and receipt of the owner's ballot.

(e) If an electronic ballot is posted on an Internet website, a notice of the posting shall be sent to each owner that contains instructions on obtaining access to the posting on the website.

(f) This section supersedes any contrary provision in a dedicatory instrument.

(g) This section does not apply to a property owners' association that is subject to Chapter 552, Government Code, by application of Section 552.0036, Government Code.

Sec. 209.00593. ELECTION OF BOARD MEMBERS.

(a) Notwithstanding any provision in a dedicatory instrument, any board member whose term has expired must be elected by owners who are members of the property owners' association. A board member may be appointed by the board only to fill a vacancy caused by a resignation, death, or disability. A board member appointed to fill a vacant position shall serve the unexpired term of the predecessor board member.

(b) The board of a property owners' association may amend the bylaws of the property owners' association to provide for elections to be held as required by Subsection (a).

(c) The appointment of a board member in violation of this section is void.

(d) This section does not apply to the appointment of a board member during a development period, as defined by Section 202.011.

(e) This section does not apply to a representative board whose members or delegates are elected or appointed by representatives of a property owners' association who are elected by owner members of a property owners' association.

SECTION 16. Subsection (b), Section 209.006, Property Code, is amended to read as follows:

(b) The notice must:

(1) describe the violation or property damage that is the basis for the suspension action, charge, or fine and state any amount due the association from the owner; and

(2) inform the owner that the owner:

(A) is entitled to a reasonable period to cure the violation and avoid the fine or suspension unless the owner was given notice and a reasonable opportunity to cure a similar violation within the preceding six months; and

(B) may request a hearing under Section 209.007 on or before the 30th day after the date notice was delivered to the owner [~~receives the notice~~].

SECTION 17. Chapter 209, Property Code, is amended by adding Sections 209.0061, 209.0062, 209.0063, and 209.0064 to read as follows:

Sec. 209.0061. ASSESSMENT OF FINES. (a) A fine assessed by the property owners' association must be reasonable in the context of the nature and frequency of the violation and the effect of the violation on the subdivision as a whole. If the association allows fines for a continuing violation to accumulate against a lot or an owner, the association must establish a reasonable maximum fine amount for a continuing violation at which point the total fine amount is capped.

(b) If a lot occupant other than the owner violates a provision of the dedicatory instrument, the property owners' association, in addition to exercising any of the association's powers against the owner, may assess a fine directly

against the nonowner occupant in the same manner as provided for an owner but may not require payment from both the owner and a nonowner occupant for the same violation.

(c) If the property owners' association assesses a fine against a nonowner occupant under this section, the notice provisions of Section 209.006 and the hearing provisions of Section 209.007 apply to the nonowner occupant in the same manner as those provisions apply to an owner.

Sec. 209.0062. ALTERNATIVE PAYMENT SCHEDULE FOR CERTAIN ASSESSMENTS. (a) A property owners' association composed of more than 14 lots shall adopt reasonable guidelines to establish an alternative payment schedule by which an owner may make partial payments to the property owners' association for delinquent regular or special assessments or any other amount owed to the association without accruing additional monetary penalties. For purposes of this section, monetary penalties do not include reasonable costs associated with administering the payment plan or interest.

(b) The minimum term for a payment plan offered by a property owners' association is three months.

(c) A property owners' association is not required to enter into a payment plan with an owner who failed to honor the terms of a previous payment plan during the two years following the owner's default under the previous payment plan.

(d) A property owners' association shall file the association's guidelines under this section in the real property records of each county in which the subdivision is located.

(e) A property owners' association's failure to file as required by this section the association's guidelines in the real property records of each county in which the subdivision is located does not prohibit a property owner from receiving an alternative payment schedule by which the owner may make partial payments to the property owners' association for delinquent regular or special assessments or any other amount owed to the association without accruing additional monetary penalties, as defined by Subsection (a).

Sec. 209.0063. PRIORITY OF PAYMENTS. (a) Except as provided by Subsection (b), a payment received by a property owners' association from the owner shall be applied to the owner's debt in the following order of priority:

(1) any delinquent assessment;

(2) any current assessment;

(3) any attorney's fees or third party collection costs incurred by the association associated solely with assessments or any other charge that could provide the basis for foreclosure;

(4) any attorney's fees incurred by the association that are not subject to Subdivision (3);

(5) any fines assessed by the association; and

(6) any other amount owed to the association.

(b) If, at the time the property owners' association receives a payment from a property owner, the owner is in default under a payment plan entered into with the association:



(1) the association is not required to apply the payment in the order of priority specified by Subsection (a); and

(2) in applying the payment, a fine assessed by the association may not be given priority over any other amount owed to the association.

Sec. 209.0064. THIRD PARTY COLLECTIONS. (a) In this section:

(1) "Collection agent" means a debt collector, as defined by Section 803 of the federal Fair Debt Collection Practices Act (15 U.S.C. Section 1692a).

(2) "Financial institution" means:

(A) a bank, savings bank, or savings and loan association or a wholly owned subsidiary or affiliate of a bank, savings bank, or savings and loan association;

(B) a state or federal credit union or a wholly owned subsidiary, affiliate, or credit union service organization of a state or federal credit union; or

(C) an insurance company licensed or authorized to engage in business in this state under the Insurance Code.

(b) An owner is not liable for fees of a collection agent retained by the property owners' association or the association's agent unless the association first provides written notice to the owner by certified mail, return receipt requested, or by the United States Postal Service with signature confirmation service or delivery confirmation, that:

(1) specifies each delinquent amount and the total amount of the payment required to make the account current;

(2) describes the options the owner has to avoid liability for collection agent fees or other costs related to collection of those amounts, including information regarding availability of a payment plan through the association; and

(3) provides a period of at least 30 days for the owner to cure the delinquency before further action is taken by the association.

(c) An owner is not liable for fees of a collection agent retained by the property owners' association or the association's agent if:

(1) the obligation for payment by the association or the association's agent to the collection agent for fees or costs associated with a collection action is in any way dependent or contingent on amounts recovered; or

(2) the payment agreement between the association or the association's agent and the collection agent does not require payment by the association or the association's agent of all fees to the collection agent for the action undertaken by the collection agent.

(d) The agreement between the property owners' association or the association's agent and a collection agent may not prohibit the owner from contacting the association board or the association's managing agent regarding the owner's delinquency.

(e) A property owners' association may not sell or otherwise transfer any interest in the association's accounts receivables for a purpose other than as collateral for a loan to the association by a financial institution.

SECTION 18. Section 209.009, Property Code, is amended to read as follows:

Sec. 209.009. FORECLOSURE SALE PROHIBITED IN CERTAIN CIRCUMSTANCES. A property owners' association may not foreclose a property owners' association's assessment lien if the debt securing the lien consists solely of:

- (1) fines assessed by the association; [~~or~~]
- (2) attorney's fees incurred by the association solely associated with fines assessed by the association; or
- (3) amounts added to the owner's account as an assessment under Section 209.005(i).

SECTION 19. Chapter 209, Property Code, is amended by adding Sections 209.0091, 209.0092, and 209.0093 to read as follows:

Sec. 209.0091. JUDICIAL FORECLOSURE REQUIRED. (a) Except as provided by Subsection (c) and subject to Section 209.009, a property owners' association may not foreclose a property owners' association assessment lien unless the association first obtains a court order in an application for expedited foreclosure under the rules adopted by the supreme court under Subsection (b). A property owners' association may use the procedure described by this subsection to foreclose any lien described by the association's dedicatory instruments.

(b) The supreme court, as an exercise of the court's authority under Section 74.024, Government Code, shall adopt rules establishing expedited foreclosure proceedings for use by a property owners' association in foreclosing an assessment lien of the association. The rules adopted under this subsection must be substantially similar to the rules adopted by the supreme court under Section 50(r), Article XVI, Texas Constitution.

(c) Expedited foreclosure is not required under this section if the owner of the property that is subject to foreclosure agrees in writing at the time the foreclosure is sought to waive expedited foreclosure under this section. A waiver under this subsection may not be required as a condition of the transfer of title to real property.

Sec. 209.0092. REMOVAL OR ADOPTION OF FORECLOSURE AUTHORITY. A provision granting a right to foreclose a lien on real property for unpaid amounts due to a property owners' association may be removed from a dedicatory instrument or adopted in a dedicatory instrument by a vote of at least 67 percent of the total votes allocated to property owners in the property owners' association. Owners holding at least 10 percent of all voting interests in the property owners' association may petition the association and require a special meeting to be called for the purposes of taking a vote for the purposes of this section.

Sec. 209.0093. ASSESSMENT LIEN FILING. A lien, lien affidavit, or other instrument evidencing the nonpayment of assessments or other charges owed to a property owners' association and filed in the official public records of a county is a legal instrument affecting title to real property.

SECTION 20. Subsection (a), Section 209.010, Property Code, is amended to read as follows:

(a) A property owners' association that conducts a foreclosure sale of an owner's lot must send to the lot owner and to each lienholder of record, not later than the 30th day after the date of the foreclosure sale:

(1) [;] a written notice stating the date and time the sale occurred and informing the lot owner and each lienholder of record of the right of the lot owner and lienholder to redeem the property under Section 209.011; and

(2) a copy of Section 209.011.

SECTION 21. Chapter 209, Property Code, is amended by adding Section 209.014 to read as follows:

Sec. 209.014. MANDATORY ELECTION REQUIRED AFTER FAILURE TO CALL REGULAR MEETING. (a) Notwithstanding any provision in a dedicatory instrument, a board of a property owners' association shall call an annual meeting of the members of the association.

(b) If a board of a property owners' association does not call an annual meeting of the association members, an owner may demand that a meeting of the association members be called not later than the 30th day after the date of the owner's demand. The owner's demand must be made in writing and sent by certified mail, return receipt requested, to the registered agent of the property owners' association and to the association at the address for the association according to the most recently filed management certificate. A copy of the notice must be sent to each property owner who is a member of the association.

(c) If the board does not call a meeting of the members of the property owners' association on or before the 30th day after the date of a demand under Subsection (b), three or more owners may form an election committee. The election committee shall file written notice of the committee's formation with the county clerk of each county in which the subdivision is located.

(d) A notice filed by an election committee must contain:

(1) a statement that an election committee has been formed to call a meeting of owners who are members of the property owners' association for the sole purpose of electing board members;

(2) the name and residential address of each committee member; and

(3) the name of the subdivision over which the property owners' association has jurisdiction under a dedicatory instrument.

(e) Each committee member must sign and acknowledge the notice before a notary or other official authorized to take acknowledgments.

(f) The county clerk shall enter on the notice the date the notice is filed and record the notice in the county's real property records.

(g) Only one committee in a subdivision may operate under this section at one time. If more than one committee in a subdivision files a notice, the first committee that files a notice, after having complied with all other requirements of this section, is the committee with the power to act under this section. A committee that does not hold or conduct a successful election within four months after the date the notice is filed with the county clerk is dissolved by operation of law. An election held or conducted by a dissolved committee is ineffective for any purpose under this section.

(h) The election committee may call meetings of the owners who are members of the property owners' association for the sole purpose of electing board members. Notice, quorum, and voting provisions contained in the bylaws of the property owners' association apply to any meeting called by the election committee.

SECTION 22. Subsection (a), Section 211.002, Property Code, is amended to read as follows:

(a) This chapter applies only to a residential real estate subdivision or any unit or parcel of a subdivision to which another chapter in this title that provides a procedure under which a subdivision's restrictions may for general purposes be amended does not apply ~~[located in whole or in part within an unincorporated area of a county if the county has a population of less than 65,000].~~

SECTION 23. Subchapter H, Chapter 221, Property Code, is amended by adding Section 221.078 to read as follows:

Sec. 221.078. APPLICABILITY OF CERTAIN LAWS TO TIMESHARE PROPERTY OR TIMESHARE ASSOCIATION. (a) The following provisions, as added by SB 142, Acts of the 82nd Legislature, Regular Session, 2011, do not apply to a timeshare property or timeshare association:

- (1) Section 51.002(i);
- (2) Section 202.011;
- (3) Section 202.012;
- (4) Section 202.013; and
- (5) Section 207.006.

(b) To the extent the following provisions apply to a timeshare property or timeshare association, the provisions apply only as the provisions existed immediately before the effective date of SB 142, Acts of the 82nd Legislature, Regular Session, 2011, or any other Act of the 82nd Legislature, Regular Session, 2011:

- (1) Section 5.012;
- (2) Section 202.006;
- (3) Sections 207.003(a), (b), and (c); and
- (4) 211.002(a).

SECTION 24. (a) Subsection (a), Section 5.006, and Subsection (c), Section 202.004, Property Code, as amended by this Act, apply only to an action filed on or after the effective date of this Act. An action filed before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(b) Section 5.012, Property Code, as amended by this Act, applies only to a sale of property that occurs on or after the effective date of this Act. For the purposes of this subsection, a sale of property occurs before the effective date of this Act if the executory contract binding the purchaser to purchase the property is executed before that date. A sale of property that occurs before the effective date of this Act is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

(c) Section 51.015, Property Code, as amended by this Act, applies only to the levy of an assessment or assessments as described by Section 51.015, Property Code, as amended by this Act, the effective date of which is on or after the effective date of this Act. A levy of an assessment or assessments the effective date of which is before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(d) Section 202.006, Property Code, as amended by this Act, and Sections 202.011, 202.012, and 209.0059 and Subsection (a), Section 209.00591, Property Code, as added by this Act, apply to a provision in a dedicatory instrument or a restrictive covenant enacted before, on, or after the effective date of this Act, except that any action taken before the effective date of this Act based on an unfiled dedicatory instrument is not invalidated by Section 202.006, Property Code, as amended by this Act.

(e) Sections 207.003 and 209.005, Property Code, as amended by this Act, apply only to a request for information received by a property owners' association on or after the effective date of this Act. A request for information received by a property owners' association before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(f) Subsection (m), Section 209.005, Property Code, as added by this Act, applies only with respect to books and records generated on or after the effective date of this Act. Books and records generated before the effective date of this Act are governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(g) Section 209.006, Property Code, as amended by this Act, applies only to an enforcement action initiated by a property owners' association on or after the effective date of this Act. An enforcement action initiated before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(h) Section 209.0062, Property Code, as added by this Act, applies only to an assessment or other debt that becomes due on or after the effective date of this Act. An assessment or other debt that becomes due before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(i) Section 209.0063, Property Code, as added by this Act, applies only to a payment received by a property owners' association on or after the effective date of this Act. A payment received by a property owners' association before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(j) Section 209.0091, Property Code, as added by this Act, and Subsection (a), Section 209.010, Property Code, as amended by this Act, apply only to a foreclosure sale conducted on or after the effective date of this Act. A foreclosure sale conducted before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(k) Section 209.0093, Property Code, as added by this Act, applies only to an instrument filed on or after January 1, 2012. An instrument filed before January 1, 2012, is governed by the law in effect on the date the instrument was filed, and that law is continued in effect for that purpose.

(l) Section 209.014, Property Code, as added by this Act, applies to a property owners' association created before, on, or after the effective date of this Act.

SECTION 25. Not later than January 1, 2012, each property owners' association shall present for recording with the county clerk as prescribed by Section 202.006, Property Code, as amended by this Act, each dedicatory instrument governing the association that has not been previously recorded in the real property records of the county.

SECTION 26. Not later than January 1, 2012, the Supreme Court of Texas shall adopt rules of civil procedure under Section 209.0091, Property Code, as added by this Act.

SECTION 27. (a) Except as provided by Subsection (b) of this section, this Act takes effect January 1, 2012.

(b) Subsection (b), Section 209.0091, Property Code, and Section 221.078, Property Code, as added by this Act, take effect September 1, 2011.

#### **Amendment No. 14**

Representative White offered the following amendment to Amendment No. 13:

Amend Amendment No. 13 by P. King to **CSSB 142** as follows:

(1) Strike SECTION 22 of the amendment (page 35, line 31 through page 36, line 7) and substitute the following:

SECTION 22. Section 211.002, Property Code, is amended by amending Subsection (a) and adding Subsections (b-1) and (d) to read as follows:

(a) This chapter applies only to a residential real estate subdivision or any unit or parcel of a subdivision:

(1) all or part of which is located [in whole or in part] within an unincorporated area of a county if the county has a population of less than 65,000; or

(2) all of which is located within the extraterritorial jurisdiction of a municipality located in a county that has a population of at least 65,000 and less than 135,000.

(b-1) In addition to restrictions and units or parcels of a subdivision that are subject to this chapter under Subsection (b), this chapter applies to restrictions that affect real property within a residential real estate subdivision or any units or parcels of the subdivision and that, by the express terms of the instrument creating the restrictions, provide that amendments to the restrictions are not operative or effective until a specified date or the expiration of a specified period. An amendment under this chapter of a restriction described by this subsection is effective as provided by this chapter, regardless of whether the date specified in the restrictions has occurred or the period prescribed by the restrictions has expired. This subsection expires September 1, 2015.

(d) An amendment of a restriction under this chapter is effective on the filing of an instrument reflecting the amendment in the real property records of each county in which all or part of the subdivision is located after the approval of the owners in accordance with the amendment procedure adopted under Section 211.004.

(2) Add the following appropriately numbered SECTION to the amendment and renumber subsequent SECTIONS of the amendment accordingly:

SECTION \_\_\_\_ . Section 211.001(4), Property Code, is amended to read as follows:

(4) "Residential real estate subdivision" or "subdivision" means all land encompassed within one or more maps or plats of land that is divided into two or more parts if:

(A) the maps or plats cover land all or part of which ~~that~~ is not located within a municipality and:

(i) for a county with a population of less than 65,000, is not located ~~or~~ within the extraterritorial jurisdiction of a municipality; or

(ii) for a county with a population of at least 65,000 and less than 135,000, is located wholly within the extraterritorial jurisdiction of a municipality;

(B) the land encompassed within the maps or plats is or was burdened by restrictions limiting all or at least a majority of the land area covered by the map or plat, excluding streets and public areas, to residential use only; and

(C) all instruments creating the restrictions are recorded in the deed or real property records of a county.

Amendment No. 14 was adopted.

### **LEAVE OF ABSENCE GRANTED**

The following member was granted leave of absence temporarily for today to attend a meeting on **SB 8**:

Kolkhorst on motion of Geren.

### **CSSB 142 - (consideration continued)**

Representative Solomons moved to table Amendment No. 13, as amended.

The vote of the house was taken on the motion to table Amendment No. 13, as amended, and the vote was announced yeas 68, nays 73.

A verification of the vote was requested and was granted.

The roll of those voting yea and nay was again called and the verified vote resulted, as follows (Record 1363): 63 Yeas, 73 Nays, 4 Present, not voting.

Yeas — Allen; Alvarado; Anchia; Anderson, C.; Brown; Castro; Chisum; Cook; Darby; Davis, J.; Deshotel; Dutton; Elkins; Farias; Farrar; Geren; Giddings; Gonzales, V.; Gooden; Gutierrez; Hardcastle; Hernandez Luna; Hilderbran; Hochberg; Hopson; Howard, D.; Hunter; Jackson; Keffer; King, S.; Kleinschmidt; Kuempel; Lewis; Lyne; Marquez; McClendon; Menendez; Miles;

Naishtat; Orr; Otto; Peña; Pickett; Pitts; Quintanilla; Raymond; Ritter; Rodriguez; Simpson; Smith, W.; Smithee; Solomons; Strama; Taylor, V.; Thompson; Turner; Veasey; Villarreal; Vo; Walle; Woolley; Workman; Zerwas.

Nays — Aliseda; Alonzo; Anderson, R.; Aycock; Beck; Berman; Bohac; Branch; Burkett; Button; Cain; Callegari; Carter; Christian; Coleman; Craddock; Creighton; Crownover; Davis, S.; Davis, Y.; Driver; Fletcher; Flynn; Frullo; Gallego; Garza; Gonzales, L.; Gonzalez; Guillen; Hamilton; Hancock; Harper-Brown; Hartnett; Huberty; Hughes; Isaac; Johnson; King, P.; King, T.; Landtroop; Larson; Laubenberg; Lavender; Legler; Lozano; Lucio; Madden; Mallory Caraway; Margo; Martinez Fischer; Miller, D.; Miller, S.; Morrison; Muñoz; Murphy; Nash; Parker; Patrick; Paxton; Perry; Phillips; Price; Reynolds; Riddle; Scott; Sheets; Sheffield; Shelton; Taylor, L.; Torres; Weber; White; Zedler.

Present, not voting — Mr. Speaker; Burnam; Schwertner(C); Truitt.

Absent, Excused — Kolkhorst.

Absent — Bonnen; Dukes; Eiland; Eissler; Harless; Howard, C.; Martinez; Oliveira; Smith, T.

#### STATEMENTS OF VOTE

When Record No. 1363 was taken, I was temporarily out of the house chamber. I would have voted no.

Dukes

When Record No. 1363 was taken, I was at the governor's bill signing of **HB 15**. I would have voted no.

Harless

I was shown voting yes on Record No. 1363. I intended to vote no.

Hunter

I was shown voting yes on Record No. 1363. I intended to vote no.

Lewis

I was shown voting yes on Record No. 1363. I intended to vote no.

Peña

When Record No. 1363 was taken, I was temporarily out of the house chamber. I would have voted no.

T. Smith

The chair stated that the motion to table was lost by the above vote.

#### LEAVE OF ABSENCE GRANTED

The following member was granted leave of absence temporarily for today because of important business:

Martinez on motion of Legler.



**CSSB 142 - (consideration continued)**

Representative Solomons moved to postpone consideration of **CSSB 142** until the end of today's calendar.

The motion prevailed.

**LEAVES OF ABSENCE GRANTED**

The following members were granted leaves of absence temporarily for today because of important business in the district:

Dukes on motion of McClendon.

T. Smith on motion of Woolley.

(Bonnen in the chair)

The following member was granted leave of absence temporarily for today because of important business:

Peña on motion of Deshotel.

(Dukes and Kolkhorst now present)

**RECESS**

At 12:55 p.m., the chair announced that the house would stand recessed until 1:45 p.m. today.

**AFTERNOON SESSION**

The house met at 1:45 p.m. and was called to order by the speaker.

**SB 8 ON SECOND READING  
(Kolkhorst - House Sponsor)**

**SB 8**, A bill to be entitled An Act relating to improving the quality and efficiency of health care.

(T. Smith now present)

**Amendment No. 1**

Representative Kolkhorst offered the following amendment to **SB 8**:

Amend **SB 8** (house committee printing) as follows:

(1) In SECTION 2.01 of the bill, in added Section 1002.001, Health and Safety Code (page 4, line 3, through page 5, line 27), strike Subdivisions (8), (9), (10), (11), (12), and (13) and substitute:

(8) "Potentially preventable admission" means an admission of a person to a hospital or long-term care facility that may have reasonably been prevented with adequate access to ambulatory care or health care coordination.

(9) "Potentially preventable ancillary service" means a health care service provided or ordered by a physician or other health care provider to supplement or support the evaluation or treatment of a patient, including a diagnostic test, laboratory test, therapy service, or radiology service, that may not be reasonably necessary for the provision of quality health care or treatment.

(10) "Potentially preventable complication" means a harmful event or negative outcome with respect to a person, including an infection or surgical complication, that:

(A) occurs after the person's admission to a hospital or long-term care facility; and

(B) may have resulted from the care, lack of care, or treatment provided during the hospital or long-term care facility stay rather than from a natural progression of an underlying disease.

(11) "Potentially preventable event" means a potentially preventable admission, a potentially preventable ancillary service, a potentially preventable complication, a potentially preventable emergency room visit, a potentially preventable readmission, or a combination of those events.

(12) "Potentially preventable emergency room visit" means treatment of a person in a hospital emergency room or freestanding emergency medical care facility for a condition that may not require emergency medical attention because the condition could be, or could have been, treated or prevented by a physician or other health care provider in a nonemergency setting.

(13) "Potentially preventable readmission" means a return hospitalization of a person within a period specified by the commission that may have resulted from deficiencies in the care or treatment provided to the person during a previous hospital stay or from deficiencies in post-hospital discharge follow-up. The term does not include a hospital readmission necessitated by the occurrence of unrelated events after the discharge. The term includes the readmission of a person to a hospital for:

(A) the same condition or procedure for which the person was previously admitted;

(B) an infection or other complication resulting from care previously provided; or

(C) a condition or procedure that indicates that a surgical intervention performed during a previous admission was unsuccessful in achieving the anticipated outcome.

(2) In SECTION 2.01 of the bill, in added Section 1002.052(b)(7), Health and Safety Code (page 7, line 1), strike "and".

(3) In SECTION 2.01 of the bill, in added Section 1002.052(b), Health and Safety Code (page 7, line 2), between "(8)" and "a representative", insert: the commissioner of the Department of Aging and Disability Services;

(9) the executive director of the Texas Workforce Commission;

(10) the commissioner of the Texas Higher Education Coordinating Board; and

(11)

(4) In SECTION 2.01 of the bill, strike added Section 1002.053(a), Health and Safety Code (page 7, lines 12-14), and substitute:

(a) Appointed members of the board serve staggered terms of four years, with the terms of as close to one-half of the members as possible expiring January 31 of each odd-numbered year.

(5) In SECTION 2.01 of the bill, in added Section 1002.061(c), Health and Safety Code (page 10, line 16), strike "Each" and substitute "Except as otherwise prohibited by law, each".

(6) In SECTION 2.01 of the bill, in added Section 1002.061, Health and Safety Code (page 10, between lines 20 and 21), insert:

(d) This section does not permit the sale of information that is confidential under Section 1002.060.

(7) In SECTION 2.01 of the bill, in added Section 1002.101(1)(C), Health and Safety Code (page 11, line 9), between "efficiency" and the underlined semicolon, insert:

⋮

(i) using nationally accredited measures; or

(ii) if no nationally accredited measures exist, using measures based on expert consensus

(8) In SECTION 2.01 of the bill, in added Section 1002.102(a)(2), Health and Safety Code (page 12, line 1), after the underlined semicolon, strike "and".

(9) In SECTION 2.01 of the bill, in added Section 1002.102(a), Health and Safety Code (page 12, line 5), between "care" and the underlined period, insert: ; and

(4) meaningful use of electronic health records by providers and electronic exchange of health information among providers

(10) In SECTION 2.01 of the bill, immediately after added Section 1002.102(b), Health and Safety Code (page 12, between lines 14 and 15), insert the following new subsections and reletter the subsequent subsections of Section 1002.102 appropriately:

(c) In developing recommendations under Subsection (b), the institute shall use nationally accredited measures or, if no nationally accredited measures exist, measures based on expert consensus.

(d) The institute may study and develop recommendations for measuring the quality of care and efficiency in state or federally funded health care delivery systems other than those described by Subsection (b).

(11) In SECTION 2.01 of the bill, in added Section 1002.151(b)(5), Health and Safety Code (page 13, line 10), after the underlined semicolon, strike "and".

(12) In SECTION 2.01 of the bill, in added Section 1002.151(b)(6), Health and Safety Code (page 13, line 11), between "satisfaction" and the underlined period, insert:

; and

(7) the meaningful use of electronic health records by providers and electronic exchange of health information among providers

(13) In SECTION 2.01 of the bill, in added Section 1002.201(a), Health and Safety Code (page 13, line 17), strike "state and how the public and health care providers" and substitute "state, what information is available to the public, and how the public and health care providers currently benefit and could potentially".

(14) In SECTION 2.01 of the bill, in added Section 1002.201(b)(1), Health and Safety Code (page 13, line 23), between "providers" and the underlined semicolon, insert "and payors".

(15) In SECTION 2.01 of the bill, immediately after added Section 1002.202(a), Health and Safety Code (page 14, between lines 8 and 9), insert:

(b) The study described by Subsection (a) shall:

(1) use the assessment described by Section 1002.201 to develop recommendations relating to the adequacy of existing data sources for carrying out the state's purposes under this chapter and Chapter 848, Insurance Code;

(2) determine whether the establishment of an all payor claims database would reduce the need for some data submissions provided by payors;

(3) identify the best available sources of data necessary for the state's purposes under this chapter and Chapter 848, Insurance Code, that are not collected by the state under existing law;

(4) describe how an all payor claims database may facilitate carrying out the state's purposes under this chapter and Chapter 848, Insurance Code;

(5) identify national standards for claims data collection and use, including standardized data sets, standardized methodology, and standard outcome measures of health care quality and efficiency; and

(6) estimate the costs of implementing an all payor claims database, including:

(A) the costs to the state for collecting and processing data;

(B) the cost to the payors for supplying the data; and

(C) the available funding mechanisms that might support an all payor claims database.

(16) In SECTION 2.01 of the bill, in added Section 1002.202, Health and Safety Code (page 14, line 9), reletter Subsection (b) as Subsection (c).

(17) In SECTION 2.04 of the bill (page 14, line 25), between "SECTION 2.04." and "The governor", insert "(a)".

(18) After SECTION 2.04 of the bill (page 15, between lines 2 and 3), insert:

(b) In making the initial appointments under this section, the governor shall designate seven members to terms expiring January 31, 2013, and eight members to terms expiring January 31, 2015.

(19) In SECTION 2.05(a)(4) of the bill (page 15, line 17), between "micro businesses," and "and health care providers", insert "payors,".

(20) In SECTION 2.05(b)(2) of the bill (page 16, lines 1-2), strike "Subsection (b)" and substitute "Subsection (c)".

(21) In SECTION 2.05(b)(4) of the bill (page 16, line 7), between "micro businesses," and "and health care providers", insert "payors,".

(22) In SECTION 3.01 of the bill, strike added Section 848.001(2), Insurance Code (page 16, line 18, through page 17, line 3), and substitute:

(2) "Health care collaborative" means an entity:

(A) that undertakes to arrange for medical and health care services for insurers, health maintenance organizations, and other payors in exchange for payments in cash or in kind;

(B) that accepts and distributes payments for medical and health care services;

(C) that consists of:

(i) physicians;

(ii) physicians and other health care providers;

(iii) physicians and insurers or health maintenance organizations; or

(iv) physicians, other health care providers, and insurers or health maintenance organizations; and

(D) that is certified by the commissioner under this chapter to lawfully accept and distribute payments to physicians and other health care providers using the reimbursement methodologies authorized by this chapter.

(23) In SECTION 3.01 of the bill, in added Section 848.004, Insurance Code (page 19, line 25), between "LAWS." and "An", insert "(a)".

(24) In SECTION 3.01 of the bill, in added Section 848.004, Insurance Code (page 20, between lines 4 and 5), insert:

(b) The following provisions of this code apply to a health care collaborative in the same manner and to the same extent as they apply to an individual or entity otherwise subject to the provision:

(1) Section 38.001;

(2) Subchapter A, Chapter 542;

(3) Chapter 541;

(4) Chapter 543;

(5) Chapter 602;

(6) Chapter 701;

(7) Chapter 803; and

(8) Chapter 804.

(25) In SECTION 3.01 of the bill, strike added Section 848.005, Insurance Code (page 20, lines 5-10), and substitute:

Sec. 848.005. CERTAIN INFORMATION CONFIDENTIAL. (a) Except as provided by Subsection (b), an application, filing, or report required under this chapter is public information subject to disclosure under Chapter 552, Government Code.

(b) The following information is confidential and is not subject to disclosure under Chapter 552, Government Code:

(1) a contract, agreement, or document that establishes another arrangement:

(A) between a health care collaborative and a governmental or private entity for all or part of health care services provided or arranged for by the health care collaborative; or

(B) between a health care collaborative and participating physicians and health care providers;

(2) a written description of a contract, agreement, or other arrangement described by Subdivision (1);

(3) information relating to bidding, pricing, or other trade secrets submitted to:

(A) the department under Sections 848.057(5) and (6); or

(B) the attorney general under Section 848.059;

(4) information relating to the diagnosis, treatment, or health of a patient who receives health care services from a health care collaborative under a contract for services; and

(5) information relating to quality improvement or peer review activities of a health care collaborative.

(26) In SECTION 3.01 of the bill, in added Section 848.052(e), Insurance Code (page 21, lines 17-18), strike "may include nonvoting ex officio members" and substitute "must include at least three nonvoting ex officio members who represent the community in which the health care collaborative operates".

(27) In SECTION 3.01 of the bill, in the heading to added Section 848.053, Insurance Code (page 22, line 12), strike "COMMITTEE." and substitute "COMMITTEE; SHARING OF CERTAIN DATA. (a)".

(28) In SECTION 3.01 of the bill, after added Section 848.053, Insurance Code (page 22, after line 27), insert:

(b) A health care collaborative shall establish and enforce policies to prevent the sharing of charge, fee, and payment data among nonparticipating physicians and health care providers.

(29) In SECTION 3.01 of the bill, after added Section 848.055(b), Insurance Code (page 23, between lines 18 and 19), insert:

(c) A medical school, medical and dental unit, or health science center as described by Section 61.003, 61.501, or 74.601, Education Code, is not required to obtain a certificate of authority under this chapter to the extent that the medical school, medical and dental unit, or health science center contracts to deliver medical care services within a health care collaborative. This chapter is otherwise applicable to a medical school, medical and dental unit, or health science center.

(d) An entity licensed under the Health and Safety Code that employs a physician under a specific statutory authority is not required to obtain a certificate of authority under this chapter to the extent that the entity contracts to deliver medical care services and health care services within a health care collaborative. This chapter is otherwise applicable to the entity.

(30) In SECTION 3.01 of the bill, after added Section 848.056(c), Insurance Code (page 24, between lines 14 and 15), insert:

(d) The commissioner by rule may:

(1) extend the date by which an application is due under this section;  
and

(2) require the disclosure of any additional information necessary to implement and administer this chapter, including information necessary to antitrust review and oversight.

(31) In SECTION 3.01 of the bill, in added Section 848.057, Insurance Code (page 24, line 15), after "APPLICATION.", insert "(a)".

(32) In SECTION 3.01 of the bill, in added Section 848.057(2)(A)(ii), Insurance Code (page 25, line 1), between "promotes" and "quality-based", insert "improvement in".

(33) In SECTION 3.01 of the bill, in added Section 848.057(2)(A)(ii), Insurance Code (page 25, line 2), between "outcomes," and "patient," insert "patient safety,".

(34) In SECTION 3.01 of the bill, in added Section 848.057(2)(C), Insurance Code (page 25, line 8), between "statistics" and "relating," insert "on performance measures".

(35) In SECTION 3.01 of the bill, after added Section 848.057, Insurance Code (page 26, between lines 1 and 2), insert:

(b) A certificate of authority is effective for a period of one year, subject to Section 848.060(d).

(36) In SECTION 3.01 of the bill, strike added Section 848.059, Insurance Code (page 26, line 10, through page 27, line 15), and substitute:

Sec. 848.059. CONCURRENCE OF ATTORNEY GENERAL. (a) If the commissioner determines that an application for a certificate of authority filed under Section 848.056 complies with the requirements of Section 848.057, the commissioner shall forward the application, and all data, documents, and analysis considered by the commissioner in making the determination, to the attorney general. The attorney general shall review the application and the data, documents, and analysis and, if the attorney general concurs with the commissioner's determination under Sections 848.057(a)(5) and (6), the attorney general shall notify the commissioner.

(b) If the attorney general does not concur with the commissioner's determination under Sections 848.057(a)(5) and (6), the attorney general shall notify the commissioner.

(c) A determination under this section shall be made not later than the 60th day after the date the attorney general receives the application and the data, documents, and analysis from the commissioner.

(d) If the attorney general lacks sufficient information to make a determination under Sections 848.057(a)(5) and (6), within 60 days of the attorney general's receipt of the application and the data, documents, and analysis the attorney general shall inform the commissioner that the attorney general lacks sufficient information as well as what information the attorney general requires. The commissioner shall then either provide the additional information to the attorney general or request the additional information from the applicant. The commissioner shall promptly deliver any such additional information to the attorney general. The attorney general shall then have 30 days from receipt of the additional information to make a determination under Subsection (a) or (b).

(e) If the attorney general notifies the commissioner that the attorney general does not concur with the commissioner's determination under Sections 848.057(a)(5) and (6), then, notwithstanding any other provision of this subchapter, the commissioner shall deny the application.

(f) In reviewing the commissioner's determination, the attorney general shall consider the findings, conclusions, or analyses contained in any other governmental entity's evaluation of the health care collaborative.

(g) The attorney general at any time may request from the commissioner additional time to consider an application under this section. The commissioner shall grant the request and notify the applicant of the request. A request by the attorney general or an order by the commissioner granting a request under this section is not subject to administrative or judicial review.

(37) In SECTION 3.01 of the bill, in added Section 848.060(a), Insurance Code (page 27, line 19), between "issued" and the underlined comma, insert "or most recently renewed".

(38) In SECTION 3.01 of the bill, in added Section 848.060(b)(2)(E), Insurance Code (page 28, line 13), after the underlined semicolon, strike "and".

(39) In SECTION 3.01 of the bill, in added Section 848.060(b)(2)(F), Insurance Code (page 28, line 16), strike "848.107." and substitute "848.107; and".

(40) In SECTION 3.01 of the bill, after added Section 848.060(b)(2)(F), Insurance Code (page 28, between lines 16 and 17), insert:

(G) any other information required by the commissioner.

(41) In SECTION 3.01 of the bill, strike added Section 848.060(c)(1), Insurance Code (page 28, lines 19-22), and substitute:

(1) the commissioner shall conduct a review under Section 848.057 as if the application for renewal were a new application, and, on approval by the commissioner, the attorney general shall review the application under Section 848.059 as if the application for renewal were a new application; and

(42) In SECTION 3.01 of the bill, in added Section 848.060(d), Insurance Code (page 29, line 2), between "issued" and the comma, insert "or renewed".

(43) In SECTION 3.01 of the bill, after added Section 848.060(d), Insurance Code (page 29, between lines 6 and 7), insert:

(e) A health care collaborative shall report to the department a material change in the size or composition of the collaborative. On receipt of a report under this subsection, the department may require the collaborative to file an application for renewal before the date required by Subsection (a).

(44) In SECTION 3.01 of the bill, strike added Section 848.103(b), Insurance Code (page 31, lines 5-10), and substitute:

(b) Notwithstanding any other law, a health care collaborative that is in compliance with this code, including Chapters 841, 842, and 843, as applicable, may contract for, accept, and distribute payments from governmental or private payors based on fee-for-service or alternative payment mechanisms, including:

(1) episode-based or condition-based bundled payments;

(2) capitation or global payments; or

(3) pay-for-performance or quality-based payments.

(c) Except as provided by Subsection (d), a health care collaborative may not contract for and accept from a governmental or private entity payments on a prospective basis, including bundled or global payments, unless the health care collaborative is licensed under Chapter 843.

(d) A health care collaborative may contract for and accept from an insurance company or a health maintenance organization payments on a prospective basis, including bundled or global payments.



(45) In SECTION 3.01 of the bill, in added Section 848.106(a)(2), Insurance Code (page 32, line 5), strike "and monitoring" and substitute "monitoring, and evaluation".

(46) In SECTION 3.01 of the bill, in added Section 848.106(a)(3), Insurance Code (page 32, line 11), strike "and monitoring" and substitute "monitoring, and evaluation".

(47) In SECTION 3.01 of the bill, in added Section 848.106(a)(4), Insurance Code (page 32, lines 15-16), strike "participating physicians and health care providers" and substitute "participating physicians, health care providers, and patients".

(48) In SECTION 3.01 of the bill, in added Section 848.153(a), Insurance Code (page 36, line 9), strike "attorney general" and substitute "commissioner".

(49) In SECTION 3.01 of the bill, after added Section 848.153(d), Insurance Code (page 36, after line 27), insert:

(e) The commissioner or attorney general may disclose the results of an examination conducted under this section or documentation provided under this section to a governmental agency that contracts with a health care collaborative for the purpose of determining financial stability, readiness, or other contractual compliance needs.

(50) In SECTION 3.01 of the bill, in added Section 848.201(b)(7), Insurance Code (page 38, line 8), after the underlined semicolon, strike "or".

(51) In SECTION 3.01 of the bill, in added Section 848.201(b)(8), Insurance Code (page 38, line 15), strike "reasonable." and substitute "reasonable; or".

(52) In SECTION 3.01 of the bill, after added Section 848.201(b)(8), Insurance Code (page 38, between lines 15 and 16), insert:

(9) has or is utilizing market power in an anticompetitive manner, in accordance with established antitrust principles of market power analysis.

(53) In SECTION 3.01 of the bill, after added Section 848.203, Insurance Code (page 39, between lines 13 and 14), insert:

Sec. 848.204. NOTICE. The commissioner shall:

(1) report any action taken under this subchapter to:

(A) the relevant state licensing or certifying agency or board; and

(B) the United States Department of Health and Human Services

National Practitioner Data Bank; and

(2) post notice of the action on the department's Internet website.

Sec. 848.205. INDEPENDENT AUTHORITY OF ATTORNEY GENERAL. (a) The attorney general may:

(1) investigate a health care collaborative with respect to anticompetitive behavior that is contrary to the goals and requirements of this chapter; and

(2) request that the commissioner:

(A) impose a penalty or sanction;

(B) issue a cease and desist order; or

(C) suspend or revoke the health care collaborative's certificate of

authority.

(b) This section does not limit any other authority or power of the attorney general.

(54) In SECTION 3.03 of the bill, in the recital (page 40, line 4), strike "Sections 1301.0625 and 1301.0626" and substitute "Section 1301.0625".

(55) In SECTION 3.03 of the bill, strike added Sections 1301.0625 and 1301.0626, Insurance Code (page 40, lines 6-26), and substitute:

Sec. 1301.0625. HEALTH CARE COLLABORATIVES. (a) Subject to the requirements of this chapter, a health care collaborative may be designated as a preferred provider under a preferred provider benefit plan and may offer enhanced benefits for care provided by the health care collaborative.

(b) A preferred provider contract between an insurer and a health care collaborative may use a payment methodology other than a fee-for-service or discounted fee methodology. A reimbursement methodology used in a contract under this subsection is not subject to Chapter 843.

(c) A contract authorized by Subsection (b) must specify that the health care collaborative and the physicians or providers providing health care services on behalf of the collaborative will hold an insured harmless for payment of the cost of covered health care services if the insurer or the health care collaborative do not pay the physician or health care provider for the services.

(d) An insurer issuing an exclusive provider benefit plan authorized by another law of this state may limit access to only preferred providers participating in a health care collaborative if the limitation is consistent with all requirements applicable to exclusive provider benefit plans.

(56) Strike SECTION 3.04 of the bill (page 40, line 27, through page 41, line 11) and substitute:

SECTION 3.04. Subtitle F, Title 4, Health and Safety Code, is amended by adding Chapter 315 to read as follows:

CHAPTER 315. ESTABLISHMENT OF HEALTH CARE  
COLLABORATIVES

Sec. 315.001. AUTHORITY TO ESTABLISH HEALTH CARE COLLABORATIVE. A public hospital created under Subtitle C or D or a hospital district created under general or special law may form and sponsor a nonprofit health care collaborative that is certified under Chapter 848, Insurance Code.

(57) Strike SECTION 3.07 of the bill (page 43, lines 4-8) and substitute:

SECTION 3.07. Not later than September 1, 2012, the commissioner of insurance and the attorney general shall adopt rules as necessary to implement this article.

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

SECTION 3.\_\_\_\_. As soon as practicable after the effective date of this Act, the commissioner of insurance shall designate or employ staff with antitrust expertise sufficient to carry out the duties required by this Act.

(59) In the recital to SECTION 5.01 of the bill (page 44, line 16), strike "Subdivision (10-a)" and substitute "Subdivisions (8-a) and (10-a)".

(60) In SECTION 5.01 of the bill, in amended Section 98.001, Health and Safety Code, as added by Chapter 359 (**SB 288**), Acts of the 80th Legislature, Regular Session, 2007 (page 44, between lines 17 and 18), immediately after the recital, insert the following:

(8-a) "Health care professional" means an individual licensed, certified, or otherwise authorized to administer health care, for profit or otherwise, in the ordinary course of business or professional practice. The term does not include a health care facility.

(61) In SECTION 5.05 of the bill, strike added Section 98.1046(a), Health and Safety Code (page 46, lines 20-24), and substitute the following:

(a) In consultation with the Texas Institute of Health Care Quality and Efficiency under Chapter 1002, the department, using data submitted under Chapter 108, shall publicly report for hospitals in this state risk-adjusted outcome rates for those potentially preventable complications and potentially preventable readmissions that the department, in consultation with the institute, has determined to be the most effective measures of quality and efficiency.

(62) In SECTION 5.05 of the bill, in added Section 98.1046(c), Health and Safety Code (page 47, line 2), strike "health care provider" and substitute "health care professional".

(63) In SECTION 5.05 of the bill, in added Section 98.1047(a), Health and Safety Code (page 47, line 5), after "(a)", strike "The" and substitute "In consultation with the Texas Institute of Health Care Quality and Efficiency under Chapter 1002, the".

(64) In SECTION 5.08 of the bill, strike added Section 98.1065, Health and Safety Code (page 48, line 20, through page 49, line 4), and substitute the following:

Sec. 98.1065. STUDY OF INCENTIVES AND RECOGNITION FOR HEALTH CARE QUALITY. The department, in consultation with the Texas Institute of Health Care Quality and Efficiency under Chapter 1002, shall conduct a study on developing a recognition program to recognize exemplary health care facilities for superior quality of health care and make recommendations based on that study.

(65) In SECTION 5.10 of the bill, in amended Section 98.110, Health and Safety Code, as added by Chapter 359 (**SB 288**), Acts of the 80th Legislature, Regular Session, 2007 (page 50, lines 2-3), between "Centers for Disease Control and Prevention" and "for public health research", insert ", or any other agency of the United States Department of Health and Human Services,".

(66) Add the following appropriately numbered SECTIONS to ARTICLE 5 of the bill and renumber subsequent SECTIONS of the ARTICLE accordingly:

SECTION 5.\_\_\_\_. Section 98.109(a), Health and Safety Code, as added by Chapter 359 (**SB 288**), Acts of the 80th Legislature, Regular Session, 2007, is amended to read as follows:

(a) Except as provided by Sections 98.1046, 98.106, and 98.110, all information and materials obtained or compiled or reported by the department under this chapter or compiled or reported by a health care facility under this chapter, and all related information and materials, are confidential and:

(1) are not subject to disclosure under Chapter 552, Government Code, or discovery, subpoena, or other means of legal compulsion for release to any person; and

(2) may not be admitted as evidence or otherwise disclosed in any civil, criminal, or administrative proceeding.

SECTION 5. \_\_\_\_\_. (a) Not later than December 1, 2012, the Department of State Health Services shall submit a report regarding recommendations for improved health care reporting to the governor, the lieutenant governor, the speaker of the house of representatives, and the chairs of the appropriate standing committees of the legislature outlining:

(1) the initial assessment in the study conducted under Section 98.1065, Health and Safety Code, as added by this Act;

(2) based on the study described by Subdivision (1) of this subsection, the feasibility and desirability of establishing a recognition program to recognize exemplary health care facilities for superior quality of health care;

(3) the recommendations developed under Section 98.1065, Health and Safety Code, as added by this Act; and

(4) the changes in existing law that would be necessary to implement the recommendations described by Subdivision (3) of this subsection.

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

Representative Kolkhorst offered the following amendment to Amendment No. 1:

Amend Amendment No. 1 by Kolkhorst (82R29960) to **SB 8** (house committee printing) as follows:

(1) In item 24 of the amendment, in added Section 848.004(b), Insurance Code (page 7, line 20), strike "The" and substitute "Except as provided by Subsection (c), the".

(2) In item 24 of the amendment, after added Section 848.004(b), Insurance Code (page 7, after line 31), add the following:

(c) The remedies available under this chapter in the manner provided by Chapter 541 do not include:

(1) a private cause of action under Subchapter D, Chapter 541; or

(2) a class action under Subchapter F, Chapter 541.

(3) Add the following appropriately numbered item to the amendment and renumber subsequent items of the amendment accordingly:

( ) In SECTION 3.01 of the bill, strike added Section 848.057(6), Insurance Code (page 25, line 27, through page 26, line 1), and substitute the following:

(6) the pro-competitive benefits of the applicant's proposed health care collaborative are likely to substantially outweigh the anti-competitive effects of any increase in market power.

Amendment No. 2 was adopted.

Amendment No. 1, as amended, was adopted.

(Martinez now present)

**Amendment No. 3**

Representative Kolkhorst offered the following amendment to **SB 8**:

Amend **SB 8** (house committee printing) in SECTION 2.01 of the bill as follows:

(1) Strike added Section 1002.001(6)(E), Health and Safety Code (page 3, lines 22-23), and reletter subsequent paragraphs of Subdivision (6) accordingly.

(2) Strike added Sections 1002.001(13)(B)-(D), Health and Safety Code (page 5, lines 20-27), and substitute the following:

(B) an infection or other complication resulting from care previously provided; or

(C) a condition or procedure that indicates that a surgical intervention performed during a previous admission was unsuccessful in achieving the anticipated outcome.

(3) Strike added Section 1002.061(b), Health and Safety Code (page 10, lines 13-15), and reletter subsequent subsections of Section 1002.061 accordingly.

Amendment No. 3 was adopted.

**Amendment No. 4**

Representative Kolkhorst offered the following amendment to **SB 8**:

Amend **SB 8** (house committee printing) in SECTION 2.01 of the bill, in added Section 1002.054(a), Health and Safety Code (page 7, line 17), following "commission.", by adding the following:

The commission shall collaborate with other health-related institutes to provide administrative support to the institute.

Amendment No. 4 was adopted.

**Amendment No. 5**

Representative Kolkhorst offered the following amendment to **SB 8**:

Amend **SB 8** (house committee printing) in ARTICLE 2 of the bill by adding the following appropriately numbered SECTION to that ARTICLE and renumbering subsequent SECTIONS of that ARTICLE appropriately:

SECTION 2.\_\_\_\_. (a) The Texas Institute of Health Care Quality and Efficiency under Chapter 1002, Health and Safety Code, as added by this Act, shall conduct a study:

(1) evaluating how the legislature may promote a consumer-driven health care system, including by increasing the adoption of high-deductible insurance products with health savings accounts by consumers and employers to lower health care costs and increase personal responsibility for health care; and

(2) examining the issue of differing amounts of payment in full accepted by a provider for the same or similar health care services or supplies, including bundled health care services and supplies, and addressing:

(A) the extent of the differences in the amounts accepted as payment in full for a service or supply;

(B) the reasons that amounts accepted as payment in full differ for the same or similar services or supplies;

(C) the availability of information to the consumer regarding the amount accepted as payment in full for a service or supply;

(D) the effects on consumers of differing amounts accepted as payment in full; and

(E) potential methods for improving consumers' access to information in relation to the amounts accepted as payment in full for health care services or supplies, including the feasibility and desirability of requiring providers to:

(i) publicly post the amount that is accepted as payment in full for a service or supply; and

(ii) adhere to the posted amount.

(b) The institute shall submit a report to the legislature outlining the results of the study conducted under this section and any recommendations for potential legislation not later than January 1, 2013.

(c) This section expires September 1, 2013.

Amendment No. 5 was adopted.

#### MESSAGE FROM THE SENATE

A message from the senate was received at this time (see the addendum to the daily journal, Messages from the Senate, Message No. 3).

#### SB 8 - (consideration continued)

#### Amendment No. 6

Representatives D. Howard, Hopson, S. King, Simpson, and Chisum offered the following amendment to **SB 8**:

Amend Amendment No. \_\_\_\_ by Zedler (82R31311) to **SB 8** (house committee printing) as follows:

(1) On page 3 of the amendment, line 6, strike "or".

(2) On page 3 of the amendment, line 7, after the semicolon, insert the following:

or

(D) a registered nurse or a licensed vocational nurse;

(3) On page 4 of the amendment, line 2, strike "or".

(4) On page 4 of the amendment, line 3, strike the period and substitute the following:

; or

(D) a registered nurse or a licensed vocational nurse.

Amendment No. 6 was withdrawn.

#### Amendment No. 7

Representative Laubenberg offered the following amendment to **SB 8**:

Amend **SB 8** (house committee printing) as follows:

(1) On page 24, line 5, between "primary care physicians" and "in", insert "or primary care providers".

Amendment No. 7 was withdrawn.

#### **Amendment No. 8**

Representative Zerwas offered the following amendment to **SB 8**:

Amend **SB 8** (house committee printing) in SECTION 3.01 of the bill, in added Section 848.101(c), Insurance Code (page 29, lines 22-23), by striking "after the termination of the physician's contract with the health care collaborative".

Amendment No. 8 was adopted.

#### **Amendment No. 9**

Representative Zedler offered the following amendment to **SB 8**:

Amend **SB 8** (house committee report) in SECTION 5.05 of the bill, immediately following proposed Section 98.1046(a), Health and Safety Code (page 46, between lines 24 and 25), by inserting the following:

(a-1) In consultation with the Texas Institute of Health Care Quality And Efficiency, the department shall publically report outcomes for potentially preventable complications and potentially preventable readmissions related to an illness, injury, or medical complication related to or resulting from the performance of an abortion.

Amendment No. 9 was withdrawn.

(Bonnen in the chair)

#### **Amendment No. 10**

Representative Hughes offered the following amendment to **SB 8**:

Amend **SB 8** (house committee report) as follows:

(1) In the recital to SECTION 6.04 of the bill, amending Section 108.013, Health and Safety Code (page 51, line 22), strike "(n)" and substitute "(o)".

(2) In SECTION 6.04 of the bill, immediately following proposed Section 108.013(n), Health and Safety Code (page 54, between lines 5 and 6), insert the following:

(o) The department as the department determines appropriate may, subject to Section 166.054(c), include data collected in Section 166.054 in the data collected or disclosed under this section.

(3) Add the following appropriately numbered SECTION to ARTICLE 6 of the bill and renumber subsequent SECTIONS of ARTICLE 6 accordingly:

SECTION \_\_\_\_\_. Subchapter B, Chapter 166, Health and Safety Code, is amended by adding Section 166.054 to read as follows:

Sec. 166.054. REPORTING REQUIREMENTS. (a) The executive commissioner of the Health and Human Services Commission by rule shall require appropriate health care facilities in this state to annually provide to the department the following information:

(1) for cases in which an attending physician refused to comply with an advance directive or health care or treatment decision and did not wish to follow the procedure established by Section 166.046:

(A) the total number of cases;

(B) for each case:

(i) whether the attending physician objected to providing or to withholding treatment;

(ii) the patient's diagnosis and a statement as to whether the diagnosis is of an irreversible condition or terminal condition;

(iii) the race, gender, age, national origin, disability, if any, and financial status, including insurance status, of the patient;

(iv) the type of health care facility, including a hospital, long-term care facility, or institution licensed under Chapter 242, including a skilled nursing facility, to which a transfer was sought; and

(v) whether the transfer occurred; and

(C) for each case in which a transfer was not made:

(i) whether the patient died;

(ii) the number of days between the date on which the opportunity to transfer the patient was first afforded and the date of the patient's death, if applicable; and

(iii) whether life-sustaining treatment had been withheld or withdrawn before the patient's death;

(2) for cases in which an attending physician's refusal to honor an advance directive or health care or treatment decision made by or on behalf of a patient was reviewed under Section 166.046:

(A) the total number of cases;

(B) for each case:

(i) whether the attending physician objected to providing or to withholding treatment;

(ii) the patient's diagnosis and a statement as to whether the diagnosis is of an irreversible condition or terminal condition;

(iii) the race, gender, age, national origin, disability, if any, and financial status, including insurance status, of the patient;

(iv) whether an ethics or medical committee meeting was held;

(v) whether the ethics or medical committee agreed with the physician or with the patient or the person responsible for the health care decisions of the patient;

(vi) the type of health care facility, including a hospital, long-term care facility, or institution licensed under Chapter 242, including a skilled nursing facility, to which a transfer was sought;

(vii) whether the transfer occurred; and

(viii) the number of days between the date the person received the written explanation to which the person is entitled under Section 166.046(b)(4)(B) and the date of the patient's transfer or death, if applicable; and

(C) for each case in which a transfer was not made:

(i) whether the patient died;



(ii) the number of days between the date on which the opportunity to transfer the patient was first afforded and the date of the patient's death, if applicable; and

(iii) whether life-sustaining treatment had been withheld or withdrawn before the patient's death; and

(3) for each case in which the health care facility or its agents attempted to assist in finding another facility willing and able to accept transfer of the patient:

(A) the number of other facilities contacted and asked to consider accepting transfer; and

(B) to the extent provided to the reporting facility, the reasons given by the other facilities for refusing to accept or for accepting transfer.

(b) Not later than February 1 of each year, the department shall issue a public report cumulating the data reported under Subsection (a) for the previous calendar year and provide a copy of the report to the governor, lieutenant governor, and speaker of the house of representatives. The report must include the aggregate data for the entire state and, subject to Subsection (c), data for each reporting health care facility. The department must allow researchers access to the database of reported data to conduct studies based on cross-tabulation, subject to Subsection (c).

(c) Except to the extent waived by a patient or the patient's legally authorized representative, the department shall ensure that information made public or available to researchers under Subsection (b) does not compromise patient confidentiality.

(d) The reporting required under this section shall be integrated, to the extent practicable, with the uniform reporting and collection system established under Section 311.032. The department shall encourage the use of electronic reporting to the extent practicable. The department shall consult with the Department of Information Resources on developing an appropriate format for use in implementing this subsection.

#### **Amendment No. 10 - Point of Order**

Representative Coleman raised a point of order against further consideration of Amendment No. 10 under Rule 11, Section 2 and Rule 11, Section 3 of the House Rules on the grounds that the amendment is not germane to the bill and the amendment would change the original purpose of the bill.

The chair overruled the point of order.

#### **Amendment No. 11**

Representative Truitt offered the following amendment to Amendment No. 10:

Amend Amendment No. 10 by Hughes to **SB 8** (house committee printing) by adding the following appropriately numbered item to the amendment:

( ) Add the following appropriately numbered ARTICLE to the bill and renumber subsequent ARTICLES and SECTIONS of the bill accordingly:

ARTICLE \_\_\_\_ . INTERIM STUDY OF ADVANCE DIRECTIVES AND  
HEALTH CARE AND TREATMENT DECISIONS

SECTION \_\_\_\_ .01. INTERIM STUDY OF ADVANCE DIRECTIVES AND HEALTH CARE AND TREATMENT DECISIONS. (a) The lieutenant governor shall issue an interim charge to the standing committee of the senate with jurisdiction over health care treatment to conduct a study as described by Subsection (b).

(b) The study must examine the provisions of Chapter 166, Health and Safety Code, including:

(1) the scope of medical and physical conditions covered by the chapter;

(2) forms for executing advance directives;

(3) operational issues, including the conflict resolution process;

(4) reporting requirements;

(5) due process provisions;

(6) forms for executing physicians' orders; and

(7) court intervention that was sought, for damages or injunctive relief, during or arising from the health care provided and treatment decisions made pursuant to Chapter 166, Health and Safety Code.

(c) Not later than January 1, 2013, the committee shall report the committee's findings and recommendations to the lieutenant governor, the speaker of the house, and the governor. The committee shall include in its recommendations specific changes to statutes and agency rules that may be necessary, based on the results of the committee's study conducted under this section.

(d) Not later than November 1, 2011, the lieutenant governor shall issue the interim charge required by this section.

(e) This section expires January 1, 2013.

**LEAVE OF ABSENCE GRANTED**

The following member was granted leave of absence temporarily for today to attend a TDI Sunset meeting:

L. Taylor on motion of Crownover.

**SB 8 - (consideration continued)**

Amendment No. 11 was adopted by (Record 1364): 96 Yeas, 47 Nays, 1 Present, not voting.

Yeas — Aliseda; Alonzo; Alvarado; Anchia; Aycock; Beck; Bohac; Bonnen(C); Branch; Brown; Burnam; Button; Callegari; Castro; Coleman; Craddick; Creighton; Crownover; Darby; Davis, J.; Davis, S.; Davis, Y.; Deshotel; Driver; Dukes; Dutton; Eiland; Farias; Farrar; Gallego; Geren; Giddings; Gonzales, L.; Gonzales, V.; Gonzalez; Gutierrez; Hamilton; Harcastle; Harless; Hernandez Luna; Hilderbran; Hochberg; Hopson; Howard, D.; Huberty; Jackson; Johnson; King, S.; King, T.; Kleinschmidt; Kolkhorst; Kuempel; Lavender; Lewis; Lucio; Lyne; Mallory Caraway; Margo; Marquez; Martinez Fischer; McClendon; Menendez; Miller, D.; Morrison; Muñoz;

Naishtat; Nash; Oliveira; Orr; Otto; Patrick; Pickett; Pitts; Price; Quintanilla; Raymond; Reynolds; Ritter; Rodriguez; Schwertner; Scott; Sheffield; Shelton; Smith, W.; Solomons; Strama; Thompson; Torres; Truitt; Veasey; Villarreal; Vo; Walle; Woolley; Workman; Zerwas.

Nays — Anderson, C.; Anderson, R.; Berman; Burkett; Cain; Carter; Chisum; Christian; Cook; Elkins; Fletcher; Flynn; Frullo; Garza; Gooden; Guillen; Hancock; Harper-Brown; Hartnett; Howard, C.; Hughes; Hunter; Isaac; Keffer; King, P.; Landtroop; Larson; Laubenberg; Legler; Lozano; Madden; Martinez; Miller, S.; Murphy; Parker; Paxton; Perry; Phillips; Riddle; Sheets; Simpson; Smith, T.; Smithee; Taylor, V.; Weber; White; Zedler.

Present, not voting — Mr. Speaker.

Absent, Excused — Peña; Taylor, L.

Absent — Allen; Eissler; Miles; Turner.

### STATEMENTS OF VOTE

I was shown voting yes on Record No. 1364. I intended to vote no.

Bohac

When Record No. 1364 was taken, I was temporarily out of the house chamber. I would have voted no.

Eissler

Amendment No. 10, as amended, was adopted.

### Amendment No. 12

Representative Zerwas offered the following amendment to **SB 8**:

Amend **SB 8** (house committee printing) by adding the following appropriately numbered ARTICLE to the bill and renumbering subsequent ARTICLES and SECTIONS of the bill accordingly:

#### ARTICLE \_\_\_\_ INSURER CONTRACTS REGARDING CERTAIN BENEFIT PLANS

SECTION \_\_\_\_.01. Section 1301.006, Insurance Code, is amended to read as follows:

Sec. 1301.006. AVAILABILITY OF AND ACCESSIBILITY TO HEALTH CARE SERVICES. (a) An insurer that markets a preferred provider benefit plan shall contract with physicians and health care providers to ensure that all medical and health care services and items contained in the package of benefits for which coverage is provided, including treatment of illnesses and injuries, will be provided under the health insurance policy in a manner ensuring availability of and accessibility to adequate personnel, specialty care, and facilities.

(b) A contract between an insurer that markets a plan regulated under this chapter and an institutional provider may not, as a condition of staff membership or privileges, require a physician or other practitioner to enter into a preferred provider contract.

Amendment No. 12 was withdrawn.

**Amendment No. 13**

Representative Brown offered the following amendment to **SB 8**:

Amend **SB 8** (house committee printing) by adding the following appropriately numbered ARTICLE to the bill and renumbering subsequent ARTICLES and SECTIONS of the bill accordingly:

ARTICLE \_\_\_\_ . MONITORING AND ENHANCEMENT OF HEALTH AND HUMAN SERVICES INFORMATION TECHNOLOGY SYSTEMS

SECTION \_\_\_\_ .01. Section 531.458, Government Code, is amended to read as follows:

Sec. 531.458. EXPIRATION. This subchapter expires September 1, 2015 [~~2014~~].

Amendment No. 13 was adopted.

**Amendment No. 14**

Representative Shelton offered the following amendment to **SB 8**:

Amend **SB 8** by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_ . Subchapter D, Chapter 62, Health and Safety Code, is amended by adding Section 62.160 to read as follows:

Sec. 62.160. PILOT PROJECT TO INCREASE ENROLLEE ACCESS TO PRIMARY CARE SERVICES AND SIMPLIFY ENROLLMENT PROCEDURES. (a) In this section:

(1) "CPT code" means the number assigned to identify a specific health care procedure performed by a health care provider under the American Medical Association's "Current Procedural Terminology 2011 Professional Edition" or a subsequent edition of that publication adopted by the executive commissioner of the Health and Human Services Commission by rule.

(2) "Lower-cost medical setting" means a facility, clinic, center, office, or other setting primarily used to provide primary care services.

(3) "Primary care services" means health services generally provided through a general, family, internal medicine, or pediatrics practice. The term does not include services provided through a hospital emergency room or surgical services.

(4) "Service area" means the geographical area determined by the commission that is coterminous with one or more Medicaid service areas and in which the pilot project is established.

(b) The commission shall establish a two-year pilot project in one or more Medicaid service areas that is designed to:

(1) increase child health plan enrollee access to primary care services;  
and

(2) simplify child health plan enrollment procedures.

(c) In establishing the pilot project under this section, the executive commissioner of the Health and Human Services Commission shall:

(1) for each service area, establish health care provider reimbursement rates for primary care services provided in lower-cost medical settings that are comparable to the federal Medicare program rates for the same or similar services;

(2) identify CPT codes that represent primary care services for purposes of Subdivision (1);

(3) prescribe and use an alternative application for child health plan coverage that is written on a sixth-grade reading comprehension level; and

(4) require any enrollment services provider in a service area to reduce application processing delays and procedural denials and increase renewal rates.

(d) An individual who resides in the service area and who is determined eligible for coverage under the child health plan remains eligible for benefits until the expiration of the period provided by Section 62.102(a), subject to Section 62.102(b).

(e) The commission shall provide at least one point of service contact in each county in the service area where trained personnel are available to personally assist interested individuals who reside in the service area with the application form and procedures for child health plan coverage.

(f) The commission may enroll an individual in the child health plan program under the pilot project established under this section during only the first year of the project.

(g) Not later than January 1, 2013, the commission shall submit an initial report to the governor, the lieutenant governor, the speaker of the house of representatives, and the presiding officers of the standing committees of the senate and house of representatives having primary jurisdiction over the child health plan program. The report must evaluate the operation of the pilot project and make recommendations regarding the continuation or expansion of the pilot project. The report must:

(1) state whether:

(A) a higher percentage of eligible individuals in the service area enrolled in the child health plan as a result of the pilot project, as compared to percentages in other areas;

(B) a higher percentage of health plan providers in the service area participated in the child health plan as a result of the pilot project, as compared to percentages in other areas; and

(C) the enrollment changes implemented under the pilot project:

(i) reduced application processing delays and procedural denials; and

(ii) affected reenrollment rates; and

(2) include recommendations for the statewide implementation of successful pilot project strategies.

(h) The commission shall submit a final report regarding the results of the pilot project in the manner prescribed by Subsection (g) not later than the 60th day after the date the pilot project terminates. The report must contain the information required by Subsection (g).

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

(j) This section expires January 1, 2015.

SECTION \_\_\_\_\_. (a) Subject to Subsection (b) of this section, not later than October 1, 2011, the Health and Human Services Commission shall establish the pilot project required under Section 62.160, Health and Safety Code, as added by this Act.

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

Amendment No. 14 was adopted.

#### **Amendment No. 15**

Representative Hardcastle offered the following amendment to **SB 8**:

Amend **SB 8** (house committee printing) as follows:

(1) In SECTION 2.01 of the bill, in added Section 1002.101(2), Health and Safety Code (page 11, line 17), following the underlined semicolon, strike "and".

(2) In SECTION 2.01 of the bill, in added Section 1002.101(3), Health and Safety Code (page 11, line 20), following "Insurance Code", strike the underlined period and substitute "; and".

(3) In SECTION 2.01 of the bill, in added Section 1002.101, Health and Safety Code (page 11, between lines 20 and 21), insert the following:

(4) establishing a database of ambulatory surgical centers licensed under Chapter 243 to enable those centers to be reimbursed using a charge-based methodology to promote competition in accordance with Chapter 1301, Insurance Code.

Amendment No. 15 was adopted.

#### **Amendment No. 16**

Representative Zerwas offered the following amendment to **SB 8**:

Amend **SB 8** (house committee report) by adding the following appropriately numbered ARTICLE to the bill and renumbering subsequent ARTICLES and SECTIONS of the bill accordingly:

ARTICLE \_\_\_\_\_. ADOPTION OF VACCINE PREVENTABLE DISEASES  
POLICY BY HEALTH CARE FACILITIES

SECTION \_\_\_\_\_.01. The heading to Subtitle A, Title 4, Health and Safety Code, is amended to read as follows:

SUBTITLE A. FINANCING, CONSTRUCTING, REGULATING, AND  
INSPECTING  
HEALTH FACILITIES

SECTION \_\_\_\_\_.02. Subtitle A, Title 4, Health and Safety Code, is amended by adding Chapter 224 to read as follows:

CHAPTER 224. POLICY ON VACCINE PREVENTABLE DISEASESSec. 224.001. DEFINITIONS. In this chapter:

(1) "Covered individual" means:

(A) an employee of the health care facility;

(B) an individual providing direct patient care under a contract with a health care facility; or

(C) an individual to whom a health care facility has granted privileges to provide direct patient care.

(2) "Health care facility" means:

(A) a facility licensed under Subtitle B, including a hospital as defined by Section 241.003; or

(B) a hospital maintained or operated by this state.

(3) "Regulatory authority" means a state agency that regulates a health care facility under this code.

(4) "Vaccine preventable diseases" means the diseases included in the most current recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention.

Sec. 224.002. VACCINE PREVENTABLE DISEASES POLICY REQUIRED. (a) Each health care facility shall develop and implement a policy to protect its patients from vaccine preventable diseases.

(b) The policy must:

(1) require covered individuals to receive vaccines for the vaccine preventable diseases specified by the facility based on the level of risk the individual presents to patients by the individual's routine and direct exposure to patients;

(2) specify the vaccines a covered individual is required to receive based on the level of risk the individual presents to patients by the individual's routine and direct exposure to patients;

(3) include procedures for verifying whether a covered individual has complied with the policy;

(4) include procedures for a covered individual to be exempt from the required vaccines for the medical conditions identified as contraindications or precautions by the Centers for Disease Control and Prevention;

(5) for a covered individual who is exempt from the required vaccines, include procedures the individual must follow to protect facility patients from exposure to disease, such as the use of protective medical equipment, such as gloves and masks, based on the level of risk the individual presents to patients by the individual's routine and direct exposure to patients;

(6) prohibit discrimination or retaliatory action against a covered individual who is exempt from the required vaccines for the medical conditions identified as contraindications or precautions by the Centers for Disease Control and Prevention, except that required use of protective medical equipment, such as gloves and masks, may not be considered retaliatory action for purposes of this subdivision;

(7) require the health care facility to maintain a written or electronic record of each covered individual's compliance with or exemption from the policy; and

(8) include disciplinary actions the health care facility is authorized to take against a covered individual who fails to comply with the policy.

(c) The policy may include procedures for a covered individual to be exempt from the required vaccines based on reasons of conscience, including a religious belief.

Sec. 224.003. DISASTER EXEMPTION. (a) In this section, "public health disaster" has the meaning assigned by Section 81.003.

(b) During a public health disaster, a health care facility may prohibit a covered individual who is exempt from the vaccines required in the policy developed by the facility under Section 224.002 from having contact with facility patients.

Sec. 224.004. DISCIPLINARY ACTION. A health care facility that violates this chapter is subject to an administrative or civil penalty in the same manner, and subject to the same procedures, as if the facility had violated a provision of this code that specifically governs the facility.

Sec. 224.005. RULES. The appropriate rulemaking authority for each regulatory authority shall adopt rules necessary to implement this chapter.

SECTION \_\_\_\_ .03. Not later than June 1, 2012, a state agency that regulates a health care facility subject to Chapter 224, Health and Safety Code, as added by this article, shall adopt the rules necessary to implement that chapter.

SECTION \_\_\_\_ .04. Notwithstanding Chapter 224, Health and Safety Code, as added by this article, a health care facility subject to that chapter is not required to have a policy on vaccine preventable diseases in effect until September 1, 2012.

Amendment No. 16 was adopted.

#### **Amendment No. 17**

Representative Creighton offered the following amendment to **SB 8**:

Amend **SB 8** (senate engrossed version) in SECTION 3.01 of the bill, after added Section 848.005, Insurance Code (page 20, between lines 10 and 11), by inserting:

Sec. 848.006. COVERAGE BY HEALTH CARE COLLABORATIVE NOT REQUIRED. (a) Except as provided by Subsection (b), an individual may not be required to obtain or maintain coverage under:

(1) an individual health insurance policy written through a health care collaborative; or

(2) any plan or program for health care services provided on an individual basis through a health care collaborative.

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

(1) who is required to obtain or maintain health benefit plan coverage:

(A) written by an institution of higher education at which the individual is or will be enrolled as a student; or

(B) under an order requiring medical support for a child; or



(2) who voluntarily applies for benefits under a state administered program under Title XIX of the Social Security Act (42 U.S.C. Section 1396 et seq.), or Title XXI of the Social Security Act (42 U.S.C. Section 1397aa et seq.).

(c) Except as provided by Subsection (d), a fine or penalty may not be imposed on an individual if the individual chooses not to obtain or maintain coverage described by Subsection (a).

(d) Subsection (c) does not apply to a fine or penalty imposed on an individual described in Subsection (b) for the individual's failure to obtain or maintain health benefit plan coverage.

#### **Amendment No. 18**

Representative Creighton offered the following amendment to Amendment No. 17:

Amend Amendment No. 17 by Creighton to **SB 8** (house committee printing) as follows:

(1) in added Section 848.006(a), Insurance Code (page 1, line 5), between "**(b)**" and the underlined comma, insert "and subject to Chapter 843 and Section 1301.0625".

(2) After added Section 848.006(a), Insurance Code (page 1, between lines 11 and 12), insert:

(a-1) This chapter does not require an individual to obtain or maintain health insurance coverage.

Amendment No. 18 was adopted.

Amendment No. 17, as amended, was adopted.

#### **Amendment No. 19**

Representative S. Miller offered the following amendment to **SB 8**:

Amend **SB 8** (senate engrossed version) in SECTION 4 of the bill by inserting the following appropriately lettered subsection to the SECTION and relettering subsequent subsections of the SECTION accordingly:

SECTION \_\_\_\_\_. Chapter 1560, Insurance Code, is amended by adding Section 1560.005 to read as follows:

Sec. 1560.005. REVIEW OF PHARMACY CLAIMS. (a) The state auditor may conduct a biennial review of prescriptions intended for a 90-day supply to determine compliance with this chapter and to verify community retail and mail order pharmacies' parity in all factors of reimbursement, including average wholesale price and maximum allowable cost.

(b) The state auditor shall submit a review conducted under this section to the board of trustees for the Employees Retirement System of Texas and the trustee for the Teacher Retirement System of Texas.

(c) The Employees Retirement System of Texas and the Teacher Retirement System of Texas shall reimburse the state auditor for all costs of a review under this section.

(d) If in the course of a review the state auditor finds evidence of improper practices or illegal transactions, the state auditor shall report the evidence in accordance with Section 321.016, Government Code.

Amendment No. 19 was adopted.

**Amendment No. 20**

Representative Eiland offered the following amendment to **SB 8**:

Amend **SB 8** (house committee report) by adding the following appropriately numbered ARTICLE to the bill and renumbering subsequent ARTICLES and SECTIONS of the bill accordingly:

ARTICLE \_\_\_\_\_. PROVIDER NETWORK CONTRACT ARRANGEMENTS

SECTION \_\_\_\_\_.001. Subtitle F, Title 8, Insurance Code, is amended by adding Chapter 1458 to read as follows:

CHAPTER 1458. PROVIDER NETWORK CONTRACT ARRANGEMENTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1458.001. GENERAL DEFINITIONS. In this chapter:

(1) "Affiliate" means a person who, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with another person.

(2) "Contracting entity" means a person who:

(A) enters into a direct contract with a provider for the delivery of health care services to covered individuals; and

(B) in the ordinary course of business establishes a provider network or networks for access by another party.

(3) "Covered individual" means an individual who is covered under a health benefit plan.

(4) "Direct notification" means a written or electronic communication from a contracting entity to a physician or other health care provider documenting third party access to a provider network.

(5) "Health care services" means services provided for the diagnosis, prevention, treatment, or cure of a health condition, illness, injury, or disease.

(6) "Person" has the meaning assigned by Section 823.002.

(7) "Provider" means a physician, a professional association composed solely of physicians, a single legal entity authorized to practice medicine owned by two or more physicians, a nonprofit health corporation certified by the Texas Medical Board under Chapter 162, Occupations Code, a partnership composed solely of physicians, a physician-hospital organization that acts exclusively as an administrator for a provider to facilitate the provider's participation in health care contracts, or an institution that is licensed under Chapter 241, Health and Safety Code. The term does not include a physician-hospital organization that leases or rents the physician-hospital organization's network to a third party.

(8) "Provider network contract" means a contract between a contracting entity and a provider for the delivery of, and payment for, health care services to a covered individual.

(9) "Third party" means a person that contracts with a contracting entity or another party to gain access to a provider network contract.

Sec. 1458.002. DEFINITION OF HEALTH BENEFIT PLAN. (a) In this chapter, "health benefit plan" means:

(1) a hospital and medical expense incurred policy;  
(2) a nonprofit health care service plan contract;  
(3) a health maintenance organization subscriber contract; or  
(4) any other health care plan or arrangement that pays for or furnishes medical or health care services.

(b) "Health benefit plan" does not include one or more or any combination of the following:

(1) coverage only for accident or disability income insurance or any combination of those coverages;

(2) credit-only insurance;

(3) coverage issued as a supplement to liability insurance;

(4) liability insurance, including general liability insurance and automobile liability insurance;

(5) workers' compensation or similar insurance;

(6) a discount health care program, as defined by Section 7001.001;

(7) coverage for on-site medical clinics;

(8) automobile medical payment insurance; or

(9) other similar insurance coverage, as specified by federal regulations issued under the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191), under which benefits for medical care are secondary or incidental to other insurance benefits.

(c) "Health benefit plan" does not include the following benefits if they are provided under a separate policy, certificate, or contract of insurance, or are otherwise not an integral part of the coverage:

(1) dental or vision benefits;

(2) benefits for long-term care, nursing home care, home health care, community-based care, or any combination of these benefits;

(3) other similar, limited benefits, including benefits specified by federal regulations issued under the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191); or

(4) a Medicare supplement benefit plan described by Section 1652.002.

(d) "Health benefit plan" does not include coverage limited to a specified disease or illness or hospital indemnity coverage or other fixed indemnity insurance coverage if:

(1) the coverage is provided under a separate policy, certificate, or contract of insurance;

(2) there is no coordination between the provision of the coverage and any exclusion of benefits under any group health benefit plan maintained by the same plan sponsor; and

(3) the coverage is paid with respect to an event without regard to whether benefits are provided with respect to such an event under any group health benefit plan maintained by the same plan sponsor.

Sec. 1458.003. EXEMPTIONS. This chapter does not apply:

(1) to a provider network contract for services provided to a beneficiary under the Medicaid program, the Medicare program, or the state child health plan established under Chapter 62, Health and Safety Code, or the comparable plan under Chapter 63, Health and Safety Code;

(2) under circumstances in which access to the provider network is granted to an entity that operates under the same brand licensee program as the contracting entity; or

(3) to a contract between a contracting entity and a discount health care program operator, as defined by Section 7001.001.

[Sections 1458.004-1458.050 reserved for expansion]

#### SUBCHAPTER B. REGISTRATION REQUIREMENTS

Sec. 1458.051. REGISTRATION REQUIRED. (a) Unless the person holds a certificate of authority issued by the department to engage in the business of insurance in this state or operate a health maintenance organization under Chapter 843, a person must register with the department not later than the 30th day after the date on which the person begins acting as a contracting entity in this state.

(b) Notwithstanding Subsection (a), under Section 1458.055 a contracting entity that holds a certificate of authority issued by the department to engage in the business of insurance in this state or is a health maintenance organization shall file with the commissioner an application for exemption from registration under which the affiliates may access the contracting entity's network.

(c) An application for an exemption filed under Subsection (b) must be accompanied by a list of the contracting entity's affiliates. The contracting entity shall update the list with the commissioner on an annual basis.

(d) A list of affiliates filed with the commissioner under Subsection (c) is public information and is not exempt from disclosure under Chapter 552, Government Code.

Sec. 1458.052. DISCLOSURE OF INFORMATION. (a) A person required to register under Section 1458.051 must disclose:

(1) all names used by the contracting entity, including any name under which the contracting entity intends to engage or has engaged in business in this state;

(2) the mailing address and main telephone number of the contracting entity's headquarters;

(3) the name and telephone number of the contracting entity's primary contact for the department; and

(4) any other information required by the commissioner by rule.

(b) The disclosure made under Subsection (a) must include a description or a copy of the applicant's basic organizational structure documents and a copy of organizational charts and lists that show:

(1) the relationships between the contracting entity and any affiliates of the contracting entity, including subsidiary networks or other networks; and

(2) the internal organizational structure of the contracting entity's management.

Sec. 1458.053. SUBMISSION OF INFORMATION. Information required under this subchapter must be submitted in a written or electronic format adopted by the commissioner by rule.

Sec. 1458.054. FEES. The department may collect a reasonable fee set by the commissioner as necessary to administer the registration process. Fees collected under this chapter shall be deposited in the Texas Department of Insurance operating fund.

Sec. 1458.055. EXEMPTION FOR AFFILIATES. (a) The commissioner shall grant an exemption for affiliates of a contracting entity if the contracting entity holds a certificate of authority issued by the department to engage in the business of insurance in this state or is a health maintenance organization if the commissioner determines that:

(1) the affiliate is not subject to a disclaimer of affiliation under Chapter 823; and

(2) the relationships between the person who holds a certificate of authority and all affiliates of the person, including subsidiary networks or other networks, are disclosed and clearly defined.

(b) An exemption granted under this section applies only to registration. An entity granted an exemption is otherwise subject to this chapter.

(c) The commissioner shall establish a reasonable fee as necessary to administer the exemption process.

[Sections 1458.056-1458.100 reserved for expansion]

#### SUBCHAPTER C. RIGHTS AND RESPONSIBILITIES OF A CONTRACTING ENTITY

Sec. 1458.101. CONTRACT REQUIREMENTS. A contracting entity may not provide a person access to health care services or contractual discounts under a provider network contract unless the provider network contract specifically states that:

(1) the contracting entity may contract with a third party to provide access to the contracting entity's rights and responsibilities under a provider network contract; and

(2) the third party must comply with all applicable terms, limitations, and conditions of the provider network contract.

Sec. 1458.102. DUTIES OF CONTRACTING ENTITY. (a) A contracting entity that has granted access to health care services and contractual discounts under a provider network contract shall:

(1) notify each provider of the identity of, and contact information for, each third party that has or may obtain access to the provider's health care services and contractual discounts;

(2) provide each third party with sufficient information regarding the provider network contract to enable the third party to comply with all relevant terms, limitations, and conditions of the provider network contract;

(3) require each third party to disclose the identity of the contracting entity and the existence of a provider network contract on each remittance advice or explanation of payment form; and

(4) notify each third party of the termination of the provider network contract not later than the 30th day after the effective date of the contract termination.

(b) If a contracting entity knows that a third party is making claims under a terminated contract, the contracting entity must take reasonable steps to cause the third party to cease making claims under the provider network contract. If the steps taken by the contracting entity are unsuccessful and the third party continues to make claims under the terminated provider network contract, the contracting entity must:

(1) terminate the contracting entity's contract with the third party; or

(2) notify the commissioner, if termination of the contract is not feasible.

(c) Any notice provided by a contracting entity to a third party under Subsection (b) must include a statement regarding the third party's potential liability under this chapter for using a provider's contractual discount for services provided after the termination date of the provider network contract.

(d) The notice required under Subsection (a)(1):

(1) must be provided by:

(A) providing for a subscription to receive the notice by e-mail; or

(B) posting the information on an Internet website at least once each calendar quarter; and

(2) must include a separate prominent section that lists:

(A) each third party that the contracting entity knows will have access to a discounted fee of the provider in the succeeding calendar quarter; and

(B) the effective date and termination or renewal dates, if any, of the third party's contract to access the network.

(e) The e-mail notice described by Subsection (d) may contain a link to an Internet web page that contains a list of third parties that complies with this section.

(f) The notice described by Subsection (a)(1) is not required to include information regarding payors who are not insurers or health maintenance organizations.

Sec. 1458.103. EFFECT OF CONTRACT TERMINATION. Subject to continuity of care requirements, agreements, or contractual provisions:

(1) a third party may not access health care services and contractual discounts after the date the provider network contract terminates;

(2) claims for health care services performed after the termination date may not be processed or paid under the provider network contract after the termination; and

(3) claims for health care services performed before the termination date and processed after the termination date may be processed and paid under the provider network contract after the date of termination.

Sec. 1458.104. AVAILABILITY OF CODING GUIDELINES. (a) A contract between a contracting entity and a provider must provide that:

(1) the provider may request a description and copy of the coding guidelines, including any underlying bundling, recoding, or other payment process and fee schedules applicable to specific procedures that the provider will receive under the contract;

(2) the contracting entity or the contracting entity's agent will provide the coding guidelines and fee schedules not later than the 30th day after the date the contracting entity receives the request;

(3) the contracting entity or the contracting entity's agent will provide notice of changes to the coding guidelines and fee schedules that will result in a change of payment to the provider not later than the 90th day before the date the changes take effect and will not make retroactive revisions to the coding guidelines and fee schedules; and

(4) if the requested information indicates a reduction in payment to the provider from the amounts agreed to on the effective date of the contract, the contract may be terminated by the provider on written notice to the contracting entity on or before the 30th day after the date the provider receives information requested under this subsection without penalty or discrimination in participation in other health care products or plans.

(b) A provider who receives information under Subsection (a) may only:

(1) use or disclose the information for the purpose of practice management, billing activities, and other business operations; and

(2) disclose the information to a governmental agency involved in the regulation of health care or insurance.

(c) The contracting entity shall, on request of the provider, provide the name, edition, and model version of the software that the contracting entity uses to determine bundling and unbundling of claims.

(d) The provisions of this section may not be waived, voided, or nullified by contract.

(e) If a contracting entity is unable to provide the information described by Subsection (a)(1), (a)(3), or (c), the contracting entity shall by telephone provide a readily available medium in which providers may obtain the information, which may include an Internet website.

[Sections 1458.105-1458.150 reserved for expansion]

#### SUBCHAPTER D. RIGHTS AND RESPONSIBILITIES OF THIRD PARTY

Sec. 1458.151. THIRD-PARTY RIGHTS AND RESPONSIBILITIES. A third party that leases, sells, aggregates, assigns, or otherwise conveys a provider's contractual discount to another party, who is not a covered individual, must comply with the responsibilities of a contracting entity under Subchapters C and E.

Sec. 1458.152. DISCLOSURE BY THIRD PARTY. (a) A third party shall disclose, to the contracting entity and providers under the provider network contract, the identity of a person, who is not a covered individual, to whom the third party leases, sells, aggregates, assigns, or otherwise conveys a provider's contractual discount through an electronic notification that complies with Section 1458.102 and includes a link to the Internet website described by Section 1458.102(d).

(b) A third party that uses an Internet website under this section must update the website on a quarterly basis. On request, a contracting entity shall disclose the information by telephone or through direct notification.

[Sections 1458.153-1458.200 reserved for expansion]

SUBCHAPTER E. UNAUTHORIZED ACCESS TO PROVIDER NETWORK CONTRACTS

Sec. 1458.201. UNAUTHORIZED ACCESS TO OR USE OF DISCOUNT. (a) A person who knowingly accesses or uses a provider's contractual discount under a provider network contract without a contractual relationship established under this chapter commits an unfair or deceptive act in the business of insurance that violates Subchapter B, Chapter 541. The remedies available for a violation of Subchapter B, Chapter 541, under this subsection do not include a private cause of action under Subchapter D, Chapter 541, or a class action under Subchapter F, Chapter 541.

(b) A contracting entity or third party must comply with the disclosure requirements under Sections 1458.102 and 1458.152 concerning the services listed on a remittance advice or explanation of payment. A provider may refuse a discount taken without a contract under this chapter or in violation of those sections.

(c) Notwithstanding Subsection (b), an error in the remittance advice or explanation of payment may be corrected by a contracting entity or third party not later than the 30th day after the date the provider notifies in writing the contracting entity or third party of the error.

Sec. 1458.202. ACCESS TO THIRD PARTY. A contracting entity may not provide a third party access to a provider network contract unless the third party is:

(1) a payor or person who administers or processes claims on behalf of the payor;

(2) a preferred provider benefit plan issuer or preferred provider network, including a physician-hospital organization; or

(3) a person who transports claims electronically between the contracting entity and the payor and does not provide access to the provider's services and discounts to any other third party.

[Sections 1458.203-1458.250 reserved for expansion]

SUBCHAPTER F. ENFORCEMENT

Sec. 1458.251. UNFAIR CLAIM SETTLEMENT PRACTICE. (a) A contracting entity that violates this chapter commits an unfair claim settlement practice under Subchapter A, Chapter 542, and is subject to sanctions under that subchapter as if the contracting entity were an insurer.

(b) A provider who is adversely affected by a violation of this chapter may make a complaint under Subchapter A, Chapter 542.

Sec. 1458.252. REMEDIES NOT EXCLUSIVE. The remedies provided by this subchapter are in addition to any other defense, remedy, or procedure provided by law, including common law.



SECTION \_\_\_\_ .002. The change in law made by this article applies only to a provider network contract entered into or renewed on or after January 1, 2012. A provider network contract entered into or renewed before January 1, 2012, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

Amendment No. 20 was adopted.

**Amendment No. 21**

Representative S. King offered the following amendment to **SB 8**:

Amend **SB 8** (house committee printing) as follows:

(1) Add the following SECTION to Article 6 of the bill to read as follows:

SECTION 6. \_\_\_\_ . Chapter 108, Health and Safety Code, is amended by adding Section 108.0131 to read as follows:

Sec. 108.0131. NOTICE REQUIRED. (a) A provider who submits data under Section 108.009 shall provide notice to the provider's patients that:

(1) the provider may submit data as required by this chapter; and

(2) the data may be sold, collected, identified, or distributed to third parties.

(b) The department shall post on the department's Internet website a list of each entity that purchases or receives data collected under this chapter.

(2) Renumber subsequent SECTIONS of the Article accordingly.

Amendment No. 21 was adopted.

**Amendment No. 22**

Representative Zerwas offered the following amendment to **SB 8**:

Amend **SB 8** (house committee printing) by adding the following appropriately numbered ARTICLE to the bill and renumbering the remaining ARTICLES and SECTIONS of the bill accordingly:

ARTICLE \_\_\_\_ . FISCAL AND ADMINISTRATIVE MATTERS  
 CONCERNING THE TEXAS EMERGENCY AND TRAUMA CARE  
 EDUCATION PARTNERSHIP PROGRAM

SECTION \_\_\_\_ .01. Chapter 61, Education Code, is amended by adding Subchapter GG to read as follows:

SUBCHAPTER GG. TEXAS EMERGENCY AND TRAUMA CARE  
 EDUCATION PARTNERSHIP PROGRAM

Sec. 61.9801. DEFINITIONS. In this subchapter:

(1) "Emergency and trauma care education partnership" means a partnership that:

(A) consists of one or more hospitals in this state and one or more graduate professional nursing or graduate medical education programs in this state; and

(B) serves to increase training opportunities in emergency and trauma care for doctors and registered nurses at participating graduate medical education and graduate professional nursing programs.

(2) "Participating education program" means a graduate professional nursing program as that term is defined by Section 54.221 or a graduate medical education program leading to board certification by the American Board of Medical Specialties that participates in an emergency and trauma care education partnership.

Sec. 61.9802. PROGRAM: ESTABLISHMENT; ADMINISTRATION; PURPOSE. (a) The Texas emergency and trauma care education partnership program is established.

(b) The board shall administer the program in accordance with this subchapter and rules adopted under this subchapter.

(c) Under the program, to the extent funds are available under Section 61.9805, the board shall make grants to emergency and trauma care education partnerships to assist those partnerships to meet the state's needs for doctors and registered nurses with training in emergency and trauma care by offering one-year or two-year fellowships to students enrolled in graduate professional nursing or graduate medical education programs through collaboration between hospitals and graduate professional nursing or graduate medical education programs and the use of the existing expertise and facilities of those hospitals and programs.

Sec. 61.9803. GRANTS: CONDITIONS; LIMITATIONS. (a) The board may make a grant under this subchapter to an emergency and trauma care education partnership only if the board determines that:

(1) the partnership will meet applicable standards for instruction and student competency for each program offered by each participating education program;

(2) each participating education program will, as a result of the partnership, enroll in the education program a sufficient number of additional students as established by the board;

(3) each hospital participating in an emergency and trauma care education partnership will provide to students enrolled in a participating education program clinical placements that:

(A) allow the students to take part in providing or to observe, as appropriate, emergency and trauma care services offered by the hospital; and

(B) meet the clinical education needs of the students; and

(4) the partnership will satisfy any other requirement established by board rule.

(b) A grant under this subchapter may be spent only on costs related to the development or operation of any emergency and trauma care education partnership that prepares a student to complete a graduate professional nursing program with a specialty focus on emergency and trauma care or earn board certification by the American Board of Medical Specialties.

Sec. 61.9804. PRIORITY FOR FUNDING. In awarding a grant under this subchapter, the board shall give priority to an emergency and trauma care education partnership that submits a proposal that:

(1) provides for collaborative educational models between one or more participating hospitals and one or more participating education programs that have signed a memorandum of understanding or other written agreement under which the participants agree to comply with standards established by the board, including any standards the board may establish that:

(A) provide for program management that offers a centralized decision-making process allowing for inclusion of each entity participating in the partnership;

(B) provide for access to clinical training positions for students in graduate professional nursing and graduate medical education programs that are not participating in the partnership; and

(C) specify the details of any requirement relating to a student in a participating education program being employed after graduation in a hospital participating in the partnership, including any details relating to the employment of students who do not complete the program, are not offered a position at the hospital, or choose to pursue other employment;

(2) includes a demonstrable education model to:

(A) increase the number of students enrolled in, the number of students graduating from, and the number of faculty employed by each participating education program; and

(B) improve student or resident retention in each participating education program;

(3) indicates the availability of money to match a portion of the grant money, including matching money or in-kind services approved by the board from a hospital, private or nonprofit entity, or institution of higher education;

(4) can be replicated by other emergency and trauma care education partnerships or other graduate professional nursing or graduate medical education programs; and

(5) includes plans for sustainability of the partnership.

Sec. 61.9805. GRANTS, GIFTS, AND DONATIONS. In addition to money appropriated by the legislature, the board may solicit, accept, and spend grants, gifts, and donations from any public or private source for the purposes of this subchapter.

Sec. 61.9806. RULES. The board shall adopt rules for the administration of the Texas emergency and trauma care education partnership program. The rules must include:

(1) provisions relating to applying for a grant under this subchapter; and

(2) standards of accountability consistent with other graduate professional nursing and graduate medical education programs to be met by any emergency and trauma care education partnership awarded a grant under this subchapter.

Sec. 61.9807. ADMINISTRATIVE COSTS. A reasonable amount, not to exceed three percent, of any money appropriated for purposes of this subchapter may be used to pay the costs of administering this subchapter.

SECTION \_\_\_\_ .02. As soon as practicable after the effective date of this article, the Texas Higher Education Coordinating Board shall adopt rules for the implementation and administration of the Texas emergency and trauma care education partnership program established under Subchapter GG, Chapter 61, Education Code, as added by this article. The board may adopt the initial rules in the manner provided by law for emergency rules.

Amendment No. 22 was adopted.

**Amendment No. 23**

Representative Zedler offered the following amendment to **SB 8**:

Amend **SB 8** (house committee report) by adding the following appropriately numbered ARTICLE to the bill and renumbering subsequent ARTICLES and SECTIONS of the bill accordingly:

**ARTICLE \_\_\_\_ . REPORTING REQUIREMENTS ON ABORTIONS AND TREATMENT FOR COMPLICATIONS RESULTING FROM ABORTIONS**

**SECTION \_\_\_\_ .01.** Chapter 170, Health and Safety Code, is amended by adding Section 170.003 to read as follows:

**Sec. 170.003. COERCIVE ABORTION PROHIBITED; CRIMINAL PENALTY.** (a) A physician commits an offense if the physician:

(1) intentionally performs an abortion on a woman; and  
(2) knows or should reasonably believe that the woman is seeking the abortion as the result of coercion, as that term is defined by Section 1.07, Penal Code.

(b) An offense under this section is a Class A misdemeanor.

**SECTION \_\_\_\_ .02.** Chapter 171, Health and Safety Code, is amended by adding Subchapter C to read as follows:

**SUBCHAPTER C. REPORTING REQUIREMENTS**

**Sec. 171.021. LEGISLATIVE FINDINGS AND PURPOSE.** (a) The legislature finds that:

(1) an abortion, whether surgically or chemically induced, terminates the life of a whole, separate, unique, living human being;

(2) this state is currently prevented from providing adequate legal remedies to protect the life, health, and welfare of pregnant women and unborn human life because of the lack of accurate and relevant statistical data concerning the practice of abortion and the women seeking abortion services in this state; and

(3) there is a need for stricter requirements regarding the content, accuracy, and consistency of reporting by physicians who perform abortions in this state and stricter enforcement of the reporting requirements.

(b) The purpose of this subchapter is to further the important and compelling state interests in:

(1) protecting the life and health of a pregnant woman seeking an elective abortion and, to the extent constitutionally permissible, the life of the woman's unborn child;

(2) fostering the development of standards of professional conduct in the provision of an abortion; and

(3) maintaining accurate statistical data to aid in providing proper maternal health assistance, regulation, and education.

Sec. 171.022. REPORTING REQUIREMENTS. (a) Not later than the 15th day of each month, a physician by mail shall submit to the department the abortion reporting form required by Section 171.024 for each abortion performed by the physician in the preceding calendar month.

(b) As soon as practicable, but not later than 48 hours after the time of diagnosis or treatment, a physician by mail shall submit to the department the complication reporting form required by Section 171.025 for each illness or injury of a woman in the preceding calendar year that:

(1) the physician determines was caused by a medical complication resulting from an abortion for which the physician treated the woman; or

(2) the woman suspects was caused by a medical complication resulting from an abortion for which the physician treated the woman.

(c) The reports submitted to the department as required by this subchapter may not by any means identify the name of a woman on whom an abortion is performed.

Sec. 171.023. REPORTING FEE. A physician submitting a reporting form under Section 171.022(a) or (b) shall pay to the department for each form submitted a fee in an amount, set by the department, that is reasonably designed to cover the costs associated with administering the department's duties under this chapter.

Sec. 171.024. ABORTION REPORTING FORM; PARTIAL EXCEPTION. (a) A physician shall report to the department on the form prescribed by the department the information required by this section for each abortion performed by the physician.

(b) The form must include:

(1) the following information, which must be completed by the woman before anesthesia is administered or the abortion is performed:

(A) the woman's:

(i) age;

(ii) race or ethnicity;

(iii) marital status; and

(iv) municipality, county, state, and nation of residence;

(B) the woman's highest level of education, selected by checking one of the following:

(i) did not receive any high school education;

(ii) received some high school education but did not graduate;

(iii) is a high school graduate or recipient of a high school equivalency certificate;

(iv) received some college education but is not a college graduate;

(v) obtained an associate's degree;

(vi) obtained a bachelor's degree;

(vii) obtained a master's degree;

(viii) obtained a doctoral degree; or

- (ix) received other education (specify): \_\_\_\_\_;
- (C) the age of the father of the unborn child at the time of the abortion;
- (D) the method or methods of contraception used at the time the unborn child was conceived, selected by checking all applicable methods from the following list:
- (i) condoms;
  - (ii) spermicide;
  - (iii) male sterilization;
  - (iv) female sterilization;
  - (v) an injectable contraceptive;
  - (vi) an inter-uterine device;
  - (vii) mini pills;
  - (viii) combination pills;
  - (ix) a diaphragm;
  - (x) a cervical cap or vaginal contraceptive ring;
  - (xi) a contraceptive patch;
  - (xii) a sponge;
  - (xiii) a calendar-based contraceptive method, including rhythm method or natural family planning or fertility awareness;
  - (xiv) withdrawal;
  - (xv) no method of contraception; or
  - (xvi) other method (specify): \_\_\_\_\_;
- (E) a space for the woman to indicate the specific reason the abortion is to be performed, selected from the following list:
- (i) the woman was coerced or forced to have the abortion;
  - (ii) the woman does not want any more children;
  - (iii) economic reasons;
  - (iv) the woman's unborn child has been diagnosed with one or more health problems that are documented in the woman's medical records;
  - (v) the father of the unborn child opposes the pregnancy;
  - (vi) the woman's parent opposes the pregnancy;
  - (vii) the woman fears a loss of family support;
  - (viii) the woman fears losing her job;
  - (ix) a school counselor recommends abortion;
  - (x) a physician recommends abortion;
  - (xi) the pregnancy is the result of rape;
  - (xii) the pregnancy is the result of incest;
  - (xiii) the woman does not prefer the gender of the unborn child; or
  - (xiv) the woman does not want to complete this section;
- (F) the number of the woman's previous live births;
- (G) the number of induced abortions the woman has previously undergone;
- (H) the number of miscarriages the woman has previously experienced;

(I) the source of the woman's referral to the physician for the abortion, selected from the following list:

- (i) a physician;
- (ii) the woman herself;
- (iii) a friend or family member of the woman;
- (iv) a member of the clergy;
- (v) a school counselor;
- (vi) a social services agency;
- (vii) the department;
- (viii) a family planning clinic; or
- (ix) other (specify): \_\_\_\_\_;

(J) the method of payment for the abortion, selected from the following list:

- (i) private insurance;
- (ii) a public health plan;
- (iii) personal payment by cash; or
- (iv) personal payment by check or credit card; and

(K) whether the woman availed herself of the opportunity to view the printed information required under Subchapter B and, if so, whether the woman viewed the information described by Section 171.014 in printed form or on the department's Internet website; and

(2) the following information, which must be completed by the physician:

(A) the name of the facility at which the abortion was performed, the municipality and county in which the facility is located, and the type of facility at which the abortion was performed, selected from the following list:

- (i) an abortion facility licensed under Chapter 245;
- (ii) a private office of a licensed physician;
- (iii) a licensed hospital;
- (iv) a licensed hospital satellite clinic; or
- (v) an ambulatory surgical center licensed under Chapter 243;

(B) the license number, area of specialty, and signature of the physician who performed the abortion;

(C) a statement that the physician screened the woman to determine whether:

(i) coercion, as defined by Section 1.07, Penal Code, is a reason that the woman is seeking the abortion; and

(ii) the woman is a victim of an offense described by Section 22.011(a)(2), Penal Code;

(D) the type of the abortion procedure performed, selected from the following list:

- (i) chemical abortion, specifying the chemical used;
- (ii) suction and curettage;
- (iii) dilation and curettage;
- (iv) dilation and evacuation;
- (v) dilation and extraction;

- (vi) labor and induction;  
(vii) hysterotomy or hysterectomy; or  
(viii) other (specify): \_\_\_\_\_;  
(E) the date the abortion was performed;  
(F) whether the woman survived the abortion and, if the woman  
did not survive, the cause of the woman's death;  
(G) the number of fetuses aborted;  
(H) the number of weeks of gestation at which the abortion was  
performed, based on the best medical judgment of the attending physician  
performing the procedure, and the weight of the fetus or fetuses, if determinable;  
(I) the method of pregnancy verification, selected from the  
following list:
- (i) urine test;  
(ii) clinical laboratory test;  
(iii) ultrasound;  
(iv) not tested; or  
(v) other (specify): \_\_\_\_\_;  
(J) the total fee collected from the patient by the physician for  
performing the abortion, including any services related to the abortion;  
(K) whether the abortion procedure was:
- (i) covered by fee-for-service insurance;  
(ii) covered by a managed care benefit plan;  
(iii) covered by another type of health benefit plan (specify):  
\_\_\_\_\_;  
or  
(iv) not covered by insurance or a health benefit plan;  
(L) the type of anesthetic, if any, used on the woman during the  
abortion;  
(M) the type of anesthetic, if any, used on the unborn child or  
children during the abortion;  
(N) the method used to dispose of fetal tissue and remains;  
(O) complications of the abortion, including:
- (i) none;  
(ii) shock;  
(iii) uterine perforation;  
(iv) cervical laceration;  
(v) hemorrhage;  
(vi) aspiration or allergic response;  
(vii) infection or sepsis;  
(viii) infant or infants born alive;  
(ix) death of woman; or  
(x) other (specify): \_\_\_\_\_;  
(P) if an infant was born alive during the abortion:
- (i) whether life-sustaining measures were provided to the  
infant; and  
(ii) the period of time the infant survived; and



(Q) for each abortion performed on a woman who is younger than 18 years of age:

(i) whether:

(a) the minor's parent, managing conservator, or legal guardian provided the written consent required by Section 164.052(a)(19), Occupations Code;

(b) the minor obtained judicial authorization under Section 33.003 or 33.004, Family Code, for the minor to consent to the abortion;

(c) the woman is emancipated and permitted under law to have the abortion without the written consent required by Section 164.052(a)(19), Occupations Code, or judicial authorization; or

(d) the physician concluded and documented in writing in the patient's medical record that on the basis of the physician's good faith clinical judgment a condition existed that complicated the medical condition of the pregnant minor and necessitated the immediate abortion of her pregnancy to avert her death or to avoid a serious risk of substantial impairment of a major bodily function and that there was insufficient time to obtain the consent of the minor's parent, managing conservator, or legal guardian;

(ii) if the minor's parent, managing conservator, or legal guardian gave written consent, whether the consent was given:

(a) in person at the time of the abortion; or

(b) at a place other than the location where the abortion was performed; and

(iii) if the minor obtained judicial authorization:

(a) the process the physician or physician's agent used to inform the minor of the availability of judicial bypass as an alternative to the written consent required by Section 164.052(a)(19), Occupations Code;

(b) whether court forms were provided to the minor; and

(c) who made arrangements for the minor for the court appearance.

(c) The information required by Subsection (b)(1) must be at the top of the form. The information required by Subsection (b)(2) must be at the bottom of the form.

(d) A woman is required to complete the information required by Subsection (b)(1) unless the abortion is medically necessary, as certified by a physician, to prevent death or the serious risk of substantial impairment of a major bodily function resulting from a life-threatening physical condition that is aggravated by, is caused by, or arises from the woman's pregnancy.

(e) If the woman does not complete the required information, the physician who performs the abortion shall include in the woman's medical file a signed written statement certifying the nature of the medical emergency described by Subsection (d).

(f) A physician shall maintain a copy of each completed form in the woman's medical file until the later of:

(1) the seventh anniversary of the date on which the form was signed;

or

(2) the woman's 25th birthday.

(g) A physician or the physician's agent shall provide to each woman required to complete a form under this section a copy of the completed form before the woman leaves the facility where the abortion was performed.

(h) The department shall make the abortion reporting form available on the department's Internet website.

(i) The form prescribed by this section must comply with the requirements of Section 171.014(b)(1).

Sec. 171.025. COMPLICATION REPORTING FORM. (a) A physician shall report to the department on the form prescribed by the department the information required by this section on the physician's treatment of an illness or injury related to a medical complication resulting from the performance of an abortion.

(b) The form must include the following information to be completed by the physician providing the treatment:

(1) the date of the abortion that caused or may have caused the complication;

(2) the type of abortion that caused or may have caused the complication, selected from the following list:

(A) chemical abortion, specifying the chemical used;

(B) suction and curettage;

(C) dilation and curettage;

(D) dilation and evacuation;

(E) dilation and extraction;

(F) labor and induction;

(G) hysterotomy or hysterectomy; or

(H) other (specify): \_\_\_\_\_;

(3) the name and type of the facility where the abortion complication was diagnosed and treated, selected from the following list:

(A) an abortion facility licensed under Chapter 245;

(B) a private office of a licensed physician;

(C) a licensed hospital;

(D) a licensed hospital satellite clinic; or

(E) an ambulatory surgical center licensed under Chapter 243;

(4) the name and type of the facility where the abortion was provided, if known;

(5) the license number, area of specialty, and signature of the physician who treated the abortion complication;

(6) the date on which the abortion complication was treated;

(7) a description of the complication or complications, selected from the following list:

(A) none;

(B) shock;

(C) uterine perforation;

(D) cervical laceration;

(E) hemorrhage;

- (F) aspiration or allergic response;
- (G) infection or sepsis;
- (H) infant or infants born alive;
- (I) death of woman; or
- (J) other (specify): \_\_\_\_\_;

(8) the number of weeks of gestation at which the abortion was performed, based on the best medical judgment of the attending physician at the time of the treatment for the complication;

(9) the number of the woman's previous live births;

(10) the number of previous induced abortions the woman has undergone;

(11) the number of miscarriages the woman has previously experienced;

(12) whether the treatment for the complication was paid for by:

- (A) private insurance;
- (B) a public health plan;
- (C) personal payment by cash; or
- (D) personal payment by check or credit card;

(13) the total fee collected by the physician for treatment of the complication;

(14) whether the treatment for the complication was:

- (A) covered by fee-for-service insurance;
- (B) covered by a managed care benefit plan;
- (C) covered by another type of health benefit plan (specify):

\_\_\_\_\_ ; or

(D) not covered by insurance or a health benefit plan; and

(15) the type of follow-up care recommended by the physician after the physician provides treatment for the complication.

(c) A physician shall maintain a copy of each completed form in the woman's medical file until the later of:

(1) the seventh anniversary of the date on which the form was signed;

or

(2) the woman's 25th birthday.

(d) A physician or the physician's agent shall provide to each woman for whom a form is completed under this section a copy of the completed form before the woman leaves the facility where the treatment was received.

(e) The department shall make the complication form available on the department's Internet website.

(f) The form prescribed by this section must comply with the requirements of Section 171.014(b)(1).

Sec. 171.026. CONFIDENTIAL INFORMATION. (a) Except as provided by Section 171.029 and Subsection (b), all information received or maintained by the department under this subchapter is confidential and is not subject to disclosure under Chapter 552, Government Code.

(b) A department employee may disclose information described by Subsection (a):

(1) for statistical purposes, but only if a person or facility is not identified;

(2) to a medical professional, a state agency, or a county or district court for purposes of enforcing this chapter or Chapter 245; or

(3) to a state licensing board for purposes of enforcing state licensing laws.

Sec. 171.027. PENALTIES. (a) The commissioner of state health services may assess an administrative penalty against a physician who fails to submit a report within the time required by Section 171.022 in the amount of \$500 for each 30-day period or portion of a 30-day period the report remains overdue.

(b) The commissioner may bring an action against a physician who fails to file a report required under Section 171.022 before the first anniversary of the date the report was due to compel the physician to submit a complete report within a time stated by the court order or be subject to sanctions for civil contempt.

Sec. 171.028. OFFENSE; CRIMINAL PENALTY. (a) A physician commits an offense if:

(1) the physician fails to submit a report required by this subchapter;

(2) the physician intentionally, knowingly, or recklessly submits false information in a report required by this subchapter;

(3) the physician includes in a report required by this subchapter the name or identifying information of a woman on whom the physician performed an abortion; or

(4) the physician or the physician's agent discloses identifying information that is confidential under Section 171.026.

(b) An offense under this section is a Class A misdemeanor.

Sec. 171.029. PUBLIC DATA POSTING BY DEPARTMENT. (a) Not later than April 1 of each year, the department shall post on the department's Internet website statistical data that details the information reported under Section 171.022 during the preceding calendar year.

(b) Each posting under Subsection (a) must include data from the postings made under this section in previous years, including updated or corrected information for those postings. Each Internet web page containing a posting from a previous year must indicate at the bottom of the web page the date on which the data contained on the web page was most recently updated or corrected.

(c) The department shall ensure that a posting made under this section does not contain any information that could reasonably lead to the identification of:

(1) a woman on whom an abortion was performed or who received treatment for a complication resulting from an abortion; or

(2) a physician who performed an abortion or treated a complication resulting from an abortion.

SECTION \_\_\_\_ .03. Section 245.001, Health and Safety Code, is amended to read as follows:

Sec. 245.001. SHORT TITLE. This chapter may be cited as the Texas Abortion Facility [Reporting and] Licensing Act.

SECTION \_\_\_\_ .04. Section 245.005(e), Health and Safety Code, is amended to read as follows:

(e) As a condition for renewal of a license, the licensee must submit to the department the annual license renewal fee and an annual report ~~[, including the report required under Section 245.011].~~

SECTION \_\_\_\_ .05. Section 248.003, Health and Safety Code, is amended to read as follows:

Sec. 248.003. EXEMPTIONS. This chapter does not apply to:

(1) a home and community support services agency required to be licensed under Chapter 142;

(2) a person required to be licensed under Chapter 241 (Texas Hospital Licensing Law);

(3) an institution required to be licensed under Chapter 242;

(4) an ambulatory surgical center required to be licensed under Chapter 243 (Texas Ambulatory Surgical Center Licensing Act);

(5) a birthing center required to be licensed under Chapter 244 (Texas Birthing Center Licensing Act);

(6) a facility required to be licensed under Chapter 245 (Texas Abortion Facility  ~~[Reporting and]~~  Licensing Act);

(7) a child care institution, foster group home, foster family home, and child-placing agency, for children in foster care or other residential care who are under the conservatorship of the Department of Family and Protective  ~~[and Regulatory]~~  Services; or

(8) a person providing medical or nursing care or services under a license or permit issued under other state law.

SECTION \_\_\_\_ .06. Effective January 1, 2012, Section 245.011, Health and Safety Code, is repealed.

SECTION \_\_\_\_ .07. (a) Not later than December 1, 2011, the Department of State Health Services shall:

(1) make available the forms required by Sections 171.024 and 171.025, Health and Safety Code, as added by this article; and

(2) set the fee described by Section 171.023, Health and Safety Code, as added by this article.

(b) Notwithstanding Section 171.022, Health and Safety Code, as added by this article, a physician is not required to submit a report required by Section 171.022, Health and Safety Code, as added by this article, before January 1, 2012.

SECTION \_\_\_\_ .08. Not later than April 1, 2013, the Department of State Health Services shall make the data posting required by Section 171.029, Health and Safety Code, as added by this article.

SECTION \_\_\_\_ .09. Sections 170.003 and 171.028, Health and Safety Code, as added by this article, and Sections 245.001, 245.005, and 248.003, Health and Safety Code, as amended by this article, take effect January 1, 2012.

Amendment No. 23 was withdrawn.

**SB 8**, as amended, was passed to third reading by (Record 1365): 137 Yeas, 5 Nays, 2 Present, not voting.

Yeas — Aliseda; Allen; Alonzo; Alvarado; Anderson, C.; Anderson, R.; Aycock; Beck; Berman; Bohac; 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; Elkins; Farias; Farrar; Fletcher; Frullo; Gallego; Garza; Geren; Giddings; Gonzales, L.; Gonzales, V.; Gonzalez; Gooden; Guillen; Gutierrez; Hamilton; Hancock; Hardcastle; Harless; Harper-Brown; 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; Miles; Miller, D.; Miller, S.; Morrison; Muñoz; Murphy; Naishtat; Nash; Oliveira; Orr; Otto; Parker; Patrick; Paxton; Perry; Phillips; Pitts; Price; Quintanilla; Raymond; Reynolds; Riddle; Ritter; Rodriguez; Schwertner; Scott; Sheets; Sheffield; Shelton; Smith, T.; Smith, W.; Smithee; Solomons; Taylor, V.; Thompson; Torres; Truitt; Turner; Veasey; Villarreal; Vo; Walle; White; Woolley; Workman; Zedler; Zerwas.

Nays — Anchia; Flynn; Simpson; Strama; Weber.

Present, not voting — Mr. Speaker; Bonnen(C).

Absent, Excused — Peña; Taylor, L.

Absent — Eissler; Hartnett; Menendez; Pickett.

#### STATEMENTS OF VOTE

When Record No. 1365 was taken, I was temporarily out of the house chamber. I would have voted yes.

Eissler

I was shown voting no on Record No. 1365. I intended to vote yes.

Flynn

I was shown voting yes on Record No. 1365. I intended to vote no.

Guillen

I was shown voting no on Record No. 1365. I intended to vote yes.

Simpson

#### CSSB 1588 ON SECOND READING (Pitts - House Sponsor)

**CSSB 1588**, A bill to be entitled An Act relating to the creation and re-creation of funds and accounts, the dedication and rededication of revenue, and the exemption of unappropriated money from use for general governmental purposes.

#### Amendment No. 1

On behalf of Representative Pitts, Representative Chisum offered the following amendment to **CSSB 1588**:

Amend **CSSB 1588** (house committee printing) in Section 10 of the bill as follows:

- (1) At the end of Subdivision (4) (page 4, line 25), strike "and".
- (2) At the end of Subdivision (5), strike the period and substitute:

(6) the low-level radioactive waste disposal compact commission account created as an account in the general revenue fund by **HB 2694** or similar legislation; and

(7) the Alamo complex account created as a separate account in the general revenue fund by **HB 3726**, **SB 1841**, or similar legislation.

Amendment No. 1 was adopted.

### **Amendment No. 2**

Representative Guillen offered the following amendment to **CSSB 1588**:

Amend **CSSB 1588** (house committee report) as follows:

(1) In SECTION 10 of the bill, add the following appropriately numbered subdivision to that SECTION and renumber the subsequent subdivisions of that SECTION accordingly:

( ) the emergency radio infrastructure account created by **HB 442** or similar legislation;

(2) In SECTION 11 of the bill, add the following appropriately numbered subdivision to that SECTION and renumber the subsequent subdivisions of that SECTION accordingly:

( ) the dedication of the revenue generated under **HB 442**, or similar legislation, for the purpose of creating an interoperable statewide emergency radio infrastructure;

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

SECTION \_\_\_\_ . TRANSFER OF CERTAIN FUNDS. (a) The comptroller shall hold the revenue that under Section 133.102(e)(11), Local Government Code, would be deposited to the credit of the fugitive apprehension account until the effective date of **HB 442**, Acts of the 82nd Legislature, Regular Session, 2011, or similar legislation creating the emergency radio infrastructure account, and deposit that revenue into the emergency radio infrastructure account on that date.

(b) If **HB 442**, Acts of the 82nd Legislature, Regular Session, 2011, or similar legislation creating the emergency radio infrastructure account is not enacted, this section has no effect.

Amendment No. 2 was adopted.

### **Amendment No. 3**

Representative Margo offered the following amendment to **CSSB 1588**:

Amend **CSSB 1588** (house committee printing) by adding the following appropriately numbered ARTICLE to the bill and renumbering the remaining ARTICLES and SECTIONS of the bill accordingly:

ARTICLE \_\_\_\_ . FISCAL MATTERS CONCERNING PERMANENT FUNDS  
FOR HEALTH-RELATED INSTITUTIONS OF HIGHER EDUCATION

SECTION \_\_\_\_ .01. Subchapter B, Chapter 63, Education Code, is amended by adding Section 63.104 to read as follows:

Sec. 63.104. INVESTMENT AND DISTRIBUTION POLICY GOVERNING ENDOWMENT OF THE UNIVERSITY OF TEXAS AT EL PASO. The governing board of The University of Texas at El Paso shall adopt an investment and distribution policy for the institution's endowment fund provided by this subchapter. Section 63.102 does not apply to the investment, distribution, or expenditure of money from the endowment fund.

Amendment No. 3 was adopted.

**Amendment No. 4**

Representative Brown offered the following amendment to **CSSB 1588**:

Amend **CSSB 1588** (house committee printing) by adding the following SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_ . (a) Subchapter C, Chapter 2054, Government Code, is amended by adding Section 2054.064 to read as follows:

Sec. 2054.064. ADVERTISING ON STATE ELECTRONIC INTERNET PORTALS. (a) In this section:

(1) "Department" means the Department of Information Resources or a successor agency.

(2) "State agency" means any department, board, commission, or other agency in the executive branch of state government, including the office of the governor. The term does not include an institution of higher education, as defined by Section 61.003, Education Code.

(b) In accordance with rules adopted by the department and to the extent allowed under federal law:

(1) a state agency shall contract with a private entity to lease advertising space on the agency's official electronic Internet portal; and

(2) the department shall contract with a private entity by awarding a 10-year license to the entity to lease advertising space on the official electronic Internet portal for the State of Texas.

(c) The department shall develop a standard contract for the lease of advertising space on an electronic Internet portal under this section. The standard contract developed by the department must include terms that:

(1) provide for the payment of a fee by the person leasing the advertising space in an amount set by department rule; and

(2) require the advertisements to comply with the rules adopted by the department relating to content and composition.

(d) The department shall adopt rules to implement this section. The rules must establish:

(1) guidelines relating to the content and composition of advertisements that may be placed on an electronic Internet portal;



(2) procedures for procuring advertisements that relate, to the greatest extent practicable, to the stated purpose of the state agency;

(3) policies that require:

(A) each advertisement to be clearly labeled on the electronic Internet portal as an advertisement; and

(B) a disclaimer on each electronic Internet portal that clearly states that the State of Texas does not endorse the products or services advertised on the state agency electronic Internet portal;

(4) a schedule of fees to be charged for the lease of advertising space under this section; and

(5) the amount of the lease payment that a private entity may retain for administering the lease contract.

(e) A private entity administering a lease under this section shall collect the fees due from the leasing entity. After deduction of the private entity's fees, the remainder of the fees collected under this section shall be forwarded to the comptroller to be allocated as follows:

(1) 50 percent to the credit of the foundation school fund; and

(2) the remainder deposited to the credit of the general revenue fund.

(f) Before entering into a contract under this section, a state agency or the department must evaluate:

(1) the effect of the contract on the bandwidth that the agency or the department requires to perform its official duties; and

(2) whether the contract increases vulnerability to malware or other potential threats to the security of the electronic Internet portal or computer network.

(g) Except as provided by Subsection (h), using the results of the evaluation required under Subsection (f), a state agency or the department shall develop and implement a plan to ensure that state electronic Internet portals and computer networks are secure and that sufficient bandwidth is available to host the advertising required under the contract and to allow for performance of official duties. The plan must include provisions to:

(1) prevent inappropriate content on electronic Internet portals and computer networks associated with this state;

(2) efficiently route data used by the agency or the department to perform its official duties;

(3) manage and reduce the quantity of bandwidth used by the agency or the department; and

(4) ensure the continued security and integrity of electronic Internet portals, computer networks, and confidential and sensitive data associated with this state.

(h) A state agency or the department may accept free or discounted services to assist in performing the evaluation and planning requirements under Subsections (f) and (g) from a provider designated as qualified by the department. The department shall maintain a list of qualified providers on the department's electronic Internet portal.

(i) A state agency or the department is not required to implement a plan developed under Subsection (g) if:

(1) money appropriated to the agency or the department may not be lawfully spent for the purposes of this section; or

(2) the agency or the department determines that the cost of implementing the plan will exceed the income received from a contract under this section.

(b) The dedication of revenue made by this section is exempt from Section 2 of this Act.

Amendment No. 4 was adopted.

**CSSB 1588**, as amended, was passed to third reading. (C. Anderson, Cain, and V. Taylor recorded voting no.)

### **SB 875 ON SECOND READING**

**(Hancock, W. Smith, and Chisum - House Sponsors)**

**SB 875**, A bill to be entitled An Act relating to compliance with state and federal environmental permits as a defense to certain actions for nuisance or trespass.

(Geren in the chair)

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

Representative Burnam offered the following amendment to **SB 875**:

Amend **SB 875** (house committee printing) on page 2, line 5, between "after" and "the" by adding "the later of the date of resolution of any litigation relating to greenhouse gases in which the State of Texas or any agency of the State of Texas is a party or".

Representative Hancock moved to table Amendment No. 1.

The motion to table prevailed by (Record 1366): 104 Yeas, 41 Nays, 2 Present, not voting.

Yeas — Aliseda; Allen; Alvarado; Anderson, C.; Anderson, R.; Aycock; Beck; Berman; Bohac; Bonnen; Branch; Brown; Burkett; Button; Cain; Callegari; Chisum; Christian; Cook; Craddick; Creighton; Crownover; Darby; Davis, J.; Davis, S.; Driver; Eiland; Eissler; Elkins; Fletcher; Flynn; Frullo; Garza; Gonzales, L.; Gooden; Guillen; Hamilton; Hancock; Hardcastle; Harless; Harper-Brown; Hartnett; Hilderbran; Hopson; Howard, C.; Huberty; Hughes; Hunter; Isaac; Jackson; Johnson; Keffer; King, P.; King, S.; King, T.; Kleinschmidt; Kolkhorst; Kuempel; Landtroop; Larson; Laubenberg; Lavender; Legler; Lewis; Lyne; Madden; Margo; Miller, D.; Miller, S.; Morrison; Muñoz; Murphy; Nash; Orr; Otto; Parker; Patrick; Paxton; Perry; Phillips; Pitts; Price; Riddle; Ritter; Schwertner; Scott; Sheets; Sheffield; Shelton; Simpson; Smith, T.; Smith, W.; Smithee; Solomons; Taylor, V.; Torres; Truitt; Villarreal; Weber; White; Woolley; Workman; Zedler; Zerwas.

Nays — Alonzo; Anchia; Burnam; Carter; Castro; Coleman; Davis, Y.; Deshotel; Dukes; Dutton; Farias; Farrar; Gallego; Giddings; Gonzales, V.; Gonzalez; Gutierrez; Hernandez Luna; Hochberg; Howard, D.; Lozano; Lucio; Mallory Caraway; Marquez; Martinez; Martinez Fischer; McClendon; Menendez; Miles; Naishtat; Oliveira; Pickett; Quintanilla; Raymond; Reynolds; Rodriguez; Strama; Thompson; Turner; Veasey; Walle.

Present, not voting — Mr. Speaker; Geren(C).

Absent, Excused — Peña; Taylor, L.

Absent — Vo.

### STATEMENT OF VOTE

I was shown voting yes on Record No. 1366. I intended to vote no.

Alvarado

#### Amendment No. 2

Representative Bonnen offered the following amendment to **SB 875**:

Amend **SB 875** (house committee printing) as follows:

(1) In SECTION 2 of the bill (page 2, line 3), between "SECTION 2." and "Section 7.257," insert the following:

(a) Section 93.003, Civil Practice and Remedies Code, as added by this Act, applies only to a cause of action that accrues on or after the effective date of this Act. A cause of action that accrues before the effective date of this Act is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

(b)

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

SECTION \_\_\_\_\_. Chapter 93, Civil Practice and Remedies Code, is amended by adding Section 93.003 to read as follows:

Sec. 93.003. AFFIRMATIVE DEFENSE TO NUISANCE OR TRESPASS.

(a) In a nuisance or trespass action brought against a person, as defined by Section 382.003, Health and Safety Code, there is a rebuttable presumption that the person is not liable for any injury allegedly caused by the actions of the person if the person establishes that:

(1) the alleged conduct on which the nuisance or trespass claim is based was authorized by the federal or state government, or an agency of the federal or state government, through the issuance of a rule, order, or permit, as defined by Section 7.001, Water Code; and

(2) the person was in substantial compliance with that rule, order, or permit while the alleged nuisance or trespass was occurring.

(b) The claimant may rebut the presumption established under Subsection (a) by a showing of clear and convincing evidence that:

(1) the person knowingly withheld or misrepresented material information relevant to determining compliance with the rule or order or to obtaining the permit from the federal or state government or agency of the federal or state government; and

(2) such withholding or misrepresentation of information was the primary reason the person allegedly complied with the rule or order or was successful in obtaining the permit.

Amendment No. 2 was adopted.

(Bonnen in the chair)

**SB 875**, as amended, was passed to third reading by (Record 1367): 103 Yeas, 40 Nays, 2 Present, not voting.

Yeas — Aliseda; Anderson, C.; Anderson, R.; Aycock; Beck; Berman; Bohac; Branch; Brown; Burkett; Button; Cain; Callegari; Carter; Chisum; Christian; Craddick; Creighton; Crownover; Darby; Davis, J.; Davis, S.; Driver; Eiland; Eissler; Elkins; Fletcher; Flynn; Frullo; Garza; Geren; Gonzales, L.; Gooden; Guillen; Hamilton; Hancock; Hardcastle; Harless; Harper-Brown; Hartnett; Hilderbran; Hopson; Howard, C.; Huberty; Hughes; Hunter; Isaac; Jackson; Johnson; Keffer; King, P.; King, S.; King, T.; Kleinschmidt; Kolkhorst; Kuempel; Landtroop; Larson; Laubenberg; Lavender; Legler; Lewis; Lozano; Lyne; Madden; Margo; Menendez; Miller, D.; Morrison; Muñoz; Murphy; Nash; Orr; Otto; Parker; Patrick; Paxton; Perry; Phillips; Pickett; Pitts; Price; Raymond; Riddle; Ritter; Schwertner; Scott; Sheets; Sheffield; Shelton; Simpson; Smith, T.; Smith, W.; Smithee; Solomons; Taylor, V.; Truitt; Weber; White; Woolley; Workman; Zedler; Zerwas.

Nays — Allen; Alonzo; Alvarado; Anchia; Burnam; Castro; Coleman; Davis, Y.; Deshotel; Dukes; Dutton; Farias; Farrar; Gallego; Giddings; Gonzales, V.; Gonzalez; Gutierrez; Hernandez Luna; Hochberg; Howard, D.; Lucio; Mallory Caraway; Marquez; Martinez; Martinez Fischer; McClendon; Miles; Naishtat; Oliveira; Quintanilla; Reynolds; Rodriguez; Strama; Thompson; Turner; Veasey; Villarreal; Vo; Walle.

Present, not voting — Mr. Speaker; Bonnen(C).

Absent, Excused — Peña; Taylor, L.

Absent — Cook; Miller, S.; Torres.

#### STATEMENT OF VOTE

When Record No. 1367 was taken, I was temporarily out of the house chamber. I would have voted yes.

Torres

#### LEAVE OF ABSENCE GRANTED

The following member was granted leave of absence temporarily for today because of illness:

Villarreal on motion of Eiland.

**CSSB 661 ON SECOND READING**  
**(Solomons - House Sponsor)**

**CSSB 661**, A bill to be entitled An Act relating to the continuation and functions, as applicable, of the Electric Reliability Council of Texas, the Office of Public Utility Counsel, and the Public Utility Commission of Texas and to the transfer of certain functions from the Texas Commission on Environmental Quality to the Public Utility Commission of Texas; imposing administrative penalties.

**CSSB 661 - POINT OF ORDER**

Representative Y. Davis raised a point of order against further consideration of **CSSB 661** under Rule 4, Section 32(c)(3) of the House Rules on the grounds that the committee report is incorrect.

(Speaker in the chair)

The point of order was withdrawn.

Representative Solomons moved to postpone consideration of **CSSB 661** until 5 p.m. today.

The motion prevailed.

**CONSTITUTIONAL AMENDMENTS CALENDAR**  
**SENATE JOINT RESOLUTIONS**  
**SECOND READING**

The following resolutions were laid before the house and read second time:

**SJR 50 ON SECOND READING**  
**(Branch and Alonzo - House Sponsors)**

**SJR 50**, A joint resolution proposing a constitutional amendment providing for the issuance of general obligation bonds of the state to finance educational loans to students.

**SJR 50** was adopted by (Record 1368): 142 Yeas, 3 Nays, 1 Present, not voting.

Yeas — 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; Hartnett; Hernandez Luna; Hilderbran; Hochberg; Hopson; Howard, C.; Howard, D.; Huberty; Hughes; Hunter; Isaac; Jackson; Johnson; Keffer; King, P.; King, S.; King, T.; Kleinschmidt; Kuempel; Landtroop; Larson; Laubenberg; Lavender; Lewis; Lozano; Lucio; Lyne; Madden; Mallory Caraway; Margo; Marquez; Martinez; Martinez Fischer; McClendon; Menendez; Miles; Miller, D.; Morrison; Muñoz; Murphy; Naishtat; Nash; Oliveira; Orr; Otto; Parker; Patrick; Paxton; 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, V.; Thompson; Torres; Truitt; Turner; Veasey; Vo; Walle; Weber; White; Woolley; Workman; Zedler; Zerwas.

Nays — Kolkhorst; Legler; Miller, S.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Peña; Taylor, L.; Villarreal.

Absent — Harper-Brown.

#### STATEMENTS OF VOTE

When Record No. 1368 was taken, I was in the house but away from my desk. I would have voted yes.

Harper-Brown

I was shown voting yes on Record No. 1368. I intended to vote no.

Paxton

I was shown voting yes on Record No. 1368. I intended to vote no.

V. Taylor

#### SJR 37 ON SECOND READING

(V. Taylor - House Sponsor)

**SJR 37**, A joint resolution proposing a constitutional amendment to change the length of the unexpired term that causes the automatic resignation of certain elected county or district officeholders if they become candidates for another office.

**SJR 37** was adopted by (Record 1369): 131 Yeas, 14 Nays, 1 Present, not voting.

Yeas — Aliseda; Allen; Alonzo; Alvarado; Anderson, C.; Anderson, R.; Aycock; Beck; Berman; Bohac; Bonnen; Branch; Brown; Burkett; 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.; Gooden; Guillen; Hamilton; Hancock; Hardcastle; Harless; Harper-Brown; Hartnett; Hilderbran; Hopson; Howard, C.; Howard, D.; Huberty; Hughes; Hunter; Isaac; Jackson; Keffer; King, P.; King, S.; King, T.; Kleinschmidt; Kolkhorst; Kuempel; Landroop; Larson; Laubenberg; Lavender; Legler; Lewis; Lozano; Madden; Mallory Caraway; Margo; Martinez Fischer; McClendon; Menendez; Miles; Miller, D.; Miller, S.; Morrison; Muñoz; Murphy; Naishtat; Nash; Oliveira; Orr; Otto; Parker; Patrick; Paxton; Perry; Phillips; Pickett; Pitts; Price; Raymond; Riddle; Ritter; Rodriguez; Schwertner; Scott; Sheets; Sheffield; Shelton; Simpson; Smith, T.; Smith, W.; Smithee; Solomons; Taylor, V.; Torres; Truitt; Turner; Veasey; Vo; Walle; Weber; White; Woolley; Workman; Zedler; Zerwas.

Nays — Anchia; Burnam; Gonzalez; Gutierrez; Hernandez Luna; Hochberg; Johnson; Lucio; Marquez; Martinez; Quintanilla; Reynolds; Strama; Thompson.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Peña; Taylor, L.; Villarreal.

Absent — Lyne.

### STATEMENTS OF VOTE

I was shown voting no on Record No. 1369. I intended to vote yes.

Gutierrez

I was shown voting no on Record No. 1369. I intended to vote yes.

Strama

### SJR 14 ON SECOND READING

**(C. Anderson, Pickett, McClendon, Farias, and Lozano - House Sponsors)**

**SJR 14**, A joint resolution proposing a constitutional amendment authorizing the legislature to provide for an exemption from ad valorem taxation of all or part of the market value of the residence homestead of the surviving spouse of a 100 percent or totally disabled veteran.

**SJR 14** was adopted by (Record 1370): 143 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Aliseda; Allen; Alonzo; Alvarado; Anchia; Anderson, C.; Anderson, R.; Aycok; 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; 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; 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; 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, V.; Thompson; Torres; Truitt; Turner; Veasey; Vo; Walle; White; Woolley; Workman; Zedler; Zerwas.

Present, not voting — Mr. Speaker(C); Geren.

Absent, Excused — Peña; Taylor, L.; Villarreal.

Absent — Lewis; Weber.

**STATEMENT OF VOTE**

When Record No. 1370 was taken, I was in the house but away from my desk. I would have voted yes.

Weber

**SJR 26 ON SECOND READING**  
**(Turner - House Sponsor)**

**SJR 26**, A joint resolution proposing a constitutional amendment authorizing the legislature to allow cities or counties to enter into interlocal contracts with other cities or counties without the imposition of a tax or the provision of a sinking fund.

**SJR 26** was adopted by (Record 1371): 144 Yeas, 0 Nays, 1 Present, not voting.

Yeas — 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; Mallory Caraway; Margo; Marquez; Martinez; McClendon; Menendez; Miles; Miller, D.; Miller, S.; Morrison; Muñoz; Murphy; Naishtat; Nash; Oliveira; Orr; Otto; Parker; Patrick; Paxton; 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, V.; Thompson; Torres; Truitt; Turner; Veasey; Vo; Walle; Weber; White; Woolley; Workman; Zedler; Zerwas.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Peña; Taylor, L.; Villarreal.

Absent — Madden; Martinez Fischer.

**GENERAL STATE CALENDAR**  
**SENATE BILLS**  
**SECOND READING**

The following bills were laid before the house and read second time:

**SB 327 ON SECOND READING**  
**(Garza - House Sponsor)**

**SB 327**, A bill to be entitled An Act relating to including certain veterans service organizations as small businesses for the purpose of state contracting.



**SB 327 - STATEMENT OF LEGISLATIVE INTENT**

REPRESENTATIVE BERMAN: There are certain people who are concerned about HUB. This will in no way interfere with HUB, will it?

REPRESENTATIVE GARZA: Not at all. This is your veteran service organizations, and they are just looking for that status as a small business to compete on government contracts that are not a part of the HUB.

**REMARKS ORDERED PRINTED**

Representative Berman moved to print remarks between Representative Garza and Representative Berman.

The motion prevailed.

**SB 327** was passed to third reading.

**MESSAGE FROM THE SENATE**

A message from the senate was received at this time (see the addendum to the daily journal, Messages from the Senate, Message No. 4).

**SB 1393 ON SECOND READING  
(Keffer - House Sponsor)**

**SB 1393**, A bill to be entitled An Act relating to the use of contracts by local governments to purchase electricity.

Representative Keffer moved to postpone consideration of **SB 1393** until 4:45 p.m. today.

The motion prevailed.

**SB 1434 ON SECOND READING  
(Geren - House Sponsor)**

**SB 1434**, A bill to be entitled An Act relating to certain low-income weatherization programs.

**SB 1434** was passed to third reading. (C. Anderson, Laubenberg, and V. Taylor recorded voting no.)

**CSSB 1286 ON SECOND READING  
(Rodriguez - House Sponsor)**

**CSSB 1286**, A bill to be entitled An Act relating to the funding of retirement systems for firefighters in certain municipalities.

**CSSB 1286** was passed to third reading by (Record 1372): 114 Yeas, 28 Nays, 1 Present, not voting.

Yeas — Aliseda; Allen; Alonzo; Alvarado; Anchia; Anderson, C.; Aycock; Beck; Berman; Bohac; Brown; Burkett; Burnam; Callegari; Castro; Chisum; Coleman; Cook; Craddick; Crownover; Davis, J.; Davis, S.; Davis, Y.; Deshotel; Driver; Dutton; Eiland; Eissler; Elkins; Farias; Farrar; Fletcher; Flynn; Frullo; Gallego; Garza; Giddings; Gonzales, L.; Gonzales, V.; Gonzalez; Guillen; Gutierrez; Hamilton; Hancock; Hardcastle; Harless; Harper-Brown; Hartnett;

Hernandez Luna; Hilderbran; Hochberg; Hopson; Howard, D.; Huberty; Hughes; Hunter; Isaac; Johnson; Keffer; King, P.; King, T.; Kleinschmidt; Kuempel; Larson; Lavender; Lewis; Lozano; Lucio; Mallory Caraway; Margo; Marquez; Martinez; Martinez Fischer; McClendon; Menendez; Miles; Miller, S.; Morrison; Muñoz; Naishtat; Nash; Oliveira; Otto; Parker; Patrick; Perry; Phillips; Pickett; Pitts; Price; Quintanilla; Raymond; Reynolds; Riddle; Ritter; Rodriguez; Schwertner; Scott; Sheffield; Smith, W.; Smithee; Solomons; Strama; Thompson; Torres; Turner; Veasey; Vo; Walle; White; Woolley; Workman; Zedler; Zerwas.

Nays — Anderson, R.; Bonnen; Branch; Button; Cain; Carter; Christian; Creighton; Geren; Gooden; Howard, C.; Jackson; King, S.; Kolkhorst; Landtroop; Laubenberg; Legler; Lyne; Madden; Murphy; Orr; Paxton; Sheets; Shelton; Simpson; Smith, T.; Taylor, V.; Weber.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Peña; Taylor, L.; Villarreal.

Absent — Darby; Dukes; Miller, D.; Truitt.

#### STATEMENT OF VOTE

When Record No. 1372 was taken, my vote failed to register. I would have voted yes.

Truitt

#### CSSB 981 ON SECOND READING (Anchia and Gallego - House Sponsors)

**CSSB 981**, A bill to be entitled An Act relating to the regulation of distributed renewable generation of electricity.

#### Amendment No. 1

Representatives Solomons and Gallego offered the following amendment to **CSSB 981**:

Amend **CSSB 981** (house committee printing) by striking SECTION 2 of the bill (page 1, line 15, through page 2, line 3) and substituting the following:

SECTION 2. Section 39.916, Utilities Code, is amended by adding Subsection (k) to read as follows:

(k) Neither a retail electric customer that uses distributed renewable generation nor the owner of the distributed renewable generation that the retail electric customer uses is an electric utility, power generation company, or retail electric provider for the purposes of this title and neither is required to register with or be certified by the commission if at the time distributed renewable generation is installed, the estimated annual amount of electricity to be produced by the distributed renewable generation is less than or equal to the retail electric customer's estimated annual electricity consumption.

Amendment No. 1 was adopted.

**Amendment No. 2**

Representatives Solomons and Gallego offered the following amendment to **CSSB 981**:

Amend **CSSB 981** (house committee printing) in SECTION 1 of the bill, in amended Section 39.916(a), Utilities Code, by striking Subdivision (2) (page 1, lines 7-14) and substituting the following:

(2) "Distributed renewable generation owner" means:

(A) an [the] owner of distributed renewable generation;

(B) a retail electric customer on whose side of the meter distributed renewable generation is installed and operated, regardless of whether the customer takes ownership of the distributed renewable generation; or

(C) a person who by contract is assigned ownership rights to energy produced from distributed renewable generation located at the premises of the customer on the customer's side of the meter.

Amendment No. 2 was adopted.

(L. Taylor now present)

**Amendment No. 3**

Representative L. Taylor offered the following amendment to **CSSB 981**:

Amend **CSSB 981** (house committee report) by adding the following appropriately numbered SECTIONS and renumbering the subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 39.352, Utilities Code, is amended by adding Subsections (c-1) and (c-2) to read as follows:

(c-1) Notwithstanding Subsections (b)(2) and (c), the commission may not refuse to issue a certificate to an applicant whose majority owner owns more than 80 percent of the applicant based solely on the fact that the majority owner was previously a minority owner of a retail electric provider that was involved in a mass transition of customers from that provider to a provider of last resort.

(c-2) Notwithstanding Subsections (b)(2) and (c), the commission may not amend or revoke the certificate of a retail electric provider of which the majority owner owns more than 80 percent based solely on the fact that the majority owner was previously a minority owner of a retail electric provider that was involved in a mass transition of customers from that provider to a provider of last resort.

SECTION \_\_\_\_\_. (a) The change in law made by Section 39.952(c-1), Utilities Code, as added by this Act, applies only to a retail electric provider certificate application that is filed on or after the effective date of this Act. A retail electric provider certificate application filed before the effective date of this Act is governed by the law in effect on the date the application was filed, and that law is continued in effect for that purpose.

(b) The change in law made by Section 39.952(c-2), Utilities Code, as added by this Act, applies to a retail electric provider certificate revocation or amendment proceeding for which the Public Utility Commission of Texas has not issued a final order before the effective date of this Act.

**Amendment No. 3 - Point of Order**

Representative Anchia raised a point of order against further consideration of Amendment No. 3 under Rule 11, Section 2 of the House Rules on the grounds that the amendment is not germane to the bill.

The speaker sustained the point of order.

The ruling precluded further consideration of Amendment No. 3.

**CSSB 981**, as amended, was passed to third reading. (Weber recorded voting no.)

**SB 158 ON SECOND READING**  
**(Fletcher and Gallego - House Sponsors)**

**SB 158**, A bill to be entitled An Act relating to the fraudulent obtaining of a controlled substance from a practitioner; providing a penalty.

**Amendment No. 1**

Representative Deshotel offered the following amendment to **SB 158**:

Amend **SB 158** by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Subchapter D, Chapter 481, Health and Safety Code, is amended by adding Section 481.1285 to read as follows:

Sec. 481.1285. OFFENSE: DIVERSION OF CONTROLLED SUBSTANCE BY REGISTRANTS, DISPENSERS, AND CERTAIN OTHER PERSONS. (a) This section applies only to a registrant, a dispenser, or a person who, pursuant to Section 481.062(a)(1) or (2), is not required to register under this subchapter.

(b) A person commits an offense if the person knowingly:

(1) converts to the person's own use or benefit a controlled substance to which the person has access by virtue of the person's profession or employment;  
or

(2) diverts to the unlawful use or benefit of another person a controlled substance to which the person has access by virtue of the person's profession or employment.

(c) An offense under Subsection (b)(1) is a state jail felony. An offense under Subsection (b)(2) is a felony of the third degree.

(d) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section, the other law, or both.

Amendment No. 1 was adopted.

**Amendment No. 2**

Representative Woolley offered the following amendment to **SB 158**:

Amend **SB 158** (house committee printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 71.02(a), Penal Code, as amended by Chapters 153 (**SB 2225**), 1130 (**HB 2086**), and 1357 (**SB 554**), Acts of the 81st Legislature, Regular Session, 2009, is reenacted and amended to read as follows:

(a) A person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination or as a member of a criminal street gang, the person commits or conspires to commit one or more of the following:

(1) murder, capital murder, arson, aggravated robbery, robbery, burglary, theft, aggravated kidnapping, kidnapping, aggravated assault, aggravated sexual assault, sexual assault, forgery, deadly conduct, assault punishable as a Class A misdemeanor, burglary of a motor vehicle, or unauthorized use of a motor vehicle;

(2) any gambling offense punishable as a Class A misdemeanor;

(3) promotion of prostitution, aggravated promotion of prostitution, or compelling prostitution;

(4) unlawful manufacture, transportation, repair, or sale of firearms or prohibited weapons;

(5) unlawful manufacture, delivery, dispensation, or distribution of a controlled substance or dangerous drug, or unlawful possession of a controlled substance or dangerous drug through forgery, fraud, misrepresentation, or deception;

(5-a) causing the unlawful delivery, dispensation, or distribution of a controlled substance or dangerous drug in violation of Subtitle B, Title 3, Occupations Code;

(6) any unlawful wholesale promotion or possession of any obscene material or obscene device with the intent to wholesale promote the same;

(7) any offense under Subchapter B, Chapter 43, depicting or involving conduct by or directed toward a child younger than 18 years of age;

(8) any felony offense under Chapter 32;

(9) any offense under Chapter 36;

(10) any offense under Chapter 34 or 35;

(11) any offense under Section 37.11(a);

(12) any offense under Chapter 20A;

(13) any offense under Section 37.10; ~~or~~

(14) any offense under Section 38.06, 38.07, 38.09, or 38.11;

(15) ~~(14)~~ any offense under Section 42.10; or

(16) ~~(14)~~ any offense under Section 46.06(a)(1) or 46.14.

SECTION \_\_\_\_\_. Sections 71.02(b) and (c), Penal Code, as amended by Chapters 761 (**HB 354**) and 900 (**SB 1067**), Acts of the 73rd Legislature, Regular Session, 1993, are reenacted to read as follows:

(b) Except as provided in Subsections (c) and (d), an offense under this section is one category higher than the most serious offense listed in Subsection (a) that was committed, and if the most serious offense is a Class A misdemeanor, the offense is a state jail felony, except that if the most serious offense is a felony of the first degree, the offense is a felony of the first degree.

(c) Conspiring to commit an offense under this section is of the same degree as the most serious offense listed in Subsection (a) that the person conspired to commit.

SECTION \_\_\_\_\_. Section 71.05(a), Penal Code, as amended by Chapters 761 (**HB 3544**) and 900 (**SB 1067**), Acts of the 73rd Legislature, Regular Session, 1993, is reenacted and amended to read as follows:

(a) It is an affirmative defense to prosecution under Section 71.02 that under circumstances manifesting a voluntary and complete renunciation of the actor's his criminal objective, the actor withdrew from the combination before commission of an offense listed in [~~Subsection (a) of~~] Section 71.02(a) [~~71.02~~] and took further affirmative action that prevented the commission of the offense.

SECTION \_\_\_\_\_. Section 71.05(c), Penal Code, is amended to read as follows:

(c) Evidence that the defendant withdrew from the combination before commission of an offense listed in [~~Subdivisions (1) through (7) or Subdivision (10) of Subsection (a) of~~] Section 71.02(a) [~~71.02 of this code~~] and made substantial effort to prevent the commission of an offense listed in [~~Subdivisions (1) through (7) or Subdivision (10) of Subsection (a) of~~] Section 71.02(a) [~~71.02 of this code~~] shall be admissible as mitigation at the hearing on punishment if the actor he has been found guilty under Section 71.02 [~~of this code~~], and in the event of a finding of renunciation under this subsection, the punishment shall be one grade lower than that provided under Section 71.02 [~~of this code~~].

SECTION \_\_\_\_\_. To the extent of any conflict, this Act prevails over another Act of the 82nd Legislature, Regular Session, 2011, relating to nonsubstantive additions to and corrections in enacted codes.

Amendment No. 2 was adopted.

**SB 158**, as amended, was passed to third reading.

**SB 1120 ON SECOND READING**  
(Lewis - House Sponsor)

**SB 1120**, A bill to be entitled An Act relating to the exemption from taxation of property of a local government corporation.

**SB 1120** was passed to third reading.

**CSSB 1048 ON SECOND READING**  
(J. Davis - House Sponsor)

**CSSB 1048**, A bill to be entitled An Act relating to the creation of public and private facilities and infrastructure.

**Amendment No. 1**

Representative J. Davis offered the following amendment to **CSSB 1048**:

Amend **CSSB 1048** (house committee report) as follows:

(1) In SECTION 1 of the bill, in proposed Section 2267.002(e), Government Code (page 5, line 17), between "other" and "authority", insert "statutory".

(2) In SECTION 1 of the bill, immediately following proposed Section 2267.065(b)(2), Government Code (page 26, between lines 19 and 20), insert the following:

(3) Section 51.780, Education Code;

(3) In SECTION 1 of the bill, in proposed Section 2267.065(b), Government Code (page 26, lines 20 and 21), renumber the subdivisions of that subsection appropriately.

Amendment No. 1 was adopted.

### **Amendment No. 2**

Representatives D. Howard, Branch, and Craddick offered the following amendment to **CSSB 1048**:

Amend **CSSB 1048** by adding an appropriately numbered SECTION to read as follows:

SECTION \_\_\_\_ .01. Subchapter B, Chapter 55, Education Code, is amended by adding Section 55.1782 to read as follows:

Sec. 55.1782. THE UNIVERSITY OF TEXAS SYSTEM; ADDITIONAL BONDS. (a) Consistent with the described need in Section 2267.002 for the "timely acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, operation, implementation, and installation of education facilities," the project described by this section is a qualifying project for purposes of Chapter 2267, Government Code. As provided by that chapter, the board of regents of The University of Texas System may elect to design, construct, and equip the project described by this section in accordance with that chapter.

(b) In addition to the other authority granted by this subchapter, the board of regents of The University of Texas System may acquire, purchase, construct, improve, renovate, enlarge, or equip facilities, including related infrastructure, for an engineering education and research center for The University of Texas at Austin, to be financed through the issuance of bonds in accordance with this subchapter and in accordance with a systemwide revenue financing program adopted by the board, not to exceed the aggregate principal amount of \$100 million.

(c) The board may pledge irrevocably to the payment of bonds authorized by this section all or any part of the revenue funds of an institution, branch, or entity of The University of Texas System, including student tuition charges. The amount of a pledge made under this subsection may not be reduced or abrogated while the bonds for which the pledge is made, or bonds issued to refund those bonds, are outstanding.

(d) If sufficient funds are not available to the board to meet its obligations under this section, the board may transfer funds among institutions, branches, and entities of The University of Texas System to ensure the most equitable and efficient allocation of available resources for each institution, branch, or entity to carry out its duties and purposes.

(e) General revenue may not be appropriated for the purpose of reimbursing The University of Texas System for debt service on the bonds authorized by this section for any state fiscal year earlier than the state fiscal year beginning September 1, 2015.

(f) The board may issue the bonds authorized by this section only if the board by resolution finds that:

(1) the total amount of bonds to be issued for the project does not exceed one-third of the project's completed cost;

(2) the project has funding support equal to at least two-thirds of the project's completed cost from private philanthropic sources or from other funds available to the institution;

(3) the project is designated with the highest priority ranking by the board; and

(4) the project has been highly recommended by the Texas Higher Education Coordinating Board in the coordinating board's most recent review of proposed bonding projects.

(b) Section 61.0572(e), Education Code, is amended to read as follows:

(e) Approval of the board is not required to acquire real property that is financed by bonds issued under Section 55.17(e)(3) or (4), 55.1713-55.1718, 55.1721-55.1728, 55.1735(a)(1), 55.174, 55.1742, 55.1743, 55.1744, 55.1751-55.17592, 55.1768, 55.1771, ~~or~~ 55.17721, or 55.1782, except that the board shall review all real property to be financed by bonds issued under those sections to determine whether the property meets the standards adopted by the board for cost, efficiency, and space use. If the property does not meet those standards, the board shall notify the governor, the lieutenant governor, the speaker of the house of representatives, and the Legislative Budget Board.

(c) Section 61.058(b), Education Code, is amended to read as follows:

(b) This section does not apply to construction, repair, or rehabilitation financed by bonds issued under Section 55.17(e)(3) or (4), 55.1713-55.1718, 55.1721-55.1728, 55.174, 55.1742, 55.1743, 55.1744, 55.1751-55.17592, 55.1768, 55.1771, ~~or~~ 55.17721, or 55.1782, except that the board shall review all construction, repair, or rehabilitation to be financed by bonds issued under those sections to determine whether the construction, rehabilitation, or repair meets the standards adopted by board rule for cost, efficiency, and space use. If the construction, rehabilitation, or repair does not meet those standards, the board shall notify the governor, the lieutenant governor, the speaker of the house of representatives, and the Legislative Budget Board.

Amendment No. 2 was adopted.

### **Amendment No. 3**

Representative Margo offered the following amendment to **CSSB 1048**:

Amend **CSSB 1048** (house committee printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill appropriately:

SECTION \_\_\_\_ . Subchapter B, Chapter 55, Education Code, is amended by adding Section 55.1789 to read as follows:



Sec. 55.1789. TEXAS TECH UNIVERSITY SYSTEM; ADDITIONAL BONDS. (a) In addition to the other authority granted under this subchapter, the board of regents of the Texas Tech University System may acquire, purchase, construct, improve, renovate, enlarge, or equip property, buildings, structures, facilities, roads, or related infrastructure for an academic building in the city of El Paso for the Texas Tech University Health Sciences Center, to be financed by the issuance of bonds in accordance with this subchapter, including bonds issued in accordance with a systemwide revenue financing program and secured as provided by that program, in an aggregate principal amount not to exceed \$58,500,000.

(b) The board may pledge irrevocably to the payment of the bonds authorized by this section all or any part of the revenue funds of an institution, branch, or entity of the Texas Tech University System, including student tuition charges. The amount of a pledge made under this subsection may not be reduced or abrogated while the bonds for which the pledge is made, or bonds issued to refund those bonds, are outstanding.

(c) If sufficient funds are not available to the board to meet its obligations under this section, the board may transfer funds among institutions, branches, and entities of the Texas Tech University System to ensure the most equitable and efficient allocation of available resources for each institution, branch, or entity to carry out its duties and purposes.

(d) General revenue may not be appropriated for the purpose of reimbursing the Texas Tech University System for debt service on the bonds authorized by this section for any state fiscal year earlier than the state fiscal year beginning September 1, 2015.

(e) The board may issue the bonds authorized by this section only if the board by resolution finds that the project has funding from sources other than the bonds to be issued equal to at least two-thirds of the initial cost of the project.

SECTION \_\_\_\_ .02. Section 61.0572(e), Education Code, is amended to read as follows:

(e) Approval of the board is not required to acquire real property that is financed by bonds issued under Section 55.17(e)(3) or (4), 55.1713-55.1718, 55.1721-55.1728, 55.1735(a)(1), 55.174, 55.1742, 55.1743, 55.1744, 55.1751-55.17592, 55.1768, 55.1771, ~~or~~ 55.17721, or 55.1789, except that the board shall review all real property to be financed by bonds issued under those sections to determine whether the property meets the standards adopted by the board for cost, efficiency, and space use. If the property does not meet those standards, the board shall notify the governor, the lieutenant governor, the speaker of the house of representatives, and the Legislative Budget Board.

SECTION \_\_\_\_ .03. Section 61.058(b), Education Code, is amended to read as follows:

(b) This section does not apply to construction, repair, or rehabilitation financed by bonds issued under Section 55.17(e)(3) or (4), 55.1713-55.1718, 55.1721-55.1728, 55.174, 55.1742, 55.1743, 55.1744, 55.1751-55.17592, 55.1768, 55.1771, ~~or~~ 55.17721, or 55.1789, except that the board shall review all construction, repair, or rehabilitation to be financed by bonds issued under

those sections to determine whether the construction, rehabilitation, or repair meets the standards adopted by board rule for cost, efficiency, and space use. If the construction, rehabilitation, or repair does not meet those standards, the board shall notify the governor, the lieutenant governor, the speaker of the house of representatives, and the Legislative Budget Board.

Amendment No. 3 was adopted.

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

Representative Lewis offered the following amendment to **CSSB 1048**:

Amend **CSSB 1048** (house committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill appropriately:

SECTION \_\_\_\_ .01. Subchapter B, Chapter 55, Education Code, is amended by adding Section 55.1789 to read as follows:

Sec. 55.1789. TEXAS TECH UNIVERSITY SYSTEM; ADDITIONAL REVENUE BONDS. (a) In addition to the other authority granted under this subchapter, the board of regents of the Texas Tech University System may acquire, purchase, construct, improve, renovate, enlarge, or equip property, buildings, structures, facilities, roads, or related infrastructure for a medical education building to support the Texas Tech University Health Sciences Center's educational programs in the city of Odessa, to be financed by the issuance of bonds in accordance with this subchapter, including bonds issued in accordance with a systemwide revenue financing program and secured as provided by that program, not to exceed \$17.01 million.

(b) The board may pledge irrevocably to the payment of the bonds authorized by this section all or any part of the revenue funds of an institution, branch, or entity of the Texas Tech University System, including student tuition charges. The amount of a pledge made under this subsection may not be reduced or abrogated while the bonds for which the pledge is made, or bonds issued to refund those bonds, are outstanding.

(c) If sufficient funds are not available to the board to meet its obligations under this section, the board may transfer funds among institutions, branches, and entities of the Texas Tech University System to ensure the most equitable and efficient allocation of available resources for each institution, branch, or entity to carry out its duties and purposes.

(d) General revenue may not be appropriated for the purpose of reimbursing the Texas Tech University System for debt service on the bonds authorized by this section for any state fiscal year earlier than the state fiscal year beginning September 1, 2015.

(e) The board may issue the bonds authorized by this section only if the board by resolution finds that the project has funding from sources other than the bonds to be issued equal to at least two-thirds of the initial cost of the project.

SECTION \_\_\_\_ .02. Section 61.0572(e), Education Code, is amended to read as follows:

(e) Approval of the board is not required to acquire real property that is financed by bonds issued under Section 55.17(e)(3) or (4), 55.1713-55.1718, 55.1721-55.1728, 55.1735(a)(1), 55.174, 55.1742, 55.1743, 55.1744, 55.1751-55.17592, 55.1768, 55.1771, ~~55.17721~~, or 55.1789, except that the board shall review all real property to be financed by bonds issued under those sections to determine whether the property meets the standards adopted by the board for cost, efficiency, and space use. If the property does not meet those standards, the board shall notify the governor, the lieutenant governor, the speaker of the house of representatives, and the Legislative Budget Board.

SECTION \_\_\_\_ .03. Section 61.058(b), Education Code, is amended to read as follows:

(b) This section does not apply to construction, repair, or rehabilitation financed by bonds issued under Section 55.17(e)(3) or (4), 55.1713-55.1718, 55.1721-55.1728, 55.174, 55.1742, 55.1743, 55.1744, 55.1751-55.17592, 55.1768, 55.1771, ~~55.17721~~, or 55.1789, except that the board shall review all construction, repair, or rehabilitation to be financed by bonds issued under those sections to determine whether the construction, rehabilitation, or repair meets the standards adopted by board rule for cost, efficiency, and space use. If the construction, rehabilitation, or repair does not meet those standards, the board shall notify the governor, the lieutenant governor, the speaker of the house of representatives, and the Legislative Budget Board.

Amendment No. 4 was adopted.

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

Representative Murphy offered the following amendment to **CSSB 1048**:

Amend **CSSB 1048** (house committee printing) in SECTION 1 of the bill, immediately following added Section 2267.060, Government Code (page 22, between lines 23 and 24), by inserting the following:

Sec. 2267.0605. PERFORMANCE AND PAYMENT BONDS REQUIRED. (a) The construction, remodel, or repair of a qualifying project may be performed only after performance and payment bonds for the construction, remodel, or repair have been executed in compliance with Chapter 2253 regardless of whether the qualifying project is on public or private property or is publicly or privately owned.

(b) For purposes of this section, a qualifying project is considered a public work under Chapter 2253 and the responsible governmental entity shall assume the obligations and duties of a governmental entity under that chapter. The obligee under a performance bond under this section may be a public entity, a private person, or an entity consisting of both a public entity and a private person.

Amendment No. 5 was adopted.

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

Representative Veasey offered the following amendment to **CSSB 1048**:

Amend **CSSB 1048** (house committee report) by adding the following appropriately numbered SECTIONS to the bill and amending subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 2254.003, Government Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) Unless inconsistent with the criteria in Subsection (a), a governmental entity selecting a provider of or awarding a contract for professional services may consider:

(1) the impact on the entity's ability to comply with laws, rules, or policies regarding, as applicable:

(A) historically underutilized or minority-owned businesses;

(B) small business development programs; and

(C) any other contracting program approved by the entity that relates to Paragraph (A) or (B); and

(2) the locations of the provider's or group or association of providers' places of business where the work will be performed if, in the entity's governing body's judgment, the location of the places of business where the work will be performed will impact the most efficient and economical provision of the services.

SECTION \_\_\_\_\_. Section 2254.004, Government Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) Unless inconsistent with the criteria in Subsection (a), a governmental entity selecting a provider of or awarding a contract for architectural, engineering, or land surveying services may consider:

(1) the impact on the entity's ability to comply with laws, rules, or policies regarding, as applicable:

(A) historically underutilized or minority-owned businesses;

(B) small business development programs; and

(C) any other contracting program approved by the entity that relates to Paragraph (A) or (B); and

(2) the locations of the provider's places of business where the work will be performed if, in the entity's governing body's judgment, the location of the places of business where the work will be performed will impact the most efficient and economical provision of the services.

SECTION \_\_\_\_\_. The changes in law made by this Act to Sections 2254.003 and 2254.004, Government Code, apply only to a contract for which an invitation for offers, request for proposals, request for qualifications, or other similar solicitation is first published or distributed on or after the effective date of this Act. A contract for which an invitation for offers, request for proposals, request for qualifications, or other similar solicitation is first published or distributed before the effective date of this Act is governed by the law in effect at the time the invitation, request, or other solicitation is published or distributed, and the former law is continued in effect for that purpose.

Amendment No. 6 was withdrawn.

**Amendment No. 7**

Representative Aycock offered the following amendment to **CSSB 1048**:

Amend **CSSB 1048** (house committee printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill appropriately:

SECTION \_\_\_\_\_. Subchapter B, Chapter 55, Education Code, is amended by adding Section 55.1782 to read as follows:

Sec. 55.1782. THE UNIVERSITY OF TEXAS SYSTEM; ADDITIONAL BONDS. (a) In addition to the other authority granted by this subchapter, the board of regents of The University of Texas System may acquire, purchase, construct, improve, renovate, enlarge, or equip facilities, including roads and related infrastructure, for an engineering education and research center for The University of Texas at Austin, to be financed through the issuance of bonds in accordance with this subchapter and in accordance with a systemwide revenue financing program adopted by the board, not to exceed the aggregate principal amount of \$100 million.

(b) The board may pledge irrevocably to the payment of bonds authorized by this section all or any part of the revenue funds of an institution, branch, or entity of The University of Texas System, including student tuition charges. The amount of a pledge made under this subsection may not be reduced or abrogated while the bonds for which the pledge is made, or bonds issued to refund those bonds, are outstanding.

(c) If sufficient funds are not available to the board to meet its obligations under this section, the board may transfer funds among institutions, branches, and entities of The University of Texas System to ensure the most equitable and efficient allocation of available resources for each institution, branch, or entity to carry out its duties and purposes.

(d) General revenue may not be appropriated for the purpose of reimbursing The University of Texas System for debt service on the bonds authorized by this section for any state fiscal year earlier than the state fiscal year beginning September 1, 2015.

SECTION \_\_\_\_\_. Section 61.0572(e), Education Code, is amended to read as follows:

(e) Approval of the board is not required to acquire real property that is financed by bonds issued under Section 55.17(e)(3) or (4), 55.1713-55.1718, 55.1721-55.1728, 55.1735(a)(1), 55.174, 55.1742, 55.1743, 55.1744, 55.1751-55.17592, 55.1768, 55.1771, ~~or~~ 55.17721, or 55.1782, except that the board shall review all real property to be financed by bonds issued under those sections to determine whether the property meets the standards adopted by the board for cost, efficiency, and space use. If the property does not meet those standards, the board shall notify the governor, the lieutenant governor, the speaker of the house of representatives, and the Legislative Budget Board.

SECTION \_\_\_\_\_. Section 61.058(b), Education Code, is amended to read as follows:

(b) This section does not apply to construction, repair, or rehabilitation financed by bonds issued under Section 55.17(e)(3) or (4), 55.1713-55.1718, 55.1721-55.1728, 55.174, 55.1742, 55.1743, 55.1744, 55.1751-55.17592, 55.1768, 55.1771, ~~[or]~~ 55.17721, or 55.1782, except that the board shall review all construction, repair, or rehabilitation to be financed by bonds issued under those sections to determine whether the construction, rehabilitation, or repair meets the standards adopted by board rule for cost, efficiency, and space use. If the construction, rehabilitation, or repair does not meet those standards, the board shall notify the governor, the lieutenant governor, the speaker of the house of representatives, and the Legislative Budget Board.

Amendment No. 7 was withdrawn.

Representative J. Davis moved to postpone consideration of **CSSB 1048** until 5:40 p.m. today.

The motion prevailed.

### POSTPONED BUSINESS

The following bills were laid before the house as postponed business:

#### **SB 1393 ON SECOND READING** (Keffer - House Sponsor)

**SB 1393**, A bill to be entitled An Act relating to the use of contracts by local governments to purchase electricity.

**SB 1393** was read second time earlier today and was postponed until this time.

**SB 1393** was passed to third reading.

#### **GENERAL STATE CALENDAR** (consideration continued)

#### **CSSB 776 ON SECOND READING** (Guillen, Quintanilla, and Raymond - House Sponsors)

**CSSB 776**, A bill to be entitled An Act relating to customs brokers.

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

Representative Quintanilla offered the following amendment to **CSSB 776**:

Amend **CSSB 776** (house committee printing) as follows:

(1) In SECTION 2 of the bill, in amended Section 151.1575(a)(3)(G)(ii), Tax Code (page 4, line 9), strike "and" and substitute "[~~and~~]".

(2) In SECTION 2 of the bill, in amended Section 151.1575(a)(3)(H)(ii), Tax Code (page 4, line 18), strike the period and substitute the following:  
; and

(I) requiring the purchaser and the broker or an authorized employee, when using a power of attorney form, to attest, as a part of the form and in the presence of each other:

(i) that the purchaser has provided the information and documentation required by this subdivision; and

(ii) that the purchaser is on notice that tangible personal property not exported is subject to taxation under this chapter and the purchaser is liable, in addition to other possible civil liabilities and criminal penalties, for payment of an amount equal to the value of the merchandise if the purchaser improperly obtained a refund of taxes relating to the property.

Amendment No. 1 was adopted.

**CSSB 776**, as amended, was passed to third reading by (Record 1373): 124 Yeas, 19 Nays, 1 Present, not voting.

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

Nays — Anderson, C.; Anderson, R.; Cain; Carter; Davis, S.; Flynn; Gooden; Hughes; King, S.; Landtroop; Laubenberg; Miller, S.; Paxton; Riddle; Schwertner; Sheets; Taylor, V.; Weber; White.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Peña; Villarreal.

Absent — Dukes; Eiland; Fletcher; Zedler.

#### STATEMENTS OF VOTE

I was shown voting no on Record No. 1373. I intended to vote yes.

R. Anderson

I was shown voting no on Record No. 1373. I intended to vote yes.

Sheets

When Record No. 1373 was taken, I was in the house but away from my desk. I would have voted no.

Zedler

**CSSB 293 ON SECOND READING**  
**(J. Davis - House Sponsor)**

**CSSB 293**, A bill to be entitled An Act relating to telemedicine medical services, telehealth services, and home telemonitoring services provided to certain Medicaid recipients.

**Amendment No. 1**

Representative J. Davis offered the following amendment to **CSSB 293**:

Amend **CSSB 293** (house committee printing) as follows:

(1) In SECTION 1 of the bill, in added Section 531.001(4-a), Government Code (page 1, line 11), strike "as" and substitute "or a hospital, as those terms are".

(2) In SECTION 2 of the bill, strike amended Section 531.0216(b), Government Code (page 2, line 23, through page 3, line 26), and substitute the following:

(b) In developing the system, the executive commissioner by rule shall:

(1) review programs and pilot projects in other states to determine the most effective method for reimbursement;

(2) establish billing codes and a fee schedule for services;

(3) provide for an approval process before a provider can receive reimbursement for services;

(4) consult with the Department of State Health Services and the telemedicine and telehealth advisory committee to establish procedures to:

(A) identify clinical evidence supporting delivery of health care services using a telecommunications system; and

(B) ~~establish pilot studies for telemedicine medical service delivery; and~~

~~[(C)]~~ annually review health care services, considering new clinical findings, to determine whether reimbursement for particular services should be denied or authorized;

~~(5) [establish pilot programs in designated areas of this state under which the commission, in administering government funded health programs, may reimburse a health professional participating in the pilot program for telehealth services authorized under the licensing law applicable to the health professional;~~

~~[(6)]~~ establish a separate provider identifier for telemedicine medical services providers, telehealth services providers, and home telemonitoring services providers; and

~~(6) [(7)]~~ establish a separate modifier for telemedicine medical services, telehealth services, and home telemonitoring services eligible for reimbursement.

(3) In SECTION 5 of the bill, strike added Section 531.02164(a), Government Code (page 6, lines 6 through 9), and substitute the following:

(a) In this section:

(1) "Home health agency" means a facility licensed under Chapter 142, Health and Safety Code, to provide home health services as defined by Section 142.001, Health and Safety Code.



(2) "Hospital" means a hospital licensed under Chapter 241, Health and Safety Code.

(4) In SECTION 5 of the bill, strike added Section 531.02164(c), Government Code (page 6, line 15, through page 7, line 11), and substitute the following:

(c) The program required under this section must:

(1) provide that home telemonitoring services are available only to persons who:

(A) are diagnosed with one or more of the following conditions:

(i) pregnancy;

(ii) diabetes;

(iii) heart disease;

(iv) cancer;

(v) chronic obstructive pulmonary disease;

(vi) hypertension;

(vii) congestive heart failure;

(viii) mental illness or serious emotional disturbance;

(ix) asthma;

(x) myocardial infarction; or

(xi) stroke; and

(B) exhibit two or more of the following risk factors:

(i) two or more hospitalizations in the prior 12-month period;

(ii) frequent or recurrent emergency room admissions;

(iii) a documented history of poor adherence to ordered medication regimens;

(iv) a documented history of falls in the prior six-month period;

(v) limited or absent informal support systems;

(vi) living alone or being home alone for extended periods of time; and

(vii) a documented history of care access challenges;

(2) ensure that clinical information gathered by a home health agency or hospital while providing home telemonitoring services is shared with the patient's physician; and

(3) ensure that the program does not duplicate disease management program services provided under Section 32.057, Human Resources Code.

(5) In SECTION 5 of the bill, in added Section 531.02164(e), Government Code (page 7, lines 21 through 26), strike "If the commission determines that the provision of home telemonitoring services achieves cost savings for the Medicare program, the commission shall pursue the creation of accountable care organizations to participate in the Medicare shared savings program in accordance with 42 U.S.C. Section 1395jjj."

(6) Strike SECTION 6 of the bill (page 7, line 27, through page 8, line 4).

(7) Strike SECTION 7 of the bill (page 8, line 5, through page 9, line 14).

(8) In the recital to SECTION 9 of the bill (page 9, line 19), strike "Section 531.02172(b), Government Code, is" and substitute "Sections 531.02172(a) and (b), Government Code, are".

(9) In SECTION 9 of the bill, immediately following the recital (page 9, between lines 20 and 21), insert the following:

(a) The executive commissioner shall establish an advisory committee to assist the commission in:

(1) evaluating policies for telemedical consultations under Sections 531.02163 and 531.0217;

(2) ~~[evaluating policies for telemedicine medical services or telehealth services pilot programs established under Section 531.02171];~~

~~[(2)]~~ ensuring the efficient and consistent development and use of telecommunication technology for telemedical consultations and telemedicine medical services or telehealth services reimbursed under government-funded health programs;

(3) ~~[(4)]~~ monitoring the type of consultations and other services ~~[programs]~~ receiving reimbursement under Section ~~[Sections]~~ 531.0217 ~~[and 531.02171]~~; and

(4) ~~[(5)]~~ coordinating the activities of state agencies concerned with the use of telemedical consultations and telemedicine medical services or telehealth services.

(10) In SECTION 11(3) of the bill (page 10, line 27), strike "Sections 531.02171(a)(3) and (4)" and substitute "Section 531.02171".

(11) Renumber SECTIONS of the bill accordingly.

Amendment No. 1 was adopted.

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

Representative Schwertner offered the following amendment to **CSSB 293**:

Amend **CSSB 293** (house committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.02176 to read as follows:

Sec. 531.02176. EXPIRATION OF MEDICAID REIMBURSEMENT FOR PROVISION OF TELEMEDICINE MEDICAL, TELEHEALTH, AND HOME TELEMONITORING SERVICES. Notwithstanding any other law, the commission may not reimburse providers under the Medicaid program for the provision of telemedicine medical, telehealth, or home telemonitoring services on or after September 1, 2015.

Amendment No. 2 was adopted.

**CSSB 293**, as amended, was passed to third reading.

**SB 1073 ON SECOND READING**  
**(T. King - House Sponsor)**

**SB 1073**, A bill to be entitled An Act relating to rainwater harvesting systems that are connected to public water supply systems.

**SB 1073** was passed to third reading.

**SB 1551 ON SECOND READING**  
**(Raymond and Gallego - House Sponsors)**

**SB 1551**, A bill to be entitled An Act relating to missing children; providing a criminal penalty.

**Amendment No. 1**

Representatives S. King and Chisum offered the following amendment to **SB 1551**:

Amend **SB 1551** (house committee report) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Chapter 13, Code of Criminal Procedure, is amended by adding Article 13.075 to read as follows:

Art. 13.075. CHILD INJURED IN ONE COUNTY AND RESIDING IN ANOTHER. An offense under Title 5, Penal Code, involving a victim younger than 18 years of age, or an offense under Section 25.03, Penal Code, that results in bodily injury to a child younger than 18 years of age, may be prosecuted in the county:

- (1) in which an element of the offense was committed;
- (2) in which the defendant is apprehended;
- (3) in which the victim resides; or
- (4) in which the defendant resides.

SECTION \_\_\_\_\_. Article 13.075, Code of Criminal Procedure, as added by this Act, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

Amendment No. 1 was adopted.

**SB 1551**, as amended, was passed to third reading.

**CSSB 573 ON SECOND READING**  
**(Creighton, Eissler, and Cook - House Sponsors)**

**CSSB 573**, A bill to be entitled An Act relating to certificates of public convenience and necessity for water or sewer services.

**CSSB 573 - STATEMENT OF LEGISLATIVE INTENT**

REPRESENTATIVE BECK: My only question to you is, are the population brackets based on the 2010 census data?

CREIGHTON: Yes, that's correct. The population brackets are based on the 2010 census bracket which is consistent with the Code Construction Act, and we want to be very consistent there, and I appreciate that question.

### REMARKS ORDERED PRINTED

Representative Beck moved to print remarks between Representative Creighton and Representative Beck.

The motion prevailed.

(Geren in the chair)

#### Amendment No. 1

Representative Brown offered the following amendment to **CSSB 573**:

Amend **CSSB 573** (house committee report) in SECTION 2.45 of the bill, in added Section 13.254(a-5), Water Code (page 77, line 11), between "220,000" and the period by inserting "that does not contain a public or private university that had a total enrollment in the most recent fall semester of 40,000 or more".

Amendment No. 1 was adopted.

#### Amendment No. 2

Representative Callegari offered the following amendment to **CSSB 573**:

Amend **CSSB 573** (house committee report) as follows:

(1) Strike the recital to SECTION 1 of the bill (page 1, lines 5-7) and substitute "Section 13.254, Water Code, is amended by amending Subsections (a), (a-1), (a-2), and (a-3) and adding Subsections (a-5), (a-6), and (h) to read as follows:".

(2) In SECTION 1 of the bill, in amended Section 13.254, Water Code (page 2, between lines 11 and 12), insert the following:

(a-1) As an alternative to decertification under Subsection (a), the owner of a tract of land that is at least 50 acres and that is not in a platted subdivision actually receiving water or sewer service may petition the commission under this subsection for expedited release of the area from a certificate of public convenience and necessity so that the area may receive service from another retail public utility. The fact that a certificate holder is a borrower under a federal loan program is not a bar to a request under this subsection for the release of the petitioner's land and the receipt of services from an alternative provider. On the day the petitioner submits the petition to the commission, the [The] petitioner shall send [deliver], via certified mail, a copy of the petition to the certificate holder, who may submit information to the commission to controvert information submitted by the petitioner. The petitioner must demonstrate that:

(1) a written request for service, other than a request for standard residential or commercial service, has been submitted to the certificate holder, identifying:

(A) the area for which service is sought;

(B) the timeframe within which service is needed for current and projected service demands in the area;

(C) the level and manner of service needed for current and projected service demands in the area;

(D) the approximate cost for the alternative provider to provide the service at the same level and manner that is requested from the certificate holder;

(E) the flow and pressure requirements and specific infrastructure needs, including line size and system capacity for the required level of fire protection requested; and

(F) ~~(D)~~ any additional information requested by the certificate holder that is reasonably related to determination of the capacity or cost for providing the service;

(2) the certificate holder has been allowed at least 90 calendar days to review and respond to the written request and the information it contains;

(3) the certificate holder:

(A) has refused to provide the service;

(B) is not capable of providing the service on a continuous and adequate basis within the timeframe, at the level, at the approximate cost that the alternative provider is capable of providing for a comparable level of service, or in the manner reasonably needed or requested by current and projected service demands in the area; or

(C) conditions the provision of service on the payment of costs not properly allocable directly to the petitioner's service request, as determined by the commission; and

(4) the alternate retail public utility from which the petitioner will be requesting service possesses the financial, managerial, and technical capability to provide ~~is capable of providing~~ continuous and adequate service within the timeframe, at the level, at the cost, and in the manner reasonably needed or requested by current and projected service demands in the area.

(3) In SECTION 1 of the bill, in amended Section 13.254, Water Code (page 2, between lines 22 and 23), insert the following:

(a-3) Within 60 ~~90~~ calendar days from the date the commission determines the petition filed pursuant to Subsection (a-1) to be administratively complete, the commission shall grant the petition unless the commission makes an express finding that the petitioner failed to satisfy the elements required in Subsection (a-1) and supports its finding with separate findings and conclusions for each element based solely on the information provided by the petitioner and the certificate holder. The commission may grant or deny a petition subject to terms and conditions specifically related to the service request of the petitioner and all relevant information submitted by the petitioner and the certificate holder. In addition, the commission may require an award of compensation as otherwise provided by this section. If the certificate holder has never made service available through planning, design, construction of facilities, or contractual obligations to serve the area the petitioner seeks to have released, the commission is not required to find that the proposed alternative provider is capable of providing better service than the certificate holder, but only that the proposed alternative provider is capable of providing the requested service.

(4) In SECTION 1 of the bill, in amended Section 13.254, Water Code (page 3, between lines 13 and 14), insert the following:

(h) A certificate holder that has land removed from its certificated service area in accordance with this section may not be required, after the land is removed, to provide service to the removed land for any reason, including the violation of law or commission rules by a water or sewer system of another person.

(5) Add the following appropriately numbered SECTIONS to the bill and renumber the subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_ . Section 13.245, Water Code, is amended by amending Subsection (b) and adding Subsections (c-1), (c-2), and (c-3) to read as follows:

(b) Except as provided by Subsections [Subsection] (c), (c-1), and (c-2), the commission may not grant to a retail public utility a certificate of public convenience and necessity for a service area within the boundaries or extraterritorial jurisdiction of a municipality without the consent of the municipality. The municipality may not unreasonably withhold the consent. As a condition of the consent, a municipality may require that all water and sewer facilities be designed and constructed in accordance with the municipality's standards for facilities.

(c-1) If a municipality has not consented under Subsection (b) before the 180th day after the date a landowner or a retail public utility submits to the municipality a formal request for service according to the municipality's application requirements and standards for facilities on the same or substantially similar terms as provided by the retail public utility's application to the commission, including a capital improvements plan required by Section 13.244(d)(3) or a subdivision plat, the commission may grant the certificate of public convenience and necessity without the consent of the municipality if:

(1) the commission makes the findings required by Subsection (c);

(2) the municipality has not entered into a binding commitment to serve the area that is the subject of the retail public utility's application to the commission before the 180th day after the date the formal request was made; and

(3) the landowner or retail public utility that submitted the formal request has not unreasonably refused to:

(A) comply with the municipality's service extension and development process; or

(B) enter into a contract for water or sewer services with the municipality.

(c-2) If a municipality refuses to provide service in the proposed service area, as evidenced by a formal vote of the municipality's governing body or an official notification from the municipality, the commission is not required to make the findings otherwise required by this section and may grant the certificate of public convenience and necessity to the retail public utility at any time after the date of the formal vote or receipt of the official notification.

(c-3) The commission must include as a condition of a certificate of public convenience and necessity granted under Subsection (c-1) or (c-2) that all water and sewer facilities be designed and constructed in accordance with the municipality's standards for water and sewer facilities.

SECTION \_\_\_\_\_. Sections 13.2451(a) and (b), Water Code, are amended to read as follows:

(a) Except as provided by Subsection (b), if [H] a municipality extends its extraterritorial jurisdiction to include an area certificated to a retail public utility, the retail public utility may continue and extend service in its area of public convenience and necessity under the rights granted by its certificate and this chapter.

(b) The commission may not extend a municipality's certificate of public convenience and necessity beyond its extraterritorial jurisdiction if an owner of land that is located wholly or partly outside the extraterritorial jurisdiction elects to exclude some or all of the landowner's property within a proposed service area in accordance with Section 13.246(h). This subsection does not apply to a transfer of a certificate as approved by the commission. [A municipality that seeks to extend a certificate of public convenience and necessity beyond the municipality's extraterritorial jurisdiction must ensure that the municipality complies with Section 13.241 in relation to the area covered by the portion of the certificate that extends beyond the municipality's extraterritorial jurisdiction.]

SECTION \_\_\_\_\_. Section 13.246(h), Water Code, is amended to read as follows:

(h) Except as provided by Subsection (i), a landowner who owns a tract of land that is at least 25 acres and that is wholly or partially located within the proposed service area may elect to exclude some or all of the landowner's property from the proposed service area by providing written notice to the commission before the 30th day after the date the landowner receives notice of a new application for a certificate of public convenience and necessity or for an amendment to an existing certificate of public convenience and necessity. The landowner's election is effective without a further hearing or other process by the commission. If a landowner makes an election under this subsection, the application shall be modified so that the electing landowner's property is not included in the proposed service area. An applicant for a certificate of public convenience and necessity that has land removed from its proposed certificated service area because of a landowner's election under this subsection may not be required to provide service to the removed land for any reason, including the violation of law or commission rules by the water or sewer system of another person.

SECTION \_\_\_\_\_. The changes made by this Act to Sections 13.245, 13.2451, 13.246, and 13.254, Water Code, apply only to:

(1) a retail public utility's application for a certificate of public convenience and necessity for a service area in the extraterritorial jurisdiction of a municipality that is made on or after the effective date of this Act;

(2) an extension of a municipality's certificate of public convenience and necessity for a service area in the extraterritorial jurisdiction of the municipality on or after the effective date of this Act; and

(3) a petition to release an area from a certificate of public convenience and necessity that is made on or after the effective date of this Act.

### **Amendment No. 3**

Representatives Lucio and Oliveira offered the following amendment to Amendment No. 2:

Amend Amendment No. 2 by Callegari to **CSSB 573** (house committee report) as follows:

(1) On page 3, line 15 of the amendment, strike "If" and substitute "Except in a county that borders the United Mexican States and the Gulf of Mexico or a county adjacent to that county, if".

(2) On page 4, lines 2-3 of the amendment, strike "and (c-3)" and substitute "(c-3), and (c-4)".

(3) On page 5, between lines 16 and 17 of the amendment, insert the following:

(c-4) Subsections (c-1), (c-2), and (c-3) do not apply to a county that borders the United Mexican States and the Gulf of Mexico or a county adjacent to such a county.

(4) On page 5, line 30 of the amendment, through page 6, line 1 of the amendment, strike "This subsection does not apply to a transfer of a certificate as approved by the utility commission." and substitute "This subsection does not apply to:

(1) a transfer of a certificate as approved by the commission; or

(2) an extension of extraterritorial jurisdiction in a county that borders the United Mexican States and the Gulf of Mexico or a county adjacent to such a county."

Amendment No. 3 was adopted.

Amendment No. 2, as amended, was adopted.

### **Amendment No. 4**

Representative Walle offered the following amendment to **CSSB 573**:

Amend **CSSB 573** (house committee printing) as follows:

(1) In the recital to SECTION 1 of the bill (page 1, lines 6-7), strike "Subsections (a-5) and (a-6)" and substitute "Subsections (a-5), (a-6), and (a-7)"

(2) In SECTION 1 of the bill in amended Section 13.254, Water Code (page 3, between lines 13-14), add the following:

(a-7) The utility shall include with the statement of intent provided to each landowner or ratepayer a notice of:

(1) a proceeding under this section related to certification or decertification;

(2) the reason or reasons for the proposed rate change; and



(3) any bill payment assistance program available to low-income ratepayers.

Amendment No. 4 was adopted.

**HR 1315 - ADOPTED**  
**(by S. King, et al.)**

Representative S. King moved to suspend all necessary rules to take up and consider at this time **HR 1315**.

The motion prevailed.

The following resolution was laid before the house:

**HR 1315**, Honoring the achievements of chef and restaurateur Tom Perini of Buffalo Gap.

**HR 1315** was read and was adopted.

On motion of Representative Sheffield, the names of all the members of the house were added to **HR 1315** as signers thereof.

**INTRODUCTION OF GUESTS**

The chair recognized Representatives S. King and Keffer who introduced Tom Perini and members of his family.

**CSSB 573 - (consideration continued)**

**CSSB 573 - STATEMENT OF LEGISLATIVE INTENT**

REPRESENTATIVE D. MILLER: I appreciate you bringing this measure before the house and letting us have some debate on it for consideration. Let me just ask you, do you believe that this bill will have a detrimental effect, or a detrimental impact should I say, on water or water and sewer systems' ability to obtain financing for new infrastructure?

REPRESENTATIVE CREIGHTON: I don't. I don't believe there will be a negative impact. You know, I understand, Representative Miller—you and I have had some conversations about federal loans that are in place to be able to assist water supply corporations and water providers within CCNs to be able to finance these projects—and no, I don't believe this bill will have any negative effect. In fact, current law, which this bill does not change, allows for CCN holders that have a federal loan to be compensated if they show that they've got pipes in the ground and they've got infrastructure in place. In fact, under the decertification process and guidelines under the Water Code, Section 13.254, the very first provision that's considered on a decertification application is the amount of the retail public utility's debt. So, if the property owner wants out of the CCN—their 25 acres or more—there's a federal loan that's assisting the CCN holder, but the pipes are over here and the property owner is well in another location that's not going to receive service. They're unable to get them service. That debt, as well as the impact on the future consumer base, would be considered.

D. MILLER: Well, Chairman Creighton—and I certainly don't disagree with you and your knowledge of the law as far as people being able to go through the process and decertify—but are you aware, and I think you may be, of a letter from the U.S. Department of Agriculture-Rural Development to Chairman Ritter?

CREIGHTON: Yes, I am.

D. MILLER: And, in that letter, the state director says that in the last three years there has been an investment of \$94 million in low-interest loans and grants to finance these programs that helped over 200,000 Texans. Are you aware of that?

CREIGHTON: Yes, I am. It's a very valuable resource for water providers and their customers.

D. MILLER: Now, are you also aware that they take a lien on the entire service area for which the debtor has a certificate?

CREIGHTON: Yes, I'm aware of that.

D. MILLER: And are you also aware that when they take into consideration, before they make that loan for that CCN, that that whole area is part of the asset that they're taking a lien on?

CREIGHTON: Yes, I'm aware of that, as well. The federal loan, of course, takes into consideration, within the CCN, and they consider that collateral—the entire area—but they also consider, on the front end, the current ability to pay and the financial wherewithal of the CCN applicant or the federal loan applicant that has the CCN. And so they've got to prove up their financial ability on the front end, and it's up to good planning and good rates and providing a good marketplace for whether or not those customers stay in that area.

D. MILLER: And are you aware that under Title 7, Section 1926(b), that the federal law protects the federal government's interest in that property?

CREIGHTON: I am, Representative Miller—and it's a good point. The federal statute is there for a reason and it protects the CCN holder that has a federal loan in place. I agree, again, that that's collateral for that loan, but keep in mind, under the holding in Creedmoor, which is a very recent holding, there was a three-part test that had to do with whether or not that statute trumped a decertification process. And the reason why it did not is, under that three-part test, the third part of the test, or the third step, was whether or not there were pipes in the ground.

D. MILLER: I agree, and that's the point I wanted to come to, the fact that they are making a decision about loaning the money or not loaning the money, which is not a federal mandate. But would you agree that that is a factor—that will be a factor going forward if we pass this statute?

CREIGHTON: It very much is a factor going forward, and this bill protects CCNs in the sense that it does not change the current compensation process. And so any infrastructure that's in place, to serve a plat in a CCN that is backed by a federal loan where a tract is to be decertified, or the CCNs to be certified, or part of that land—or opted out—that CCN holder carrying that federal loan will be compensated under current statute, and this bill does nothing to change that.

**REMARKS ORDERED PRINTED**

Representative D. Miller moved to print remarks between Representative Creighton and Representative D. Miller.

The motion prevailed.

**CSSB 573**, as amended, was passed to third reading. (Gooden, Kuempel, and Price recorded voting no.)

**POSTPONED BUSINESS**

The following bills were laid before the house as postponed business:

**CSSB 661 ON SECOND READING**

**(Solomons - House Sponsor)**

**CSSB 661**, A bill to be entitled An Act relating to the continuation and functions, as applicable, of the Electric Reliability Council of Texas, the Office of Public Utility Counsel, and the Public Utility Commission of Texas and to the transfer of certain functions from the Texas Commission on Environmental Quality to the Public Utility Commission of Texas; imposing administrative penalties.

**CSSB 661** was read second time earlier today and was postponed until this time.

**CSSB 661 - POINT OF ORDER**

Representative Y. Davis raised a point of order against further consideration of **CSSB 661** under Rule 4, Section 32(c)(3) of the House Rules on the grounds that the committee report is incorrect.

The chair sustained the point of order.

**CSSB 661** was returned to the Committee on State Affairs.

**HB 871 - HOUSE REFUSES TO CONCUR  
IN SENATE AMENDMENTS  
CONFERENCE COMMITTEE APPOINTED**

Representative Y. Davis called up with senate amendments for consideration at this time,

**HB 871**, A bill to be entitled An Act relating to indigent health care services that may be provided by a county.

Representative Y. Davis moved that the house not concur in the senate amendments and that a conference committee be requested to adjust the differences between the two houses on **HB 871**.

The motion prevailed.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 871**: Y. Davis, chair; Coleman, Naishtat, Reynolds, and Gooden.

**HB 2170 - HOUSE CONCURS IN SENATE AMENDMENTS  
TEXT OF SENATE AMENDMENTS**

Representative Raymond called up with senate amendments for consideration at this time,

**HB 2170**, A bill to be entitled An Act relating to assisting a foster child in obtaining the child's credit report.

Representative Raymond moved to concur in the senate amendments to **HB 2170**.

The motion to concur in the senate amendments to **HB 2170** prevailed by (Record 1374): 143 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Aliseda; Allen; Alonzo; Alvarado; Anchia; Anderson, C.; Anderson, R.; Aycock; Beck; Berman; Bohac; Bonnen; Branch; Brown; Burkett; Burnam; Button; Cain; Callegari; Carter; Castro; Chisum; Coleman; Cook; Craddick; Creighton; Crownover; Darby; Davis, J.; Davis, S.; Davis, Y.; Deshotel; Driver; Dukes; Dutton; Eiland; Elkins; Farias; Farrar; Fletcher; Flynn; Frullo; Gallego; Garza; 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; 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; 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; Vo; Walle; Weber; White; Woolley; Workman; Zedler; Zerwas.

Present, not voting — Mr. Speaker; Geren(C).

Absent, Excused — Peña; Villarreal.

Absent — Christian; Eissler; Lucio.

**STATEMENTS OF VOTE**

I was shown voting yes on Record No. 1374. I intended to vote no.

Landtroop

I was shown voting yes on Record No. 1374. I intended to vote no.

Laubenberg

I was shown voting yes on Record No. 1374. I intended to vote no.

Legler

I was shown voting yes on Record No. 1374. I intended to vote no.

Perry

**Senate Amendment No. 1 (Senate Floor Amendment No. 1)**

Amend **HB 2170** by adding the following appropriately numbered SECTION to the bill and renumbering existing SECTIONS accordingly:

SECTION \_\_\_\_ Subchapter A, Chapter 263, Family Code, is amended by adding Section 263.007 to read as follows:

Sec. 263.007. FOSTER CHILDREN'S BILL OF RIGHTS. (a) In this section:

(1) "Agency foster group home," "agency foster home," "facility," "foster group home," and "foster home" have the meanings assigned by Section 42.002, Human Resources Code.

(2) "Foster care" means the placement of a child who is in the conservatorship of the department or an authorized agency and in care outside the child's home in an agency foster group home, agency foster home, foster group home, foster home, or another facility licensed or certified under Chapter 42, Human Resources Code, in which care is provided for 24 hours a day.

(3) "Foster children's bill of rights" means the rights described by Subsection (b).

(b) It is the policy of this state that each child in foster care be informed of the child's rights provided by state or federal law or policy that relate to:

(1) abuse, neglect, exploitation, discrimination, and harassment;

(2) food, clothing, shelter, and education;

(3) medical, dental, vision, and mental health services, including the right of the child to consent to treatment;

(4) emergency behavioral intervention, including what methods are permitted, the conditions under which it may be used, and the precautions that must be taken when administering it;

(5) placement with the child's siblings and contact with members of the child's family;

(6) privacy and searches, including the use of storage space, mail, and the telephone;

(7) participation in school-related extracurricular or community activities;

(8) interaction with persons outside the foster care system, including teachers, church members, mentors, and friends;

(9) contact and communication with caseworkers, attorneys ad litem, guardians ad litem, and court-appointed special advocates;

(10) religious services and activities;

(11) confidentiality of the child's records;

(12) job skills, personal finances, and preparation for adulthood;

(13) participation in a court hearing that involves the child;

(14) participation in the development of service and treatment plans;

(15) if the child has a disability, the advocacy and protection of the rights of a person with that disability; and

(16) any other matter affecting the child's ability to receive care and treatment in the least restrictive environment that is most like a family setting, consistent with the best interests and needs of the child.

(c) The department shall provide a written copy of the foster children's bill of rights to each child placed in foster care in the child's primary language, if possible, and shall inform the child of the rights described by the foster children's bill of rights:

(1) orally in the child's primary language, if possible, and in simple, nontechnical terms; or

(2) for a child who has a disability, including an impairment of vision or hearing, through any means that can reasonably be expected to result in successful communication with the child.

(d) A child placed in foster care may, at the child's option, sign a document acknowledging the child's understanding of the foster children's bill of rights after the department provides a written copy of the foster children's bill of rights to the child and informs the child of the rights described by the foster children's bill of rights in accordance with Subsection (c). If a child signs a document acknowledging the child's understanding of the foster children's bill of rights, the document must be placed in the child's case file.

(e) An agency foster group home, agency foster home, foster group home, foster home, or other facility in which a child is placed in foster care shall provide a copy of the foster children's bill of rights to a child on the child's request. The foster children's bill of rights must be printed in English and in a second language.

(f) The department shall promote the participation of foster children and former foster children in educating other foster children about the foster children's bill of rights.

(g) The department shall develop and implement a policy for receiving and handling reports that the rights of a child in foster care are not being observed. The department shall inform a child in foster care and, if appropriate, the child's parent, managing conservator, or guardian of the method for filing a report with the department under this subsection.

(h) This section does not create a cause of action.

**HB 414 - HOUSE REFUSES TO CONCUR  
IN SENATE AMENDMENTS  
CONFERENCE COMMITTEE APPOINTED**

Representative Aycock called up with senate amendments for consideration at this time,

**HB 414**, A bill to be entitled An Act relating to the conducting of licensing examinations by the State Board of Veterinary Medical Examiners.

Representative Aycock moved that the house not concur in the senate amendments and that a conference committee be requested to adjust the differences between the two houses on **HB 414**.

The motion prevailed.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 414**: Aycock, chair; Geren, S. Miller, D. Howard, and Landtroop.

**HB 534 - HOUSE CONCURS IN SENATE AMENDMENTS  
TEXT OF SENATE AMENDMENTS**

Representative Phillips called up with senate amendments for consideration at this time,

**HB 534**, A bill to be entitled An Act relating to the powers and duties of the Gunter Municipal Utility Districts Nos. 1 and 2.

Representative Phillips moved to concur in the senate amendments to **HB 534**.

The motion to concur in the senate amendments to **HB 534** prevailed by (Record 1375): 142 Yeas, 0 Nays, 2 Present, not voting.

Yeas — 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; Dutton; Eiland; Eissler; Elkins; Farias; Farrar; Fletcher; Flynn; Frullo; Gallego; Garza; 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; Lyne; Madden; Mallory Caraway; Margo; Marquez; Martinez; Martinez Fischer; Menendez; Miles; Miller, D.; Miller, S.; Morrison; Muñoz; Murphy; Naishtat; Nash; Oliveira; Orr; Otto; Parker; Patrick; Paxton; 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; Truitt; Turner; Veasey; Vo; Walle; Weber; White; Woolley; Workman; Zedler; Zerwas.

Present, not voting — Mr. Speaker; Geren(C).

Absent, Excused — Peña; Villarreal.

Absent — Dukes; Lucio; McClendon; Torres.

**Senate Amendment No. 1 (Senate Floor Amendment No. 1)**

Amend **HB 534** (senate committee printing) as follows:

(1) Before SECTION 1 of the bill, between the enacting clause and "SECTION 1." (page 1, between lines 11 and 12), insert the following:

ARTICLE \_\_\_\_ GUNTER MUNICIPAL UTILITY DISTRICTS NOS. 1 AND  
2

(2) Renumber the SECTIONS of ARTICLE 1 (page 1, line 12 through page 3, line 15) appropriately.

(3) In SECTION 5 of the bill (page 2, line 67), strike "Act" and substitute "article".

(4) In SECTION 5 of the bill (page 2, line 68), strike "Act" and substitute "article".

(5) In SECTION 5 of the bill (page 2, line 69), strike "Act" and substitute "article".

(6) In SECTION 5 of the bill (page 3, line 5), strike "Act" and substitute "article".

(7) In SECTION 5 of the bill (page 3, line 8), strike "Act" and substitute "article".

(8) In SECTION 5 of the bill (page 3, line 13), strike "Act" and substitute "article".

(9) In SECTION 6 of the bill (page 3, line 15), strike "Act" and substitute "article".

(10) After SECTION 6 of the bill (page 3, line 15), add the following appropriately numbered ARTICLES and SECTIONS:

ARTICLE \_\_\_\_ . MUSTANG RANCH MUNICIPAL MANAGEMENT  
DISTRICT NO. 1

SECTION \_\_\_\_ .01. Subtitle C, Title 4, Special District Local Laws Code, is amended by adding Chapter 3885 to read as follows:

CHAPTER 3885. MUSTANG RANCH MUNICIPAL MANAGEMENT  
DISTRICT NO. 1

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 3885.001. DEFINITIONS. In this chapter:

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

(2) "City" means the City of Celina, Texas.

(3) "County" means Collin County, Texas.

(4) "Development agreement" means the development agreement between the city and Celina 682 Partners, L.P., initially effective June 11, 2007.

(5) "Director" means a board member.

(6) "District" means the Mustang Ranch Municipal Management District No. 1.

Sec. 3885.002. CREATION AND NATURE OF DISTRICT. The district is a special district created under Sections 52 and 52-a, Article III, and Section 59, Article XVI, Texas Constitution.

Sec. 3885.003. PURPOSE; LEGISLATIVE FINDINGS. (a) The creation of the district is essential to accomplish the purposes of Sections 52 and 52-a, Article III, and Section 59, Article XVI, Texas Constitution, and other public purposes stated in this chapter. By creating the district and in authorizing the city and other political subdivisions to contract with the district, the legislature has established a program to accomplish the public purposes set out in Section 52-a, Article III, Texas Constitution.

(b) The creation of the district is necessary to promote, develop, encourage, and maintain employment, commerce, transportation, housing, tourism, recreation, the arts, entertainment, economic development, safety, and the public welfare in the district.



(c) This chapter and the creation of the district may not be interpreted to relieve the city or county from providing the level of services provided to the area in the district as of the effective date of the article of the Act enacting this chapter. The district is created to supplement and not to supplant the city and county services provided in the district.

Sec. 3885.004. FINDINGS OF BENEFIT AND PUBLIC PURPOSE. (a) The district is created to serve a public use and benefit.

(b) All land and other property included in the district will benefit from the improvements and services to be provided by the district under powers conferred by Sections 52 and 52-a, Article III, and Section 59, Article XVI, Texas Constitution, and other powers granted under this chapter.

(c) The district is created to accomplish the purposes of a municipal management district as provided by general law and Sections 52 and 52-a, Article III, and Section 59, Article XVI, Texas Constitution.

(d) The creation of the district is in the public interest and is essential to:

(1) further the public purposes of developing and diversifying the economy of the state;

(2) eliminate unemployment and underemployment; and

(3) develop or expand transportation and commerce.

(e) The district will:

(1) promote the health, safety, and general welfare of residents, employers, potential employees, employees, visitors, and consumers in the district, and of the public;

(2) provide needed funding for the district to preserve, maintain, and enhance the economic health and vitality of the district territory as a community and business center; and

(3) promote the health, safety, welfare, and enjoyment of the public by providing pedestrian ways and by landscaping and developing certain areas in the district, which are necessary for the restoration, preservation, and enhancement of scenic beauty.

(f) Pedestrian ways along or across a street, whether at grade or above or below the surface, and street lighting, street landscaping, parking, and street art objects are parts of and necessary components of a street and are considered to be a street or road improvement.

(g) The district will not act as the agent or instrumentality of any private interest even though the district will benefit many private interests as well as the public.

Sec. 3885.005. INITIAL DISTRICT TERRITORY. (a) The district is initially composed of the territory described by Section \_\_\_\_ .02 of the Act enacting this chapter.

(b) The boundaries and field notes contained in Section \_\_\_\_ .02 of the Act enacting this chapter form a closure. A mistake in the field notes or in copying the field notes in the legislative process does not affect the district's:

(1) organization, existence, or validity;

(2) right to contract;

(3) authority to borrow money or issue bonds or other obligations described by Section 3885.253 or to pay the principal and interest of the bonds or other obligations;

(4) right to impose or collect an assessment, or collect other revenue; or

(5) legality or operation.

Sec. 3885.006. ELIGIBILITY FOR INCLUSION IN SPECIAL ZONES.

(a) All or any part of the area of the district is eligible to be included in:

(1) a tax increment reinvestment zone created under Chapter 311, Tax Code;

(2) a tax abatement reinvestment zone created under Chapter 312, Tax Code;

(3) an enterprise zone created under Chapter 2303, Government Code;

or  
(4) an industrial district created under Chapter 42, Local Government Code.

(b) If the city creates a tax increment reinvestment zone described by Subsection (a), the city and the board of directors of the zone, by contract with the district, may grant money deposited in the tax increment fund to the district to be used by the district for:

(1) the purposes permitted for money granted to a corporation under Section 380.002(b), Local Government Code; and

(2) any other district purpose, including the right to pledge the money as security for any bonds or other obligations issued by the district under Section 3885.253.

(c) A tax increment reinvestment zone created by the city in the district is not subject to the limitations provided by Section 311.006, Tax Code.

Sec. 3885.007. APPLICABILITY OF MUNICIPAL MANAGEMENT DISTRICT LAW. Except as provided by this chapter, Chapter 375, Local Government Code, applies to the district.

Sec. 3885.008. LIBERAL CONSTRUCTION OF CHAPTER. This chapter shall be liberally construed in conformity with the findings and purposes stated in this chapter.

[Sections 3885.009-3885.050 reserved for expansion]

SUBCHAPTER B. BOARD OF DIRECTORS

Sec. 3885.051. GOVERNING BODY; TERMS. (a) The district is governed by a board of five directors composed of:

(1) two directors appointed by the governing body of the city;

(2) one director appointed by the governing body of the city who is an employee of the Prosper Independent School District;

(3) the city manager; and

(4) the city's chief financial officer.

(b) An appointed director serves a term of four years.

Sec. 3885.052. QUALIFICATIONS OF DIRECTOR. (a) Section 375.063, Local Government Code, does not apply to a director employed by the city or the Prosper Independent School District.

(b) Section 49.052, Water Code, does not apply to the district.

Sec. 3885.053. VACANCY. The governing body of the city shall appoint a director to fill a vacancy on the board for the remainder of the unexpired term.

Sec. 3885.054. DIRECTOR'S OATH OR AFFIRMATION. A director shall file the director's oath or affirmation of office with the district, and the district shall retain the oath or affirmation in the district records.

Sec. 3885.055. OFFICERS. The board shall elect from among the directors a chair, a vice chair, and a secretary.

Sec. 3885.056. COMPENSATION; EXPENSES. (a) The district may compensate each director in an amount not to exceed \$150 for each board meeting.

(b) A director is entitled to reimbursement for necessary and reasonable expenses incurred in carrying out the duties and responsibilities of a director.

Sec. 3885.057. LIABILITY INSURANCE. The district may obtain and pay for comprehensive general liability insurance coverage from a commercial insurance company or other source that protects and insures the directors against personal liability and from all claims for actions taken as directors or actions and activities taken by the district or by others acting on its behalf.

Sec. 3885.058. BOARD MEETINGS. The board shall hold meetings at a place accessible to the public.

Sec. 3885.059. INITIAL DIRECTORS. (a) The initial board consists of the following directors:

- (1) Rod Hogan, city manager;
- (2) Jay Toutounchian, city chief financial officer;
- (3) Jim Melino;
- (4) Drew Watkins, Prosper Independent School District employee; and
- (5) a director appointed by the governing body of the city.

(b) Of the initial directors, the term of the director appointed under Subsection (a)(3) expires May 31, 2014, and the terms of the directors appointed under Subsections (a)(4) and (5) expire May 31, 2012.

(c) This section expires September 1, 2014.

[Sections 3885.060-3885.100 reserved for expansion]

#### SUBCHAPTER C. POWERS AND DUTIES

Sec. 3885.101. GENERAL POWERS AND DUTIES. The district has the powers and duties necessary to accomplish the purposes for which the district is created.

Sec. 3885.102. IMPROVEMENT PROJECTS. The district may provide, or it may enter into contracts with a governmental or private entity to provide, the improvement projects described by Subchapter C-1 or activities in support of or incidental to those projects.

Sec. 3885.103. WATER DISTRICT POWERS. The district has the powers provided by the general laws relating to conservation and reclamation districts created under Section 59, Article XVI, Texas Constitution, including Chapters 49 and 54, Water Code.

Sec. 3885.104. ROAD DISTRICT POWERS. The district has the powers provided by the general laws relating to road districts and road utility districts created under Section 52(b), Article III, Texas Constitution, including Chapter 441, Transportation Code.

Sec. 3885.105. PUBLIC IMPROVEMENT DISTRICT POWERS. The district has the powers provided by Chapter 372, Local Government Code, to a municipality or county.

Sec. 3885.106. CONTRACT POWERS. The district may contract with a governmental or private entity, on terms determined by the board, to carry out a power or duty authorized by this chapter or to accomplish a purpose for which the district is created.

Sec. 3885.107. EMERGENCY SERVICES. (a) This section applies only to territory in the district:

- (1) that is in the extraterritorial jurisdiction of the city;
- (2) for which a plat has been filed; and
- (3) that includes 100 or more residents.

(b) To protect the public interest, the district shall provide or contract with a qualified party to provide emergency services, including law enforcement, fire, and ambulance services, in the territory described by Subsection (a).

Sec. 3885.108. AMENDMENT OF DEVELOPMENT AGREEMENT. The parties to the development agreement may amend the agreement as necessary to accomplish the purposes of the district.

Sec. 3885.109. ECONOMIC DEVELOPMENT. (a) The district may engage in activities that accomplish the economic development purposes of the district.

(b) The district may establish and provide for the administration of one or more programs to promote state or local economic development and to stimulate business and commercial activity in the district, including programs to:

- (1) make loans and grants of public money; and
- (2) provide district personnel and services.

(c) The district may create economic development programs and exercise the economic development powers that:

- (1) Chapter 380, Local Government Code, provides to a municipality;

and

- (2) Subchapter A, Chapter 1509, Government Code, provides to a municipality.

Sec. 3885.110. NO EMINENT DOMAIN POWER. The district may not exercise the power of eminent domain.

Sec. 3885.111. NO TOLL ROADS. The district may not construct, acquire, maintain, or operate a toll road.

[Sections 3885.112-3885.150 reserved for expansion]

#### SUBCHAPTER C-1. IMPROVEMENT PROJECTS AND SERVICES

Sec. 3885.151. IMPROVEMENT PROJECTS AND SERVICES. The district may provide, design, construct, acquire, improve, relocate, operate, maintain, or finance an improvement project or service using money available to the district, or contract with a governmental or private entity to provide, design,

construct, acquire, improve, relocate, operate, maintain, or finance an improvement project or service authorized under this chapter or Chapter 375, Local Government Code.

Sec. 3885.152. BOARD DETERMINATION REQUIRED. The district may not undertake an improvement project unless the board determines the project:

(1) is necessary to accomplish a public purpose of the district; and

(2) complies with the development agreement or the parties to the development agreement agree to the project, in writing.

Sec. 3885.153. LOCATION OF IMPROVEMENT PROJECT. An improvement project may be inside or outside the district.

Sec. 3885.154. CITY REQUIREMENTS. (a) An improvement project in the city must comply with any applicable requirements of the city, including codes and ordinances, that are consistent with the development agreement.

(b) The district may not provide, conduct, or authorize any improvement project on the city's streets, highways, rights-of-way, or easements without the consent of the governing body of the city.

Sec. 3885.155. IMPROVEMENT PROJECT AND SERVICE IN DEFINABLE AREA. The district may undertake an improvement project or service that confers a special benefit on a definable area in the district and levy and collect a special assessment on benefited property in the district in accordance with:

(1) Chapter 372, Local Government Code; or

(2) Chapter 375, Local Government Code.

Sec. 3885.156. CONTRACTS. A contract to design, construct, acquire, improve, relocate, operate, maintain, or finance an improvement project is considered a contract for a good or service under Subchapter I, Chapter 271, Local Government Code.

[Sections 3885.157-3885.200 reserved for expansion]

#### SUBCHAPTER D. DIVISION OF DISTRICT INTO MULTIPLE DISTRICTS

Sec. 3885.201. DIVISION OF DISTRICT; PREREQUISITE. The district may be divided into two or more new districts only if the district has no outstanding bonded debt.

Sec. 3885.202. LAW APPLICABLE TO NEW DISTRICT. This chapter applies to any new district created by division of the district, and a new district has all the powers and duties of the district.

Sec. 3885.203. DIVISION PROCEDURES. (a) The board, on its own motion or on receipt of a petition signed by an owner of real property in the district, may adopt an order proposing to divide the district.

(b) The board may not divide the district unless the division is approved by the governing body of the city by resolution. The resolution may set terms for the division under Subsection (c).

(c) If the board decides to divide the district, the board shall, subject to the city's resolution:

(1) set the terms of the division, including names for the new districts and a plan for the payment or performance of any outstanding district obligations;

(2) prepare a metes and bounds description for each proposed district;  
and

(3) appoint initial directors for each new district.

Sec. 3885.204. NOTICE AND RECORDING OF ORDER. Not later than the 30th day after the date of an order dividing the district, the district shall:

(1) file the order with the Texas Commission on Environmental Quality; and

(2) record the order in the real property records of the county in which the district is located.

Sec. 3885.205. CONTRACT AUTHORITY OF NEW DISTRICTS. (a) Except as provided by Subsection (b), the new districts may contract with each other for any matter the boards of the new districts consider appropriate.

(b) The new districts may not contract with each other for water and wastewater services.

[Sections 3885.206-3885.250 reserved for expansion]

SUBCHAPTER E. GENERAL FINANCIAL PROVISIONS; ASSESSMENTS

Sec. 3885.251. DISBURSEMENTS AND TRANSFERS OF MONEY. The board by resolution shall establish the number of directors' signatures and the procedure required for a disbursement or transfer of the district's money.

Sec. 3885.252. MONEY USED FOR IMPROVEMENTS OR SERVICES. The district may undertake and provide an improvement project or service authorized by this chapter using any money available to the district.

Sec. 3885.253. BORROWING MONEY; OBLIGATIONS. (a) The district may borrow money for a district purpose without holding an election by issuing bonds, notes, time warrants, or other obligations, or by entering into a contract or other agreement payable wholly or partly from an assessment, a contract payment, a grant, revenue from a zone created under Chapter 311 or 312, Tax Code, other district revenue, or a combination of these sources.

(b) An obligation described by Subsection (a):

(1) may bear interest at a rate determined by the board; and

(2) may include a term or condition as determined by the board.

Sec. 3885.254. DEVELOPMENT AGREEMENT. Before the district borrows money or issues an obligation under Section 3885.253, the city must provide written certification to the district that no party to the development agreement is in default as of the date the district is authorized to borrow the money or enter the obligation.

Sec. 3885.255. ASSESSMENTS. (a) Except as provided by Subsection (b), the district may impose an assessment on property in the district to pay for an obligation described by Section 3885.253 in the manner provided for:

(1) a district under Subchapters A, E, and F, Chapter 375, Local Government Code; or

(2) a municipality or county under Subchapter A, Chapter 372, Local Government Code.

(b) The district may not impose an assessment on a municipality, county, or other political subdivision.

Sec. 3885.256. NOTICE OF ASSESSMENTS. (a) The board shall annually file written notice with the secretary of the city that specifies the assessments the district will impose in the district's next fiscal year in sufficient clarity to describe the assessments for the operation and maintenance of the district and the assessments for the payment of debt service of obligations issued or incurred by the district.

(b) The board shall annually record in the deed records of the county a current assessment roll approved by the governing body of the city.

(c) The assessment roll must clearly state that the assessments in the assessment roll are in addition to the ad valorem taxes imposed by other taxing units that tax real property in the district.

(d) The district shall generate and implement a program to provide notification to a prospective purchaser of property in the district of the assessments that have been approved and are imposed by the district.

Sec. 3885.257. RESIDENTIAL PROPERTY NOT EXEMPT. Section 375.161, Local Government Code, does not apply to the district.

Sec. 3885.258. NO IMPACT FEES. The district may not impose an impact fee.

Sec. 3885.259. NO AD VALOREM TAX. The district may not impose an ad valorem tax.

[Sections 3885.260-3885.300 reserved for expansion]

#### SUBCHAPTER F. DISSOLUTION

Sec. 3885.301. DISSOLUTION BY CITY. (a) The city may dissolve the district by ordinance.

(b) The city may not dissolve the district until:

(1) the district's outstanding debt or contractual obligations have been repaid or discharged; or

(2) the city agrees to succeed to the rights and obligations of the district.

Sec. 3885.302. COLLECTION OF ASSESSMENTS AND OTHER REVENUE. (a) If the dissolved district has bonds or other obligations outstanding secured by and payable from assessments or other revenue, the city succeeds to the rights and obligations of the district regarding enforcement and collection of the assessments or other revenue.

(b) The city shall have and exercise all district powers to enforce and collect the assessments or other revenue to pay:

(1) the bonds or other obligations when due and payable according to their terms; or

(2) special revenue or assessment bonds or other obligations issued by the city to refund the outstanding bonds or obligations of the district.

Sec. 3885.303. ASSUMPTION OF ASSETS AND LIABILITIES. (a) After the city dissolves the district, the city assumes the obligations of the district, including any bonds or other debt payable from assessments or other district revenue.

(b) If the city dissolves the district, the board shall transfer ownership of all district property to the city.

SECTION \_\_\_\_ .02. The Mustang Ranch Municipal Management District No. 1 initially includes all the territory contained in the following area:

BEING a tract of land located in the COLEMAN WATSON SURVEY, ABSTRACT NO. 945, Collin County, Texas and being a part of a called 632.051 acre tract of land described in Deed to Twin Eagles, Ltd. recorded in County Clerk's Document Number 96-0013989, Deed Records, Collin County, Texas and being a part of a called 12.686 acre tract of land described in Deed to Robert S. Folsom, Trustee of the Twin Eagles Qualified Personal Residence Trust recorded in County Clerk's Document Number 95-0093145, Deed Records, Collin County, Texas and being a part of a called 50.00 acre tract of land described in Deed to Twin Eagles Ltd. recorded in Volume 4826, Page 2205, Deed Records, Collin County, Texas and being more particularly described as follows:

BEGINNING at a 5/8 inch iron rod found in the North line of Farm-To-Market Road 1461, a variable width right-of-way, at the Southwest corner of a called 19.93 acre tract of land described in Deed to Debra Folsom Jarma and Don M. Jarma recorded in Volume 3790, Page 267, Deed Records, Collin County, Texas, said point being the Southeast corner of said 50.00 acre tract;

THENCE South 89 degrees 41 minutes 18 seconds West, along the North line of said Farm-To-Market Road 1461, a distance of 750.84 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner, from which a 1/2 inch iron found bears South 76 degrees 31 minutes 14 seconds West, a distance of 2.08 feet;

THENCE South 89 degrees 16 minutes 18 seconds West, continuing long the North line of said Farm-To-Market Road 1461, a distance of 231.01 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set at the Southwest corner of Lot 30, Block C of TWELVE OAKS PHASE II, an Addition to Collin County, Texas according to the Plat thereof recorded in Cabinet P, Slide 486, Map Records, Collin County, Texas, from which a 1/2 inch iron rod with a yellow plastic cap stamped "EC&D RPLS 5439" bears South 06 degrees 27 minutes 24 seconds West, a distance of 0.32 feet;

THENCE North 00 degrees 54 minutes 55 seconds East, along the West line of said TWELVE OAKS PHASE II, a distance of 2,206.67 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set in the South line of said 632.051 acre tract at the Northeast corner of Lot 18, Block C of said TWELVE OAKS PHASE II, from which a 1/2 inch iron rod with a yellow plastic cap stamped "ROOME" bears South 50 degrees 24 minutes 07 seconds West, a distance of 0.44 feet;

THENCE South 89 degrees 37 minutes 23 seconds West, along the North line of said TWELVE OAKS PHASE II, a distance of 2,146.50 feet to a 3/8 inch iron rod found at the Southwest corner of said 632.051 acre tract;

THENCE North 00 degrees 07 minutes 29 seconds East, along the West line of said 632.051 acre tract, a distance of 1,637.32 feet to a point for corner in the approximate centerline of Wilson Creek and in the East line of Lot 5, Block A of



WILSON CREEK ESTATES, an Addition to Collin County, Texas according to the Plat thereof recorded in Cabinet J, Slide 605, Map Records, Collin County, Texas;

THENCE Northerly, along the East line of said WILSON CREEK ESTATES and the approximate centerline of said Wilson Creek, the following five (5) courses and distances; North 39 degrees 31 minutes 50 seconds East, a distance of 1.00 feet to a point for corner; North 14 degrees 09 minutes 54 seconds East, a distance of 67.24 feet to a point for corner; North 01 degrees 45 minutes 24 seconds West, a distance of 113.30 feet to a point for corner; North 08 degrees 43 minutes 39 seconds West, a distance of 137.99 feet to point for corner; North 02 degrees 14 minutes 13 seconds West, a distance of 113.37 feet to point at the Southeast corner of WILSON CREEK ESTATES 2, an Addition to Collin County, Texas according to the Plat thereof recorded in Cabinet K, Slide 192, Map Records, Collin County, Texas;

THENCE Northerly, along the East line of said WILSON CREEK ESTATES 2 and the approximate centerline of said Wilson Creek, the following eight (8) courses and distances; North 15 degrees 56 minutes 43 seconds East, a distance of 284.21 feet to point for corner; North 27 degrees 49 minutes 29 seconds East, a distance of 53.72 feet to a point for corner; North 13 degrees 03 minutes 17 seconds East, a distance of 109.39 feet to point for corner; North 10 degrees 02 minutes 27 seconds West, a distance of 235.76 feet to point for corner; North 04 degrees 58 minutes 53 seconds East, a distance of 56.26 feet to a point for corner; North 05 degrees 12 minutes 56 seconds West, a distance of 121.33 feet to point for corner; North 09 degrees 39 minutes 44 seconds West, a distance of 165.65 feet to point for corner; North 01 degrees 30 minutes 36 seconds East, a distance of 45.98 feet to a point for corner in the South line of a called 185.094 acre tract of land described as Tract One in Deed to J. Baxter Brinkman recorded in County Clerk's Document Number 92-0052450, Deed Records, Collin County, Texas, from which a 3/4 inch iron rod found bears South 89 degrees 38 minutes 46 seconds West; a distance of 39.22 feet;

THENCE North 89 degrees 38 minutes 46 seconds East, along the common line of said 185.094 acre tract and said 632.051 acre tract, a distance of 1,947.39 feet to a 1/2 inch iron rod found for corner;

THENCE North 00 degrees 14 minutes 27 seconds West, along the common line of said 185.094 acre tract and said 632.051 acre tract, a distance of 1,721.69 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set at the Southwest corner of a called 5.384 acre tract of land described as Tract Two in Deed to J. Baxter Brinkman recorded in County Clerk's Document Number 92-0052450, Deed Records, Collin County, Texas, from which a 1/2 inch iron rod found bears South 85 degrees 18 minutes 16 seconds West, a distance of 1.01 feet;

THENCE Easterly, along the common line of said 5.384 acre tract and said 632.051 acre tract, the following six (6) courses and distances: North 89 degrees 48 minutes 09 seconds East, a distance of 2,167.88 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "COLLIS RPLS 1764" found for corner; North 89 degrees 49 minutes 55 seconds East, a distance of 465.82 feet to a 1/2 inch

iron rod with a yellow plastic cap stamped "DAA" set for corner, from which a 1/2 inch iron rod found bears South 35 degrees 46 minutes 01 seconds West, a distance of 0.39 feet; North 89 degrees 47 minutes 20 seconds East, a distance of 305.39 feet to a 1/2 inch iron rod found for corner; North 89 degrees 51 minutes 51 seconds East, a distance of 816.05 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner; South 89 degrees 56 minutes 24 seconds East, a distance of 311.73 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner; North 89 degrees 42 minutes 42 seconds East, a distance of 330.59 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set at the Northwest corner of a called 1.0000 acre tract of land described in Deed to Danville Water Supply Corporation recorded in Volume 1992, Page 738, Deed Records, Collin County, Texas;

THENCE South 00 degrees 15 minutes 01 seconds East, along the common line of said 1.0000 acre tract and said 632.051 acre tract, a distance of 146.88 feet to a 1/2 inch iron rod found for corner;

THENCE North 89 degrees 44 minutes 59 seconds East, continuing along the common line of said 1.0000 acre tract and said 632.051 acre tract a distance of 299.37 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner in the West line of Farm-To-Market Road 2478, a variable width right-of-way, from which a 1/2 inch iron rod found bears South 89 degrees 44 minutes 59 seconds East, a distance of 0.33 feet;

THENCE Southerly, along the West line of said Farm-To-Market Road 2478, the following eight (8) courses and distances: South 04 degrees 07 minutes 13 seconds East, a distance of 113.40 feet to a wood right-of-way marker found for corner; South 03 degrees 46 minutes 13 seconds East, a distance of 525.05 feet to a 1/2 inch iron rod found for corner; South 01 degrees 56 minutes 26 seconds West, a distance of 100.50 feet to a nail found in wood right-of-way marker for corner; South 03 degrees 46 minutes 13 seconds East, a distance of 200.00 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner, from which a wood right-of-way marker found bears North 78 degrees 39 minutes 45 seconds West, a distance of 0.95 feet; South 09 degrees 28 minutes 51 seconds East, a distance of 100.50 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner; South 03 degrees 46 minutes 13 seconds East, a distance of 415.90 feet to a wood right-of-way marker found for corner at the beginning of a curve to the right having a central angle of 03 degrees 41 minutes 00 seconds, a radius of 5,679.58 feet and a chord bearing and distance of South 01 degrees 55 minutes 43 seconds East, 365.06 feet; Southerly, along said curve to the right, an arc distance of 365.12 feet to a wood right-of-way marker found for corner; South 00 degrees 05 minutes 13 seconds East, a distance of 2,278.15 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set at the Northeast corner of a called 1.000 acre tract of land described in Deed to Rhea's Mill Baptist Church recorded in Volume 1745, Page 773, Deed Records, Collin County, Texas, from which a 1/2 inch square pipe found bears South 89 degrees 48 minutes 02 seconds West, a distance of 1.07 feet;

THENCE South 89 degrees 48 minutes 02 seconds West, a distance of 291.81 feet to a 1/2 inch iron rod found at the Northwest corner of said Rhea's Mill Baptist Church tract;

THENCE South 00 degrees 20 minutes 34 seconds East, a distance of 150.52 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner in the North line of Lot 4 of ROLLING MEADOWS ESTATES, an Addition to Collin County, Texas according to the Plat thereof recorded in Cabinet P, Slide 486, Map Records, Collin County, Texas;

THENCE South 89 degrees 40 minutes 07 seconds West, along the common line of said ROLLING MEADOWS ESTATES and said 632.051 acre tract, passing at a distance of 1,509.89 feet a 1 inch iron rod found at the Northwest corner of said ROLLING MEADOWS ESTATES and the Northeast corner of a called 81.104 acre tract described in Deed to Debra F. Jarma and Don M. Jarma recorded in County Clerk's Document Number 95-0092267, Deed Records, Collin County, Texas and continuing along the common line of said 81.104 acre tract and said 632.051 acre tract, in all for a total distance of 2,209.89 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

THENCE South 00 degrees 52 minutes 41 seconds West, along the common line of said 81.104 acre tract and said 632.051 acre tract, a distance of 421.13 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

THENCE South 89 degrees 27 minutes 07 seconds West, continuing along the common line of said 81.104 acre tract and said 632,051 acre tract, a distance of 1,159.85 feet to a 1/2 inch iron square pipe found at the Northwest corner of said 81.104 acre tract and the Northeast corner of a called 11.252 acre tract of land described in Deed to Debra F. Jarma and Don M. Jarma recorded in Volume 4973, Page 3420, Deed Records, Collin County, Texas;

THENCE South 89 degrees 24 minutes 47 seconds West, along the common line of said 11.252 acre tract and said 632.051 acre tract, a distance of 281.99 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set at the Northwest corner of said 11.252 acre tract;

THENCE Southerly, along the West line of said 11.252 acre tract, the following six (6) courses and distances: South 00 degrees 55 minutes 08 seconds West, a distance of 420.00 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner; South 14 degrees 29 minutes 02 seconds East, a distance of 241.26 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner; South 00 degrees 55 minutes 08 seconds West, a distance of 320.00 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner; South 12 degrees 45 minutes 08 seconds West, a distance of 449.55 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner; South 19 degrees 10 minutes 32 seconds East, a distance of 436.57 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner; South 33 degrees 22 minutes 42 seconds East, a distance of 288.40 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner in the West line of said 19.93 acre tract;

THENCE South 01 degrees 56 minutes 48 seconds West, along the West line of said 19.93 acre tract, a distance of 139.88 feet to the POINT OF BEGINNING and containing 681.999 acres of land, more or less.

SECTION \_\_\_\_ .03. (a) The legal notice of the intention to introduce this article, setting forth the general substance of this article, has been published as provided by law, and the notice and a copy of this article have been furnished to all persons, agencies, officials, or entities to which they are required to be furnished under Section 59, Article XVI, Texas Constitution, and Chapter 313, Government Code.

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

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

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

SECTION \_\_\_\_ .04. This article takes effect September 1, 2011.

ARTICLE \_\_\_\_ . CASE CREEK MUNICIPAL UTILITY DISTRICT NO. 1 OF  
GRAYSON COUNTY

SECTION \_\_\_\_ .01. Subtitle F, Title 6, Special District Local Laws Code, is amended by adding Chapter 8249 to read as follows:

CHAPTER 8249. CASE CREEK MUNICIPAL UTILITY DISTRICT NO. 1 OF  
GRAYSON COUNTY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 8249.001. DEFINITIONS. In this chapter:

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

(2) "Commission" means the Texas Commission on Environmental  
Quality.

(3) "Director" means a board member.

(4) "District" means the Case Creek Municipal Utility District No. 1 of  
Grayson County.

Sec. 8249.002. NATURE OF DISTRICT. The district is a municipal utility  
district created under Section 59, Article XVI, Texas Constitution.

Sec. 8249.003. CONFIRMATION AND DIRECTORS' ELECTION  
REQUIRED. The temporary directors shall hold an election to confirm the  
creation of the district and to elect five permanent directors as provided by  
Section 49.102, Water Code.

Sec. 8249.004. FINDINGS OF PUBLIC PURPOSE AND BENEFIT. (a)  
The district is created to serve a public purpose and benefit.

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

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

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

Sec. 8249.005. INITIAL DISTRICT TERRITORY. (a) The district is initially composed of the territory described by Section \_\_\_\_\_.02 of the Act enacting this chapter.

(b) The boundaries and field notes contained in Section \_\_\_\_\_.02 of the Act enacting this chapter form a closure. A mistake made in the field notes or in copying the field notes in the legislative process does not affect the district's:

- (1) organization, existence, or validity;
- (2) right to issue any type of bond for the purposes for which the district is created or to pay the principal of and interest on a bond;
- (3) right to impose a tax; or
- (4) legality or operation.

[Sections 8249.006-8249.050 reserved for expansion]

#### SUBCHAPTER B. BOARD OF DIRECTORS

Sec. 8249.051. GOVERNING BODY; TERMS. (a) The district is governed by a board of five elected directors.

(b) Except as provided by Section 8249.052, directors serve staggered four-year terms.

Sec. 8249.052. TEMPORARY DIRECTORS. (a) On or after September 1, 2011, the owner or owners of a majority of the assessed value of the real property in the district may submit a petition to the commission requesting that the commission appoint as temporary directors the five persons named in the petition. The commission shall appoint as temporary directors the five persons named in the petition.

(b) Temporary directors serve until the earlier of:

- (1) the date permanent directors are elected under Section 8249.003; or
- (2) September 1, 2015.

(c) If permanent directors have not been elected under Section 8249.003 and the terms of the temporary directors have expired, successor temporary directors shall be appointed or reappointed as provided by Subsection (d) to serve terms that expire on the earlier of:

- (1) the date permanent directors are elected under Section 8249.003; or
- (2) the fourth anniversary of the date of the appointment or reappointment.

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

[Sections 8249.053-8249.100 reserved for expansion]

**SUBCHAPTER C. POWERS AND DUTIES**

Sec. 8249.101. GENERAL POWERS AND DUTIES. The district has the powers and duties necessary to accomplish the purposes for which the district is created.

Sec. 8249.102. MUNICIPAL UTILITY DISTRICT POWERS AND DUTIES. The district has the powers and duties provided by the general law of this state, including Chapters 49 and 54, Water Code, applicable to municipal utility districts created under Section 59, Article XVI, Texas Constitution.

Sec. 8249.103. AUTHORITY FOR ROAD PROJECTS. Under Section 52, Article III, Texas Constitution, the district may design, acquire, construct, finance, issue bonds for, improve, operate, maintain, and convey to this state, a county, or a municipality for operation and maintenance macadamized, graveled, or paved roads, or improvements, including storm drainage, in aid of those roads.

Sec. 8249.104. ROAD STANDARDS AND REQUIREMENTS. (a) A road project must meet all applicable construction standards, zoning and subdivision requirements, and regulations of each municipality in whose corporate limits or extraterritorial jurisdiction the road project is located.

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

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

Sec. 8249.105. COSTS OF ROAD PROJECT. The district shall bear the cost of maintaining, improving, operating, and repairing a road located in the district and authorized by Section 8249.103 in accordance with all applicable ordinances and rules of the political subdivision authorized to exercise jurisdiction over the road, regardless of whether the district conveys the road to this state, a county, or a municipality.

Sec. 8249.106. LIMITATION ON USE OF EMINENT DOMAIN. The district may not exercise the power of eminent domain outside the district to acquire a site or easement for:

- (1) a road project authorized by Section 8249.103; or
- (2) a recreational facility as defined by Section 49.462, Water Code.

Sec. 8249.107. LIMITATION ON WATER SUPPLY AND WASTEWATER SERVICES; USE OF DISTRICT FACILITIES BY TWO WAY SPECIAL UTILITY DISTRICT. (a) The district may not act as a retail provider of water or wastewater services in the district except as provided by this section.

(b) Except as provided by Subsection (c), the district shall convey or otherwise assign the district's water supply facilities and wastewater facilities to Two Way Special Utility District.

(c) If Two Way Special Utility District refuses or is unable to provide water supply or wastewater service to customers located in the district, the district may retain the necessary facilities and provide water supply or wastewater service, as applicable, to those customers.

[Sections 8249.108-8249.150 reserved for expansion]

SUBCHAPTER D. DIVISION OF DISTRICT INTO MULTIPLE DISTRICTS

Sec. 8249.151. DIVISION OF DISTRICT; PREREQUISITES. The district may be divided into two or more new districts only if the district:

- (1) has no outstanding bonded debt; and
- (2) is not imposing ad valorem taxes.

Sec. 8249.152. LAW APPLICABLE TO NEW DISTRICT. This chapter applies to any new district created by division of the district, and a new district has all the powers and duties of the district.

Sec. 8249.153. LIMITATION ON AREA OF NEW DISTRICT. A new district created by the division of the district may not, at the time the new district is created, contain any land outside the area described by Section \_\_\_\_\_.02 of the Act enacting this chapter.

Sec. 8249.154. DIVISION PROCEDURES. (a) The board, on its own motion or on receipt of a petition signed by the owner or owners of a majority of the assessed value of the real property in the district, may adopt an order dividing the district.

(b) The board may adopt an order dividing the district before or after the date the board holds an election under Section 8249.003 to confirm the district's creation.

(c) An order dividing the district must:

- (1) name each new district;
- (2) include the metes and bounds description of the territory of each new district;
- (3) appoint temporary directors for each new district; and
- (4) provide for the division of assets and liabilities between the new districts.

(d) On or before the 30th day after the date of adoption of an order dividing the district, the district shall file the order with the commission and record the order in the real property records of each county in which the district is located.

Sec. 8249.155. CONFIRMATION ELECTION FOR NEW DISTRICT. (a) A new district created by the division of the district shall hold a confirmation and directors' election as required by Section 8249.003.

(b) If the creation of the new district is confirmed, the new district shall provide the election date and results to the commission.

Sec. 8249.156. TAX OR BOND ELECTION. Before a new district created by the division of the district may impose a maintenance tax or issue bonds payable wholly or partly from ad valorem taxes, the new district must hold an election as required by this chapter to obtain voter approval.

[Sections 8249.157-8249.200 reserved for expansion]

SUBCHAPTER E. GENERAL FINANCIAL PROVISIONS

Sec. 8249.201. ELECTIONS REGARDING TAXES OR BONDS. (a) The district may issue, without an election, bonds and other obligations secured by:

- (1) revenue other than ad valorem taxes; or
- (2) contract payments described by Section 8249.203.

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

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

Sec. 8249.202. OPERATION AND MAINTENANCE TAX. (a) If authorized at an election held under Section 8249.201, the district may impose an operation and maintenance tax on taxable property in the district in accordance with Section 49.107, Water Code.

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

Sec. 8249.203. CONTRACT TAXES. (a) In accordance with Section 49.108, Water Code, the district may impose a tax other than an operation and maintenance tax and use the revenue derived from the tax to make payments under a contract after the provisions of the contract have been approved by a majority of the district voters voting at an election held for that purpose.

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

[Sections 8249.204-8249.250 reserved for expansion]

#### SUBCHAPTER F. BONDS AND OTHER OBLIGATIONS

Sec. 8249.251. AUTHORITY TO ISSUE BONDS AND OTHER OBLIGATIONS. The district may issue bonds or other obligations payable wholly or partly from ad valorem taxes, impact fees, revenue, contract payments, grants, or other district money, or any combination of those sources, to pay for any authorized district purpose.

Sec. 8249.252. TAXES FOR BONDS. At the time the district issues bonds payable wholly or partly from ad valorem taxes, the board shall provide for the annual imposition of a continuing direct ad valorem tax, without limit as to rate or amount, while all or part of the bonds are outstanding as required and in the manner provided by Sections 54.601 and 54.602, Water Code.

Sec. 8249.253. BONDS FOR ROAD PROJECTS. At the time of issuance, the total principal amount of bonds or other obligations issued or incurred to finance road projects and payable from ad valorem taxes may not exceed one-fourth of the assessed value of the real property in the district.

SECTION \_\_\_\_\_.02. The Case Creek Municipal Utility District No. 1 of Grayson County initially includes all the territory contained in the following area:  
TRACT 1

BEING A 734.245 ACRE TRACT OF LAND SITUATED IN THE PATSY KITCHENS SURVEY, ABSTRACT NO. 666, THE RACHEL HANNING SURVEY, ABSTRACT NO. 547, THE JAMES THOMAS SURVEY, ABSTRACT NO. 1235, THE B.B.B. & C.R.R. SURVEY, ABSTRACT NO. 167 AND THE H.L. NOLAND SURVEY, ABSTRACT NO. 1550, GRAYSON COUNTY, TEXAS AND BEING ALL OF THE FOLLOWING TRACTS OF LAND, THAT TRACT OF LAND DESCRIBED IN DEED TO BLUE ISLAND



PARTNERS, LTD., RECORDED IN VOLUME 4076, PAGE 824, THAT TRACT OF LAND DESCRIBED IN DEED TO THE NICID LIMITED PARTNERSHIP, RECORDED IN VOLUME 3734, PAGE 246 AND THAT TRACT OF LAND DESCRIBED IN DEED TO 202 BOREN ROAD PARTNERS, LLC, RECORDED IN VOLUME 4223, PAGE 252 OF THE OFFICIAL PUBLIC RECORDS, GRAYSON COUNTY, TEXAS. SAID 734.245 ACRE TRACT, WITH BEARING BASIS BEING GRID NORTH, TEXAS STATE PLANE COORDINATES, NORTH CENTRAL ZONE, NAD83 (CORS96, EPOCH DATE 2002), DETERMINED BY GPS OBSERVATIONS BETWEEN JULIAN DAY 253, 2004 AND JULIAN DAY 259, 2004, CALCULATED FROM COLLIN CORS ARP (PID-DF8982) AND DENTON CORS ARP (PID-DF8986),

BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A 60D NAIL FOUND FOR THE NORTHEAST CORNER OF SAID BLUE ISLAND TRACT, SAID NAIL BEING THE SOUTHEAST CORNER OF A TRACT AS DESCRIBED IN DEED TO JERRY TODD, FILED JUNE 27, 1977, AND RECORDED IN VOLUME 1392 PAGE 797 OF SAID DEED RECORDS, SAID NAIL ALSO BEING IN THE WEST LINE OF A TRACT AS DESCRIBED IN DEED TO JEFF JOHNSON AND WIFE CARYANN JOHNSON, FILED DECEMBER 05, 2002, AND RECORDED IN VOLUME 3363, PAGE 624 OF DEED RECORDS, GRAYSON COUNTY, TEXAS, SAID NAIL ALSO BEING AT THE INTERSECTION OF DAVIS ROAD AND MACOMB CEMETERY ROAD;

THENCE, SOUTH 00 DEGREES 41 MINUTES 37 SECONDS EAST, WITH THE EAST LINE OF SAID BLUE ISLAND TRACT, AND WITH THE WEST LINE OF SAID JOHNSON TRACT, AND ALONG SAID DAVIS ROAD, A DISTANCE OF 1738.20 FEET TO A 1/2 INCH STEEL SQUARE TUBING FOUND FOR AN ELL CORNER OF SAID BLUE ISLAND TRACT, AND THE SOUTHWEST CORNER OF SAID JOHNSON TRACT, AND AT A TURN IN SAID ROAD;

THENCE, NORTH 88 DEGREES 46 MINUTES 03 SECONDS EAST, WITH A NORTH LINE OF SAID BLUE ISLAND TRACT, AND WITH THE SOUTH LINE OF SAID JOHNSON TRACT, AND ALONG SAID DAVIS ROAD, A DISTANCE OF 620.31 FEET TO A 1/2 INCH STEEL REBAR FOUND FOR THE MOST EASTERLY NORTHEAST CORNER OF SAID BLUE ISLAND TRACT, SAID REBAR BEING ON THE SOUTH LINE OF SAID JOHNSON TRACT, SAID REBAR BEING THE NORTHWEST CORNER OF A TRACT AS DESCRIBED IN DEED TO THE NICID LIMITED PARTNERSHIP, FILED SEPTEMBER 22, 2004, AND RECORDED IN VOLUME 3734, PAGE 246, OFFICIAL PUBLIC RECORDS, GRAYSON COUNTY, TEXAS, SAID REBAR ALSO BEING IN SAID ROAD;

THENCE, NORTH 89 DEGREES 31 MINUTES 32 SECONDS EAST, WITH THE NORTH LINE OF SAID NICID TRACT, AND IN DAVIS ROAD, A DISTANCE OF 2414.87 FEET TO A 1/2 INCH STEEL SQUARE TUBING FOUND, SAID TUBING BEING THE NORTHEAST CORNER OF SAID

NICID TRACT, AND THE NORTHWEST CORNER OF A TRACT AS DESCRIBED IN DEED TO DIAMOND H RANCH, LP, AND RECORDED IN VOLUME 4052, PAGE 184, OFFICIAL PUBLIC RECORDS, GRAYSON COUNTY, TEXAS, SAID TUBING ALSO BEING IN DAVIS ROAD;

THENCE, SOUTH 00 DEGREES 26 MINUTES 08 SECONDS EAST, WITH THE EAST LINE OF SAID NICID TRACT, AND THE WEST LINE OF SAID DIAMOND H TRACT, AND PASSING AT 20.34 FEET A PIPE FENCE CORNER POST ON THE SOUTH SIDE OF SAID DAVIS ROAD, AND CONTINUING ON SAID COURSE FOR A TOTAL DISTANCE OF 2645.90 FEET TO A 5/8 INCH IRON ROD WITH YELLOW PLASTIC CAP STAMPED "CARTER BURGESS" SET FOR AN ELL CORNER OF SAID NICID AND DIAMOND H TRACTS;

THENCE, SOUTH 89 DEGREES 24 MINUTES 16 SECONDS WEST, WITH THE SOUTH LINE OF SAID NICID TRACT, A DISTANCE OF 989.63 FEET TO A 5/8 INCH IRON ROD WITH YELLOW PLASTIC CAP STAMPED "CARTER BURGESS" SET FOR AN ELL CORNER OF SAID NICID AND DIAMOND H TRACT;

THENCE, SOUTH 00 DEGREES 31 MINUTES 07 SECONDS EAST, A DISTANCE OF 614.83 FEET TO A 1/2 INCH STEEL REBAR FOUND FOR A SOUTHEAST CORNER OF SAID NICID AND AN ELL CORNER OF SAID DIAMOND H TRACT;

THENCE, SOUTH 89 DEGREES 38 MINUTES 58 SECONDS WEST, WITH THE APPARENT SOUTH LINE OF SAID NICID TRACT, A DISTANCE OF 2189.66 FEET TO A POINT CORNER;

THENCE, SOUTH 00 DEGREE 58 MINUTES 28 SECONDS WEST, PASSING AT A DISTANCE OF 14.49 FEET A 1/2" IRON ROD FOUND AT THE NORTHEAST CORNER OF SAID 202 BOREN ROAD PARTNERS TRACT AND THE NORTHWEST CORNER OF THAT TRACT OF LAND DESCRIBED IN DEED TO DEWEY MCGILL, JR., RECORDED IN VOLUME 2426, PAGE 836, OFFICIAL PUBLIC RECORDS, GRAYSON COUNTY, TEXAS, AND CONTINUING WITH THE EAST LINE OF SAID 202 BOREN ROAD PARTNERS TRACT, THE WEST LINE OF SAID MCGILL TRACT, CROSSING THE SOUTH LINE OF SAID NOLAND SURVEY AND THE NORTH LINE OF SAID B.B.B. & C.R.R. SURVEY, AND CONTINUING FOR A TOTAL DISTANCE OF 2317.78 FEET TO A 1/2 INCH IRON ROD FOUND ON THE NORTH LINE OF THAT TRACT OF LAND DESCRIBED IN DEED TO DIANE S. MORGAN, RECORDED IN VOLUME 3368, PAGE 355, OFFICIAL PUBLIC RECORDS, GRAYSON COUNTY, TEXAS;

THENCE, NORTH 88 DEGREE 25 MINUTES 06 SECONDS WEST, WITH THE NORTH LINES OF SAID DIANE MORGAN TRACT, THE NORTH LINE OF A 20.000 ACRE TRACT OF LAND CONVEYED TO GLEN D. MORGAN BY DEED DATED APRIL 11, 2000, RECORDED IN VOLUME 2914, PAGE 61, OFFICIAL PUBLIC RECORDS, GRAYSON COUNTY, TEXAS AND THE SOUTH LINE OF SAID 202 BOREN ROAD PARTNERS TRACT, FOR A DISTANCE OF 1627.84 FEET TO A 60D NAIL FOUND AT

THE SOUTHWEST CORNER OF BOTH SAID B.B.B. & C.R.R. SURVEY AND THE SOUTHEAST CORNER OF SAID THOMAS SURVEY, FOR THE MOST SOUTHERLY SOUTHWEST CORNER OF SAID 202 BOREN ROAD PARTNERS TRACT AND THE SOUTHEAST CORNER OF THAT TRACT OF LAND DESCRIBED IN DEED TO TOM W. PINGLETON, DATED AUGUST 15, 2006, RECORDED IN VOLUME 4105, PAGE 811, OFFICIAL PUBLIC RECORDS, GRAYSON COUNTY, TEXAS,

THENCE, NORTH 01 DEGREES 40 MINUTES 41 SECONDS EAST, WITH THE WEST LINES OF BOTH SAID B.B.B. & C.R.R. SURVEY, AND SAID 202 BOREN ROAD PARTNERS TRACT AND THE EAST LINES OF THE FOLLOWING, SAID THOMAS SURVEY, TRACT 1 DESCRIBED IN DEED TO JAMES DOUGLAS SCHULTZ, RECORDED IN VOLUME 1646, PAGE 617 DEED RECORDS, GRAYSON COUNTY, TEXAS, SAID PINGLETON TRACT, THAT TRACT OF LAND DESCRIBED IN DEED TO GINGER BLALOCK, DATED AUGUST 28, 1998, RECORDED IN VOLUME 2695, PAGE 380, OFFICIAL PUBLIC RECORDS, GRAYSON COUNTY, TEXAS, THAT TRACT OF LAND DESCRIBED IN DEED TO JAMES C. BLAKE, ET UX, DATED OCTOBER 9, 1998, RECORDED IN VOLUME 2709, PAGE 366, OFFICIAL PUBLIC RECORDS, GRAYSON COUNTY, TEXAS, THAT TRACT OF LAND DESCRIBED IN DEED TO MICHAEL W. WALKER, AND MONIQUE R. WALKER, DATED DECEMBER 22, 2004, RECORDED IN VOLUME 3790, PAGE 348, OFFICIAL PUBLIC RECORDS, GRAYSON COUNTY, TEXAS AND THAT TRACT OF LAND DESCRIBED IN DEED TO NANCY SUSAN PARKER, DATED DECEMBER 1, 1993, RECORDED IN VOLUME 2306, PAGE 433, OFFICIAL PUBLIC RECORDS, GRAYSON COUNTY, TEXAS FOR A DISTANCE OF 2132.79 FEET TO A 1/2 INCH IRON ROD FOUND AT THE NORTHEAST CORNER OF SAID PARKER TRACT AT AN ELL CORNER OF SAID 202 BOREN ROAD PARTNERS TRACT;

THENCE, NORTH 86 DEGRESS 41 MINUTES 55 SECONDS WEST, WITH THE NORTH LINE OF SAID PARKER TRACT, AND A SOUTH LINE OF SAID 202 BOREN ROAD PARTNERS TRACT, A DISTANCE OF 1332.93 FEET TO A PK NAIL FOUND FOR THE NORTHWEST CORNER OF SAID PARKER TRACT IN THE EAST LINE OF THAT TRACT OF LAND DESCRIBED IN DEED TO MYRNA RHEUDASIL, INDIVIDUALLY BY DEED DATED APRIL 21, 1992, RECORDED IN VOLUME 2208, PAGE 492, OFFICIAL PUBLIC RECORDS, GRAYSON COUNTY, TEXAS IN THE CENTER OF A PUBLIC ROAD KNOWN AS BOREN ROAD;

THENCE NORTH 01 DEGREES, 59 MINUTES 16 SECONDS EAST, WITH THE CENTER OF SAID BOREN ROAD, THE WEST LINE OF SAID 202 BOREN ROAD PARTNERS TRACT, THE EAST LINE OF SAID RHEUDASIL TRACT FOR A DISTANCE OF 411.44 FEET TO A 1/2 INCH IRON ROD FOUND AT THE NORTHEAST CORNER OF SAID RHEUDASIL TRACT, ON THE NORTH LINE OF SAID THOMAS SURVEY, THE SOUTH LINE OF BOTH SAID RACHEL HANNING SURVEY, AND SAID 202 BOREN ROAD PARTNERS TRACT;

THENCE, NORTH 88 DEGREES 28 MINUTES 34 SECONDS WEST, WITH THE NORTH LINE OF BOTH SAID THOMAS SURVEY, AND SAID RHEUDASIL TRACT, THE SOUTH LINE OF BOTH SAID RACHEL HANNING SURVEY, AND SAID 202 BOREN ROAD PARTNERS TRACT, CONTINUING ALONG SAID BOREN ROAD, FOR A DISTANCE OF 1333.90 FEET TO A 5/8 INCH IRON ROD WITH YELLOW PLASTIC CAP STAMPED "CARTER BURGESS" SET AT THE SOUTHWEST CORNER OF BOTH SAID RACHEL HANNING SURVEY, AND SAID 202 BOREN ROAD PARTNERS TRACT, THE SOUTHEAST CORNER OF THE JAMES M. THOMAS SURVEY, ABSTRACT NO. 1212, THE MOST SOUTHERLY SOUTHEAST CORNER OF THAT TRACT OF LAND DESCRIBED IN DEED TO CALVIN BLEDSOE, RECORDED IN VOLUME 2546, PAGE 224, OFFICIAL PUBLIC RECORDS, GRAYSON COUNTY, TEXAS;

THENCE, NORTH 01 DEGREE 36 MINUTES 58 SECONDS EAST, WITH THE WEST LINE OF BOTH SAID RACHEL HANNING SURVEY, AND SAID 202 BOREN ROAD PARTNERS TRACT, THE EAST LINE OF SAID JAMES THOMAS SURVEY, ABST. NO. 1212, AND SAID BLEDSOE TRACT, FOR A DISTANCE OF 1595.82 FEET TO A 1/2 INCH IRON ROD CAPPED "COX 4577" FOUND AT THE NORTHWEST CORNER OF SAID 202 BOREN ROAD PARTNERS TRACT, THE MOST WESTERLY SOUTHWEST CORNER OF A 300.43 ACRE TRACT OF LAND DESCRIBED IN DEED TO BLUE ISLAND PARTNERS, LTD. BY DEED DATED JUNE 28, 2006, RECORDED IN VOLUME 4076, PAGE 824, OFFICIAL PUBLIC RECORDS, GRAYSON COUNTY, TEXAS;

THENCE, NORTH 01 DEGREES 26 MINUTES 55 SECONDS EAST, WITH THE WEST LINE OF SAID BLUE ISLAND TRACT, AND WITH THE EAST LINE OF SAID BLEDSOE TRACT, A DISTANCE OF 1631.30 FEET TO A 1/2 INCH IRON ROD CAPPED "COX 4577" FOUND FOR THE WESTERN MOST NORTHWEST CORNER OF BLUE ISLAND TRACT, AND THE NORTHEAST CORNER OF SAID BLEDSOE TRACT;

THENCE, NORTH 89 DEGREES 27 MINUTES 39 SECONDS EAST, WITH A NORTH LINE OF SAID BLUE ISLAND TRACT, A DISTANCE OF 1676.04 FEET TO A 5/8 INCH IRON ROD WITH YELLOW PLASTIC CAP STAMPED "CARTER BURGESS" SET FOR AN ELL CORNER OF SAID BLUE ISLAND TRACT, AND THE SOUTHEAST CORNER OF A TRACT AS DESCRIBED IN DEED TO NANCY SUSAN PARKER, FILED SEPTEMBER 15, 1993, AND RECORDED IN VOLUME 2306 PAGE 433, OFFICIAL PUBLIC RECORDS, GRAYSON COUNTY, TEXAS;

THENCE, NORTH 00 DEGREES 18 MINUTES 02 SECONDS WEST, WITH THE WEST LINE OF SAID BLUE ISLAND TRACT, AND WITH THE EAST LINE OF SAID PARKER TRACT, A DISTANCE OF 1411.57 FEET TO A 5/8 INCH IRON ROD WITH YELLOW PLASTIC CAP STAMPED "CARTER BURGESS" SET FOR THE NORTHWEST CORNER OF SAID BLUE ISLAND TRACT, SAID IRON ROD BEING THE NORTHEAST CORNER OF

SAID PARKER TRACT, SAID IRON ROD ALSO BEING ON THE SOUTH LINE OF SAID BLEDSOE TRACT, SAID IRON ROD BEING IN SAID MACOMB CEMETERY ROAD;

THENCE, SOUTH 88 DEGREES 57 MINUTES 45 SECONDS EAST, WITH THE NORTH LINE OF SAID BLUE ISLAND TRACT, ALONG SAID ROAD, PASSING THE SOUTHEAST CORNER OF SAID BLEDSOE TRACT, AND THE SOUTHWEST CORNER OF SAID TODD TRACT, AND CONTINUING ALONG SAID COURSE, A DISTANCE OF 2597.18 FEET TO THE POINT OF BEGINNING AND CONTAINING 734.245 ACRES OF LAND, MORE OR LESS.

TRACT 2

BEING A 558.197 ACRE TRACT OF LAND SITUATED IN THE BURK TRAMMEL SURVEY, ABSTRACT NUMBER 1229, GRAYSON COUNTY, TEXAS, SAID 558.132 ACRE TRACT BEING COMPRISED BY THE TOTAL OF 6 TRACTS OF LAND RECORDED IN THE OFFICIAL PUBLIC RECORDS, GRAYSON COUNTY, TEXAS, A TRACT OF LAND DESCRIBED IN A DEED TO W.P. PELPHREY AND C.F. PELPHREY AS RECORDED IN VOLUME 205, PAGE 591, DEED RECORDS, GRAYSON COUNTY, TEXAS, A TRACT OF LAND DESCRIBED IN A DEED TO W.P. PELPHREY AS RECORDED IN VOLUME 234, PAGE 113, DEED RECORDS, GRAYSON COUNTY, TEXAS, A TRACT OF LAND DESCRIBED IN A DEED TO A.T. PELPHREY AS RECORDED IN VOLUME 129, PAGE 171, DEED RECORDS, GRAYSON COUNTY, TEXAS, A TRACT OF LAND DESCRIBED IN A DEED TO JACK M. DECORDOVA AND WIFE FRANCES M. DECORDOVA AS RECORDED IN VOLUME 1280, PAGE 29, DEED RECORDS, GRAYSON COUNTY, TEXAS, A TRACT OF LAND DESCRIBED IN A DEED TO C.F. PELPHREY AS RECORDED IN VOLUME 550, PAGE 399, DEED RECORDS, GRAYSON COUNTY, TEXAS, AND A TRACT OF LAND DESCRIBED IN A DEED TO W.P. PELPHREY AS RECORDED IN VOLUME 234, PAGE 113, DEED RECORDS, GRAYSON COUNTY, TEXAS, SAID 558.197 ACRE TRACT WITH BEARING BASIS BEING GRID NORTH, TEXAS STATE PLANE COORDINATES, NORTH CENTRAL ZONE, NAD83 (CORS96, EPOCH DATE 2002), DETERMINED BY GPS OBSERVATIONS BETWEEN JULIAN DAY 253, 2004 AND JULIAN DAY 259, 2004, CALCULATED FROM COLLIN CORS ARP (PID-DF8982) AND DENTON CORS ARP (PID-DF8986), BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A P.K. NAIL SET FOR THE NORTHWEST CORNER OF SAID W.P. PELPHREY AND C.F. PELPHREY TRACT, SAME POINT BEING IN THE APPROXIMATE INTERSECTION OF SOUTHMAYD ROAD (AN APPARENT PERSCRIPTIVE RIGHT OF WAY) WITH MCGEEHE ROAD (AN APPARENT PERSCRIPTIVE RIGHT OF WAY);

THENCE, SOUTH 88 DEGREES 22 MINUTES 04 SECONDS EAST, IN SAID SOUTHMAYD ROAD, A DISTANCE OF 2563.72 FEET TO A P.K. NAIL FOUND FOR THE NORTHWEST CORNER OF THE AFOREMENTIONED W.P. PELPHREY TRACT DESCRIBED IN VOLUME 234 AT PAGE 113, DEED RECORDS, GRAYSON COUNTY, TEXAS FOR AN ANGLE POINT; THENCE, SOUTH 88 DEGREES 29 MINUTES 07 SECONDS EAST, CONTINUING IN SAID ROAD, FOR A DISTANCE OF 1926.86 FEET TO A P.K. NAIL SET FOR THE NORTHEAST CORNER OF THE HEREIN DESCRIBED TRACT AND THE NORTHWEST CORNER OF THAT CERTAIN TRACT OF LAND DESCRIBED IN A DEED TO GLEN D. MORGAN AS RECORDED IN VOLUME 2752, PAGE 321, OFFICIAL PUBLIC RECORDS, GRAYSON COUNTY, TEXAS

THENCE, SOUTH 00 DEGREES 58 MINUTES 51 SECONDS WEST, WITH THE WEST LINE OF SAID MORGAN TRACT AND ALONG A FENCE LINE AT A DISTANCE 3314.73 PASSING A 1/2" IRON ROD FOR THE SOUTHWEST CORNER OF SAID MORGAN TRACT, THE SAME BEING THE NORTHWEST CORNER OF THAT CERTAIN TRACT OF LAND DESCRIBED IN A DEED TO LOY RODERICK MAYFIELD AS RECORDED IN VOLUME 2889, PAGE 672 OF THE OFFICIAL PUBLIC RECORDS, GRAYSON COUNTY, TEXAS AND WITH THE WEST LINE OF SAID MAYFIELD TRACT FOR A TOTAL DISTANCE 5469.03 FEET TO A 5/8" IRON ROD WITH YELLOW PLASTIC CAP STAMPED "CARTER BURGESS" SET FOR CORNER THE SAME BEING THE SOUTHEAST CORNER OF THE AFOREMENTIONED JACK M. DECORDOVA TRACT;

THENCE, NORTH 88 DEGREES 58 MINUTES 51 SECONDS WEST, WITH THE SOUTH LINE OF SAID JACK M. DECORDOVA TRACT, IN BATES ROAD (AN APPARENT PERSCRIPTIVE RIGHT OF WAY) FOR A DISTANCE OF 2596.11 FEET TO A 1/2" CAPPED IRON ROD FOUND STAMPED "SARTIN" FOR CORNER IN THE EAST LINE OF THAT CERTAIN TRACT OF LAND DESCRIBED IN A DEED TO CHALLENGE MOTOR SPORTS AS RECORDED IN VOLUME 4224, PAGE 225, OFFICIAL PUBLIC RECORDS, GRAYSON COUNTY, TEXAS;

THENCE, NORTH 00 DEGREES 40 MINUTES 14 SECONDS WEST, AT TIMES WITHIN SAID BATES ROAD, A DISTANCE OF 248.68 FEET A 5/8" IRON ROD WITH YELLOW PLASTIC CAP STAMPED "CARTER BURGESS" SET FOR CORNER AND BEING THE SOUTHEAST CORNER OF THE AFOREMENTIONED C.F. PELPHREY TRACT;

THENCE, NORTH 88 DEGREES 23 MINUTES 47 SECONDS WEST, WITH THE SOUTH LINE OF SAID C.F. PHELPHREY TRACT AND GENERALLY ALONG SAID BATES ROAD A DISTANCE OF 1944.93 FEET TO A P.K. NAIL SET FOR CORNER AT THE INTERSECTION OF SAID BATES ROAD WITH RICE ROAD (AN APPARENT PERSCRIPTIVE RIGHT OF WAY) THE SAME BEING THE SOUTHWEST CORNER OF SAID C.F. PELPHREY TRACT;

THENCE NORTH 01 DEGREES 36 MINUTES 42 SECONDS EAST, WITH THE WEST LINE OF SAID PELPHREY TRACTS, AND GENERALLY ALONG SAID RICE AND SOUTHMAYD ROADS, A DISTANCE OF 5245.00 FEET TO THE POINT OF BEGINNING, CONTAINING 558.197 ACRES OR OF LAND MORE OR LESS.

TRACT 3

BEING A 185.677 ACRE TRACT OF LAND SITUATED IN THE SAMUEL GILMAN SURVEY, ABSTRACT NO. 456, GRAYSON COUNTY, TEXAS, AND BEING ALL OF A 185.677 ACRE TRACT OF LAND, CONVEYED TO WALTON TEXAS, L.P. BY DEED RECORDED IN VOLUME 4782, PAGE 760, OFFICIAL PUBLIC RECORDS, GRAYSON COUNTY, TEXAS, SAID 185.677 ACRE TRACT, WITH BEARING BASIS BEING GRID NORTH, TEXAS STATE PLANE COORDINATES, NORTH CENTRAL ZONE, NAD83 (CORS96, EPOCH DATE 2002), DETERMINED BY GPS OBSERVATIONS BETWEEN JULIAN DAY 253, 2004 AND JULIAN DAY 259, 2004, CALCULATED FROM COLLIN CORS ARP (PID-DF8982) AND DENTON CORS ARP (PID-DF8986), BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A 1/2" IRON ROD FOUND AT THE MOST WESTERLY SOUTHWEST CORNER OF SAID 185.677 ACRE TRACT, SAID POINT BEING ON THE EAST RIGHT-OF-WAY LINE OF F.M. HIGHWAY NO. 902 (A 100' RIGHT OF WAY);

THENCE, NORTH 00 DEGREES 36 MINUTES 33 SECONDS WEST, ALONG SAID EAST RIGHT OF WAY LINE, A DISTANCE OF 996.90 FEET TO A 60D NAIL FOUND FOR CORNER NEAR THE CENTER LINE OF A PUBLIC ROAD;

THENCE, NORTH 88 DEGREES 59 MINUTES 45 SECONDS EAST, WITH THE GENERAL DIRECTION OF SAID CENTERLINE OF SAID PUBLIC ROAD, A DISTANCE OF 839.41 FEET TO A 1/2" IRON ROD WITH YELLOW PLASTIC CAP STAMPED "RPLS 5433" FOUND FOR AN ELL CORNER OF SAID 185.677 ACRE TRACT, SAID POINT BEING ON THE WEST LINE OF A 51.465 ACRE TRACT OF LAND CONVEYED BY DEED TO CHALLENGE MOTOR SPORTS, L.P., RECORDED IN VOLUME 4224, PAGE 225, OFFICIAL PUBLIC RECORDS, GRAYSON COUNTY, TEXAS;

THENCE, SOUTH 01 DEGREES 09 MINUTES 35 SECONDS WEST, ALONG SAID WEST LINE, A DISTANCE OF 18.26 FEET TO A 1/2" IRON ROD FOUND FOR AN ELL CORNER OF SAID 185.677 ACRE TRACT AND THE COMMON SOUTHWEST CORNER OF SAID 51.465 ACRE TRACT;

THENCE, NORTH 87 DEGREES 42 MINUTES 40 SECONDS EAST, ALONG THE NORTH LINE OF SAID 185.677 ACRE TRACT AND THE SOUTH LINE OF SAID 51.465 ACRE TRACT, A DISTANCE OF 1953.64 FEET TO A 1/2" IRON ROD FOUND FOR CORNER;

THENCE, NORTH 88 DEGREES 42 MINUTES 58 SECONDS EAST, CONTINUING ALONG SAID NORTH LINE OF 185.677 ACRE TRACT, A DISTANCE OF 664.80 FEET TO A 1/2" IRON ROD WITH YELLOW PLASTIC CAP STAMPED "RPLS 5433" FOUND FOR THE NORTHEAST

CORNER OF SAID 185.677 ACRE TRACT, SAID POINT BEING THE ELL CORNER OF A 10.001 ACRE TRACT CONVEYED TO JESSE WHITTINGTON, RECORDED IN VOLUME 4272, PAGE 659, OFFICIAL PUBLIC RECORDS, GRAYSON COUNTY, TEXAS;  
THENCE, ALONG THE EAST LINE OF SAID 185.677 ACRE TRACT, THE FOLLOWING COURSES AND DISTANCES

SOUTH 00 DEGREES 27 MINUTES 48 SECONDS EAST, ALONG THE WEST LINE OF SAID 10.001 ACRE TRACT, A DISTANCE OF 413.59 FEET TO A 1/2" IRON ROD WITH YELLOW PLASTIC CAP STAMPED "RPLS 5433" FOUND FOR CORNER, SAID POINT BEING THE SOUTHWEST CORNER OF SAID 10.001 ACRE TRACT AND THE NORTHWEST CORNER OF A 136.85 ACRE TRACT OF LAND CONVEYED BY DEED TO SUTTER INVESTMENTS, L.P., RECORDED IN VOLUME 4224, PAGE 231, OFFICIAL PUBLIC RECORDS, GRAYSON COUNTY, TEXAS;

SOUTH 00 DEGREES 46 MINUTES 35 SECONDS EAST, ALONG THE WEST LINE OF SAID 136.85 ACRE TRACT, A DISTANCE OF 2334.85 FEET TO A 1" IRON PIPE FOUND FOR CORNER, SAID POINT BEING THE SOUTHWEST CORNER OF SAID 136.85 ACRE TRACT AND THE NORTHWEST CORNER OF 15.00 ACRE TRACT OF LAND CONVEYED BY DEED TO BILLY LYNN, RECORDED IN VOLUME 1462, PAGE 390, DEED RECORDS, GRAYSON COUNTY, TEXAS;

SOUTH 00 DEGREES 04 MINUTES 17 SECONDS WEST, ALONG THE WEST LINE OF SAID 15.00 ACRE TRACT, A DISTANCE OF 510.69 FEET TO A 1/2" SQUARE IRON ROD FOUND FOR CORNER, SAID POINT BEING THE SOUTHWEST CORNER OF SAID 15.00 ACRE TRACT AND THE NORTHWEST CORNER OF A 16.866 ACRE TRACT OF LAND CONVEYED BY DEED TO JAMES D. HOOVER, RECORDED IN VOLUME 3245, PAGE 578, OFFICIAL PUBLIC RECORDS, GRAYSON COUNTY, TEXAS, SAID POINT ALSO LYING NEAR THE CENTER OF A PUBLIC ROAD KNOWN AS COBLER ROAD;

SOUTH 00 DEGREES 23 MINUTES 38 SECONDS EAST, ALONG THE WEST LINE OF SAID 16.866 ACRE TRACT AND WITH THE GENERAL DIRECTION OF THE CENTERLINE OF COBLER ROAD, A DISTANCE OF 407.48 FEET TO A 1/2" IRON ROD WITH YELLOW PLASTIC CAP STAMPED "RPLS 5433" FOUND FOR THE SOUTHWEST CORNER OF SAID 185.677 ACRE TRACT, SAID POINT BEING AT THE INTERSECTION OF SAID COBLER ROAD AND A PUBLIC ROAD KNOWN AS MINNIS ROAD;

THENCE, SOUTH 89 DEGREES 02 MINUTES 11 SECONDS WEST, ALONG THE SOUTH LINE OF SAID 185.677 ACRE TRACT AND WITH THE GENERAL DIRECTION OF SAID COBLER ROAD, A DISTANCE OF 1748.05 FEET TO A 1/2" IRON ROD FOUND FOR CORNER; THE SOUTHWEST CORNER OF SAID 185.677 ACRE TRACT AND THE



SOUTHEAST CORNER OF A 33.04 ACRE TRACT OF LAND CONVEYED BY DEED TO THOMAS W. BYROM, SR., RECORDED IN 3117, PAGE 40, OFFICIAL PUBLIC RECORDS, GRAYSON COUNTY, TEXAS;  
THENCE, NORTH 00 DEGREES 49 MINUTES 46 SECONDS WEST, ALONG THE COMMON WEST LINE OF SAID 185.677 ACRE TRACT AND THE EAST LINE OF SAID 33.04 ACRE TRACT, A DISTANCE OF 2562.49 FEET TO A 1/2" IRON ROD FOUND FOR THE NORTHEAST CORNER OF SAID 33.04 ACRE TRACT AND THE SOUTHEAST CORNER OF A 12.352 ACRE TRACT OF LAND CONVEYED BY DEED TO THE MILDRED L. BROWN REVOCABLE TRUST, RECORDED IN VOLUME 3194, PAGE 344, OFFICIAL PUBLIC RECORDS, GRAYSON COUNTY, TEXAS;  
THENCE, NORTH 01 DEGREES 43 MINUTES 38 SECONDS WEST, CONTINUING ALONG THE WEST LINE OF SAID 185.677 ACRE TRACT AND THE COMMON EAST LINE OF SAID 12.352 ACRE TRACT, A DISTANCE OF 103.58 FEET TO A 1/2" IRON ROD FOUND FOR AND INTERIOR ELL CORNER OF SAID 185.677 ACRE TRACT AND THE NORTHEAST CORNER OF SAID 12.352 ACRE TRACT;  
THENCE, SOUTH 88 DEGREES 06 MINUTES 00 SECONDS WEST, ALONG THE COMMON SOUTH LINE OF SAID 185.677 ACRE TRACT AND THE NORTH LINE OF SAID 12.352 ACRE TRACT, A DISTANCE OF 1695.09 FEET; TO THE POINT OF BEGINNING AND CONTAINING 185.677 ACRES LAND, MORE OR LESS.

TRACT 4

BEING A 207.484 ACRE TRACT OF LAND SITUATED IN THE SAMUEL GILMAN SURVEY, ABSTRACT NO. 456 AND THE S. PRATHER SURVEY, ABSTRACT NO. 934, GRAYSON COUNTY, TEXAS, AND BEING ALL OF A 207.51 ACRE TRACT OF LAND, CONVEYED AS TRACT 1 TO WALTON TEXAS, L.P., BY DEED RECORDED IN VOLUME 4861, PAGE 258, OFFICIAL PUBLIC RECORDS, GRAYSON COUNTY, TEXAS, SAID 207.484 ACRE TRACT, WITH BEARING BASIS BEING GRID NORTH, TEXAS STATE PLANE COORDINATES, NORTH CENTRAL ZONE, NAD83 (CORS96, EPOCH DATE 2002), DETERMINED BY GPS OBSERVATIONS BETWEEN JULIAN DAY 253, 2004 AND JULIAN DAY 259, 2004, CALCULATED FROM COLLIN CORS ARP (PID-DF8982) AND DENTON CORS ARP (PID-DF8986), BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A 1/2" IRON ROD FOUND FOR THE SOUTHEAST CORNER OF SAID 207.484 ACRE TRACT, SAID POINT BEING THE NORTHEAST CORNER OF A 130.028 ACRE TRACT OF LAND CONVEYED BY DEED TO LITTLE CREEK INVESTMENTS, L.P., RECORDED IN VOLUME 3751, PAGE 802, OFFICIAL PUBLIC RECORDS, GRAYSON COUNTY, TEXAS, SAID POINT BEING ON THE WEST LINE OF F.M. HIGHWAY NO. 902 (A 100 FOOT RIGHT-OF-WAY) AND IN A PUBLIC ROAD KNOWN AS SPRING CREEK ROAD;

THENCE, SOUTH 89 DEGREES 47 MINUTES 51 SECONDS WEST, ALONG THE COMMON SOUTH LINE OF SAID 207.484 ACRE TRACT AND THE NORTH LINE OF SAID 130.028 ACRE TRACT, A DISTANCE OF 1751.93 FEET TO A 1/2" IRON ROD WITH YELLOW PLASTIC CAP STAMPED "RPLS 3688" FOUND FOR THE SOUTHWEST CORNER OF SAID 207.484 ACRE TRACT AND THE SOUTHEAST CORNER OF A 20.992 ACRE TRACT OF LAND CONVEYED BY DEED TO JOHN DANIEL BROWN JR. AND TWALLA Y. BROWN RECORDED IN VOLUME 4292, PAGE 423, OFFICIAL PUBLIC RECORDS, GRAYSON COUNTY, TEXAS;

THENCE, NORTH 00 DEGREES 57 MINUTES 18 SECONDS EAST, ALONG THE COMMON WEST LINE OF SAID 207.484 ACRE TRACT AND THE EAST LINE OF SAID 20.992 ACRE TRACT, A DISTANCE OF 880.65 FEET TO A 1/2" IRON ROD WITH FOUND FOR AN INTERIOR ELL CORNER OF SAID 207.484 ACRE TRACT AND THE NORTHEAST CORNER OF SAID 20.992 ACRE TRACT;

THENCE, SOUTH 88 DEGREES 18 MINUTES 15 SECONDS WEST, ALONG THE COMMON SOUTH LINE OF SAID 207.484 ACRE TRACT AND THE NORTH LINE OF SAID 20.992 ACRE TRACT AND THE NORTH LINES OF A 9.000 ACRE TRACT OF LAND CONVEYED BY DEED TO JONATHAN L. HACKETT, RECORDED IN VOLUME 3909, PAGE 579, OFFICIAL PUBLIC RECORDS, GRAYSON COUNTY, TEXAS; A 5.334 ACRE TRACT OF LAND CONVEYED BY DEED TO TIMOTHY A GARBACIK AND DEBBIE J. GARBACIK RECORDED IN VOLUME 3570, PAGE 885, OFFICIAL PUBLIC RECORDS, GRAYSON COUNTY, TEXAS; AND A 13.000 ACRE TRACT OF LAND CONVEYED BY DEED TO DOYLE ALAN COULTER, RECORDED IN VOLUME 3356, PAGE 501, OFFICIAL PUBLIC RECORDS, GRAYSON COUNTY, TEXAS; A DISTANCE OF 2631.70 FEET TO A 1/2" IRON ROD FOUND FOR THE SOUTHWEST CORNER OF SAID 207.484 ACRE TRACT AND THE NORTHWEST CORNER OF SAID 13.000 ACRE TRACT AND BEING ON THE EAST LINE OF A TRACT OF LAND CONVEYED BY WILL TO NANCY L. LINDSAY, RECORDED IN VOLUME 4039, PAGE 877, OFFICIAL PUBLIC RECORDS, GRAYSON COUNTY, TEXAS;

THENCE, NORTH 01 DEGREES 06 MINUTES 22 SECONDS EAST, ALONG THE COMMON WEST LINE OF SAID 207.484 ACRE TRACT AND THE EAST LINE OF SAID LINDSAY TRACT, A DISTANCE OF 518.13 FEET TO A 60D NAIL FOUND IN FENCE POST FOR A NORTHWEST CORNER OF SAID 207.484 ACRE TRACT AND BEING THE SOUTHWEST CORNER OF A 78.974 ACRE TRACT OF LAND CONVEYED BY DEED TO TOW W. PINGLETON RECORDED IN VOLUME 4042, PAGE 73, OFFICIAL PUBLIC RECORDS, GRAYSON COUNTY, TEXAS;

THENCE, SOUTH 89 DEGREES 59 MINUTES 22 SECONDS EAST, ALONG THE COMMON NORTH LINE OF SAID 78.974 ACRE TRACT, A DISTANCE OF 409.90 FEET TO A 1/2" IRON ROD FOUND FOR AND INTERIOR ELL CORNER OF SAID 207.484 ACRE TRACT AND THE SOUTHEAST CORNER OF SAID 78.974 ACRE TRACT;

THENCE, NORTH 01 DEGREES 11 MINUTES 10 SECONDS EAST, ALONG THE COMMON WEST LINE OF SAID 207.484 TRACT AND THE EAST LINE OF SAID 78.974 ACRE TRACT, A DISTANCE OF 1352.83 FEET TO A 1/2" IRON ROD WITH PLASTIC CAP STAMPED "COX4577" FOUND FOR THE NORTHWEST CORNER OF SAID 207.484 ACRE TRACT;

THENCE, NORTH 88 DEGREES 22 MINUTES 08 SECONDS EAST, ALONG THE NORTH LINE OF SAID 207.484 ACRE TRACT, A DISTANCE OF 3816.13 FEET TO A 5/8" IRON ROD WITH PLASTIC CAP STAMPED "PEISER SUR" FOUND FOR THE NORTHEAST CORNER OF SAID 207.484 ACRE TRACT, SAID POINT BEING ON THE AFORESAID WEST LINE OF F.M. HIGHWAY 902 AND BEING THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 16 DEGREES 45 MINUTES 31 SECONDS, A RADIUS OF 1860.00 FEET, AND A LONG CHORD THAT BEARS SOUTH 08 DEGREES 38 MINUTES 43 SECONDS EAST, A DISTANCE OF 542.10 FEET;

THENCE, ALONG SAID NON-TANGENT CURVE TO THE RIGHT AND THE COMMON EAST LINE OF SAID 207.484 ACRE TRACT AND SAID WEST LINE OF F.M. HIGHWAY 902, AN ARC DISTANCE OF 544.04 FEET TO A 5/8" IRON ROD WITH PLASTIC CAP STAMPED "PEISER SUR" FOUND FOR CORNER;

THENCE, SOUTH 00 DEGREES 36 MINUTES 33 SECONDS EAST, CONTINUING ALONG SAID COMMON LINE, A DISTANCE OF 2239.76 FEET TO THE POINT OF BEGINNING AND CONTAINING 207.484 ACRES LAND, MORE OR LESS.

SECTION \_\_\_\_ .03. (a) The legal notice of the intention to introduce this article, setting forth the general substance of this article, has been published as provided by law, and the notice and a copy of this article have been furnished to all persons, agencies, officials, or entities to which they are required to be furnished under Section 59, Article XVI, Texas Constitution, and Chapter 313, Government Code.

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

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

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

SECTION \_\_\_\_ .04. (a) Section 8249.106, Special District Local Laws Code, as added by Section \_\_\_\_ .01 of this article, takes effect only if this Act receives a two-thirds vote of all the members elected to each house.

(b) If this Act does not receive a two-thirds vote of all the members elected to each house, Subchapter C, Chapter 8249, Special District Local Laws Code, as added by Section \_\_\_\_ .01 of this article, is amended by adding Section 8249.106 to read as follows:

Sec. 8249.106. NO EMINENT DOMAIN POWER. The district may not exercise the power of eminent domain.

(c) This section is not intended to be an expression of a legislative interpretation of the requirements of Section 17(c), Article I, Texas Constitution.

SECTION \_\_\_\_ .05. Except as provided by Section \_\_\_\_ .04 of this article, this article takes effect September 1, 2011.

### **HB 2725 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS**

Representative Hartnett called up with senate amendments for consideration at this time,

**HB 2725**, A bill to be entitled An Act relating to the determination of incompetency in criminal cases.

Representative Hartnett moved to concur in the senate amendments to **HB 2725**.

The motion to concur in the senate amendments to **HB 2725** prevailed by (Record 1376): 141 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Aliseda; Allen; Alonzo; Alvarado; Anderson, C.; Anderson, R.; Aycocck; 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; 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; Lavender; Legler; Lewis; Lozano; 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; 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; Truitt; Turner; Veasey; Vo; Walle; Weber; White; Woolley; Workman; Zedler; Zerwas.

Present, not voting — Mr. Speaker; Geren(C).

Absent, Excused — Peña; Villarreal.

Absent — Anchia; Laubenberg; Lucio; Paxton; Torres.

### **STATEMENT OF VOTE**

When Record No. 1376 was taken, I was in the house but away from my desk. I would have voted yes.

Paxton

**Senate Committee Substitute**

**CSHB 2725**, A bill to be entitled An Act relating to the determination of incompetency in criminal cases.

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

SECTION 1. Section 2(a), Article 42.03, Code of Criminal Procedure, is amended to read as follows:

(a) In all criminal cases the judge of the court in which the defendant is convicted shall give the defendant credit on the defendant's sentence for the time that the defendant has spent:

(1) in jail for the case, including confinement served as described by Article 46B.009 and excluding ~~other than~~ confinement served as a condition of community supervision, from the time of his arrest and confinement until his sentence by the trial court; ~~or~~

(2) in a substance abuse treatment facility operated by the Texas Department of Criminal Justice under Section 493.009, Government Code, or another court-ordered residential program or facility as a condition of deferred adjudication community supervision granted in the case if the defendant successfully completes the treatment program at that facility; or

(3) confined in a mental health facility or residential care facility as described by Article 46B.009.

SECTION 2. Article 46B.009, Code of Criminal Procedure, is amended to read as follows:

Art. 46B.009. TIME CREDITS. A court sentencing a person convicted of a criminal offense shall credit to the term of the person's sentence each of the following periods for which ~~the time~~ the person may be ~~is~~ confined in a mental health facility, residential care facility, or jail:

(1) any period of confinement that occurs pending a determination ~~trial~~ under Subchapter C as to the defendant's competency to stand trial; and

(2) any period of confinement that occurs between the date of any initial determination of the defendant's incompetency under that subchapter and the date the person is transported to jail following a final judicial determination that the person has been restored to competency.

SECTION 3. Article 46B.0095, Code of Criminal Procedure, is amended to read as follows:

Art. 46B.0095. MAXIMUM PERIOD OF ~~[FACILITY]~~ COMMITMENT OR OUTPATIENT TREATMENT PROGRAM PARTICIPATION DETERMINED BY MAXIMUM TERM FOR OFFENSE. (a) A defendant may not, under Subchapter D or E or any other provision of this chapter, be committed to a mental hospital or other inpatient or residential facility, ordered to participate in an outpatient treatment program, or subjected to both inpatient and outpatient treatment for a cumulative period that exceeds the maximum term provided by law for the offense for which the defendant was to be tried, except that if the defendant is charged with a misdemeanor and has been ordered only to participate in an outpatient treatment program under Subchapter D or E, the maximum period of restoration is two years ~~[beginning on the date of the initial order for outpatient treatment program participation was entered].~~

(b) On expiration of the maximum restoration period under Subsection (a), the defendant may be confined for an additional period in a mental hospital or other inpatient or residential facility or ordered to participate for an additional period in an outpatient treatment program, as appropriate, only pursuant to civil ~~[commitment]~~ proceedings conducted under Subtitle C or D, Title 7, Health and Safety Code, by a court with probate jurisdiction.

(c) The cumulative period described by Subsection (a):

(1) begins on the date the initial order of commitment or initial order for outpatient treatment program participation is entered under this chapter; and

(2) in addition to any inpatient or outpatient treatment periods described by Subsection (a), includes any time that, following the entry of an order described by Subdivision (1), the defendant is confined in a correctional facility, as defined by Section 1.07, Penal Code, or is otherwise in the custody of the sheriff during or while awaiting, as applicable:

(A) the defendant's transfer to a mental hospital or other inpatient or residential facility;

(B) the defendant's release on bail to participate in an outpatient treatment program; or

(C) a criminal trial following any temporary restoration of the defendant's competency to stand trial.

(d) The court shall credit to the cumulative period described by Subsection (a) any time that a defendant, following arrest for the offense for which the defendant was to be tried, is confined in a correctional facility, as defined by Section 1.07, Penal Code, before the initial order of commitment or initial order for outpatient treatment program participation is entered under this chapter.

SECTION 4. Article 46B.010, Code of Criminal Procedure, is amended to read as follows:

Art. 46B.010. MANDATORY DISMISSAL OF MISDEMEANOR CHARGES. If a court orders that a defendant charged with a misdemeanor punishable by confinement be committed to a mental hospital or other inpatient or residential facility, participate in an outpatient treatment program, or be subjected to both inpatient and outpatient treatment, ~~[the commitment of or participation in an outpatient treatment program by a defendant who is charged with a misdemeanor punishable by confinement]~~ and the defendant is not tried before the ~~[date of]~~ expiration of the maximum period of restoration ~~[under this chapter as]~~ described by Article 46B.0095:

(1) on the motion of the attorney representing the state, the court shall dismiss the charge; or

(2) on the motion of the attorney representing the defendant and notice to the attorney representing the state, the court:

(A) shall set the matter to be heard not later than the 10th day after the date of filing of the motion; and

(B) may dismiss the charge on a finding that the defendant was not tried before the expiration of the maximum period of restoration ~~], the court on the motion of the attorney representing the state shall dismiss the charge].~~

SECTION 5. Article 46B.022(a), Code of Criminal Procedure, is amended to read as follows:

(a) To qualify for appointment under this subchapter as an expert, a psychiatrist or psychologist must:

(1) as appropriate, be a physician licensed in this state or be a psychologist licensed in this state who has a doctoral degree in psychology; and

(2) have the following certification [~~or experience~~] or training:

(A) as appropriate, certification by:

(i) the American Board of Psychiatry and Neurology with added or special qualifications in forensic psychiatry; or

(ii) the American Board of Professional Psychology in forensic psychology; or

(B) [~~experience or~~] training consisting of:

(i) at least 24 hours of specialized forensic training relating to incompetency or insanity evaluations; and

(ii) ~~at least [for an appointment made before January 1, 2005, at least five years of experience before January 1, 2004, in performing criminal forensic evaluations for courts; or~~

~~[(iii) for an appointment made on or after January 1, 2005, at least five years of experience before January 1, 2004, in performing criminal forensic evaluations for courts and] eight [or more] hours of continuing education relating to forensic evaluations, completed in the 12 months preceding the appointment [and documented with the court].~~

SECTION 6. Article 46B.024, Code of Criminal Procedure, is amended to read as follows:

Art. 46B.024. FACTORS CONSIDERED IN EXAMINATION. During an examination under this subchapter and in any report based on that examination, an expert shall consider, in addition to other issues determined relevant by the expert, the following:

(1) the capacity of the defendant during criminal proceedings to:

(A) rationally understand the charges against the defendant and the potential consequences of the pending criminal proceedings;

(B) disclose to counsel pertinent facts, events, and states of mind;

(C) engage in a reasoned choice of legal strategies and options;

(D) understand the adversarial nature of criminal proceedings;

(E) exhibit appropriate courtroom behavior; and

(F) testify;

(2) as supported by current indications and the defendant's personal history, whether the defendant:

(A) has a [~~diagnosable~~] mental illness; or

(B) [~~or~~] is a person with mental retardation;

(3) whether the identified condition has lasted or is expected to last continuously for at least one year;

(4) the degree of impairment resulting from ~~[impact of]~~ the mental illness or mental retardation, if existent, and the specific impact on the defendant's capacity to engage with counsel in a reasonable and rational manner; and

(5) ~~(4)~~ if the defendant is taking psychoactive or other medication:

(A) whether the medication is necessary to maintain the defendant's competency; and

(B) the effect, if any, of the medication on the defendant's appearance, demeanor, or ability to participate in the proceedings.

SECTION 7. Article 46B.025, Code of Criminal Procedure, is amended by amending Subsections (a) and (b) and adding Subsection (a-1) to read as follows:

(a) An expert's report to the court must state an opinion on a defendant's competency or incompetency to stand trial or explain why the expert is unable to state such an opinion and must also:

(1) identify and address specific issues referred to the expert for evaluation;

(2) document that the expert explained to the defendant the purpose of the evaluation, the persons to whom a report on the evaluation is provided, and the limits on rules of confidentiality applying to the relationship between the expert and the defendant;

(3) in specific ~~[general]~~ terms, describe procedures, techniques, and tests used in the examination, ~~[and]~~ the purpose of each procedure, technique, or test, and the conclusions reached; and

(4) state the expert's clinical observations, findings, and opinions on each specific issue referred to the expert by the court, state the specific criteria supporting the expert's diagnosis, and state specifically any issues on which the expert could not provide an opinion.

(a-1) The expert's opinion on the defendant's competency or incompetency may not be based solely on the defendant's refusal to communicate during the examination.

(b) If in the opinion of an expert appointed under Article 46B.021 the defendant is incompetent to proceed, the expert shall state in the report:

(1) the symptoms, exact nature, severity, and expected duration of the deficits resulting from the defendant's mental illness or mental retardation, if any, and the ~~[that]~~ impact of the identified condition on the factors listed in Article 46B.024~~[, contributing to the defendant's incompetency]; [and]~~

(2) an estimate of the period needed to restore the defendant's competency, including whether the defendant is likely to be restored to competency in the foreseeable future; and

(3) prospective treatment options, if any, appropriate for the defendant.

SECTION 8. Article 46B.071, Code of Criminal Procedure, is amended to read as follows:

Art. 46B.071. OPTIONS ON DETERMINATION OF INCOMPETENCY.

(a) Except as provided by Subsection (b), on ~~[On]~~ a determination that a defendant is incompetent to stand trial, the court shall:

(1) commit the defendant to a facility under Article 46B.073; or



(2) release the defendant on bail under Article 46B.072.

(b) On a determination that a defendant is incompetent to stand trial and is unlikely to be restored to competency in the foreseeable future, the court shall:

(1) proceed under Subchapter E or F; or

(2) release the defendant on bail as permitted under Chapter 17.

SECTION 9. Article 46B.072, Code of Criminal Procedure, is amended by amending Subsections (a), (b), and (c) and adding Subsection (a-1) to read as follows:

(a) This article applies only to a defendant who is subject to an initial restoration period based on Article 46B.071.

(a-1) Subject to conditions reasonably related to assuring public safety and the effectiveness of the defendant's treatment, if the court determines that a defendant found incompetent to stand trial is not a danger to others and may be safely treated on an outpatient basis with the specific objective of attaining competency to stand trial and if an appropriate outpatient treatment program is available for the defendant, the court:

(1) may release on bail a defendant found incompetent to stand trial with respect to a felony or may continue the defendant's release on bail; and

(2) shall release on bail a defendant found incompetent to stand trial with respect to a misdemeanor or shall continue the defendant's release on bail.

(b) The court shall order a defendant released on bail under Subsection (a-1) ~~[(a)]~~ to participate in an outpatient treatment program for a period not to exceed 120 days.

(c) Notwithstanding Subsection (a-1) ~~[(a)]~~, the court may order a defendant to participate in an outpatient treatment program under this article only if:

(1) the court receives and approves a comprehensive plan that:

(A) provides for the treatment of the defendant for purposes of competency restoration; and

(B) identifies the person who will be responsible for providing that treatment to the defendant; and

(2) the court finds that the treatment proposed by the plan will be available to and will be provided to the defendant.

SECTION 10. Articles 46B.073(a) and (b), Code of Criminal Procedure, are amended to read as follows:

(a) This article applies only to a defendant not released on bail who is subject to an initial restoration period based on Article 46B.071.

(b) For further examination and treatment toward the specific objective of the defendant attaining competency to stand trial, the ~~[The]~~ court shall commit a defendant described by Subsection (a) to a mental health facility or residential care facility for the applicable ~~[a]~~ period as follows:

(1) a period of not more than 60 days, if the defendant is charged with an offense punishable as a misdemeanor; or

(2) a period of not more than 120 days, if the defendant is charged with an offense punishable as a felony ~~[not to exceed 120 days for further examination and treatment toward the specific objective of attaining competency to stand trial].~~

SECTION 11. Subchapter D, Chapter 46B, Code of Criminal Procedure, is amended by adding Article 46B.0755 to read as follows:

Art. 46B.0755. PROCEDURES ON CREDIBLE EVIDENCE OF IMMEDIATE RESTORATION. (a) Notwithstanding any other provision of this subchapter, if the court receives credible evidence indicating that the defendant has been restored to competency at any time after the defendant's incompetency trial under Subchapter C but before the defendant is transported under Article 46B.075 to a mental health facility, residential care facility, or outpatient treatment program, as applicable, the court may appoint disinterested experts to reexamine the defendant in accordance with Subchapter B. The court is not required to appoint the same expert or experts who performed the initial examination of the defendant under that subchapter.

(b) If after a reexamination of the defendant the applicable expert's report states an opinion that the defendant remains incompetent, the court's order under Article 46B.072 or 46B.073 remains in effect, and the defendant shall be transported to the facility or outpatient treatment program as required by Article 46B.075. If after a reexamination of the defendant the applicable expert's report states an opinion that the defendant has been restored to competency, the court shall withdraw its order under Article 46B.072 or 46B.073 and proceed under Subsection (c) or (d).

(c) The court shall find the defendant competent to stand trial and proceed in the same manner as if the defendant had been found restored to competency at a hearing if:

- (1) both parties agree that the defendant is competent to stand trial; and
- (2) the court concurs.

(d) The court shall hold a hearing to determine whether the defendant has been restored to competency if any party fails to agree or if the court fails to concur that the defendant is competent to stand trial. If a court holds a hearing under this subsection, on the request of the counsel for either party or the motion of the court, a jury shall make the competency determination. For purposes of the hearing, incompetency is presumed, and the defendant's competency must be proved by a preponderance of the evidence. If after the hearing the defendant is again found to be incompetent to stand trial, the court shall issue a new order under Article 46B.072 or 46B.073, as appropriate based on the defendant's current condition.

SECTION 12. Article 46B.077(a), Code of Criminal Procedure, is amended to read as follows:

(a) The facility to which the defendant is committed or the outpatient treatment program to which the defendant is released on bail shall:

- (1) develop an individual program of treatment;
- (2) assess and evaluate whether the defendant is likely to be restored to ~~[will obtain]~~ competency in the foreseeable future; and
- (3) report to the court and to the local mental health authority or to the local mental retardation authority on the defendant's progress toward achieving competency.

SECTION 13. Article 46B.079, Code of Criminal Procedure, is amended to read as follows:

Art. 46B.079. NOTICE AND REPORT TO COURT. (a) The head of the facility or the provider of the outpatient treatment program, as appropriate, not later than the 15th day before the date on which the initial [a] restoration period is to expire according to the terms of the order or under Article 46B.0095 or other applicable provisions of this chapter, shall notify the applicable court that the [restoration] period is about to expire.

(b) The head of the facility or outpatient treatment program provider shall promptly notify the court when the head of the facility or outpatient treatment program provider believes that:

- (1) the defendant has attained competency to stand trial; or
- (2) the defendant is not likely to [will not] attain competency in the foreseeable future.

(c) When the head of the facility or outpatient treatment program provider gives notice to the court under Subsection (a) or (b), the head of the facility or outpatient treatment program provider also shall file a final report with the court stating the reason for the proposed discharge under this chapter and including a list of the types and dosages of medications prescribed for [with which] the defendant [was treated for mental illness] while the defendant was in the facility or participating in the outpatient treatment program. To enable any objection to the findings of the report to be made in a timely manner under Article 46B.084(a), the court shall provide copies of the report to the attorney representing the defendant and the attorney representing the state.

(d) If the head of the facility or outpatient treatment program provider notifies the court that the initial restoration period is about to expire, the notice may contain a request for an extension of the period for an additional period of 60 days and an explanation for the basis of the request. An explanation provided under this subsection must include a description of any evidence indicating a reduction in the severity of the defendant's symptoms or impairment.

SECTION 14. Articles 46B.080(b) and (c), Code of Criminal Procedure, are amended to read as follows:

(b) The court may enter an order under Subsection (a) only if the court determines that [~~on the basis of information provided by the head of the facility or the treatment program provider~~]:

- (1) the defendant has not attained competency; and
- (2) an extension of the initial restoration period will likely enable the facility or program to restore the defendant to competency within the period of the extension.

(c) The court may grant only one 60-day extension under this article in connection with the specific offense with which the defendant is charged [for a period of restoration ordered under this subchapter].

SECTION 15. Article 46B.084(a), Code of Criminal Procedure, is amended to read as follows:

(a) On the return of a defendant to the court, the court shall make a determination with regard to the defendant's competency to stand trial. The court may make the determination based ~~[solely]~~ on the report filed under Article 46B.079(c) and on other medical information or personal history information relating to the defendant. A ~~[-unless any]~~ party may object ~~[objects]~~ in writing or in open court to the findings of the report not later than the 15th day after the date on which the court received notification under Article 46B.079. The court shall make the determination not later than the 20th day after the date on which the court received notification under Article 46B.079, regardless of whether a party objects to the report as described by this subsection and the issue is set for hearing under Subsection (b).

SECTION 16. Article 46B.086(a), Code of Criminal Procedure, is amended to read as follows:

(a) This article applies only to a defendant:

(1) who is determined under this chapter to be incompetent to stand trial;

(2) who either:

(A) remains confined in a correctional facility, as defined by Section 1.07, Penal Code, for a period exceeding 72 hours while awaiting transfer to an inpatient mental health facility, a residential care facility, or an outpatient treatment program;

(B) is committed to an inpatient mental health facility or a residential care facility for the purpose of competency restoration;

(C) is confined in a correctional facility while awaiting further criminal proceedings following competency restoration treatment; or

(D) is subject to Article 46B.072, if the court has made the determinations required by Subsection (a-1) ~~[(a)]~~ of that article;

(3) for whom a correctional facility that employs or contracts with a licensed psychiatrist, an inpatient mental health facility, a residential care facility, or an outpatient treatment program provider has prepared a continuity of care plan that requires the defendant to take psychoactive medications; and

(4) who, after a hearing held under Section 574.106, Health and Safety Code, if applicable, has been found to not meet the criteria prescribed by Sections 574.106(a) and (a-1), Health and Safety Code, for court-ordered administration of psychoactive medications.

SECTION 17. Article 46B.101, Code of Criminal Procedure, is amended to read as follows:

Art. 46B.101. APPLICABILITY. This subchapter applies to a defendant against whom a court is required to proceed according to ~~[under]~~ Article 46B.084(e) or according to the court's appropriate determination under Article 46B.071.

SECTION 18. Article 46B.151(a), Code of Criminal Procedure, is amended to read as follows:

(a) If a court is required by Article 46B.084(f) or by its appropriate determination under Article 46B.071 to proceed under this subchapter, or if the court is permitted by Article 46B.004(e) to proceed under this subchapter, the

court shall determine whether there is evidence to support a finding that the defendant is either a person with mental illness or a person with mental retardation.

SECTION 19. The Department of State Health Services, in coordination with the Health and Human Services Commission, shall study the feasibility of providing home and community-based services, instead of institutional care, to persons with severe and persistent mental illness who have a history of more than one inpatient commitment under Chapter 46B, Code of Criminal Procedure. Not later than December 1, 2012, the department shall issue a report to the legislature regarding the results of the feasibility study.

SECTION 20. The change in law made by this Act applies only to a defendant with respect to whom any proceeding under Chapter 46B, Code of Criminal Procedure, is conducted on or after the effective date of this Act.

SECTION 21. This Act takes effect September 1, 2011.

### **Senate Amendment No. 1 (Senate Floor Amendment No. 1)**

Amend **CSHB 2725** (senate committee report) as follows:

(1) Strike the recital of SECTION 16 of the bill, amending Article 46B.086(a), Code of Criminal Procedure (page 6, lines 60-61), and substitute "Articles 46B.086(a) and (c), Code of Criminal Procedure, are amended to read as follows:".

(2) In SECTION 16 of the bill, after amended Article 46B.086(a), Code of Criminal Procedure (page 7, between lines 20 and 21), insert the following:

(c) The court, after notice and after a hearing held not later than the 10th day after the motion to compel medication is filed [~~fifth day after the defendant is returned to the committing court~~], may authorize the director of the correctional facility or the program provider, as applicable, to have the medication administered to the defendant, by reasonable force if necessary. A hearing under this subsection may be conducted using an electronic broadcast system as provided by Article 46B.013.

### **Senate Amendment No. 2 (Senate Floor Amendment No. 2)**

Amend **CSHB 2725** (senate committee printing) as follows:

(1) In SECTION 20 of the bill (page 7, line 43), strike "The change in law" and substitute "(a) Except as provided by Subsection (b) of this section, the change in law".

(2) Between SECTIONS 20 and 21 of the bill (page 7, between lines 46 and 47), insert the following:

(b) Article 46B.004(c-1), Code of Criminal Procedure, as added by this Act, applies only to a motion suggesting a defendant's incompetency to stand trial made on or after the effective date of this Act. A motion suggesting a defendant's incompetency to stand trial made before the effective date of this Act is covered by the law in effect when the motion was made, and the former law is continued in effect for that purpose.

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

SECTION \_\_\_\_ . Article 46B.004, Code of Criminal Procedure, is amended by adding Subsection (c-1) to read as follows:

(c-1) A suggestion of incompetency is the threshold requirement for an informal inquiry under Subsection (c) and may consist solely of a representation from any credible source that the defendant may be incompetent. A further evidentiary showing is not required to initiate the inquiry, and the court is not required to have a bona fide doubt about the competency of the defendant. Evidence suggesting the need for an informal inquiry may be based on observations made in relation to one or more of the factors described by Article 46B.024 or on any other indication that the defendant is incompetent within the meaning of Article 46B.003.

### **HB 338 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS**

Representative Aycock called up with senate amendments for consideration at this time,

**HB 338**, A bill to be entitled An Act relating to disclaimers by certain entities promulgating lists of noxious or invasive terrestrial plant species.

Representative Aycock moved to concur in the senate amendments to **HB 338**.

The motion to concur in the senate amendments to **HB 338** prevailed by (Record 1377): 142 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Aliseda; Allen; Alonzo; Alvarado; Anchia; Anderson, C.; Anderson, R.; Aycock; Beck; Berman; Bohac; Bonnen; Branch; Brown; Burkett; 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; 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; Landroop; Larson; Laubenberg; Lavender; Legler; Lewis; Lozano; 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; Perry; Phillips; Pickett; Pitts; Price; Quintanilla; Raymond; Reynolds; Riddle; Ritter; Rodriguez; Schwertner; Scott; Sheets; Shelton; Simpson; Smith, T.; Smith, W.; Smithee; Solomons; Strama; Taylor, L.; Taylor, V.; Thompson; Truitt; Turner; Veasey; Vo; Walle; Weber; White; Woolley; Workman; Zedler; Zerwas.

Present, not voting — Mr. Speaker; Geren(C).

Absent, Excused — Peña; Villarreal.

Absent — Burnam; Lucio; Sheffield; Torres.

**Senate Amendment No. 1 (Senate Floor Amendment No. 1)**

Amend **HB 338** (senate committee printing) as follows:

(1) In SECTION 2 of the bill, in Section 71.154, Agriculture Code, page 1, line 39, between "published" and "distributed, strike "or" and replace with "and".

**HB 2604 - HOUSE CONCURS IN SENATE AMENDMENTS  
TEXT OF SENATE AMENDMENTS**

Representative L. Taylor called up with senate amendments for consideration at this time,

**HB 2604**, A bill to be entitled An Act relating to unencumbered assets held by title agents.

Representative L. Taylor moved to concur in the senate amendments to **HB 2604**.

The motion to concur in the senate amendments to **HB 2604** prevailed by (Record 1378): 142 Yeas, 0 Nays, 2 Present, not voting.

Yeas — 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; Farias; Farrar; Fletcher; Flynn; Frullo; Gallego; Garza; 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; Lyne; Madden; Mallory Caraway; Margo; Marquez; Martinez; Martinez Fischer; McClendon; Miles; Miller, D.; Miller, S.; Morrison; Muñoz; Murphy; Naishtat; Nash; Oliveira; Orr; Otto; Parker; Patrick; Paxton; 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; Truitt; Turner; Veasey; Vo; Walle; Weber; White; Woolley; Workman; Zedler; Zerwas.

Present, not voting — Mr. Speaker; Geren(C).

Absent, Excused — Peña; Villarreal.

Absent — Elkins; Lucio; Menendez; Torres.

**Senate Committee Substitute**

**CSHB 2604**, A bill to be entitled An Act relating to unencumbered assets held by title agents.

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

SECTION 1. Section 2651.012(a)(2), Insurance Code, is amended to read as follows:

(2) "Unencumbered assets" means:

- (A) cash or cash equivalents;
- (B) liquid assets that have a readily determinable market value and that do not have any lien against them;
- (C) real estate, in excess of any encumbrances;
- (D) investments, such as mutual funds, certificates of deposit, and stocks and bonds;
- (E) a surety bond, the form and content of which shall be prescribed by the commissioner in accordance with this code;
- (F) a deposit made in accordance with Section 2651.102; ~~and~~
- (G) a letter of credit that meets the requirements of Section 493.104(b)(2)(C); and
- (H) a solvency account that meets the requirements of Section 2651.0121.

SECTION 2. Section 2651.012(b), Insurance Code, is amended to read as follows as follows:

(b) The unencumbered assets required under this section are reserves for contingencies. The reserves must be deducted from premiums for purposes of proceedings conducted under Subchapter D, Chapter 2703. The reserves may only be spent or released:

- (1) as permitted by the commissioner if the agent is declared impaired;
- (2) if the agent merges or consolidates with another agent who maintains the amount of unencumbered assets that would be required for the survivor of the merger or consolidation;
- (3) if the agent surrenders the agent's license under Section 2651.201 ~~[and the rules adopted under that section]; [or]~~
- (4) if the agent is liquidated; or
- (5) if the agent's license is revoked.

SECTION 3. Subchapter A, Chapter 2651, Insurance Code, is amended by adding Section 2651.0121 to read as follows:

Sec. 2651.0121. SOLVENCY ACCOUNT. (a) An agent may maintain a solvency account to accrue and hold unencumbered assets as provided by this section.

(b) An account under this section must be:

- (1) in a financial institution in this state that is insured by an agency of the United States;
  - (2) accessible only to the department, on order of the commissioner;
- and
- (3) audited in the same manner provided for trust funds by Section 2651.151.

(c) Subject to Subsection (d), an account under this section may be established by an initial deposit in an amount less than the amount provided by Section 2651.012(c).



(d) An account established by an initial deposit of an amount less than the amount provided by Section 2651.012(c) must be funded with a minimum deposit in the amount for each policy of title insurance issued by the agent that is equal to the greater of \$5 or one percent of the agent's portion of the retained premium received by the agent rounded to the nearest whole dollar.

(e) Deposits to the account must be made at least quarterly and must be made from and based on the agent's portion of retained premiums collected during the calendar quarter during which premiums were collected.

(f) Interest that accrues in an account the principal balance of which is less than the amount provided by Section 2651.012(c) must be retained in the account. Interest that accrues in an account the principal balance of which is greater than the amount provided by Section 2651.012(c) shall be paid to the agent maintaining the account.

(g) The commissioner may issue an order to access or release funds held in an account under this section if any of the events described by Section 2651.012(b) occur.

(h) The commissioner by rule shall adopt procedures and requirements for the release, transfer, or expenditure of the funds held in an account. The rules must establish the procedures and requirements by which the department shall account for any expenditures that the department makes from an account or funds transferred by the department to a third party.

(i) If an agent or an agent's principal office voluntarily ceases to engage in business, surrenders the agent's license, and liquidates the agent's assets, the agent may apply to the department in a form prescribed by the commissioner by rule for the release of the agent's solvency account.

(j) Not later than the 60th day after the date the department receives an application under Subsection (i), provided that the title agent complied with all applicable rules adopted under Subsection (h), the commissioner shall enter an order authorizing the financial institution in which the solvency account is held to release all or part of the account balance to the agent or the agent's principal office. If the commissioner does not enter the order within that 60-day period, the application is denied.

(k) An agent may appeal an order of the commissioner or denial of an application without an order by filing a petition in a district court of Travis County to seek injunctive or other relief against the commissioner.

(l) An account established, funded, and maintained as provided by this section complies with the requirement for maintenance of unencumbered assets under Section 2651.012(c), regardless of whether the amount required by that section is fully accrued. The amount required by Section 2651.012(c) may be accrued in an account as provided by this section according to the schedule established by Section 2651.012(g) or as provided by the commissioner by rule under Section 2651.012(j).

(m) In a home office issue transaction in which a title insurance company issues a policy of title insurance, an agent who closes the transaction and remits premium to the title insurance company shall make the deposit required by this

section. An agent who otherwise participates in a home office issue transaction but does not close the transaction is not required to make a deposit under this section.

SECTION 4. Section 2651.158, Insurance Code, is amended to read as follows:

Sec. 2651.158. CERTIFICATION OF UNENCUMBERED ASSETS. (a) Unless the agent has elected to make a deposit with the department under Section 2651.012(f), the annual audit of escrow accounts must be accompanied by a certification by the title insurance agent or direct operation [~~a certified public accountant~~] that the title insurance agent has the appropriate unencumbered assets in excess of liabilities, exclusive of the value of its abstract plants, as required by Section 2651.012.

(b) The commissioner by rule shall establish[+:

~~(1) a procedure to be used to determine the value of categories of assets; and~~

~~(2) the method by which the certification required by this section must be made, which shall not include an audit of operating accounts or a certification by a certified public accountant.~~

SECTION 5. As soon as practicable after the effective date of this Act, but not later than January 1, 2012, the commissioner of insurance shall promulgate rules and forms governing the operation of a solvency account under Section 2651.0121, Insurance Code, as added by this Act.

SECTION 6. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2011.

#### **HB 254 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS**

Representative Hilderbran called up with senate amendments for consideration at this time,

**HB 254**, A bill to be entitled An Act relating to establishing the Texas Derbies.

Representative Hilderbran moved to concur in the senate amendments to **HB 254**.

The motion to concur in the senate amendments to **HB 254** prevailed by (Record 1379): 118 Yeas, 23 Nays, 2 Present, not voting.

Yeas — Aliseda; Allen; Alonzo; Alvarado; Anchia; Anderson, C.; Anderson, R.; Beck; Branch; Brown; Burnam; Cain; Callegari; Castro; Chisum; Christian; Coleman; Creighton; Crownover; Darby; Davis, J.; Davis, S.; Davis, Y.; Deshotel; Driver; Dukes; Dutton; Eiland; Eissler; Elkins; Farias; Farrar; Fletcher; Gallego; Garza; Giddings; Gonzales, L.; Gonzales, V.; Gonzalez; Gooden; Guillen; Gutierrez; Hamilton; Hardcastle; Harless; Harper-Brown; Hernandez Luna; Hilderbran; Hochberg; Hopson; Howard, D.; Huberty; Hughes; Hunter; Isaac; Jackson; Johnson; Keffer; King, P.; King, T.; Kleinschmidt;

Kolkhorst; Kuempel; Larson; Lavender; Legler; Lozano; Lyne; Madden; Mallory Caraway; Margo; Marquez; Martinez; Martinez Fischer; McClendon; Menendez; Miles; Miller, D.; Morrison; Muñoz; Murphy; Naishtat; Nash; Oliveira; Orr; Otto; Patrick; Pickett; Pitts; Price; Quintanilla; Raymond; Reynolds; Riddle; Ritter; Rodriguez; Schwertner; Scott; Sheets; Sheffield; Simpson; Smith, T.; Smith, W.; Smithee; Solomons; Strama; Taylor, L.; Taylor, V.; Thompson; Truitt; Turner; Veasey; Vo; Walle; White; Woolley; Zedler; Zerwas.

Nays — Aycock; Berman; Bonnen; Burkett; Button; Carter; Craddick; Flynn; Frullo; Hancock; Hartnett; Howard, C.; Landtroop; Laubenberg; Lewis; Miller, S.; Parker; Paxton; Perry; Phillips; Shelton; Weber; Workman.

Present, not voting — Mr. Speaker; Geren(C).

Absent, Excused — Peña; Villarreal.

Absent — Bohac; Cook; King, S.; Lucio; Torres.

**STATEMENTS OF VOTE**

I was shown voting no on Record No. 1379. I intended to vote yes.

Aycock

I was shown voting yes on Record No. 1379. I intended to vote no.

Christian

I was shown voting no on Record No. 1379. I intended to vote yes.

Lewis

I was shown voting yes on Record No. 1379. I intended to vote no.

T. Smith

**Senate Amendment No. 1 (Senate Floor Amendment No. 1)**

Amend **HB 254** (senate committee printing) as follows:

(1) In SECTION 1 of the bill, in added Section 9A.003, Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes), immediately following Subsection (d) (page 2, between lines 16-17), insert the following:

(e) The commission may not:

(1) use funds from the Accredited Texas-bred program under Article 9 of this Act or the escrowed purse account under Section 6.091(e) of this Act to fund the Texas Derby escrow purse fund; or

(2) order a breed registry to fund a purse for a Texas Derby, make contributions to the Texas Derby escrow purse fund, or pay the expenses of a Texas Derby race.

(2) In SECTION 1 of the bill, in added Section 9A.003, Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes), reletter the subsequent subsections accordingly (page 1, line 17).

**HB 364 - HOUSE CONCURS IN SENATE AMENDMENTS  
TEXT OF SENATE AMENDMENTS**

Representative Turner called up with senate amendments for consideration at this time,

**HB 364**, A bill to be entitled An Act relating to condominiums in certain municipalities, including the exercise of eminent domain authority by those municipalities with respect to certain condominiums.

Representative Turner moved to concur in the senate amendments to **HB 364**.

The motion to concur in the senate amendments to **HB 364** prevailed by (Record 1380): 113 Yeas, 30 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Alvarado; Anchia; Anderson, C.; Beck; Berman; Branch; Brown; Burnam; Button; Cain; Callegari; Castro; Chisum; Christian; Coleman; Cook; Creighton; Crownover; Darby; Davis, J.; Davis, S.; Davis, Y.; Deshotel; Driver; Dukes; Dutton; Eiland; Eissler; Elkins; Farias; Farrar; Fletcher; Flynn; Gallego; Garza; Giddings; Gonzales, L.; Gonzales, V.; Gonzalez; Guillen; Gutierrez; Hamilton; Hardcastle; Harless; Harper-Brown; Hernandez Luna; Hochberg; Hopson; Howard, C.; Howard, D.; Huberty; Hunter; Jackson; Johnson; Keffer; King, P.; King, S.; King, T.; Kleinschmidt; Kolkhorst; Kuempel; Larson; Legler; Lewis; Lozano; Lyne; Mallory Caraway; Margo; Marquez; Martinez; Martinez Fischer; McClendon; Menendez; Miles; Morrison; Muñoz; Murphy; Naishtat; Nash; Oliveira; Orr; Otto; Patrick; Pickett; Pitts; Price; Quintanilla; Raymond; Reynolds; Riddle; Ritter; Rodriguez; Schwertner; Scott; Sheffield; Shelton; Simpson; Smith, W.; Smithee; Solomons; Strama; Taylor, L.; Taylor, V.; Thompson; Truitt; Turner; Veasey; Vo; Walle; Woolley; Zerwas.

Nays — Aliseda; Anderson, R.; Aycock; Bonnen; Burkett; Carter; Craddick; Frullo; Gooden; Hancock; Hartnett; Hilderbran; Hughes; Isaac; Landtroop; Laubenberg; Lavender; Madden; Miller, D.; Miller, S.; Parker; Paxton; Perry; Phillips; Sheets; Smith, T.; Weber; White; Workman; Zedler.

Present, not voting — Mr. Speaker; Geren(C).

Absent, Excused — Peña; Villarreal.

Absent — Bohac; Lucio; Torres.

**STATEMENTS OF VOTE**

I was shown voting yes on Record No. 1380. I intended to vote no.

Button

I was shown voting yes on Record No. 1380. I intended to vote no.

Christian

I was shown voting yes on Record No. 1380. I intended to vote no.

Harless

I was shown voting yes on Record No. 1380. I intended to vote no.

Truitt

**Senate Amendment No. 1 (Senate Floor Amendment No. 1)**

Amend **HB 364** (senate committee printing), in SECTION 5 of the bill, by striking proposed Section 214.303(2), Property Code (page 2, lines 44-48) and substituting the following:

(2) the property:

(A) contains uninhabitable, unsafe, and unsanitary units that are not fit for their intended use because the utilities, sewerage, plumbing, or heating or a similar service or facility of the units has been destroyed, removed, or rendered ineffective; or

(B) contained units described by Paragraph (A) that were demolished in accordance with a court order issued under Section 54.018, Local Government Code; and

**HB 3727 - HOUSE CONCURS IN SENATE AMENDMENTS  
TEXT OF SENATE AMENDMENTS**

Representative Hilderbran called up with senate amendments for consideration at this time,

**HB 3727**, A bill to be entitled An Act relating to the appraisal for ad valorem tax purposes of certain commercial aircraft that are temporarily located in this state for manufacturing or assembly purposes.

Representative Hilderbran moved to concur in the senate amendments to **HB 3727**.

The motion to concur in the senate amendments to **HB 3727** prevailed by (Record 1381): 143 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Aliseda; Allen; Alonzo; Alvarado; Anchia; Anderson, C.; Anderson, R.; Aycock; Beck; Berman; Bohac; Bonnen; Branch; Brown; Burkett; Burnam; Button; Cain; 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; 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; 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; Perry; Phillips; Pickett; 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; Vo; Walle; Weber; White; Woolley; Workman; Zedler; Zerwas.

Present, not voting — Mr. Speaker; Geren(C).

Absent, Excused — Peña; Villarreal.

Absent — Callegari; Lucio; Pitts.

### **Senate Amendment No. 1 (Senate Floor Amendment No. 1)**

Amend **HB 3727** in SECTION 1 of the bill, at the end of added Section 23.1211, Tax Code (senate committee printing, page 1, between lines 39 and 40), by inserting the following:

(c) The legislature finds that there is a lack of information that reliably establishes the market value of temporary production aircraft. Accordingly, the legislature has enacted this section to specify the method to be used in determining the appraised value of such aircraft.

### **HB 1610 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS**

Representative L. Gonzales called up with senate amendments for consideration at this time,

**HB 1610**, A bill to be entitled An Act relating to employment termination procedures applicable to a teacher who is convicted of or receives deferred adjudication for a felony.

Representative L. Gonzales moved to concur in the senate amendments to **HB 1610**.

The motion to concur in the senate amendments to **HB 1610** prevailed by (Record 1382): 144 Yeas, 1 Nays, 2 Present, not voting.

Yeas — Aliseda; Allen; Alvarado; Anchia; Anderson, C.; Anderson, R.; Aycoc; 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; 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; Landroop; Larson; Laubenberg; Lavender; Legler; Lewis; Lozano; 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; 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; Vo; Walle; Weber; White; Woolley; Workman; Zedler; Zerwas.

Nays — Alonzo.

Present, not voting — Mr. Speaker; Geren(C).

Absent, Excused — Peña; Villarreal.

Absent — Lucio.

### Senate Committee Substitute

**CSHB 1610**, A bill to be entitled An Act relating to employment termination procedures applicable to a teacher who is convicted of or receives deferred adjudication for a felony.

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

SECTION 1. Section 21.058, Education Code, is amended by amending Subsections (a) and (c) and adding Subsections (c-1), (c-2), and (e) to read as follows:

(a) The procedures described by Subsections (b) and (c) apply [This section applies] only:

(1) to conviction of a felony offense under Title 5, Penal Code, or an offense on conviction of which a defendant is required to register as a sex offender under Chapter 62, Code of Criminal Procedure; and

(2) if the victim of the offense is under 18 years of age.

(c) A school district or open-enrollment charter school that receives notice under Subsection (b) of the revocation of a certificate issued under this subchapter shall:

(1) immediately remove the person whose certificate has been revoked from campus or from an administrative office, as applicable, to prevent the person from having any contact with a student; and

(2) if the person is employed under a probationary, continuing, or term contract under this chapter:

(A) suspend the person without pay;

(B) provide the person with written notice that the person's contract is void as provided by Subsection (c-2); and

(C) [as soon as practicable,] terminate the employment of the person as soon as practicable [in accordance with the person's contract and with this subchapter].

(c-1) If a school district or open-enrollment charter school becomes aware that a person employed by the district or school under a probationary, continuing, or term contract under this chapter has been convicted of or received deferred adjudication for a felony offense, and the person is not subject to Subsection (c), the district or school may:

(1) suspend the person without pay;

(2) provide the person with written notice that the person's contract is void as provided by Subsection (c-2); and

(3) terminate the employment of the person as soon as practicable.

(c-2) A person's probationary, continuing, or term contract is void if the school district or open-enrollment charter school takes action under Subsection (c)(2)(B) or (c-1)(2).

(e) Action taken by a school district or open-enrollment charter school under Subsection (c) or (c-1) is not subject to appeal under this chapter, and the notice and hearing requirements of this chapter do not apply to the action.

SECTION 2. This Act applies beginning with the 2011-2012 school year.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2011.

**Senate Amendment No. 1 (Senate Floor Amendment No. 1)**

Amend **CSHB 1610** (senate committee printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Sections 21.12(a) and (b-1), Penal Code, are amended to read as follows:

(a) An employee of a public or private primary or secondary school commits an offense if the employee:

(1) engages in[+]

[(+)] sexual contact, sexual intercourse, or deviate sexual intercourse with a person who is enrolled in a public or private primary or secondary school at which the employee works; [or]

(2) holds a certificate or permit issued as provided by Subchapter B, Chapter 21, Education Code, or is a person who is required to be licensed by a state agency as provided by Section 21.003(b), Education Code, and engages in sexual contact, sexual intercourse, or deviate sexual intercourse with a person the employee knows is:

(A) enrolled in a public primary or secondary school in the same school district as the school at which the employee works; or

(B) a student participant in an educational activity that is sponsored by a school district or a public or private primary or secondary school, if:

(i) students enrolled in a public or private primary or secondary school are the primary participants in the activity; and

(ii) the employee provides education services to those participants; or

(3) engages in conduct described by Section 33.021, with a person described by Subdivision (1), or a person the employee knows is a person described by Subdivision (2)(A) or (B), regardless of the age of that person.

(b-1) It is an affirmative defense to prosecution under this section that:

(1) the actor was the spouse of the enrolled person at the time of the offense; or

(2) the actor was not more than three years older than the enrolled person and, at the time of the offense, the actor and the enrolled person were in a relationship that began before the actor's employment at a public or private primary or secondary school.

SECTION \_\_\_\_\_. Section 21.006, Education Code, is amended by adding Subsection (b-1) to read as follows:



(b-1) A superintendent or director of a school district shall complete an investigation of an educator that is based on reasonable cause to believe the educator may have engaged in misconduct described by Subsection (b)(2)(A), despite the educator's resignation from district employment before completion of the investigation.

SECTION \_\_\_\_\_. Section 21.006(b-1), Education Code, as added by this Act, applies to an investigation of possible public school educator misconduct begun on or after the effective date of this Act, regardless of whether the alleged misconduct occurred before, on, or after the effective date of this Act.

SECTION \_\_\_\_\_. The change in law made by this Act to Section 21.12, Penal Code, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

### **SB 28 - ADOPTION OF CONFERENCE COMMITTEE REPORT**

Representative Branch submitted the conference committee report on **SB 28**.

Representative Branch moved to adopt the conference committee report on **SB 28**.

The motion to adopt the conference committee report on **SB 28** prevailed by (Record 1383): 143 Yeas, 1 Nays, 2 Present, not voting.

Yeas — Aliseda; Allen; Alonzo; 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; 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; Lyne; Madden; Mallory Caraway; Margo; Marquez; Martinez; Martinez Fischer; McClendon; Menendez; Miles; Miller, D.; Miller, S.; Morrison; Muñoz; Murphy; Naishtat; Nash; Oliveira; Orr; Otto; Patrick; Paxton; 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; Vo; Walle; Weber; White; Woolley; Workman; Zedler; Zerwas.

Nays — Alvarado.

Present, not voting — Mr. Speaker; Geren(C).

Absent, Excused — Peña; Villarreal.

Absent — Lucio; Parker.

**STATEMENTS OF VOTE**

I was shown voting no on Record No. 1383. I intended to vote yes.

Alvarado

When Record No. 1383 was taken, my vote failed to register. I would have voted yes.

Parker

**GENERAL STATE CALENDAR**

(consideration continued)

**CSSB 978 ON SECOND READING**

(V. Gonzales - House Sponsor)

**CSSB 978**, A bill to be entitled An Act relating to procedures for the dissolution of the Hidalgo County Water Improvement District No. 3.

(Keffer in the chair)

**CSSB 978 - POINT OF ORDER**

Representative Riddle raised a point of order against further consideration of **CSSB 978** under Rule 8, Section 10(b) and Rule 4, Section 32(c) of the House Rules on the grounds that the bill is limited to one or more subdivisions by means of artificial devices and the committee report is incorrect.

Representative V. Gonzales moved to postpone consideration of **CSSB 978** until 7:20 p.m. today.

The motion prevailed.

**SB 1285 ON SECOND READING**

(Strama - House Sponsor)

**SB 1285**, A bill to be entitled An Act relating to contributions to the retirement systems for certain police officers in certain municipalities.

**Amendment No. 1**

Representative Orr offered the following amendment to **SB 1285**:

Amend **SB 1285** (house engrossment) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_ Subdivision (1), Subsection (a), Section 8.01, Chapter 452 (**SB 738**), Acts of the 72nd Legislature, Regular Session, 1991 (Article 6243n-1, Vernon's Texas Civil Statutes), is amended to read as follows:

(1) Deposits by the members to the police retirement system shall be made at a rate of at least 13 ~~six~~ percent of the basic hourly earnings of each member. Deposits required to be made by members shall be deducted from payroll. On recommendation of the board, the Active-Contributory members may by a majority of those voting increase the rate of member deposits above 13 ~~six~~ percent to whatever amount the board has recommended. If the deposit rate

for members has been increased to a rate above 13 [~~six~~] percent, the rate may be decreased if the board recommends the decrease, the board's actuary approves the decrease, and a majority of the Active-Contributory members voting on the matter approve the decrease.

Amendment No. 1 was adopted.

**SB 1285**, as amended, was passed to third reading. (Landtroop and Perry recorded voting no.)

### POSTPONED BUSINESS

The following bills were laid before the house as postponed business:

#### **CSSB 1048 ON SECOND READING**

**(J. Davis - House Sponsor)**

**CSSB 1048**, A bill to be entitled An Act relating to the creation of public and private facilities and infrastructure.

**CSSB 1048** was read second time earlier today, amendments were offered and disposed of, and **CSSB 1048** was postponed until this time.

#### **Amendment No. 2 - Vote Reconsidered**

Representative D. Howard moved to reconsider the vote by which Amendment No. 2 was adopted.

The motion to reconsider prevailed.

Amendment No. 2 was withdrawn.

#### **Amendment No. 3 - Vote Reconsidered**

Representative Margo moved to reconsider the vote by which Amendment No. 3 was adopted.

The motion to reconsider prevailed.

Amendment No. 3 was withdrawn.

#### **Amendment No. 4 - Vote Reconsidered**

Representative Lewis moved to reconsider the vote by which Amendment No. 4 was adopted.

The motion to reconsider prevailed.

Amendment No. 4 was withdrawn.

#### **Amendment No. 8**

Representative Dukes offered the following amendment to **CSSB 1048**:

Amend **CSSB 1048** (house committee report) in SECTION 1 of the bill, immediately following proposed Section 2267.065, Government Code (page 27, between lines 5 and 6), by inserting the following:

Sec. 2267.0655. HISTORICALLY UNDERUTILIZED BUSINESSES. A responsible governmental entity selecting a provider of services for a qualifying project or awarding a contract for a qualifying project shall comply with the requirements of Chapter 2161 if:

(1) the entity receives more than \$10 million in appropriated state funds in a state fiscal year; or

(2) the entity is awarding a contract in an amount that exceeds \$100,000 or is selecting a provider of services for the project in connection with a contract in an amount that exceeds \$100,000.

Amendment No. 8 was adopted.

**CSSB 1048**, as amended, was passed to third reading. (Cain, Kolkhorst, Landtroop, and Perry recorded voting no.)

**GENERAL STATE CALENDAR**  
(consideration continued)

**SB 1009 ON SECOND READING**  
(Sheffield - House Sponsor)

**SB 1009**, A bill to be entitled An Act relating to requiring public institutions of higher education to notify the federal Student and Exchange Visitor Information System (SEVIS) regarding the withdrawal or nonattendance of certain foreign students.

**SB 1009 - POINT OF ORDER**

Representative Gutierrez raised a point of order against further consideration of **SB 1009** under Rule 4, Section 32(c) of the House Rules on the grounds that the bill analysis is incorrect.

The point of order was withdrawn.

Representative Sheffield moved to postpone consideration of **SB 1009** until 7:45 p.m. today.

The motion prevailed.

(Geren in the chair)

**CSSB 81 ON SECOND READING**  
(Kolkhorst - House Sponsor)

**CSSB 81**, A bill to be entitled An Act relating to food safety.

**Amendment No. 1**

Representative Kolkhorst offered the following amendment to **CSSB 81**:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Amendment No. 1 was adopted.

**Amendment No. 2**

Representative Rodriguez offered the following amendment to **CSSB 81**:

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

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

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

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

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

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

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

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

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

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

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

### **Amendment No. 3**

Representative Kolkhorst offered the following amendment to Amendment No. 2:

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

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

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

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

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

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

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

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

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

Amendment No. 3 was adopted.

**COMMITTEE GRANTED PERMISSION TO MEET**

Representative McClendon requested permission for the Committee on Rules and Resolutions to meet while the house is in session, at 7:45 p.m. today, in 3W.9, to set a calendar.

Permission to meet was granted.

**COMMITTEE MEETING ANNOUNCEMENT**

The following committee meeting was announced:

Rules and Resolutions, 7:45 p.m. today, 3W.9, for a formal meeting, to set a calendar.

**HR 1991 - ADOPTED  
(by Hilderbran)**

Representative Hilderbran moved to suspend all necessary rules to take up and consider at this time **HR 1991**.

The motion prevailed.

The following resolution was laid before the house:

**HR 1991**, Congratulating Kerrville Municipal/Louis Schreiner Field Airport on being named the 2011 General Aviation Airport of the Year by the Texas Department of Transportation aviation division.

**HR 1991** was adopted.

**CSSB 81 - (consideration continued)****Amendment No. 4**

Representative S. Miller offered the following amendment to Amendment No. 2:

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

Amendment No. 4 was adopted.

Amendment No. 2, as amended, was adopted.

**CSSB 81**, as amended, was passed to third reading. (Landtroop and Perry recorded voting no.)

**MESSAGE FROM THE SENATE**

A message from the senate was received at this time (see the addendum to the daily journal, Messages from the Senate, Message No. 5).

**CSSB 1664 ON SECOND READING  
(Truitt and Creighton - House Sponsors)**

**CSSB 1664**, A bill to be entitled An Act relating to the powers and duties of and contributions to and benefits from the systems and programs administered by the Employees Retirement System of Texas.

**Amendment No. 1**

Representative Truitt offered the following amendment to **CSSB 1664**:

Amend **CSSB 1664** (house committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. (a) Section 815.317, Government Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) The comptroller shall deposit fees collected under Section 133.102(e)(7), Local Government Code, to the credit of the law enforcement and custodial officer supplemental retirement fund.

(b) Section 133.102(e), Local Government Code, is amended to read as follows:

(e) The comptroller shall allocate the court costs received under this section to the following accounts and funds so that each receives to the extent practicable, utilizing historical data as applicable, the same amount of money the account or fund would have received if the court costs for the accounts and funds had been collected and reported separately, except that the account or fund may not receive less than the following percentages:

- |  |                     |
|--|---------------------|
| (1) abused children's counseling   | 0.0088 percent;     |
| (2) crime stoppers assistance  | 0.2581 percent;     |
| (3) breath alcohol testing   | 0.5507 percent;     |
| (4) Bill Blackwood Law Enforcement Management Institute  | 2.1683 percent;     |
| (5) law enforcement officers standards and education   | 5.0034 percent;     |
| (6) comprehensive rehabilitation   | 5.3218 percent;     |
| (7) law enforcement and custodial officer supplemental retirement fund   | 11.1426 percent;    |
| <del>operator's and chauffeur's license</del>  |                     |
| (8) criminal justice planning  | 12.5537 percent;    |
| (9) an account in the state treasury to be used only for the establishment and operation of the Center for the Study and Prevention of Juvenile Crime and Delinquency at Prairie View A&M University | 1.2090 percent;     |
| (10) compensation to victims of crime fund   | 37.6338 percent;    |
| (11) fugitive apprehension account   | 12.0904 percent;    |
| (12) judicial and court personnel training fund  | 4.8362 percent;     |
| (13) an account in the state treasury to be used for the establishment and operation of the Correctional Management Institute of Texas and Criminal Justice Center Account                           | 1.2090 percent; and |
| (14) fair defense account  | 6.0143 percent.     |

(c) Notwithstanding any other provision of this Act, this section takes effect September 1, 2013.

Amendment No. 1 was adopted.

**Amendment No. 2**

Representative Johnson offered the following amendment to **CSSB 1664**:



Amend **CSSB 1664** (house committee printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS accordingly:

SECTION \_\_\_\_\_. Subchapter B, Chapter 814, Government Code, is amended by adding Section 814.1021 to read as follows:

Sec. 814.1021. CERTAIN ELECTED MEMBERS INELIGIBLE FOR RETIREMENT ANNUITY. (a) In this section, "qualifying felony" means any felony involving:

- (1) bribery;
- (2) the embezzlement, extortion, or other theft of public money;
- (3) perjury; or
- (4) conspiracy or the attempt to commit any of the above crimes.

(b) This section applies only to a member of the elected class of the retirement system as described by Section 812.002(a)(1) or (2).

(c) Except as provided by Subsection (d), a member is not eligible to receive a service retirement annuity for service credit in the elected class under the retirement system if the member is convicted of a qualifying felony committed while in office and arising directly from the official duties of that elected office.

(d) The retirement system shall suspend payments of an annuity to a person ineligible to receive the annuity under Subsection (c). A person whose conviction is overturned on appeal or who meets either of the requirements for innocence under Section 103.001(a)(2), Civil Practice and Remedies Code:

(1) is entitled to receive an amount equal to the accrued total of payments and interest earned on the payments withheld during the suspension period; and

(2) may resume receipt of annuity payments on payment to the retirement system of an amount equal to the contributions refunded to the person under Subsection (e).

(e) A member who is not eligible to receive a service retirement annuity under Subsection (c) is entitled to a refund of the member's retirement annuity contributions, including interest earned on those contributions.

(f) Benefits payable to an alternate payee under Chapter 804 who is recognized by a domestic relations order established before September 1, 2011, are not affected by a member's ineligibility to receive a retirement annuity under Subsection (c).

(g) Ineligibility for a retirement annuity under this section does not impair a person's right to any other retirement benefit for which the person is eligible.

(h) The board of trustees of the retirement system shall adopt rules and procedures to implement this section.

SECTION \_\_\_\_\_. Article 6220, Revised Statutes, is repealed.

SECTION \_\_\_\_\_. (a) Section 814.1021, Government Code, as added by this Act, applies only to a member of the Employees Retirement System of Texas who is or was a member of the state legislature or holds or has held a statewide elected office and, on or after the effective date of this Act, commits an offense that is a qualifying felony as defined by that section. A person who commits a qualifying

felony before the effective date of this Act is subject to the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose.

(b) For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

#### **Amendment No. 2 - Point of Order**

Representative Miles raised a point of order against further consideration of Amendment No. 2 under Rule 11, Section 2 of the House Rules on the grounds that the amendment is not germane to the bill.

The chair overruled the point of order.

(Speaker in the chair)

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

Representative Hartnett offered the following amendment to Amendment No. 2:

Amend the Johnson amendment to **CSSB 1664** as follows:

Add subsection (i) to Sec. 814.1021:

(i) Nothing in this section shall impair or affect a spouse's community property right in any accrued benefit.

Amendment No. 3 was adopted.

Amendment No. 2, as amended, was adopted.

**CSSB 1664**, as amended, was passed to third reading.

#### **CSSB 1605 ON SECOND READING (Lewis, Geren, and Cook - House Sponsors)**

**CSSB 1605**, A bill to be entitled An Act relating to the Texas Low-Level Radioactive Waste Disposal Compact Commission.

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

Representative Bonnen offered the following amendment to **CSSB 1605**:

Amend **CSSB 1605** (house committee report) as follows:

(1) In Section 3 of the bill, in amended Section 403.002, Health and Safety Code (page 2, lines 1-2), strike "February 1 of each even-numbered year" and substitute "September 1 of each odd-numbered year".

(2) In Section 5 of the bill (page 3, line 24), strike "February 1, 2012" and substitute "on that date".

(3) In Section 5(1) of the bill (page 4, line 2), strike "February 1, 2014" and substitute "September 1, 2013".

(4) In Section 5(2) of the bill (page 4, line 4), strike "February 1, 2016" and substitute "September 1, 2015".

(5) In Section 5(3) of the bill (page 4, line 6), strike "February 1, 2018" and substitute "September 1, 2017".

**Amendment No. 2**

Representatives Menendez, S. Miller, Truitt, Madden, Kuempel, Scott, Hopson, Isaac, Smithee, Hilderbran, Darby, Sheets, Workman, and Murphy offered the following amendment to Amendment No. 1:

Amend **CSSB 1605** as follows:

(1) In SECTION 5 of the bill, page 3, line 22, strike "The term of office of a person serving as a host state commissioner of the Texas Low-Level Radioactive Waste Disposal Compact Commission on the effective date of this Act expires February 1, 2012."

(2) In SECTION 5 of the bill, page 3, line 25, after "To begin the staggering of terms," insert "when persons who, on the effective date of this Act, are serving as host state commissioners of the Texas Low-Level Radioactive Waste Disposal Compact Commission come to the end of their normal terms or resign as commissioners,"

(3) In SECTION 5 of the bill, page 4, line 3, strike "2014", and insert "2017".

(4) In SECTION 5 of the bill, page 4, line 5 strike "2016", and insert "2019".

(5) In SECTION 5 of the bill, page 4, line 7 strike "2018", and insert "2021".

Amendment No. 2 was withdrawn.

(Villarreal now present)

**Amendment No. 3**

Representative Menendez offered the following amendment to Amendment No. 1:

Amend Amendment No. 1 by Bonnen to **CSSB 1605** by striking the text of the amendment and substituting the following:

Amend **CSSB 1605** by striking SECTION 5 of the bill, page 3, lines 21 through page 4, line 6 and substituting the following:

SECTION 5. To begin the staggering of terms, when persons who on the effective date of this Act are serving as host state commissioners of the Texas Low-Level Radioactive Waste Disposal Compact Commission come to an end of their normal terms or resign as commissioners, the governor shall appoint host state commissioners, in accordance with the provisions of Section 403.002, Health and Safety Code, as amended by this Act, as follows:

(1) two host state commissioners to terms expiring February 1, 2017;

(2) two host state commissioners to terms expiring February 1, 2019;

and

(3) two host state commissioners to terms expiring February 1, 2021.

Representative Lewis moved to table Amendment No. 3.

The motion to table prevailed by (Record 1384): 81 Yeas, 60 Nays, 1 Present, not voting.

Yeas — Aliseda; Anderson, C.; Anderson, R.; Aycock; Beck; Berman; Bohac; Bonnen; Branch; Brown; Burkett; Button; Cain; Callegari; Chisum; Christian; Cook; Craddick; Creighton; Crownover; Davis, J.; Davis, S.; Driver; Dukes; Dutton; Eiland; Elkins; Farrar; Flynn; Frullo; Garza; Gonzales, L.; Gooden; Hamilton; Hancock; Hardcastle; Harper-Brown; Hopson; Howard, C.; Hughes; Hunter; Keffer; King, P.; King, S.; King, T.; Kleinschmidt; Kolkhorst; Landtroop; Laubenberg; Lavender; Lewis; Lozano; Lyne; Madden; Miles; Miller, D.; Miller, S.; Morrison; Murphy; Nash; Orr; Otto; Parker; Patrick; Paxton; Perry; Phillips; Pitts; Quintanilla; Sheets; Sheffield; Shelton; Smith, T.; Smith, W.; Taylor, L.; Weber; White; Woolley; Workman; Zedler; Zerwas.

Nays — Allen; Alonzo; Alvarado; Anchia; Burnam; Carter; Castro; Coleman; Darby; Davis, Y.; Deshotel; Eissler; Farias; Gallego; Giddings; Gonzales, V.; Gonzalez; Guillen; Gutierrez; Harless; Hartnett; Hernandez Luna; Hilderbran; Hochberg; Howard, D.; Isaac; Johnson; Kuempel; Larson; Legler; Lucio; Mallory Caraway; Margo; Martinez; Martinez Fischer; Menendez; Muñoz; Naishtat; Oliveira; Pickett; Price; Raymond; Reynolds; Riddle; Ritter; Rodriguez; Schwertner; Scott; Simpson; Smithee; Solomons; Strama; Taylor, V.; Thompson; Truitt; Turner; Veasey; Villarreal; Vo; Walle.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Peña.

Absent — Fletcher; Geren; Huberty; Jackson; Marquez; McClendon; Torres.

#### STATEMENTS OF VOTE

When Record No. 1384 was taken, I was in the house but away from my desk. I would have voted yes.

Huberty

I was shown voting no on Record No. 1384. I intended to vote yes.

Kuempel

When Record No. 1384 was taken, I was temporarily out of the house chamber. I would have voted no.

Marquez

#### LEAVE OF ABSENCE GRANTED

The following member was granted leave of absence for the remainder of today because of important business:

Harless on motion of Truitt.

#### CSSB 1605 - (consideration continued)

Amendment No. 1 was adopted.

**CSSB 1605**, as amended, was passed to third reading. (Burnam recorded voting no.)

### POSTPONED BUSINESS

The following bills were laid before the house as postponed business:

#### **CSSB 978 ON SECOND READING (V. Gonzales - House Sponsor)**

**CSSB 978**, A bill to be entitled An Act relating to procedures for the dissolution of the Hidalgo County Water Improvement District No. 3.

**CSSB 978** was read second time earlier today and was postponed until this time. A point of order was pending at the time of postponement.

#### **CSSB 978 - POINT OF ORDER DISPOSITION**

The speaker overruled the point of order.

**CSSB 978** was passed to third reading by (Record 1385): 133 Yeas, 7 Nays, 6 Present, not voting.

Yeas — 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; Flynn; Frullo; Gallego; Geren; Giddings; Gonzales, L.; Gonzales, V.; Gonzalez; Gooden; Guillen; Gutierrez; Hamilton; Hancock; Hardcastle; Harper-Brown; Hartnett; Hernandez Luna; Hochberg; Hopson; Howard, C.; Howard, D.; Huberty; Hughes; Hunter; Jackson; Johnson; Keffer; King, P.; King, S.; Kleinschmidt; Kolkhorst; Kuempel; Larson; Laubenberg; Lavender; Legler; Lewis; Lozano; Lyne; Madden; Mallory Caraway; Margo; Marquez; Martinez; Martinez Fischer; McClendon; Menendez; Miles; Miller, D.; Miller, S.; Morrison; Muñoz; Naishtat; Nash; Oliveira; Orr; Otto; Parker; Patrick; Paxton; Phillips; Pickett; Pitts; Price; Quintanilla; Raymond; Reynolds; Rodriguez; Schwertner; Scott; Sheets; Sheffield; Shelton; Smith, T.; Smith, W.; Smithee; Solomons; Strama; Taylor, L.; Taylor, V.; Thompson; Truitt; Turner; Veasey; Villarreal; Vo; Walle; White; Woolley; Workman; Zedler; Zerwas.

Nays — Fletcher; Garza; King, T.; Murphy; Riddle; Simpson; Weber.

Present, not voting — Mr. Speaker(C); Hilderbran; Isaac; Landtroop; Perry; Ritter.

Absent, Excused — Harless; Peña.

Absent — Lucio; Torres.

### **GENERAL STATE CALENDAR (consideration continued)**

#### **CSSB 1810 ON SECOND READING (Truitt - House Sponsor)**

**CSSB 1810**, A bill to be entitled An Act relating to the exemption of certain retirement accounts from access by creditors.

CSSB 1810 was passed to third reading.

**SB 407 ON SECOND READING**  
**(Craddick, Gallego, et al. - House Sponsors)**

**SB 407**, A bill to be entitled An Act relating to the creation of the offense of electronic transmission of certain visual material depicting a minor and to certain educational programs concerning the prevention and awareness of that offense.

**Amendment No. 1 (Committee Amendment No. 1)**

Representative Gallego offered the following committee amendment to **SB 407**:

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

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

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

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

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

(3) took reasonable steps to destroy the material within an appropriate period following the allegation described by Subdivision (1).

SECTION \_\_\_\_\_. The change in law made by this Act to Section 43.26, Penal Code, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

Amendment No. 1 was adopted.

**Amendment No. 2**

Representative Gallego offered the following amendment to **SB 407**:

Amend **SB 407** (house committee printing) as follows:

(1) In SECTION 6 of the bill, strike the amended heading to Article 38.45, Code of Criminal Procedure (page 6, lines 17 through 19), and substitute the following:

Art. 38.45. EVIDENCE DEPICTING OR DESCRIBING ABUSE OF OR SEXUAL CONDUCT BY [THAT CONSTITUTES] CHILD OR MINOR [PORNOGRAPHY].

(2) In SECTION 7 of the bill, in amended Article 38.45(a), Code of Criminal Procedure (page 6, line 24), strike "that".

(3) In SECTION 7 of the bill, in amended Article 38.45(a)(1), Code of Criminal Procedure (page 6, line 25), between "(1)" and "constitutes", insert "that".

(4) In SECTION 7 of the bill, in added Article 38.45(a)(1), Code of Criminal Procedure (page 6, line 26), strike "or".

(5) In SECTION 7 of the bill, in added Article 38.45(a)(2), Code of Criminal Procedure (page 7, line 1), between "Penal Code" and the period, insert the following:

; or

(3) that is described by Section 2 or 5, Article 38.071, of this code

(6) In SECTION 8 of the bill, strike the amended heading to Article 39.15, Code of Criminal Procedure (page 7, lines 4 through 6) and substitute the following:

Art. 39.15. DISCOVERY OF EVIDENCE DEPICTING OR DESCRIBING ABUSE OF OR SEXUAL CONDUCT BY ~~[THAT CONSTITUTES]~~ CHILD OR MINOR ~~[PORNOGRAPHY]~~.

(7) In SECTION 9 of the bill, in added Article 39.15(a)(1), Code of Criminal Procedure (page 7, line 12), strike "or".

(8) In SECTION 9 of the bill, in added Article 39.15(a)(2), Code of Criminal Procedure (page 7, line 14), between "Penal Code" and the period, insert the following:

; or

(3) that is described by Section 2 or 5, Article 38.071, of this code

Amendment No. 2 was adopted.

**SB 407**, as amended, was passed to third reading.

### **CSSB 100 ON SECOND READING** **(V. Taylor - House Sponsor)**

**CSSB 100**, A bill to be entitled An Act relating to the adoption of voting procedures necessary to implement the federal Military and Overseas Voter Empowerment Act.

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

Representative Pickett offered the following amendment to **CSSB 100**:

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

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

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

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

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

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

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

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

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

(a) This section applies only to a municipality:

(1) with a population of at least 112,000 located in a county with a population of not more than 135,000;

(2) in which the sale of one or more types or classifications of alcoholic beverage is legal in the municipality as a result of a local option election held in the municipality; ~~and~~

(3) that, after the election is held, annexes territory in which the sale of one or more of those types or classifications of alcoholic beverage is not legal; and

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

Amendment No. 1 was adopted.

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

Representative Sheffield offered the following amendment to **CSSB 100**:

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

(2) Renumber subsequent subsections accordingly.

Amendment No. 2 was adopted.

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

Representative T. Smith offered the following amendment to **CSSB 100**:

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

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

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

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

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

(2) staggered terms.

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

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

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



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

(d) This section expires January 1, 2016.

Amendment No. 3 was adopted.

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

Representatives Branch, Nash, Kuempel, Pickett, Turner, Hopson, Bonnen, Keffer, Geren, Button, Ritter, and J. Davis offered the following amendment to **CSSB 100**:

Amend **CSSB 100** as follows:

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

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

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

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

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

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

Amendment No. 4 was adopted by (Record 1386): 121 Yeas, 16 Nays, 1 Present, not voting.

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

Nays — Aliseda; Burkett; Cain; Christian; Creighton; Driver; Flynn; Gonzales, L.; Hartnett; Hughes; Miller, S.; Phillips; Raymond; Riddle; Taylor, V.; White.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Harless; Peña.

Absent — Bohac; Elkins; Farias; Hunter; Lozano; Madden; Morrison; Paxton; Sheffield; Villarreal.

### STATEMENTS OF VOTE

When Record No. 1386 was taken, I was in the house but away from my desk. I would have voted yes.

Hunter

When Record No. 1386 was taken, I was in the house but away from my desk. I would have voted yes.

Paxton

### Amendment No. 5

Representative Sheffield offered the following amendment to **CSSB 100**:

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

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

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

Amendment No. 5 was adopted.

### MESSAGE FROM THE SENATE

A message from the senate was received at this time (see the addendum to the daily journal, Messages from the Senate, Message No. 6).

### CSSB 100 - (consideration continued)

CSSB 100, as amended, was passed to third reading.

### HB 447 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

Representative Menendez called up with senate amendments for consideration at this time,

**HB 447**, A bill to be entitled An Act relating to the powers of a defense base development authority.

Representative Menendez moved to concur in the senate amendments to **HB 447**.

The motion to concur in the senate amendments to **HB 447** prevailed by (Record 1387): 136 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Allen; Alonzo; Anchia; Anderson, C.; Anderson, R.; Aycock; Beck; Berman; Bohac; Bonnen; Branch; Brown; Burkett; Burnam; Button; Cain; Callegari; Carter; Castro; Chisum; Christian; Cook; Craddick; Creighton; Crownover; Darby; Davis, J.; Davis, S.; Davis, Y.; Deshotel; Driver; Dukes; Dutton; Eiland; Eissler; Elkins; Farrar; Fletcher; Flynn; Frullo; Gallego; Garza; Geren; Giddings; Gonzales, L.; Gonzales, V.; Gonzalez; Gooden; Guillen; Gutierrez; Hamilton; Hancock; Hardcastle; Harper-Brown; Hartnett; Hernandez Luna; Hilderbran; Hochberg; Hopson; Howard, C.; Howard, D.; Huberty; 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; McClendon; Menendez; Miles; Miller, D.; Miller, S.; Morrison; Muñoz; Murphy; Naishtat; Nash; Oliveira; Orr; Otto; Parker; Patrick; Paxton; Perry; Phillips; Pickett; Pitts; Price; Quintanilla; Raymond; Reynolds; Riddle; Ritter; Rodriguez; Scott; Sheets; Sheffield; Shelton; Simpson; Smith, T.; Smith, W.; Smithee; Strama; Taylor, L.; Taylor, V.; Thompson; Torres; Truitt; Turner; Vo; Weber; White; Woolley; Workman; Zedler; Zerwas.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Harless; Peña.

Absent — Aliseda; Alvarado; Coleman; Farias; Hughes; Martinez Fischer; Schwertner; Solomons; Veasey; Villarreal; Walle.

#### STATEMENT OF VOTE

When Record No. 1387 was taken, I was in the house but away from my desk. I would have voted yes.

Alvarado

#### Senate Committee Substitute

**CSHB 447**, A bill to be entitled An Act relating to the powers of a defense base development authority.

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

SECTION 1. Section 379B.004(a), Local Government Code, is amended to read as follows:

(a) An authority may exercise power necessary or convenient to carry out a purpose of this chapter, including the power to:

- (1) adopt an official seal, or alter it;
- (2) adopt rules;
- (3) enter into a contract or incur a liability;

- (4) acquire and dispose of money;
- (5) select a depository;
- (6) establish a system of accounts for the authority;
- (7) invest funds in accordance with Chapter 2256, Government Code;
- (8) set the fiscal year for the authority;
- (9) adopt an annual operating budget for major expenditures before the beginning of the fiscal year;
- (10) borrow money or issue a bond in an amount that does not exceed the maximum amount set by the board;
- (11) loan money;
- (12) acquire, lease, lease-purchase, convey, grant a mortgage on, or otherwise dispose of a property right, including a right regarding base property;
- (13) lease property located on the base property to a person to effect the purposes of this chapter;
- (14) request and accept a donation, grant, guaranty, or loan from any source permitted by law;
- (15) operate and maintain an office;
- (16) charge for the use, lease, or sale of an open space or a facility [~~or service~~];
- (17) exercise a power granted to a municipality by Chapter 380;
- (18) authorize by resolution the incorporation of a nonprofit airport facility financing corporation as provided and authorized by Subchapter E, Chapter 22, Transportation Code, to provide financing to pay the costs, including interest, and reserves for the costs of an airport facility authorized by that chapter and for other purposes set forth in the articles of incorporation;
- (19) exercise the powers granted to a local government for the financing of facilities to be located on airport property, including those set out in Chapter 22, Transportation Code, consistent with the requirements and the purposes of Section 52-a, Article III, Texas Constitution;
- (20) lease, own, and operate an airport and exercise the powers granted to municipalities and counties by Chapter 22, Transportation Code;
- (21) lease, own, and operate port facilities for air, trucking, and rail transportation;
- (22) provide security for port functions, facilities, and operations; and
- (23) cooperate with and participate in programs and security efforts of this state and the federal Department of Homeland Security.

SECTION 2. Chapter 379B, Local Government Code, is amended by adding Sections 379B.0042 and 379B.0043 to read as follows:

Sec. 379B.0042. SERVICES. An authority may charge for a service provided, including:

- (1) professional consultation services provided in relation to international trade, planning, land use, or construction;
- (2) real estate development services, including an employee licensed under Chapter 1101, Occupations Code, acting as a broker;

(3) support or participation in the acquisition of venture capital to finance the authority's redevelopment project, both inside and outside the authority;

(4) participation in or assistance on a joint venture composed of both public and private entities;

(5) promotion of an activity that creates employment opportunities; and

(6) any other service provided in relation to a project undertaken by the authority, alone or with others, to fulfill an authority purpose or objective.

Sec. 379B.0043. TRANSPORTATION PROJECT. (a) An authority may implement a transportation project:

(1) on the base property; or

(2) outside of the base property to provide access to the base property.

(b) An authority may enter into an agreement with any person, including another governmental entity, to plan, finance, construct, or maintain a project described by Subsection (a).

(c) An authority may construct a building, loading dock, or other facility as part of a transportation project described by Subsection (a)(1).

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

### **HB 1315 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS**

Representative Aliseda called up with senate amendments for consideration at this time,

**HB 1315**, A bill to be entitled An Act relating to the use of municipal hotel occupancy tax revenue in certain municipalities.

Representative Aliseda moved to concur in the senate amendments to **HB 1315**.

The motion to concur in the senate amendments to **HB 1315** prevailed by (Record 1388): 132 Yeas, 6 Nays, 1 Present, not voting.

Yeas — Aliseda; Allen; Alonzo; Alvarado; Anchia; Anderson, C.; Anderson, R.; Aycock; Beck; Bonnen; Branch; Brown; Burkett; Burnam; Button; Cain; Callegari; Carter; Castro; Chisum; Christian; Coleman; Cook; Craddick; Crownover; Darby; Davis, J.; Davis, S.; Davis, Y.; Deshotel; Driver; Dukes; Dutton; Eiland; Eissler; Elkins; Farias; Farrar; Fletcher; Frullo; Gallego; Garza; Geren; Giddings; Gonzales, L.; Gonzales, V.; Gonzalez; Gooden; Guillen; Gutierrez; Hamilton; Hancock; Harper-Brown; Hartnett; Hernandez Luna; Hilderbran; Hopson; Howard, C.; Howard, D.; Huberty; Hughes; Hunter; Isaac; Johnson; Keffer; King, P.; King, S.; King, T.; Kleinschmidt; Kuempel; Landtroop; Larson; Laubenberg; Lavender; Legler; Lewis; Lozano; Lucio; Lyne; Mallory Caraway; Margo; Martinez; McClendon; Menendez; Miles; Miller, D.; Miller, S.; Morrison; Muñoz; Murphy; Naishtat; Nash; Oliveira; Orr; Otto; Parker; Patrick; Paxton; Perry; Phillips; Pickett; Pitts; Price; Quintanilla; Raymond; Reynolds; Riddle; Ritter; Rodriguez; Schwertner; Scott; Sheets;

Shelton; Simpson; Smith, T.; Smith, W.; Smithee; Strama; Taylor, L.; Taylor, V.; Thompson; Torres; Truitt; Turner; Vo; Walle; Weber; White; Woolley; Workman; Zedler; Zerwas.

Nays — Berman; Creighton; Flynn; Kolkhorst; Madden; Sheffield.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Harless; Peña.

Absent — Bohac; Hardcastle; Hochberg; Jackson; Marquez; Martinez Fischer; Solomons; Veasey; Villarreal.

### STATEMENTS OF VOTE

When Record No. 1388 was taken, I was in the house but away from my desk. I would have voted yes.

Marquez

I was shown voting yes on Record No. 1388. I intended to vote no.

Paxton

I was shown voting yes on Record No. 1388. I intended to vote no.

Weber

### Senate Committee Substitute

**CSHB 1315**, A bill to be entitled An Act relating to the use of municipal hotel occupancy tax revenue in certain municipalities.

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

SECTION 1. Subchapter B, Chapter 351, Tax Code, is amended by adding Section 351.1066 to read as follows:

Sec. 351.1066. ALLOCATION OF REVENUE: CERTAIN MUNICIPALITIES. (a) This section applies only to:

(1) a municipality with a population of at least 3,500 but less than 5,500 that is the county seat of a county with a population of less than 50,000 that borders a county with a population of more than 1.6 million; and

(2) a municipality with a population of at least 2,900 but less than 3,500 that is the county seat of a county with a population of less than 22,000 that is bordered by the Trinity River and includes a state park and a portion of a wildlife management area.

(b) Notwithstanding any other provision of this chapter, a municipality to which this section applies may use all or any portion of the revenue derived from the municipal hotel occupancy tax for:

(1) a business recruitment project to substantially enhance hotel activity and encourage tourism; and

(2) the construction, enlarging, equipping, improvement, maintenance, repairing and operation of a recreational facility to substantially enhance hotel activity and encourage tourism.

SECTION 2. Section 351.003, Tax Code, is amended by adding Subsections (e) and (f) to read as follows:

(e) The rate in a municipality that has a population of more than 95,000 and is in a county that borders Lake Palestine and has a population of more than 200,000 may not exceed nine percent of the price paid for a room. The municipality shall allocate for the construction, expansion, maintenance, or operation of convention center facilities all revenue received by the municipality that is derived from the application of the tax at a rate of more than seven percent of the price paid for a room in a hotel.

(f) The rate in a municipality that has a population of at least 80,000 and is partly located in a county that borders the State of Louisiana and has a population of at least 60,000 may not exceed nine percent of the price paid for a room. The municipality shall allocate for the construction, expansion, maintenance, or operation of convention center facilities all revenue received by the municipality that is derived from the application of the tax at a rate of more than seven percent of the price paid for a room in a hotel.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2011.

#### **HB 1964 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS**

Representative Madden called up with senate amendments for consideration at this time,

**HB 1964**, A bill to be entitled An Act relating to discharging fines and costs assessed against certain juvenile defendants through community service.

Representative Madden moved to concur in the senate amendments to **HB 1964**.

The motion to concur in the senate amendments to **HB 1964** prevailed by (Record 1389): 145 Yeas, 0 Nays, 1 Present, not voting.

Yeas — 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; Eissler; Elkins; Farias; Farrar; Fletcher; Flynn; Frullo; Gallego; Garza; Geren; Giddings; Gonzales, L.; Gonzales, V.; Gonzalez; Gooden; Guillen; Gutierrez; Hamilton; Hancock; Hardcastle; 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; Martinez; Martinez Fischer; McClendon; Menendez; Miles; Miller, D.; Miller, S.; Morrison; Muñoz; Murphy; Naishtat; Nash; Oliveira; Orr; Otto; Parker; Patrick; Paxton; 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.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Harless; Peña.

Absent — Eiland; Marquez.

### STATEMENT OF VOTE

When Record No. 1389 was taken, I was in the house but away from my desk. I would have voted yes.

Marquez

### Senate Committee Substitute

**CSHB 1964**, A bill to be entitled An Act relating to discharging fines and costs assessed against certain juvenile defendants through community service.

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

SECTION 1. Subchapter B, Chapter 45, Code of Criminal Procedure, is amended by adding Article 45.0492 to read as follows:

Art. 45.0492. COMMUNITY SERVICE IN SATISFACTION OF FINE OR COSTS FOR CERTAIN JUVENILE DEFENDANTS. (a) This article applies only to a defendant younger than 17 years of age who is assessed a fine or costs for a Class C misdemeanor.

(b) A justice or judge may require a defendant described by Subsection (a) to discharge all or part of the fine or costs by performing community service. A defendant may discharge an obligation to perform community service under this article by paying at any time the fine and costs assessed.

(c) In the justice's or judge's order requiring a defendant to perform community service under this article, the justice or judge shall specify the number of hours of service the defendant is required to perform and may not order more than 200 hours of service.

(d) The justice or judge may order the defendant to perform community service work under this article only for a governmental entity or a nonprofit organization that provides services to the general public that enhance social welfare and the general well-being of the community. A governmental entity or nonprofit organization that accepts a defendant under this article to perform community service must agree to supervise the defendant in the performance of the defendant's work and report on the defendant's work to the justice or judge who ordered the community service.

(e) A justice or judge may not order a defendant to perform more than 16 hours of community service per week under this article unless the justice or judge determines that requiring additional hours of work does not cause a hardship on the defendant or the defendant's family. For purposes of this subsection, "family" has the meaning assigned by Section 71.003, Family Code.



(f) A sheriff, employee of a sheriff's department, county commissioner, county employee, county judge, justice of the peace, municipal court judge, or officer or employee of a political subdivision other than a county is not liable for damages arising from an act or failure to act in connection with community service performed by a defendant under this article if the act or failure to act:

(1) was performed pursuant to court order; and

(2) was not intentional, wilfully or wantonly negligent, or performed with conscious indifference or reckless disregard for the safety of others.

(g) A local juvenile probation department or a court-related services office may provide the administrative and other services necessary for supervision of a defendant required to perform community service under this article.

SECTION 2. Article 45.051(a-1), Code of Criminal Procedure, is amended to read as follows:

(a-1) Notwithstanding any other provision of law, as an alternative to requiring a defendant charged with one or more offenses to make payment of all court costs as required by Subsection (a), the judge may:

(1) allow the defendant to enter into an agreement for payment of those costs in installments during the defendant's period of probation;

(2) require an eligible defendant to discharge all or part of those costs by performing community service under Article 45.049 or 45.0492; or

(3) take any combination of actions authorized by Subdivision (1) or (2).

SECTION 3. The changes in law made by this Act apply only to an offense committed or conduct that occurs on or after the effective date of this Act. An offense committed or conduct that occurs before the effective date of this Act is governed by the law in effect when the offense was committed or the conduct occurred, and the former law is continued in effect for that purpose. For purposes of this section, an offense is committed or conduct occurs before the effective date of this Act if any element of the offense or conduct occurs before the effective date.

SECTION 4. This Act takes effect September 1, 2011.

### **Senate Amendment No. 1 (Senate Floor Amendment No. 1)**

Amend **CSHB 1964** (senate committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Article 45.057(b), Code of Criminal Procedure, is amended to read as follows:

(b) On a finding by a justice or municipal court that a child committed an offense that the court has jurisdiction of under Article 4.11 or 4.14, the court has jurisdiction to enter an order:

(1) referring the child or the child's parent for services under Section 264.302, Family Code;

(2) requiring that the child attend a special program that the court determines to be in the best interest of the child and, if the program involves the expenditure of municipal or county funds, that is approved by the governing body of the municipality or county commissioners court, as applicable, including a

rehabilitation, counseling, self-esteem and leadership, work and job skills training, job interviewing and work preparation, self-improvement, parenting, manners, violence avoidance, tutoring, sensitivity training, parental responsibility, community service, restitution, advocacy, or mentoring program; or

(3) requiring that the child's parent do any act or refrain from doing any act that the court determines will increase the likelihood that the child will comply with the orders of the court and that is reasonable and necessary for the welfare of the child, including:

- (A) attend a parenting class or parental responsibility program; and
- (B) attend the child's school classes or functions.

**HB 1619 - HOUSE REFUSES TO CONCUR  
IN SENATE AMENDMENTS  
CONFERENCE COMMITTEE APPOINTED**

Representative Orr called up with senate amendments for consideration at this time,

**HB 1619**, A bill to be entitled An Act relating to emergency services districts.

Representative Orr moved that the house not concur in the senate amendments and that a conference committee be requested to adjust the differences between the two houses on **HB 1619**.

The motion prevailed.

The chair announced the appointment of the following conference committee, on the part of the house, on **HB 1619**: Orr, chair; Coleman, L. Gonzales, D. Miller, and Schwertner.

**HB 1942 - HOUSE CONCURS IN SENATE AMENDMENTS  
TEXT OF SENATE AMENDMENTS**

Representative Patrick called up with senate amendments for consideration at this time,

**HB 1942**, A bill to be entitled An Act relating to bullying in public schools.

Representative Patrick moved to concur in the senate amendments to **HB 1942**.

The motion to concur in the senate amendments to **HB 1942** prevailed by (Record 1390): 118 Yeas, 26 Nays, 1 Present, not voting.

Yeas — Aliseda; Allen; Alonzo; Alvarado; Anchia; Aycock; Beck; Bohac; Bonnen; Branch; Brown; Burkett; Burnam; Button; Callegari; Castro; Chisum; Christian; Coleman; Cook; Craddick; Creighton; Darby; Davis, J.; Davis, S.; Davis, Y.; Deshotel; Driver; Dukes; Dutton; Eiland; Eissler; Elkins; Farias; Farrar; Fletcher; Frullo; Gallego; Garza; Geren; Giddings; Gonzales, L.; Gonzales, V.; Gonzalez; Gooden; Guillen; Gutierrez; Hamilton; Hancock; Hardcastle; Hartnett; Hernandez Luna; Hilderbran; Hochberg; Hopson; Howard, C.; Howard, D.; Huberty; Hunter; Isaac; Jackson; Johnson; King, S.; King, T.; Kleinschmidt; Kolkhorst; Kuempel; Lewis; Lozano; Lucio; Lyne; Madden;

Mallory Caraway; Margo; Marquez; Martinez; Martinez Fischer; McClendon; Menendez; Miles; Miller, D.; Muñoz; Murphy; Naishtat; Nash; Orr; Otto; Parker; Patrick; Pickett; Pitts; Quintanilla; Raymond; Reynolds; Riddle; Ritter; Rodriguez; Schwertner; Scott; Sheets; Sheffield; Shelton; Simpson; Smith, T.; Smith, W.; Smithee; Solomons; Strama; Thompson; Torres; Truitt; Turner; Veasey; Vo; Walle; Woolley; Workman; Zerwas.

Nays — Anderson, C.; Anderson, R.; Berman; Cain; Carter; Crownover; Flynn; Harper-Brown; Hughes; King, P.; Landtroop; Larson; Laubenberg; Lavender; Legler; Miller, S.; Morrison; Paxton; Perry; Phillips; Price; Taylor, L.; Taylor, V.; Weber; White; Zedler.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Harless; Peña.

Absent — Keffer; Oliveira; Villarreal.

#### STATEMENTS OF VOTE

I was shown voting yes on Record No. 1390. I intended to vote no.

Garza

I was shown voting yes on Record No. 1390. I intended to vote no.

Workman

#### Senate Committee Substitute

**CSHB 1942**, A bill to be entitled An Act relating to bullying in public schools.

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

SECTION 1. Section 21.451(d), Education Code, is amended to read as follows:

(d) The staff development:

(1) may include training in:

(A) technology;

(B) conflict resolution; ~~and~~

(C) discipline strategies, including classroom management, district discipline policies, and the student code of conduct adopted under Section 37.001 and Chapter 37; and

(D) preventing, identifying, responding to, and reporting incidents of bullying; and

(2) subject to Subsection (e), must include training based on scientifically based research, as defined by Section 9101, No Child Left Behind Act of 2001 (20 U.S.C. Section 7801), that:

(A) relates to instruction of students with disabilities; and

(B) is designed for educators who work primarily outside the area of special education.

SECTION 2. The heading to Section 25.0342, Education Code, is amended to read as follows:

Sec. 25.0342. TRANSFER OF STUDENTS WHO ARE VICTIMS OF OR HAVE ENGAGED IN BULLYING.

SECTION 3. Section 25.0342, Education Code, is amended by amending Subsection (a) and adding Subsections (b-1) and (b-2) to read as follows:

(a) In this section, "bullying" has the meaning assigned by Section 37.0832 ~~[means engaging in written or verbal expression or physical conduct that a school district board of trustees or the board's designee determines:~~

~~[(1) will have the effect of physically harming a student, damaging a student's property, or placing a student in reasonable fear of harm to the student's person or of damage to the student's property; or~~

~~[(2) is sufficiently severe, persistent, or pervasive enough that the action or threat creates an intimidating, threatening, or abusive educational environment for a student].~~

(b-1) The board of trustees of a school district may transfer the student who engaged in bullying to:

(1) another classroom at the campus to which the victim was assigned at the time the bullying occurred; or

(2) a campus in the district other than the campus to which the victim was assigned at the time the bullying occurred, in consultation with a parent or other person with authority to act on behalf of the student who engaged in bullying.

(b-2) Section 37.004 applies to a transfer under Subsection (b-1) of a student with a disability who receives special education services.

SECTION 4. Section 28.002, Education Code, is amended by adding Subsection (s) to read as follows:

(s) In this subsection, "bullying" has the meaning assigned by Section 37.0832 and "harassment" has the meaning assigned by Section 37.001. In addition to any other essential knowledge and skills the State Board of Education adopts for the health curriculum under Subsection (a)(2)(B), the board shall adopt for the health curriculum, in consultation with the Texas School Safety Center, essential knowledge and skills that include evidence-based practices that will effectively address awareness, prevention, identification, self-defense in response to, and resolution of and intervention in bullying and harassment.

SECTION 5. Section 37.001(b), Education Code, is amended to read as follows:

(b) In this section:

(1) "Bullying" has the meaning assigned by Section 37.0832.

(2) "Harassment" means threatening to cause harm or bodily injury to another student, engaging in sexually intimidating conduct, causing physical damage to the property of another student, subjecting another student to physical confinement or restraint, or maliciously taking any action that substantially harms another student's physical or emotional health or safety.

(3) ~~(2)~~ "Hit list" means a list of people targeted to be harmed, using:

(A) a firearm, as defined by Section 46.01(3), Penal Code;

(B) a knife, as defined by Section 46.01(7), Penal Code; or

(C) any other object to be used with intent to cause bodily harm.

SECTION 6. Section 37.083(a), Education Code, is amended to read as follows:

(a) Each school district shall adopt and implement a discipline management program to be included in the district improvement plan under Section 11.252. The program must provide for prevention of and education concerning unwanted physical or verbal aggression and and [;] sexual harassment [; and other forms of bullying] in school, on school grounds, and in school vehicles.

SECTION 7. Subchapter C, Chapter 37, Education Code, is amended by adding Section 37.0832 to read as follows:

Sec. 37.0832. BULLYING PREVENTION POLICIES AND PROCEDURES. (a) In this section, "bullying" means, subject to Subsection (b), engaging in written or verbal expression, expression through electronic means, or physical conduct that occurs on school property, at a school-sponsored or school-related activity, or in a vehicle operated by the district and that:

(1) has the effect or will have the effect of physically harming a student, damaging a student's property, or placing a student in reasonable fear of harm to the student's person or of damage to the student's property; or

(2) is sufficiently severe, persistent, and pervasive enough that the action or threat creates an intimidating, threatening, or abusive educational environment for a student.

(b) Conduct described by Subsection (a) is considered bullying if that conduct:

(1) exploits an imbalance of power between the student perpetrator and the student victim through written or verbal expression or physical conduct; and

(2) interferes with a student's education or substantially disrupts the operation of a school.

(c) The board of trustees of each school district shall adopt a policy, including any necessary procedures, concerning bullying that:

(1) prohibits the bullying of a student;

(2) prohibits retaliation against any person, including a victim, a witness, or another person, who in good faith provides information concerning an incident of bullying;

(3) establishes a procedure for providing notice of an incident of bullying to a parent or guardian of the victim and a parent or guardian of the bully within a reasonable amount of time after the incident;

(4) establishes the actions a student should take to obtain assistance and intervention in response to bullying;

(5) sets out the available counseling options for a student who is a victim of or a witness to bullying or who engages in bullying;

(6) establishes procedures for reporting an incident of bullying, investigating a reported incident of bullying, and determining whether the reported incident of bullying occurred;

(7) prohibits the imposition of a disciplinary measure on a student who, after an investigation, is found to be a victim of bullying, on the basis of that student's use of reasonable self-defense in response to the bullying; and

(8) requires that discipline for bullying of a student with disabilities comply with applicable requirements under federal law, including the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.).

(d) The policy and any necessary procedures adopted under Subsection (c) must be included:

(1) annually, in the student and employee school district handbooks;  
and

(2) in the district improvement plan under Section 11.252.

(e) The procedure for reporting bullying established under Subsection (c) must be posted on the district's Internet website to the extent practicable.

SECTION 8. This Act applies beginning with the 2012-2013 school year.

SECTION 9. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2011.

**SB 1811 - REQUEST OF SENATE GRANTED  
CONFERENCE COMMITTEE INSTRUCTED  
CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Pitts, the house granted the request of the senate for the appointment of a Conference Committee on **SB 1811**.

Representative Cain moved to instruct the Conference Committee on **SB 1811** to include in the conference committee report language from Amendment No. 45, as amended, relating to the language that will clarify the budget in the General Appropriations Act format without change to the substance of that section.

The motion to instruct conferees prevailed.

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 1811**: Pitts, chair; Turner, Crownover, Eissler, and Geren.

**SB 23 - REQUEST OF SENATE GRANTED  
CONFERENCE COMMITTEE INSTRUCTED  
CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Zerwas, the house granted the request of the senate for the appointment of a Conference Committee on **SB 23**.

Representative Brown moved to instruct the Conference Committee on **SB 23** to retain the bad actor amendment adopted by the house.

The motion to instruct conferees prevailed.

Representative Hopson moved to instruct the Conference Committee on **SB 23** to follow the house version of the bill as it relates to the managed care pharmacy benefit rollout.

The motion to instruct conferees prevailed.

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 23**: Zerwas, chair; J. Davis, V. Gonzales, Hopson, and Pitts.

**SB 263 - REQUEST OF SENATE GRANTED  
CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Kolkhorst, the house granted the request of the senate for the appointment of a Conference Committee on **SB 263**.

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 263**: Kolkhorst, chair; Coleman, S. Davis, S. King, and Zerwas.

**GENERAL STATE CALENDAR  
(consideration continued)**

**SB 809 ON SECOND READING  
(Giddings - House Sponsor)**

**SB 809**, A bill to be entitled An Act relating to judicial review in district court of certain workers' compensation disputes.

(L. Taylor in the chair)

**Amendment No. 1**

Representative Giddings offered the following amendment to **SB 809**:

Amend **SB 809** (house committee printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 413.031(k-1), Labor Code, is amended to read as follows:

(k-1) A party who has exhausted all administrative remedies described by [under] Subsection (k) and who is aggrieved by a final decision of the division or the State Office of Administrative Hearings may seek judicial review of the decision. Judicial review under this subsection shall be conducted in the manner provided for judicial review of a contested case under Subchapter G, Chapter 2001, Government Code, except that in the case of a medical fee dispute the party seeking judicial review under this section must file suit not later than the 45th day after the date on which the State Office of Administrative Hearings mailed the party the notification of the decision. For purposes of this subsection, the mailing date is considered to be the fifth day after the date the decision was issued by the State Office of Administrative Hearings.

SECTION \_\_\_\_\_. Section 1305.103(c), Insurance Code, is amended to read as follows:

(c) An employee who lives within the service area of a network and who is being treated by a non-network provider for an injury that occurred before the employer's insurance carrier established or contracted with the network, shall select a network treating doctor on notification by the carrier that health care services are being provided through the network. The carrier shall provide to the employee all information required by Section 1305.451. If the employee fails to

select a treating doctor on or before the 14th day after the date of receipt of the information required by Section 1305.451, the network may assign the employee a network treating doctor. An issue regarding whether a carrier properly provided an employee the information required by this subsection may be resolved using the process for adjudication of disputes under Chapter 410, Labor Code, as used by the department's division of workers' compensation.

SECTION \_\_\_\_\_. Section 1305.451, Insurance Code, is amended by adding Subsection (e) to read as follows:

(e) An issue regarding whether an employer properly provided an employee with the information required by this section may be resolved using the process for adjudication of disputes under Chapter 410, Labor Code, as used by the department's division of workers' compensation.

Amendment No. 1 was adopted.

**SB 809**, as amended, was passed to third reading.

**SB 717 ON SECOND READING**  
**(Truitt and Naishtat - House Sponsors)**

**SB 717**, A bill to be entitled An Act relating to the purpose and duties of the Council on Children and Families.

**SB 717** was passed to third reading.

**SB 460 ON SECOND READING**  
**(Hunter - House Sponsor)**

**SB 460**, A bill to be entitled An Act relating to regulation of the import, export, and management of mule deer; providing penalties.

**Amendment No. 1**

Representative Phillips offered the following amendment to **SB 460**:

Amend **SB 460** (house committee printing) as follows:

(1) In SECTION 2 of the bill, in added Subchapter R-1, Chapter 43, Parks and Wildlife Code, between added Sections 43.621 and 43.622 (page 1, between lines 21 and 22), insert the following:

Sec. 43.6211. DEFINITION. In this subchapter, "animal health commission" means the Texas Animal Health Commission.

(2) In SECTION 2 of the bill, in added Subchapter R-1, Chapter 43, Parks and Wildlife Code, between added Sections 43.625 and 43.626 (page 3, between lines 21 and 22), insert the following:

Sec. 43.6251. DESTRUCTION OF DEER. (a) To control or prevent the spread of disease, deer on acreage covered by a permit issued under this subchapter may be destroyed only if:

(1) an agent of the animal health commission has conducted an epidemiological assessment;

(2) based on the assessment under Subdivision (1), the executive director of the animal health commission determines that the deer pose a threat to the health of other deer or other species, including humans; and



(3) the executive director of the animal health commission orders the destruction of the deer.

(b) The animal health commission shall provide written notification of an order to destroy deer to:

(1) the department; and

(2) the applicable permit holder as provided by Section 43.6252.

(c) The department shall carry out an order to destroy deer after notice has been provided to the applicable permit holder. The destruction must be conducted in the presence of and under the direction of animal health commission officials.

Sec. 43.6252. NOTICE OF DEER DESTRUCTION. (a) The animal health commission must provide notice to a permit holder before the department may destroy any of the deer covered by the permit.

(b) A notice provided under this section must be sent by certified mail to the last known address of the permit holder and must contain:

(1) the date of destruction, which may not be sooner than the 10th day after the date of the notice;

(2) an explanation of any access restrictions imposed on the acreage covered by the permit during the destruction of the deer; and

(3) an explanation of the reasons for the destruction.

Sec. 43.6253. COST RECOVERY. The permit holder shall pay to the department all costs associated with the epidemiological assessment and destruction of deer under this subchapter. The department and the animal health commission shall divide the payment to cover the costs incurred by each agency in carrying out their respective duties under this subchapter.

(2) Add the following appropriately numbered SECTIONS to the bill and renumber subsequent SECTIONS accordingly:

SECTION \_\_\_\_. Section 12.501(b), Parks and Wildlife Code, is amended to read as follows:

(b) Except as provided by Subchapter G, the [The] director may suspend or revoke an original or renewal permit or license issued under this code if it is found, after notice and hearing, that:

(1) the permittee or licensee has been finally convicted of a violation of this code or proclamation or regulation adopted under this code relating to the permit or license to be suspended or revoked;

(2) the permittee or licensee violated a provision of this code or proclamation or regulation adopted under this code relating to the permit or license to be suspended or revoked;

(3) the permittee or licensee made a false or misleading statement in connection with the permittee's or licensee's [his] original or renewal application, either in the formal application itself or in any other written instrument relating to the application submitted to the commission or its officers or employees;

(4) the permittee or licensee is indebted to the state for taxes, fees, or payment of penalties imposed by this code or by a commission rule relating to a permit or license to be suspended or revoked; or

(5) the permittee or licensee is liable to the state under Section 12.301.

SECTION \_\_\_\_\_. Section 12.506, Parks and Wildlife Code, is amended by adding Subsection (c) to read as follows:

(c) This section does not apply to a permit to which Subchapter G applies.

SECTION \_\_\_\_\_. Section 12.508(b), Parks and Wildlife Code, is amended to read as follows:

(b) Except as provided by Subchapter G, the [The] department may refuse to issue or transfer an original or renewal license, permit, or tag if the applicant or transferee:

(1) has been finally convicted of a violation under this code or a rule adopted or a proclamation issued under this code;

(2) is liable to the state under Section 12.301; and

(3) has failed to fully pay the amount due under Section 12.301 after the department has issued notice of liability to the applicant or transferee.

SECTION \_\_\_\_\_. Chapter 12, Parks and Wildlife Code, is amended by adding Subchapter G to read as follows:

SUBCHAPTER G. REFUSAL TO ISSUE OR RENEW AND APPEAL OF CERTAIN DECISIONS REGARDING CERTAIN PERMITS RELATING TO THE CONTROL, BREEDING, OR MANAGEMENT OF DEER

Sec. 12.601. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to the following permits:

(1) a trap, transport, and transplant permit under Section 43.061 or 43.0611;

(2) a trap, transport, and process permit under Section 43.0612;

(3) a deer breeder's permit under Subchapter L, Chapter 43; and

(4) a deer management permit under Subchapter R or R-1, Chapter 43.

Sec. 12.602. DEFINITIONS. In this subchapter:

(1) "Applicant" means a person who has applied for a new or renewal permit.

(2) "Final conviction" means a final judgment of guilt, the granting of deferred adjudication or pretrial diversion, or the entering of a plea of guilty or nolo contendere.

(3) "Permittee" means a person to whom a permit has been issued, including each member of a partnership or association, an agent acting on behalf of a partnership or association, each officer of a corporation, and the owner of a majority of a corporation's corporate stock.

Sec. 12.603. GENERAL CIRCUMSTANCES FOR REFUSAL TO ISSUE OR RENEW PERMIT. The department may refuse to issue or renew a permit if the applicant fails to submit in a timely manner the following:

(1) a completed application on a form supplied by the department and all application materials required by the department;

(2) the required permit fee;

(3) accurate reports as applicable; and

(4) any additional information that the department determines is necessary to process the application.

Sec. 12.604. REFUSAL TO ISSUE OR RENEW PERMIT BASED ON CERTAIN CONVICTIONS. (a) This section applies only to a determination of whether to issue a permit to or renew a permit for an applicant who has a final conviction for a violation of:

(1) Subchapter C, E, L, R, or R-1, Chapter 43;

(2) a provision of this code not described by Subdivision (1) that is punishable as a Class A or B Parks and Wildlife Code misdemeanor, a Parks and Wildlife Code state jail felony, or a Parks and Wildlife Code felony;

(3) Section 63.002; or

(4) the Lacey Act (16 U.S.C. Sections 3371-3378).

(b) In determining whether to issue a permit to or renew a permit for an applicant with a final conviction, the department shall consider:

(1) the number of convictions and the seriousness of each conviction;

(2) the existence, number, and seriousness of offenses or violations other than offenses or violations that resulted in a final conviction described by Subsection (a);

(3) the length of time between the most recent final conviction and the permit application;

(4) whether the final conviction or other offense or violation was the result of negligence or intentional conduct;

(5) the applicant's efforts toward rehabilitation;

(6) the accuracy of the permit history information provided by the applicant; and

(7) other mitigating factors.

Sec. 12.605. PROCEDURE FOR REFUSAL TO ISSUE OR RENEW PERMIT. (a) Not later than the 10th day after the date a decision to refuse to issue or renew a permit has been made, the department shall provide to the applicant a written statement of the reasons for the decision.

(b) The commission by rule shall adopt procedures consistent with this subchapter for the department's review of a refusal to issue or renew a permit.

Sec. 12.606. REVIEW OF REFUSAL TO ISSUE OR RENEW PERMIT. In conducting a review of a decision by the department to refuse to issue or renew a permit, the department shall consider:

(1) whether the conduct on which the refusal is based was negligent or intentional;

(2) for a refusal based on conduct that is a violation of a provision listed in Section 12.604(a), whether the applicant has a final conviction based on the conduct;

(3) the seriousness of an offense described by Subdivision (2) for which the applicant was finally convicted;

(4) whether the conduct on which the refusal was based was committed or omitted by the applicant, an agent of the applicant, or both;

(5) for a renewal, whether the applicant agreed to any special conditions recommended by the department in lieu of a decision to refuse to issue or renew the expiring permit;

(6) whether there is a substantial likelihood that the applicant would repeat the conduct on which the refusal is based;

(7) whether the conduct on which the refusal is based involved a threat to public safety; and

(8) other mitigating factors.

Sec. 12.607. APPEAL OF DEPARTMENT DECISION TO REVOKE, SUSPEND, OR REFUSE PERMIT. (a) Except as provided by this section, the revocation or suspension of a permit is governed by Subchapter F.

(b) Venue for an appeal from a decision of the department refusing to issue or renew a permit or revoking or suspending a permit is a district court in:

(1) the county where the permitted facility, if applicable, is located;

(2) the county where the permittee resides; or

(3) Travis County.

(c) The appeal shall be by trial de novo.

SECTION \_\_\_\_. Section 43.351, Parks and Wildlife Code, is amended by adding Subdivision (8) to read as follows:

(8) "Animal health commission" means the Texas Animal Health Commission.

SECTION \_\_\_\_. Section 43.352(b), Parks and Wildlife Code, is amended to read as follows:

(b) At the option of the person applying for the issuance or renewal of a permit under this section, the [The] department may issue a permit [under this section] that is valid for [longer than] one year, three years, or five years. A three-year or five-year permit is available only to a person who agrees to submit the annual reports required under this subchapter electronically. The commission may adopt rules allowing the department to terminate a permit before the date originally specified for the permit issuance or renewal if the permit holder fails to submit the annual reports electronically as required for a three-year or five-year permit.

SECTION \_\_\_\_. Subchapter L, Chapter 43, Parks and Wildlife Code, is amended by adding Sections 43.3591, 43.3661, 43.370, 43.371, and 43.372 to read as follows:

Sec. 43.3591. GENETIC TESTING. (a) In this section:

(1) "DNA" means deoxyribonucleic acid.

(2) "Genetic test" means a laboratory analysis of a deer's genes, gene products, or chromosomes that:

(A) analyzes the deer's DNA, RNA, proteins, or chromosomes;  
and

(B) is performed to determine genetically the deer's ancestral lineage or descendants.

(3) "RNA" means ribonucleic acid.

(b) After an inspection, the department shall notify a deer breeder in writing when the department has reason to believe the deer breeder possesses deer that may pose a disease risk to other deer. The notice must include an explanation of the rationale used to establish the disease risk.

(c) If genetic testing is timely conducted, the department must postpone any actions that may be affected by the test results until the test results are available.

(d) The results of genetic testing may not be used as evidence to establish a defense against a fine imposed on a deer breeder found guilty of failure to keep records of all deer in a deer breeder facility as required by this subchapter.

Sec. 43.3661. RULES. The commission may adopt rules as needed to implement this subchapter.

Sec. 43.370. DESTRUCTION OF DEER. (a) To control or prevent the spread of disease, deer held at a deer breeding facility may be destroyed only if:

(1) an agent of the animal health commission has conducted an epidemiological assessment;

(2) based on the assessment under Subdivision (1), the executive director of the animal health commission determines that the deer pose a threat to the health of other deer or other species, including humans; and

(3) the executive director of the animal health commission orders the destruction of the deer.

(b) The animal health commission shall provide written notification of an order to destroy deer to:

(1) the department; and

(2) the applicable deer breeder as provided by Section 43.371.

(c) The department shall carry out an order to destroy deer after notice has been provided to the applicable deer breeder. The destruction must be conducted in the presence of and under the direction of animal health commission officials.

Sec. 43.371. NOTICE OF DEER DESTRUCTION. (a) The animal health commission must provide notice to a deer breeder before the department may destroy any of the deer held at the deer breeder's facility.

(b) A notice provided under this section must be sent by certified mail to the last known address of the deer breeder and must contain:

(1) the date of destruction, which may not be sooner than the 10th day after the date of the notice;

(2) an explanation of any access restrictions imposed on the deer breeder's facility during the destruction of the deer; and

(3) an explanation of the reasons for the destruction.

Sec. 43.372. COST RECOVERY. The deer breeder shall pay to the department all costs associated with the epidemiological assessment and destruction of deer under this subchapter. The department and the animal health commission shall divide the payment to cover the costs incurred by each agency in carrying out their respective duties under this subchapter.

SECTION \_\_\_\_\_. Subchapter R, Chapter 43, Parks and Wildlife Code, is amended by adding Sections 43.6011, 43.608, 43.609, and 43.610 to read as follows:

Sec. 43.6011. DEFINITION. In this subchapter, "animal health commission" means the Texas Animal Health Commission.

Sec. 43.608. DESTRUCTION OF DEER. (a) To control or prevent the spread of disease, deer on acreage covered by a permit issued under this subchapter may be destroyed only if:

(1) an agent of the animal health commission has conducted an epidemiological assessment;

(2) based on the assessment under Subdivision (1), the executive director of the animal health commission determines that the deer pose a threat to the health of other deer or other species, including humans; and

(3) the executive director of the animal health commission orders the destruction of the deer.

(b) The animal health commission shall provide written notification of an order to destroy deer to:

(1) the department; and

(2) the applicable permit holder as provided by Section 43.609.

(c) The department shall carry out an order to destroy deer after notice has been provided to the applicable permit holder. The destruction must be conducted in the presence of and under the direction of animal health commission officials.

Sec. 43.609. NOTICE OF DEER DESTRUCTION. (a) The animal health commission must provide notice to a permit holder before the department may destroy any of the deer covered by the permit.

(b) A notice provided under this section must be sent by certified mail to the last known address of the permit holder and must contain:

(1) the date of destruction, which may not be sooner than the 10th day after the date of the notice;

(2) an explanation of any access restrictions imposed on the acreage covered by the permit during the destruction of the deer; and

(3) an explanation of the reasons for the destruction.

Sec. 43.610. COST RECOVERY. The permit holder shall pay to the department all costs associated with the epidemiological assessment and destruction of deer under this subchapter. The department and the animal health commission shall divide the payment to cover the costs incurred by each agency in carrying out their respective duties under this subchapter.

SECTION \_\_\_\_. (a) Except as provided by Subsection (b) of this section, Subchapter G, Chapter 12, Parks and Wildlife Code, as added by this Act, applies only to a permit that is issued or renewed on or after the effective date of this Act. A permit issued or renewed before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(b) Section 12.607, Parks and Wildlife Code, as added by this Act, applies only to an appeal from a decision of the Parks and Wildlife Department refusing to issue or renew a permit or revoking or suspending a permit that is filed on or after the effective date of this Act. An appeal filed before the effective date of this Act is governed by the law in effect on the date the appeal was filed, and that law is continued in effect for that purpose.

SECTION \_\_\_\_. Section 43.3591(d), Parks and Wildlife Code, as added by this Act, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is

continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

Amendment No. 1 was withdrawn.

**SB 460** was passed to third reading.

**SB 766 ON SECOND READING**  
**(Isaac - House Sponsor)**

**SB 766**, A bill to be entitled An Act relating to the liability of a sport shooting range and the regulation of firearms, ammunition, firearm supplies, and sport shooting ranges.

**SB 766** was passed to third reading.

**CSSB 76 ON SECOND READING**  
**(Morrison - House Sponsor)**

**CSSB 76**, A bill to be entitled An Act relating to certain providers of subsidized child care.

**Amendment No. 1**

Representative Miles offered the following amendment to **CSSB 76**:

Amend **CSSB 76** (house committee printing) as follows:

(1) In SECTION 2 of the bill, immediately following added Section 301.191, Labor Code (page 4, between lines 9 and 10), add the following:

(c) The commission may use a motor vehicle record, including a photographic image and signature, to prevent and detect fraud, waste, and abuse in child-care programs.

(d) The commission may use the information under Subsection (c) otherwise for enforcement under this title.

(2) Add the following appropriately numbered SECTIONS to the bill and renumber subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 730.005, Transportation Code, is amended to read as follows:

Sec. 730.005. **REQUIRED DISCLOSURE.** Personal information obtained by an agency in connection with a motor vehicle record shall be disclosed for use in connection with any matter of:

- (1) motor vehicle or motor vehicle operator safety;
- (2) motor vehicle theft;
- (3) motor vehicle emissions;
- (4) motor vehicle product alterations, recalls, or advisories;
- (5) performance monitoring of motor vehicles or motor vehicle dealers by a motor vehicle manufacturer;
- (6) removal of nonowner records from the original owner records of a motor vehicle manufacturer to carry out the purposes of:

(A) the Automobile Information Disclosure Act, 15 U.S.C. Section 1231 et seq.;

(B) 49 U.S.C. Chapters 301, 305, 323, 325, 327, 329, and 331;

(C) the Anti Car Theft Act of 1992, 18 U.S.C. Sections 553, 981, 982, 2119, 2312, 2313, and 2322, 19 U.S.C. Sections 1646b and 1646c, and 42 U.S.C. Section 3750a et seq., all as amended;

(D) the Clean Air Act, 42 U.S.C. Section 7401 et seq., as amended;  
and

(E) any other statute or regulation enacted or adopted under or in relation to a law included in Paragraphs (A)-(D); [~~or~~]

(7) child support enforcement under Chapter 231, Family Code; or

(8) enforcement by the Texas Workforce Commission under Title 4, Labor Code.

SECTION \_\_\_\_ . Section 730.007(c), Transportation Code, is amended to read as follows:

(c) This section does not:

(1) prohibit the disclosure of a person's photographic image to:

(A) a law enforcement agency or a criminal justice agency for an official purpose; [~~or~~]

(B) an agency of this state investigating an alleged violation of a state or federal law relating to the obtaining, selling, or purchasing of a benefit authorized by Chapter 31 or 33, Human Resources Code; or

(C) an agency of this state investigating an alleged violation of a state or federal law under authority provided by Title 4, Labor Code; or

(2) prevent a court from compelling by subpoena the production of a person's photographic image.

Amendment No. 1 was adopted.

CSSB 76, as amended, was passed to third reading.

#### **SB 364 ON SECOND READING**

**(Brown - House Sponsor)**

**SB 364**, A bill to be entitled An Act relating to statistical information on the prosecution of certain offenses relating to the operating of a motor vehicle while intoxicated.

**SB 364** was passed to third reading. (C. Anderson, Cain, V. Taylor, and Weber recorded voting no.)

#### **SB 498 ON SECOND READING**

**(Phillips - House Sponsor)**

**SB 498**, A bill to be entitled An Act relating to the trapping and transport of surplus white-tailed deer.

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

Representative Phillips offered the following amendment to **SB 498**:

Amend **SB 498** (house committee printing) as follows:



(j) The commission by rule may set and the department may [not] charge a fee not to exceed \$300 for a white-tailed deer trapping and transporting permit issued under this section, except that the department may not charge a fee for a permit issued to a political subdivision or property owners' association if the deer pose a threat to human health or safety.

Amendment No. 1 was adopted.

### Amendment No. 2

Representative Phillips offered the following amendment to **SB 498**:

Amend **SB 498** (house committee printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS accordingly:

SECTION \_\_\_\_\_. Sections 43.357(a) and (b), Parks and Wildlife Code, are amended to read as follows:

(a) The holder of a valid deer breeder's permit may:

(1) engage in the business of breeding breeder deer in the immediate locality for which the permit was issued; ~~and~~

(2) sell, transfer to another person, or hold in captivity live breeder deer for the purpose of propagation or sale; and

(3) transfer and sell live breeder deer not needed for propagation for the purpose of processing and sale as venison.

(b) The commission may make regulations governing:

(1) the possession of breeder deer held under the authority of this subchapter;

(2) the recapture of lawfully possessed breeder deer that have escaped from the facility of a deer breeder;

(3) permit applications and fees;

(4) reporting requirements;

(5) procedures and requirements for the purchase, transfer, sale, or shipment of breeder deer;

(6) the endorsement of a deer breeder facility by a certified wildlife biologist;

(7) the number of breeder deer that a deer breeder may possess; ~~and~~

(8) the dates for which a deer breeder permit is valid; and

(9) procedures for the identification, transfer, and sale of live breeder deer not needed for propagation for the purpose of processing and sale as venison.

SECTION \_\_\_\_\_. Section 43.364, Parks and Wildlife Code, is amended to read as follows:

Sec. 43.364. USE OF BREEDER DEER. (a) Except as provided by Subsection (b), breeder [Breeder] deer may be purchased, sold, transferred, or received in this state only for the purposes of liberation or holding for propagation. All breeder deer and increase from breeder deer are under the full force of the laws of this state pertaining to deer, and those breeder deer may be held in captivity for propagation in this state only after a deer breeder's permit is issued by the department under this subchapter.

(b) Live breeder deer not needed for propagation may be transferred, processed, and sold as venison only in accordance with Section 43.357 and either:

(1) Chapter 433, Health and Safety Code, and rules adopted under that chapter; or

(2) 9 C.F.R. Part 352, as authorized by the federal Agricultural Marketing Act of 1946 (7 U.S.C. Section 1621 et seq.).

SECTION \_\_\_\_\_. Section 433.003(5), Health and Safety Code, is amended to read as follows:

(5) "Exotic animal" means:

(A) a member of a species of game not indigenous to this state, including an axis deer, nilga antelope, red sheep, or other cloven-hooved ruminant animal; or

(B) a breeder deer as defined by Section 43.351, Parks and Wildlife Code, that the Parks and Wildlife Department has identified for the purpose of processing and sale as venison.

Amendment No. 2 was withdrawn.

### **Amendment No. 3**

Representative Phillips offered the following amendment to **SB 498**:

Amend **SB 498** (house committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS accordingly:

SECTION \_\_\_\_\_. Section 43.352(b), Parks and Wildlife Code, is amended to read as follows:

(b) At the option of the person applying for the issuance or renewal of a permit under this section, the [The] department may issue a permit [under this section] that is valid for [longer than] one year, three years, or five years. A three-year or five-year permit is available only to a person who agrees to submit the annual reports required under this subchapter electronically. The commission may adopt rules allowing the department to terminate a permit before the date originally specified for the permit issuance or renewal if the permit holder fails to submit the annual reports electronically as required for a three-year or five-year permit.

### **Amendment No. 3 - Point of Order**

Representative Hilderbran raised a point of order against further consideration of Amendment No. 3 under Rule 11, Section 2 of the House Rules on the grounds that the amendment is not germane to the bill.

The point of order was withdrawn.

Representative Phillips moved to postpone consideration of **SB 498** until 10:45 p.m. today.

The motion prevailed.

**POSTPONED BUSINESS**

The following bills were laid before the house as postponed business:

**SB 1009 ON SECOND READING  
(Sheffield - House Sponsor)**

**SB 1009**, A bill to be entitled An Act relating to requiring public institutions of higher education to notify the federal Student and Exchange Visitor Information System (SEVIS) regarding the withdrawal or nonattendance of certain foreign students.

**SB 1009** was read second time earlier today and was postponed until this time.

**SB 1009 - POINT OF ORDER**

Representative Gutierrez raised a point of order against further consideration of **SB 1009** under Rule 4, Section 32(c) of the House Rules on the grounds that the bill analysis is incorrect.

The chair overruled the point of order.

**SB 1009** was passed to third reading.

**GENERAL STATE CALENDAR  
(consideration continued)****CSSB 635 ON SECOND READING  
(Larson - House Sponsor)**

**CSSB 635**, A bill to be entitled An Act relating to the authority of the Texas Commission on Environmental Quality.

**Amendment No. 1**

Representative Larson offered the following amendment to **CSSB 635**:

Amend **CSSB 635** (house committee printing) to read as follows:

(1) In the recital to SECTION 1 of the bill (page 1, line 5), strike "Section 13.043(h), Water Code, is" and substitute "Sections 13.043(h) and (i), Water Code, are".

(2) In SECTION 1 of the bill, in amended Section 13.043, Water Code (page 1, between lines 11 and 12), insert the following:

(i) The governing body of a municipally owned utility or a political subdivision, within 60 [~~30~~] days after the date of a final decision on a rate change, shall provide individual written notice to each ratepayer eligible to appeal who resides outside the boundaries of the municipality or the political subdivision. The notice must include, at a minimum, the effective date of the new rates, the new rates, and the location where additional information on rates can be obtained. The governing body of a municipally owned utility or a political subdivision may provide the notice electronically if the utility or political subdivision has access to a ratepayer's e-mail address.

(3) In SECTION 2 of the bill, in amended Section 13.187(b), Water Code (page 1, lines 14-15), strike "mailed or delivered" and substitute "mailed, sent by e-mail, or delivered".

Amendment No. 1 was adopted.

**Amendment No. 2**

Representative Larson offered the following amendment to **CSSB 635**:

Amend **CSSB 635** (house committee printing) by adding the following SECTIONS to the bill, numbered appropriately, and renumbering the SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Subchapter C, Chapter 361, Health and Safety Code, is amended by adding Section 361.0865 to read as follows:

Sec. 361.0865. CONSIDERATION OF PROCESSING OR TREATMENT FACILITY PERMIT APPLICATIONS. (a) This section applies only to an application for the issuance, amendment, extension, or renewal of a permit for a commercial facility that accepts nonhazardous liquid waste from municipal or industrial sources for processing or treatment. This section does not apply to a facility owned or operated by or affiliated with:

(1) a local government, including a facility leased to or from a local government; or

(2) a person who holds a permit to dispose of hazardous, municipal, or industrial solid waste.

(b) The commission may not issue, amend, extend, or renew a permit unless the commission determines that the applicant possesses adequate technical, managerial, and financial ability to operate the facility safely and in compliance with all applicable legal requirements. The commission shall consider, at a minimum:

(1) financial assurance information described by Section 361.085(a);

(2) evidence of the professional qualifications of the management or principals of the applicant;

(3) evidence of training, licensure, certification, or relevant experience of individuals employed by the applicant who are or will be involved in the operation of the facility;

(4) whether the applicant has a compliance history classification as a poor performer, as determined by rules adopted under Section 5.754, Water Code, or does not have a compliance history;

(5) information related to past compliance, in addition to the information provided under Section 361.084, as required by the commission, including information indicating:

(A) for the preceding five years, whether, in connection with an unauthorized acceptance or discharge of municipal solid waste:

(i) two or more administrative orders that assess penalties against the applicant or order the applicant to take corrective measures have been issued by the commission; or

(ii) four or more notices of violation have been issued by the commission to the applicant; and

(B) for the preceding 10 years, whether the facility, the applicant, the principal shareholders of the owner of the facility, or the individuals employed by the facility who are or will be responsible for the operation of the facility have been convicted of a violation of any environmental law; and

(6) any other evidence required by the commission relating to the applicant's ability to comply with all applicable legal requirements.

(c) The commission by rule shall adopt standards for making a determination under Subsection (b).

(d) The commission may impose conditions on the issuance, amendment, extension, or renewal of a permit designed to increase the likelihood of the applicant's operation of the facility safely and in compliance with all applicable legal requirements.

SECTION \_\_\_\_\_. The changes in law made by Section 361.0865, Health and Safety Code, as added by this Act, apply only to an application for the issuance, amendment, extension, or renewal of a permit that is received by the Texas Commission on Environmental Quality on or after the effective date of this Act. An application that is received before that date is governed by the law in effect at the time the application is received, and the former law is continued in effect for that purpose.

Amendment No. 2 was adopted.

### **Amendment No. 3**

Representative Gooden offered the following amendment to **CSSB 635**:

Amend **CSSB 635** (committee printing) SECTION 2, by adding a new subsection to Section 13.187, Water Code, as follows:

(q) For the purpose of ratemaking proceedings initiated by an investor-owned utility under this Chapter an "affected county" is one that has more than 3000 customers in the county when the rate change is filed with the commission or a local regulatory authority.

### **Amendment No. 3 - Point of Order**

Representative D. Miller raised a point of order against further consideration of Amendment No. 3 under Rule 11, Section 2 of the House Rules on the grounds that the amendment is not germane to the bill.

The point of order was withdrawn.

Amendment No. 3 was adopted.

### **Amendment No. 4**

Representative Aycock offered the following amendment to **CSSB 635**:

Amend **CSSB 635** (house committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS accordingly:

SECTION \_\_\_\_\_. Subchapter B, Chapter 11, Water Code, is amended by adding Section 11.0392 to read as follows:

Sec. 11.0392. COMMISSION REVIEW OF CERTAIN RIVER AUTHORITY WATER MANAGEMENT PLANS. (a) In this section:

(1) "Authority" means a river authority to which this section applies under Subsection (b).

(2) "Firm water" means a supply of stored water that could be supplied without shortage during each year of a simulated repeat of the drought of record, while honoring all senior water rights. During a drought of record, the supply of water for firm water customers has a higher priority than that of interruptible water customers.

(3) "Interruptible water" means a stored supply of water for customers of an authority that must be curtailed before the authority curtails firm water supplies.

(b) This section applies only to a river authority whose water management plan consists of a reservoir operation plan for the operation of two water supply reservoirs and was:

(1) developed by an applicant for a permit under this chapter; and

(2) originally required by a court order adjudicating the water rights for those reservoirs.

(c) Before approving an authority's water management plan, the commission shall require that the plan:

(1) ensures that adequate firm water supplies are available to meet the existing and projected demands of firm water customers to the extent:

(A) provided by previously adjudicated water rights; and

(B) other supplies are not available to the authority to meet those firm water customer demands; and

(2) provides for curtailing water supplies under interruptible commitments before requesting that firm water customers institute voluntary drought contingency measures.

**Amendment No. 4 - Point of Order**

Representative Kleinschmidt raised a point of order against further consideration of Amendment No. 4 under Rule 11, Section 2 of the House Rules on the grounds that the amendment is not germane to the bill.

The point of order was withdrawn.

Amendment No. 4 was withdrawn.

**Amendment No. 5**

Representative Coleman offered the following amendment to **CSSB 635**:

Amend **CSSB 635** (house committee printing) by adding the following appropriately numbered sections to the bill and renumbering subsequent sections of the bill appropriately:

SECTION \_\_\_\_\_. Subtitle B, Title 5, Health and Safety Code, is amended by adding Chapter 376 to read as follows:

CHAPTER 376. DISPOSABLE PLASTIC BAG FEE; LOCAL RECYCLING ASSISTANCE GRANT PROGRAM

Sec. 376.001. DEFINITIONS. In this chapter:

(1) "Compostable plastic bag" means a plastic bag that meets or exceeds the standard for compostable plastics developed by the American Society for Testing and Materials International as specified in ASTM D6400-04 as that standard existed on January 1, 2011.

(2) "Disposable plastic bag" means a plastic carryout bag that is provided by a retailer to a customer at the point of sale. The term does not include a reusable plastic bag.

(3) "Retailer" means a person engaged in the business of selling goods directly to a customer.

(4) "Reusable plastic bag" means a bag with handles that is specifically designed and manufactured for multiple reuses and is made of plastic that is at least 2.25 millimeters thick.

(5) "Commission" means the Texas Commission on Environmental Quality

Sec. 376.002. GRANT PROGRAM. (a) The commission or executive director shall establish and administer a local recycling assistance grant program for the public purpose of supporting municipal and county recycling efforts in this state.

(b) Only a municipality or county may apply for and receive a grant under the program.

(c) The commission or executive director by rule shall establish criteria for the awarding of grants under this section. In adopting the rules, the commission or executive director must give preference to applicants that:

(1) do not have a recycling program on the date of the application; or

(2) will use the grant money to expand the recycling capacity of an existing recycling program.

(d) The commission or executive director shall adopt any other rules and forms necessary for the implementation and administration of the program.

Sec. 376.003. DISPOSABLE PLASTIC BAG FEE. Except as provided by Section 376.004, a fee of five cents is imposed on a customer for each disposable plastic bag provided to the customer to carry out or protect goods purchased from a retailer.

Sec. 376.004. EXEMPTIONS. A fee may not be imposed under Section 376.003 for:

(1) a disposable plastic bag that is used solely to carry bulk food, produce, or meat from a department within a store to the point of sale; or

(2) a compostable plastic bag.

Sec. 376.005. COLLECTION BY RETAILER. (a) A retailer who provides a disposable plastic bag to a customer shall collect the fee imposed by Section 376.003. Except as provided by Subsection (d), the retailer shall remit the fee to the commission or executive director.

(b) The retailer shall add the fee imposed by Section 376.003 to the total price of the goods sold to the customer, and the fee is a part of the sales price, is a debt owed to the retailer by the customer, and is recoverable at law in the same manner as the original sales price.

(c) The amount of the fee shall be stated separately on a sales receipt, invoice, or other record of sale.

(d) A retailer may retain three percent of the total amount of the fees collected under Subsection (a) as reimbursement for any costs associated with the collection of the fees.

Sec. 376.006. ADMINISTRATION, COLLECTION, AND ENFORCEMENT BY COMMISSION OR EXECUTIVE DIRECTOR. The commission or executive director shall adopt any rules for the administration, payment, collection, and enforcement of the fee imposed by this chapter.

Sec. 376.007. LOCAL RECYCLING PROGRAM ASSISTANCE ACCOUNT. (a) The local recycling program assistance account is established as an account in the general revenue fund.

(b) The commission or executive director shall deposit the revenue received from the fee imposed by Section 376.003 to the credit of the account.

(c) Money in the account may be appropriated only for the implementation and administration of the grant program established under Section 376.002.

Amendment No. 5 failed of adoption by (Record 1391): 37 Yeas, 97 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Alvarado; Burnam; Castro; Coleman; Davis, Y.; Deshotel; Dukes; Dutton; Eiland; Farias; Farrar; Gallego; Giddings; Gonzalez; Gutierrez; Hernandez Luna; Hochberg; Howard, D.; Johnson; King, T.; Lozano; Lucio; Mallory Caraway; Martinez; Martinez Fischer; McClendon; Miles; Naishtat; Oliveira; Reynolds; Rodriguez; Turner; Veasey; Vo; Walle.

Nays — Aliseda; Anderson, C.; Anderson, R.; Aycock; Beck; Berman; Bohac; Bonnen; Branch; Brown; Burkett; Button; Cain; Callegari; Carter; Chisum; Christian; Cook; Craddick; Darby; Davis, J.; Davis, S.; Driver; Eissler; Elkins; Flynn; Frullo; Garza; Geren; Gonzales, L.; Gooden; Hamilton; Hancock; Hardcastle; Harper-Brown; Hartnett; Hilderbran; Hopson; Howard, C.; Huberty; Hughes; Hunter; Isaac; Jackson; Keffer; King, P.; King, S.; Kleinschmidt; Kolkhorst; Kuempel; Landtroop; Larson; Laubenberg; Lavender; Legler; Lewis; Lyne; Madden; Margo; Miller, D.; Miller, S.; Morrison; Muñoz; Murphy; Nash; Orr; Otto; Parker; Patrick; Paxton; Perry; Phillips; Pickett; Pitts; Price; Quintanilla; Raymond; Ritter; Schwertner; Scott; Sheets; Shelton; Simpson; Smith, T.; Smith, W.; Smithee; Solomons; Taylor, V.; Thompson; Torres; Truitt; Weber; White; Woolley; Workman; Zedler; Zerwas.

Present, not voting — Mr. Speaker; Taylor, L.(C).

Absent, Excused — Harless; Peña.

Absent — Anchia; Creighton; Crownover; Fletcher; Gonzales, V.; Guillen; Marquez; Menendez; Riddle; Sheffield; Strama; Villarreal.

#### STATEMENTS OF VOTE

When Record No. 1391 was taken, I was in the house but away from my desk. I would have voted no.

Crownover



When Record No. 1391 was taken, my vote failed to register. I would have voted no.

Guillen

When Record No. 1391 was taken, I was in the house but away from my desk. I would have voted yes.

Marquez

### MESSAGE FROM THE SENATE

A message from the senate was received at this time (see the addendum to the daily journal, Messages from the Senate, Message No. 7).

#### CSSB 635 - (consideration continued)

#### Amendment No. 6

Representative Coleman offered the following amendment to **CSSB 635**:

Amend **CSSB 635** (house committee printing) by adding the following appropriately numbered section to the bill and renumbering subsequent sections of the bill appropriately:

SECTION \_\_\_\_\_. Subtitle B, Title 5, Health and Safety Code, is amended by adding Chapter 376 to read as follows:

#### CHAPTER 376. TEXAS CONTAINER RECYCLING INITIATIVE SUBCHAPTER A. GENERAL PROVISIONS

Sec. 376.001. DEFINITIONS. In this chapter:

(1) "Beverage" means an alcoholic, nonalcoholic, carbonated, or noncarbonated drink prepared in liquid, ready-to-drink form and intended for human consumption. The term includes:

(A) beer;

(B) ale;

(C) malt liquor;

(D) other drinks produced by fermenting malt;

(E) wine coolers;

(F) soda;

(G) water, including mineral water;

(H) carbonated water, including carbonated mineral water;

(I) carbonated soft drinks;

(J) noncarbonated soft drinks and sport drinks;

(K) noncarbonated fruit drinks;

(L) energy drinks;

(M) coffee and tea drinks; and

(N) carbonated fruit drinks.

(2) "Beverage container" means a glass, metal, or plastic vessel that is hermetically sealed or capped and that contains a beverage at the time it is sold or offered for sale.

(3) "Consumer" means a person who purchases a beverage in a beverage container for the person's own use or consumption. The term includes a lodging, eating, or drinking establishment if beverages are generally consumed on the establishment's premises and does not include a person who purchases the beverage from the establishment for consumption on the premises.

(4) "Distributor" means a person who distributes beverages in beverage containers to retail dealers.

(5) "Infant formula" means any liquid food sold as an alternative for human milk for the feeding of infants.

(6) "Medical food" means a food or beverage that is formulated to be consumed or administered under the supervision of a physician and that is intended for specific dietary management of diseases or health conditions for which distinctive nutritional requirements, based on recognized scientific principles, are established by medical evaluation. The term also includes any product that meets the definition of "medical food" under Section 5(b)(3), the Food, Drug, and Cosmetic Act (21 U.S.C. Section 360ee).

(7) "Redemption center" means an operation approved by the commission to redeem beverage containers under this chapter and includes a manned operation or a mechanical device that accepts empty beverage containers and issues a cash refund or a redeemable credit slip with a value not less than the container's refund value.

(8) "Redemption zone" means:

(A) the one-half-mile radius around a retail dealer with at least \$2 million in food-related sales each year who is located in a municipality with a population of more than 50,000; or

(B) the two-mile radius around a retail dealer with at least \$2 million in food-related sales each year who is not located in a municipality described by Paragraph (A).

(9) "Refund" means a payment by a redemption center under Section 376.201 to a person who presents a beverage container at the redemption center.

(10) "Retail dealer" means a person who sells a beverage in a beverage container to a consumer.

Sec. 376.002. ADMINISTRATION AND RULES. (a) The commission shall establish and administer the Texas container recycling initiative in accordance with this chapter.

(b) In administering the Texas container recycling initiative, the commission shall:

(1) approve redemption centers under Section 376.152;

(2) enforce compliance with the provisions of this chapter;

(3) administer the infrastructure improvement grant program under Section 376.003;

(4) develop and implement a marketing plan to provide information and educate consumers about the initiative;

(5) conduct any audit of the initiative the commission determines is necessary;

(6) develop an operating budget for the initiative;

(7) ensure the solvency of the initiative's account;

(8) develop a system for reimbursement of deposits and refunds and for distribution of handling fees;

(9) develop a system for monitoring the number of containers sold by distributors and the number of containers returned to redemption centers and curbside recycling centers;

(10) administer the Texas container recycling initiative account as provided by Section 376.104; and

(11) adopt rules and forms necessary to implement this chapter.

Sec. 376.003. INFRASTRUCTURE IMPROVEMENT GRANT PROGRAM. (a) The commission shall develop and administer a program to provide grants from money in the Texas container recycling initiative account to ensure sufficient infrastructure is available to increase the state recycling rate by expanding curbside recycling programs, municipal recycling facilities, and independent redemption centers.

(b) The total amount of money available each year under the grant program may not exceed five percent of the unencumbered money available in the account at the end of the preceding state fiscal year.

(c) Annually, the commission shall allocate the grant money to municipal solid waste geographic planning regions for use by local governments and regional planning commissions according to a formula established by the Texas Commission on Environmental Quality that takes into account population, area, solid waste fee generation, and public health needs.

(d) At the end of each state fiscal biennium:

(1) a municipal solid waste geographic planning region that receives grant money under Subsection (c) shall issue a report to the legislature detailing how the grant money is used; and

(2) any unencumbered grant money must be returned to the Texas container recycling initiative account.

(e) The commission shall establish and implement any additional controls necessary to ensure that the grant money allocated under this section is used for the state purpose for which the money was intended.

(f) A project funded under this section must promote cooperation between public and private entities and may not be otherwise readily available or create a competitive advantage over a private industry that provides recycling or solid waste services.

(g) This section expires when the state recycling rate reaches 65 percent, as determined by the commission.

Sec. 376.004. CRIMINAL PENALTIES. A person commits an offense if the person knowingly violates Section 376.051, 376.101, 376.102, or 376.201. An offense under this section is a Class C misdemeanor.

Sec. 376.005. REPORT TO LEGISLATURE. Not later than November 1 of each year, the commission shall submit a report to the governor, lieutenant governor, speaker of the house of representatives, and committee in each house of

the legislature that has primary jurisdiction over environmental matters about the progress and success of the Texas container recycling initiative established under this chapter.

[Sections 376.006-376.050 reserved for expansion]

SUBCHAPTER B. REFUND VALUE AND LABELING OF BEVERAGE CONTAINERS

Sec. 376.051. REFUND VALUE AND LABEL REQUIRED. (a) Except as provided by Subsection (b), a person may not sell or offer for sale in this state a beverage container unless the container:

(1) has:

(A) a fluid capacity of less than 24 ounces and a refund value of 5 cents; or

(B) a fluid capacity of at least 24 ounces and a refund value of 10 cents; and

(2) is labeled as required by Section 376.052.

(b) A person may sell or offer for sale a beverage container that does not have a refund value if:

(1) the container has a fluid capacity of more than one gallon; or

(2) the container contains:

(A) a beverage that consists of milk or of 100 percent fruit or vegetable juice; or

(B) medical food or infant formula.

Sec. 376.052. LABELING. (a) A beverage container required to have a refund value under Section 376.051 that is offered for sale in this state must have legibly stamped, labeled, or embossed on the container:

(1) the refund value of the container;

(2) the name "Texas" or the abbreviation "TX"; and

(3) other language as required by the commission.

(b) Any beverage container intended for sale in this state must be printed, embossed, stamped, labeled, or otherwise marked with a universal product code or similar machine-readable indicia.

[Sections 376.053-376.100 reserved for expansion]

SUBCHAPTER C. COLLECTION OF DEPOSIT

Sec. 376.101. COLLECTION OF DEPOSIT BY DISTRIBUTOR AND RETAIL DEALER. (a) A distributor shall collect a deposit of 5 or 10 cents, as established by Section 376.051, from a retail dealer for each beverage container that the distributor sells to the retail dealer.

(b) A retail dealer shall collect a deposit of 5 or 10 cents, as established by Section 376.051, from a consumer for each beverage container that the retail dealer sells to the consumer.

(c) The invoice for a beverage container sold by a retail dealer to a consumer must list the beverage container deposit as a separate line item. The deposit may not be included in the sales tax calculation.

Sec. 376.102. REMITTANCE OF DEPOSITS BY DISTRIBUTOR. Not later than the fifth day of each month, a distributor shall remit to the commission the deposits collected by the distributor under Section 376.101 during the preceding month.

Sec. 376.103. MONTHLY REPORT. (a) Not later than the fifth day of each month, a distributor who collects a deposit under Section 376.101 shall report to the commission, on a form approved by the commission:

(1) the total amount of deposits collected during the preceding month;

and

(2) the number of beverage containers sold during the preceding month separated by deposit amount and material of container.

(b) The commission may require a distributor to include in the report required by Subsection (a) other information the commission considers necessary.

(c) The information contained in the report required by this section is confidential and may not be disclosed by the commission or an officer or employee of the commission.

Sec. 376.104. TEXAS CONTAINER RECYCLING INITIATIVE ACCOUNT. (a) Deposits collected under this chapter shall be deposited to the credit of the Texas container recycling initiative account in the general revenue fund. Money in the account may be appropriated only for:

(1) reimbursements and handling fees paid to redemption centers or curbside recycling programs, as applicable;

(2) administration of this chapter;

(3) providing information and educating consumers about the Texas container recycling initiative; and

(4) the purposes authorized under Section 376.003.

(b) At the end of each state fiscal biennium, any money in the account that is unencumbered must be distributed as follows:

(1) 15 percent must be retained in the account for unforeseen costs associated with a higher than expected recycling rate; and

(2) 85 percent must be transferred to the undedicated portion of the general revenue fund.

Sec. 376.105. FINANCING START-UP COSTS. (a) The commission may apply for, accept, receive, and administer gifts, grants, loans, and other funds available from any source to cover the start-up costs of the Texas container recycling initiative.

(b) The commission shall deposit revenue collected under this section to the credit of the Texas container recycling initiative account in the general revenue fund.

[Sections 376.106-376.150 reserved for expansion]

#### SUBCHAPTER D. REDEMPTION CENTERS AND REDEMPTION ZONES

Sec. 376.151. REDEMPTION ZONES. (a) A retail dealer may not sell a beverage in a beverage container eligible for redemption under this chapter to a consumer if there is not a redemption center within the retail dealer's redemption zone unless the retail dealer is located in a county with a population of less than 3,000.

(b) On petition by a retail dealer, the commission may exempt the dealer from the requirements of this section if the commission determines that extenuating circumstances support the exemption.

(c) A redemption center within a redemption zone may be owned and operated by a retail dealer, local government, or independent entity.

(d) A retail dealer who owns and operates a redemption center shall register with the commission in the manner described by Section 376.152.

Sec. 376.152. REDEMPTION CENTERS. (a) To facilitate the return of empty beverage containers, a retail dealer, local government, or independent entity may establish a redemption center at which empty containers may be returned for their refund value.

(b) The retail dealer, local government, or independent entity must file an application for approval of a redemption center with the commission. The application must state:

(1) the name, mailing address, telephone number, e-mail address, and title of the person responsible for the establishment and operation of the redemption center;

(2) the physical address of the redemption center;

(3) the name and address of each retail dealer in whose redemption zone the redemption center is located;

(4) the applicant's federal tax identification number, if applicable; and

(5) any additional information the commission by rule requires as necessary or convenient for the implementation of this section.

(c) The commission by order shall approve a redemption center if it finds the redemption center will provide a convenient service to persons for the return of empty beverage containers. The commission may include in the order other provisions that the commission determines are necessary to ensure that the redemption center will provide a convenient service to the public.

(d) The commission at any time may review its approval of a redemption center. After written notice to the person responsible for the establishment and operation of the redemption center and to each retail dealer in whose redemption zone the redemption center is located, the commission may, after a hearing, withdraw approval of a redemption center if the commission finds the redemption center has violated the order approving the redemption center.

(e) The commission by rule shall establish the required hours of operation for a redemption center.

(f) The commission may not limit the number of redemption centers within a redemption zone.

(g) Only a redemption center in a redemption zone that has been registered with the commission for the longest period may receive handling fees for returned used beverage containers.

[Sections 376.153-376.200 reserved for expansion]

#### SUBCHAPTER E. BEVERAGE CONTAINER REDEMPTION

Sec. 376.201. USED BEVERAGE CONTAINER REDEMPTION. Except as provided by Sections 376.202 and 376.203, a redemption center shall accept a used beverage container that has a refund value as established by Section 376.051

and shall pay the refund value of the container in cash to the person presenting the container if the container is stamped, labeled, or embossed with the refund value and the name "Texas" or the abbreviation "TX."

Sec. 376.202. REFUSAL PERMITTED. A redemption center may refuse to accept for refund:

(1) a glass bottle that is broken to the extent that it would present a safety hazard when handled; or

(2) a used beverage container that contains part of its original contents or other foreign matter to the extent that it could present health or sanitation problems.

Sec. 376.203. REDEMPTION BY WEIGHT. (a) The commission by rule shall establish:

(1) a procedure for providing a reimbursement based on the weight of the beverage containers presented to be used in circumstances in which the number of containers is so large that counting the containers individually would be burdensome on a redemption center or curbside recycling program;

(2) a per pound redemption value for containers composed of each material covered by this chapter that are redeemed in the manner described by Subdivision (1);

(3) a per pound redemption value for unsorted containers composed of any material covered by this chapter that are collected as part of a single-stream recycling program and redeemed in the manner described by Subdivision (1);

(4) a per pound handling fee to be paid to redemption centers and curbside recycling programs for containers redeemed in the manner described by Subdivision (1); and

(5) procedures for regulating the accuracy of scales used to weigh containers under this section.

(b) Not more than every six months the commission by rule may adjust the per pound rates described by Subsection (a).

Sec. 376.204. DISPOSAL OF BEVERAGE CONTAINERS BY REDEMPTION CENTER AND CURBSIDE RECYCLING PROGRAM. A redemption center or curbside recycling program shall dispose of the returned used beverage containers by:

(1) selling the material generated by the crushed or shredded used beverage containers to a processor or other end user; or

(2) recycling the material in another manner prescribed by the commission.

Sec. 376.205. REIMBURSEMENT OF REDEMPTION CENTERS BY COMMISSION; HANDLING FEE. (a) On submission of a completed invoice of refunds paid by a redemption center on a form adopted by the commission, the commission shall pay to the redemption center an amount equal to the redemption value established by Section 376.051 or 376.203, as applicable, plus, for a redemption center eligible under Section 376.152(g), a handling fee of:

(1) one and one-half cents for each beverage container redeemed by the redemption center under Section 376.201; or

(2) the per pound amount determined under Section 376.203 for beverage containers redeemed in the manner described by that section.

(b) The commission shall reimburse a redemption center under Subsection (a) not later than the fifth working day after the date the commission receives the invoice submitted by the redemption center.

(c) The commission by rule may adjust a handling fee to account for changes in market conditions. The commission may periodically conduct research to determine if an adjustment is necessary.

Sec. 376.206. REIMBURSEMENT OF CURBSIDE RECYCLING PROGRAM BY COMMISSION. (a) On submission of a completed report, on a form adopted by the commission, indicating the number or weight, as applicable, of beverage containers collected by a curbside recycling program that are covered under this chapter, the commission shall pay to the curbside recycling program an amount equal to the redemption value established by Section 376.051 or 376.203, as applicable, plus a handling fee of:

(1) one-half of one cent for each beverage container collected by the curbside recycling program; or

(2) the per pound amount determined under Section 376.203 for beverage containers redeemed in the manner described by that section.

(b) The commission shall reimburse a curbside recycling program under Subsection (a) not later than the fifth working day after the date the commission receives the invoice submitted by the curbside recycling program.

(c) The commission by rule may adjust a handling fee to account for changes in market conditions. The commission may periodically conduct research to determine if an adjustment is necessary.

Sec. 376.207. REPORTING REQUIREMENTS. Each redemption center and curbside recycling program shall submit a report with the submission of the completed invoice required under Sections 376.205 and 376.206, respectively, to the commission, on a form approved by the commission, that provides:

(1) the redemption value of beverage containers collected by the redemption center or curbside recycling program;

(2) the number or weight of beverage containers collected by the center or curbside recycling program; and

(3) an invoice or other documentation that provides proof that the collected recycled material was recycled in a manner described under Section 376.204.

SECTION \_\_\_\_. Section 151.007(c), Tax Code, is amended to read as follows:

(c) "Sales price" or "receipts" does not include any of the following if separately identified to the customer by such means as an invoice, billing, sales slip or ticket, or contract:

(1) a cash discount allowed on the sale;

(2) the amount charged for tangible personal property returned by a customer if the total amount charged is refunded by cash or credit;

(3) a refund of the charges for the performance of a taxable service;



(4) finance, carrying and service charges, or interest from credit extended on sales of taxable items under a conditional sales contract or other contract providing for the deferred payment of the purchase price;

(5) the value of tangible personal property that:

(A) is taken by a seller in trade as all or part of the consideration for a sale of a taxable item; and

(B) is of a type of property sold by the seller in the regular course of business;

(6) the face value of United States coin or currency in a sale of that coin or currency in which the total consideration given by the purchaser exceeds the face value of the coin or currency; [✗]

(7) a voluntary gratuity or a reasonable mandatory charge for the service of a meal or food products, including soft drinks and candy, for immediate human consumption when the service charge is separated from the sales price of the meal or food product and identified as a gratuity or tip and when the total amount of the service charge is disbursed by the employer to employees who customarily and regularly provide the service; or

(8) a beverage container redemption fee under Chapter 376, Health and Safety Code.

SECTION \_\_\_\_\_. (a) Not later than September 1, 2012, the commission shall adopt the rules necessary to implement Chapter 376, Health and Safety Code, as added by this Act.

(b) The requirements of and penalties imposed by Chapter 376, Health and Safety Code, as added by this Act, do not apply to any person before January 1, 2013.

Amendment No. 6 failed of adoption by (Record 1392): 40 Yeas, 101 Nays, 2 Present, not voting.

Yeas — Allen; Alonzo; Anchia; Burnam; Castro; Coleman; Davis, Y.; Deshotel; Dukes; Dutton; Eiland; Farias; Farrar; Gallego; Giddings; Gonzales, V.; Gonzalez; Gutierrez; Hernandez Luna; Hochberg; Johnson; Lozano; Lucio; Mallory Caraway; Marquez; Martinez; Martinez Fischer; McClendon; Miles; Naishtat; Oliveira; Reynolds; Rodriguez; Schwertner; Sheets; Thompson; Turner; Veasey; Vo; Walle.

Nays — Aliseda; Alvarado; Anderson, C.; Anderson, R.; Aycock; Beck; Berman; Bohac; Bonnen; Branch; Brown; Burkett; Button; Cain; Callegari; Carter; Chisum; Christian; Cook; Craddick; Creighton; Crownover; Darby; Davis, J.; Davis, S.; Driver; Eissler; Elkins; Fletcher; Flynn; Frullo; Garza; Geren; Gonzales, L.; Gooden; Guillen; Hamilton; Hancock; Harper-Brown; Hartnett; Hilderbran; Hopson; Howard, C.; Howard, D.; Huberty; Hughes; Hunter; Isaac; Jackson; Keffer; King, P.; King, S.; King, T.; Kleinschmidt; Kolkhorst; Kuempel; Landtroop; Larson; Laubenberg; Lavender; Legler; Lewis; Lyne; Madden; Margo; Miller, D.; Miller, S.; Morrison; Muñoz; Murphy; Nash; Orr; Otto; Parker; Patrick; Paxton; Perry; Phillips; Pickett; Pitts; Price; Raymond;

Riddle; Ritter; Scott; Sheffield; Shelton; Simpson; Smith, T.; Smith, W.; Smithee; Solomons; Taylor, V.; Torres; Truitt; Weber; White; Woolley; Workman; Zedler; Zerwas.

Present, not voting — Mr. Speaker; Taylor, L.(C).

Absent, Excused — Harless; Peña.

Absent — Hardcastle; Menendez; Quintanilla; Strama; Villarreal.

### STATEMENTS OF VOTE

I was shown voting no on Record No. 1392. I intended to vote yes.

Alvarado

I was shown voting no on Record No. 1392. I intended to vote yes.

D. Howard

I was shown voting yes on Record No. 1392. I intended to vote no.

Sheets

### Amendment No. 7

Representative Cook offered the following amendment to **CSSB 635**:

Amend **CSSB 635** (house committee report) as follows:

(1) Redesignate SECTIONS 1-11 of the bill as ARTICLE 1, name the ARTICLE "GENERAL AUTHORITY OF TEXAS COMMISSION ON ENVIRONMENTAL QUALITY," and renumber all SECTIONS appropriately.

(2) Strike SECTION 1 of the bill, amending Section 13.043(h), Water Code (page 1, line 7 through page 1, line 11), and substitute the following:

SECTION 1. Section 13.043(h), Water Code, is amended to read as follows:

(h) The utility commission or the executive director of the utility commission may~~[- on a motion by the executive director or by the appellant under Subsection (a), (b), or (f) of this section,]~~ establish interim rates to be in effect until a final decision is made in an appeal filed under Subsection (a), (b), or (f).

(3) In SECTION 2 of the bill, in amended Section 13.187(b), Water Code (page 1, line 16), strike "executive director" and substitute "executive director of the utility commission".

(4) In SECTION 2 of the bill, in amended Section 13.187(l), Water Code (page 1, line 20), strike "commission, the executive director", and substitute "utility commission, the executive director of the utility commission".

(5) Strike SECTION 3 of the bill, amending Section 13.242(c), Water Code (page 1, line 22 through page 2, line 7) and substitute the following:

SECTION 2. Section 13.242(c), Water Code is amended to read as follows:

(c) The utility commission may by rule allow a municipality or utility or water supply corporation to render retail water or sewer service without a certificate of public convenience and necessity if the municipality has given notice under Section 13.255 ~~[of this code]~~ that it intends to provide retail water or

sewer service to an area or if the utility or water supply corporation has less than 15 potential connections and is not within the certificated area of another retail public utility.

(6) Strike SECTION 4 of the bill (page 2, lines 8-16).

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

SECTION \_\_\_\_\_. Section 13.084, Water Code, is amended to read as follows:

Sec. 13.084. **AUTHORITY OF GOVERNING BODY; COST REIMBURSEMENT.** The governing body of any municipality, ~~[or]~~ the commissioners court of an affected county, or the commissioners court of a county with a population of more than four million shall have the right to select and engage rate consultants, accountants, auditors, attorneys, engineers, or any combination of these experts to conduct investigations, present evidence, advise and represent the governing body, and assist with litigation on water and sewer utility ratemaking proceedings. The water and sewer utility engaged in those proceedings shall be required to reimburse the governing body or the commissioners court for the reasonable costs of those services and shall be allowed to recover those expenses through its rates with interest during the period of recovery.

(8) Add the following ARTICLES to the bill:

**ARTICLE 2. WATER AND SEWER UTILITIES**

SECTION 2.01. Section 13.002, Water Code, is amended by amending Subdivisions (2) and (18) and adding Subdivision (22-a) to read as follows:

(2) "Affiliated interest" or "affiliate" means:

(A) any person or corporation owning or holding directly or indirectly five percent or more of the voting securities of a utility;

(B) any person or corporation in any chain of successive ownership of five percent or more of the voting securities of a utility;

(C) any corporation five percent or more of the voting securities of which is owned or controlled directly or indirectly by a utility;

(D) any corporation five percent or more of the voting securities of which is owned or controlled directly or indirectly by any person or corporation that owns or controls directly or indirectly five percent or more of the voting securities of any utility or by any person or corporation in any chain of successive ownership of five percent of those utility securities;

(E) any person who is an officer or director of a utility or of any corporation in any chain of successive ownership of five percent or more of voting securities of a public utility;

(F) any person or corporation that the utility commission, after notice and hearing, determines actually exercises any substantial influence or control over the policies and actions of a utility or over which a utility exercises such control or that is under common control with a utility, such control being the possession directly or indirectly of the power to direct or cause the direction of

the management and policies of another, whether that power is established through ownership or voting of securities or by any other direct or indirect means; or

(G) any person or corporation that the utility commission, after notice and hearing, determines is exercising substantial influence over the policies and actions of the utility in conjunction with one or more persons or corporations with which they are related by ownership or blood relationship, or by action in concert, that together they are affiliated within the meaning of this section, even though no one of them alone is so affiliated.

(18) "Regulatory authority" means, in accordance with the context in which it is found, either the commission, the utility commission, or the governing body of a municipality.

(22-a) "Utility commission" means the Public Utility Commission of Texas.

SECTION 2.02. Section 13.004, Water Code, is amended to read as follows:

Sec. 13.004. JURISDICTION OF UTILITY COMMISSION OVER CERTAIN WATER SUPPLY OR SEWER SERVICE CORPORATIONS.

(a) Notwithstanding any other law, the utility commission has the same jurisdiction over a water supply or sewer service corporation that the utility commission has under this chapter over a water and sewer utility if the utility commission finds that the water supply or sewer service corporation:

(1) is failing to conduct annual or special meetings in compliance with Section 67.007; or

(2) is operating in a manner that does not comply with the requirements for classifications as a nonprofit water supply or sewer service corporation prescribed by Sections 13.002(11) and (24).

(b) If the water supply or sewer service corporation voluntarily converts to a special utility district operating under Chapter 65, the utility commission's jurisdiction provided by this section ends.

SECTION 2.03. Section 13.011, Water Code, is amended to read as follows:

Sec. 13.011. EMPLOYEES. (a) The executive director of the utility commission and the executive director of the commission, subject to approval, as applicable, by the utility commission or the commission, shall employ any engineering, accounting, and administrative personnel necessary to carry out each agency's powers and duties under this chapter.

(b) The executive director and the commission's staff are responsible for the gathering of information relating to all matters within the jurisdiction of the commission under this subchapter. The executive director of the utility commission and the utility commission's staff are responsible for the gathering of information relating to all matters within the jurisdiction of the utility commission under this subchapter. The duties of the respective executive directors and staffs ~~[director and the staff]~~ include:

(1) accumulation of evidence and other information from water and sewer utilities, ~~[and]~~ from the agency and governing body, [commission and the board] and from other sources for the purposes specified by this chapter;

(2) preparation and presentation of evidence before the agency [commission] or its appointed examiner in proceedings;

(3) conducting investigations of water and sewer utilities under the jurisdiction of the agency [commission];

(4) preparation of recommendations that the agency [commission] undertake an investigation of any matter within its jurisdiction;

(5) preparation of recommendations and a report for inclusion in the annual report of the agency [commission];

(6) protection and representation of the public interest~~[-, together with the public interest advocate,]~~ before the agency [commission]; and

(7) other activities that are reasonably necessary to enable the executive director and the staff to perform their duties.

SECTION 2.04. Section 13.014, Water Code, is amended to read as follows:

Sec. 13.014. ATTORNEY GENERAL TO REPRESENT COMMISSION OR UTILITY COMMISSION. The attorney general shall represent the commission or the utility commission under this chapter in all matters before the state courts and any court of the United States.

SECTION 2.05. Subchapter B, Chapter 13, Water Code, is amended by adding Section 13.017 to read as follows:

Sec. 13.017. OFFICE OF PUBLIC UTILITY COUNSEL; POWERS AND DUTIES. (a) In this section, "counsellor" and "office" have the meanings assigned by Section 11.003, Utilities Code.

(b) The office represents the interests of residential and small commercial consumers under this chapter. The office:

(1) shall assess the effect of utility rate changes and other regulatory actions on residential consumers in this state;

(2) shall advocate in the office's own name a position determined by the counsellor to be most advantageous to a substantial number of residential consumers;

(3) may appear or intervene, as a party or otherwise, as a matter of right on behalf of:

(A) residential consumers, as a class, in any proceeding before the utility commission, including an alternative dispute resolution proceeding; and

(B) small commercial consumers, as a class, in any proceeding in which the counsellor determines that small commercial consumers are in need of representation, including an alternative dispute resolution proceeding;

(4) may initiate or intervene as a matter of right or otherwise appear in a judicial proceeding:

(A) that involves an action taken by an administrative agency in a proceeding, including an alternative dispute resolution proceeding, in which the counsellor is authorized to appear; or

(B) in which the counsellor determines that residential consumers or small commercial consumers are in need of representation;

(5) is entitled to the same access as a party, other than utility commission staff, to records gathered by the utility commission under Section 13.133;

(6) is entitled to discovery of any nonprivileged matter that is relevant to the subject matter of a proceeding or petition before the utility commission;

(7) may represent an individual residential or small commercial consumer with respect to the consumer's disputed complaint concerning retail utility services that is unresolved before the utility commission; and

(8) may recommend legislation to the legislature that the office determines would positively affect the interests of residential and small commercial consumers.

(c) This section does not limit the authority of the utility commission to represent residential or small commercial consumers.

(d) The appearance of the counsellor in a proceeding does not preclude the appearance of other parties on behalf of residential or small commercial consumers. The counsellor may not be grouped with any other party.

SECTION 2.06. Section 13.041, Water Code, is amended to read as follows:

Sec. 13.041. GENERAL POWERS OF UTILITY COMMISSION AND COMMISSION ~~POWER~~; RULES; HEARINGS. (a) The utility commission may regulate and supervise the business of each ~~every~~ water and sewer utility within its jurisdiction, including ratemaking and other economic regulation. The commission shall regulate water and sewer utilities within its jurisdiction to ensure safe drinking water and environmental protection. The utility commission and the commission ~~and~~ may do all things, whether specifically designated in this chapter or implied in this chapter, necessary and convenient to the exercise of these powers ~~this power~~ and jurisdiction. The utility commission may consult with the commission as necessary in carrying out its duties related to the regulation of water and sewer utilities.

(b) The commission and the utility commission shall adopt and enforce rules reasonably required in the exercise of ~~its~~ powers and jurisdiction of each agency, including rules governing practice and procedure before the commission and the utility commission.

(c) The commission and the utility commission may call and hold hearings, administer oaths, receive evidence at hearings, issue subpoenas to compel the attendance of witnesses and the production of papers and documents, and make findings of fact and decisions with respect to administering this chapter or the rules, orders, or other actions of the commission or the utility commission.

(d) The utility commission may issue emergency orders, with or without a hearing:

(1) to compel a water or sewer service provider that has obtained or is required to obtain a certificate of public convenience and necessity to provide continuous and adequate water service, sewer service, or both, if the discontinuance of the service is imminent or has occurred because of the service provider's actions or failure to act; and

(2) to compel a retail public utility to provide an emergency interconnection with a neighboring retail public utility for the provision of temporary water or sewer service, or both, for not more than 90 days if service discontinuance or serious impairment in service is imminent or has occurred.

(e) The utility commission may establish reasonable compensation for the temporary service required under Subsection (d)(2) [~~of this section~~] and may allow the retail public utility receiving the service to make a temporary adjustment to its rate structure to ensure proper payment.

(f) If an order is issued under Subsection (d) without a hearing, the order shall fix a time, as soon after the emergency order is issued as is practicable, and place for a hearing to be held before the utility commission.

(g) The regulatory assessment required by Section 5.701(n) [~~5.235(n) of this code~~] is not a rate and is not reviewable by the utility commission under Section 13.043 [~~of this code~~]. The commission has the authority to enforce payment and collection of the regulatory assessment.

SECTION 2.07. Section 13.042, Water Code, is amended to read as follows:

Sec. 13.042. JURISDICTION OF MUNICIPALITY; ORIGINAL AND APPELLATE JURISDICTION OF UTILITY COMMISSION. (a) Subject to the limitations imposed in this chapter and for the purpose of regulating rates and services so that those rates may be fair, just, and reasonable and the services adequate and efficient, the governing body of each municipality has exclusive original jurisdiction over all water and sewer utility rates, operations, and services provided by a water and sewer utility within its corporate limits.

(b) The governing body of a municipality by ordinance may elect to have the utility commission exercise exclusive original jurisdiction over the utility rates, operation, and services of utilities, within the incorporated limits of the municipality.

(c) The governing body of a municipality that surrenders its jurisdiction to the utility commission may reinstate its jurisdiction by ordinance at any time after the second anniversary of the date on which the municipality surrendered its jurisdiction to the utility commission, except that the municipality may not reinstate its jurisdiction during the pendency of a rate proceeding before the utility commission. The municipality may not surrender its jurisdiction again until the second anniversary of the date on which the municipality reinstates jurisdiction.

(d) The utility commission shall have exclusive appellate jurisdiction to review orders or ordinances of those municipalities as provided in this chapter.

(e) The utility commission shall have exclusive original jurisdiction over water and sewer utility rates, operations, and services not within the incorporated limits of a municipality exercising exclusive original jurisdiction over those rates, operations, and services as provided in this chapter.

(f) This subchapter does not give the utility commission power or jurisdiction to regulate or supervise the rates or service of a utility owned and operated by a municipality, directly or through a municipally owned corporation, within its corporate limits or to affect or limit the power, jurisdiction, or duties of a municipality that regulates land and supervises water and sewer utilities within its corporate limits, except as provided by this code.

SECTION 2.08. Subsections (a), (b), (c), (e), (f), (g), and (j), Section 13.043, Water Code, are amended to read as follows:

(a) Any party to a rate proceeding before the governing body of a municipality may appeal the decision of the governing body to the utility commission. This subsection does not apply to a municipally owned utility. An appeal under this subsection must be initiated within 90 days after the date of notice of the final decision by the governing body by filing a petition for review with the utility commission and by serving copies on all parties to the original rate proceeding. The utility commission shall hear the appeal de novo and shall fix in its final order the rates the governing body should have fixed in the action from which the appeal was taken and may include reasonable expenses incurred in the appeal proceedings. The utility commission may establish the effective date for the utility commission's rates at the original effective date as proposed by the utility provider and may order refunds or allow a surcharge to recover lost revenues. The utility commission may consider only the information that was available to the governing body at the time the governing body made its decision and evidence of reasonable expenses incurred in the appeal proceedings.

(b) Ratepayers of the following entities may appeal the decision of the governing body of the entity affecting their water, drainage, or sewer rates to the utility commission:

(1) a nonprofit water supply or sewer service corporation created and operating under Chapter 67;

(2) a utility under the jurisdiction of a municipality inside the corporate limits of the municipality;

(3) a municipally owned utility, if the ratepayers reside outside the corporate limits of the municipality;

(4) a district or authority created under Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution that provides water or sewer service to household users; and

(5) a utility owned by an affected county, if the ratepayer's rates are actually or may be adversely affected. For the purposes of this section ratepayers who reside outside the boundaries of the district or authority shall be considered a separate class from ratepayers who reside inside those boundaries.

(c) An appeal under Subsection (b) [~~of this section~~] must be initiated by filing a petition for review with the utility commission and the entity providing service within 90 days after the effective day of the rate change or, if appealing



under Subdivision (b)(2) or (5) [~~of this section~~], within 90 days after the date on which the governing body of the municipality or affected county makes a final decision. The petition must be signed by the lesser of 10,000 or 10 percent of those ratepayers whose rates have been changed and who are eligible to appeal under Subsection (b) [~~of this section~~].

(e) In an appeal under Subsection (b) [~~of this section~~], the utility commission shall hear the appeal de novo and shall fix in its final order the rates the governing body should have fixed in the action from which the appeal was taken. The utility commission may establish the effective date for the utility commission's rates at the original effective date as proposed by the service provider, may order refunds or allow a surcharge to recover lost revenues, and may allow recovery of reasonable expenses incurred by the retail public utility in the appeal proceedings. The utility commission may consider only the information that was available to the governing body at the time the governing body made its decision and evidence of reasonable expenses incurred by the retail public utility in the appeal proceedings. The rates established by the utility commission in an appeal under Subsection (b) [~~of this section~~] remain in effect until the first anniversary of the effective date proposed by the retail public utility for the rates being appealed or until changed by the service provider, whichever date is later, unless the utility commission determines that a financial hardship exists.

(f) A retail public utility that receives water or sewer service from another retail public utility or political subdivision of the state, including an affected county, may appeal to the utility commission a decision of the provider of water or sewer service affecting the amount paid for water or sewer service. An appeal under this subsection must be initiated within 90 days after the date of notice of the decision is received from the provider of water or sewer service by the filing of a petition by the retail public utility.

(g) An applicant for service from an affected county or a water supply or sewer service corporation may appeal to the utility commission a decision of the county or water supply or sewer service corporation affecting the amount to be paid to obtain service other than the regular membership or tap fees. In addition to the factors specified under Subsection (j), in an appeal brought under this subsection the utility commission shall determine whether the amount paid by the applicant is consistent with the tariff of the water supply or sewer service corporation and is reasonably related to the cost of installing on-site and off-site facilities to provide service to that applicant. If the utility commission finds the amount charged to be clearly unreasonable, it shall establish the fee to be paid for that applicant. An appeal under this subsection must be initiated within 90 days after the date written notice is provided to the applicant or member of the decision of an affected county or water supply or sewer service corporation relating to the applicant's initial request for that service. A determination made by the utility commission on an appeal under this subsection is binding on all similarly situated applicants for service, and the utility commission may not consider other appeals on the same issue until the applicable provisions of the tariff of the water supply or sewer service corporation are amended.

(j) In an appeal under this section, the utility commission shall ensure that every rate made, demanded, or received by any retail public utility or by any two or more retail public utilities jointly shall be just and reasonable. Rates shall not be unreasonably preferential, prejudicial, or discriminatory but shall be sufficient, equitable, and consistent in application to each class of customers. The utility commission shall use a methodology that preserves the financial integrity of the retail public utility. For agreements between municipalities the utility commission shall consider the terms of any wholesale water or sewer service agreement in an appellate rate proceeding.

SECTION 2.09. Subsection (b), Section 13.044, Water Code, is amended to read as follows:

(b) Notwithstanding the provisions of any resolution, ordinance, or agreement, a district may appeal the rates imposed by the municipality by filing a petition with the utility commission. The utility commission shall hear the appeal de novo and the municipality shall have the burden of proof to establish that the rates are just and reasonable. The utility commission shall fix the rates to be charged by the municipality and the municipality may not increase such rates without the approval of the utility commission.

SECTION 2.10. Section 13.046, Water Code, is amended to read as follows:

Sec. 13.046. TEMPORARY RATES FOR SERVICES PROVIDED FOR NONFUNCTIONING SYSTEM; SANCTIONS FOR NONCOMPLIANCE.

(a) The utility commission by rule shall establish a procedure that allows a retail public utility that takes over the provision of services for a nonfunctioning retail water or sewer utility service provider to charge a reasonable rate for the services provided to the customers of the nonfunctioning system and to bill the customers for the services at that rate immediately to recover service costs.

(b) The rules must provide a streamlined process that the retail public utility that takes over the nonfunctioning system may use to apply to the utility commission for a ruling on the reasonableness of the rates the utility is charging under Subsection (a). The process must allow for adequate consideration of costs for interconnection or other costs incurred in making services available and of the costs that may necessarily be incurred to bring the nonfunctioning system into compliance with utility commission and commission rules.

(c) The utility commission shall provide a reasonable period for the retail public utility that takes over the nonfunctioning system to bring the nonfunctioning system into compliance with utility commission and commission rules during which the utility commission or the commission may not impose a penalty for any deficiency in the system that is present at the time the utility takes over the nonfunctioning system. The utility commission must consult with the utility before determining the period and may grant an extension of the period for good cause.

SECTION 2.11. Subchapter C, Chapter 13, Water Code, is amended by adding Section 13.047 to read as follows:

Sec. 13.047. REVIEW AND ORDER FOR CERTAIN WHOLESALE WATER RATES. (a) A conservation and reclamation district that provides potable water service to district customers may file an application with the utility commission requesting a review of the rate a supplier of raw or treated surface water or groundwater charges the district to determine whether the rate adversely affects the public interest.

(b) The utility commission shall presume that the rate adversely affects the public interest if it is shown on hearing that the rate the supplier charges the district at the time the application is made is at least 50 percent higher than the rate charged at any time during the 36-month period before the date of the application. The utility commission shall determine the rate the supplier charges the district adversely affects the public interest if the utility commission determines:

(1) the protested rate impairs the district's ability to continue to provide service to its retail customers, based on the district's financial integrity and operational capability;

(2) the rate evidences the supplier's abuse of monopoly power in the supplier's provision of water to the district after weighing all relevant factors, including:

(A) the disparate bargaining power of the parties, including the district's alternative means, alternative costs, environmental impact, regulatory issues, and problems of obtaining alternative supplies of water;

(B) whether the supplier failed to reasonably demonstrate the changed conditions that are the basis for a change in rates;

(C) whether the supplier changed the computation of the revenue requirement or rate from one methodology to another;

(D) where the supplier demands the rate in accordance with a contract, whether other valuable consideration was paid or received by a party incident to that contract;

(E) incentives necessary to encourage regional projects or water conservation measures;

(F) the supplier's obligation to meet federal and state wastewater discharge and drinking water standards;

(G) the rates charged in this state by other similarly situated suppliers of water for resale; and

(H) the supplier's rates for water charged to the supplier's retail customers, if any, compared to the retail rates the district charges the district's retail customers as a result of the wholesale rate the supplier demands from the district; or

(3) the rate is unreasonably preferential, prejudicial, or discriminatory, compared to the wholesale rates the supplier charges other wholesale customers.

(c) If the utility commission finds on hearing the application that the rate adversely affects the public interest or if the rate is presumed to adversely affect the public interest as provided by Subsection (b), the utility commission by order

shall fix a just and reasonable rate at which the supplier may charge the district. In fixing the rate, the utility commission shall use a methodology that preserves the financial integrity of the supplier.

SECTION 2.12. Section 13.081, Water Code, is amended to read as follows:

Sec. 13.081. FRANCHISES. This chapter may not be construed as in any way limiting the rights and powers of a municipality to grant or refuse franchises to use the streets and alleys within its limits and to make the statutory charges for their use, but no provision of any franchise agreement may limit or interfere with any power conferred on the utility commission by this chapter. If a municipality performs regulatory functions under this chapter, it may make such other charges as may be provided in the applicable franchise agreement, together with any other charges permitted by this chapter.

SECTION 2.13. Section 13.082, Water Code, is amended to read as follows:

Sec. 13.082. LOCAL UTILITY SERVICE; EXEMPT AND NONEXEMPT AREAS. (a) Notwithstanding any other provision of this section, municipalities shall continue to regulate each kind of local utility service inside their boundaries until the utility commission has assumed jurisdiction over the respective utility pursuant to this chapter.

(b) If a municipality does not surrender its jurisdiction, local utility service within the boundaries of the municipality shall be exempt from regulation by the utility commission under this chapter to the extent that this chapter applies to local service, and the municipality shall have, regarding service within its boundaries, the right to exercise the same regulatory powers under the same standards and rules as the utility commission or other standards and rules not inconsistent with them. The utility commission's rules relating to service and response to requests for service for utilities operating within a municipality's corporate limits apply unless the municipality adopts its own rules.

(c) Notwithstanding any election, the utility commission may consider water and sewer utilities' revenues and return on investment in exempt areas in fixing rates and charges in nonexempt areas and may also exercise the powers conferred necessary to give effect to orders under this chapter for the benefit of nonexempt areas. Likewise, in fixing rates and charges in the exempt area, the governing body may consider water and sewer utilities' revenues and return on investment in nonexempt areas.

(d) Utilities serving exempt areas are subject to the reporting requirements of this chapter. Those reports and tariffs shall be filed with the governing body of the municipality as well as with the utility commission.

(e) This section does not limit the duty and power of the utility commission to regulate service and rates of municipally regulated water and sewer utilities for service provided to other areas in Texas.

SECTION 2.14. Section 13.085, Water Code, is amended to read as follows:

Sec. 13.085. ASSISTANCE BY UTILITY COMMISSION. On request, the utility commission may advise and assist a municipality, an affected county, and a county with a population of more than four million [~~municipalities and affected counties~~] in connection with questions and proceedings arising under this chapter. This assistance may include aid [~~to municipalities or an affected county~~] in connection with matters pending before the utility commission, the courts, the governing body of any municipality, [~~or~~] the commissioners court of an affected county, or the commissioners court of a county with a population of more than four million, including making members of the staff available to them as witnesses and otherwise providing evidence.

SECTION 2.15. Subsection (c), Section 13.087, Water Code, is amended to read as follows:

(c) Notwithstanding any other provision of this chapter, the utility commission has jurisdiction to enforce this section.

SECTION 2.16. Subsections (a), (b), (c), and (e), Section 13.131, Water Code, are amended to read as follows:

(a) Every water and sewer utility shall keep and render to the regulatory authority in the manner and form prescribed by the utility commission uniform accounts of all business transacted. The utility commission may also prescribe forms of books, accounts, records, and memoranda to be kept by those utilities, including the books, accounts, records, and memoranda of the rendition of and capacity for service as well as the receipts and expenditures of money, and any other forms, records, and memoranda that in the judgment of the utility commission may be necessary to carry out this chapter.

(b) In the case of a utility subject to regulation by a federal regulatory agency, compliance with the system of accounts prescribed for the particular class of utilities by that agency may be considered a sufficient compliance with the system prescribed by the utility commission. However, the utility commission may prescribe forms of books, accounts, records, and memoranda covering information in addition to that required by the federal agency. The system of accounts and the forms of books, accounts, records, and memoranda prescribed by the utility commission for a utility or class of utilities may not conflict or be inconsistent with the systems and forms established by a federal agency for that utility or class of utilities.

(c) The utility commission shall fix proper and adequate rates and methods of depreciation, amortization, or depletion of the several classes of property of each utility and shall require every utility to carry a proper and adequate depreciation account in accordance with those rates and methods and with any other rules the utility commission prescribes. Rules adopted under this subsection must require the book cost less net salvage of depreciable utility plant retired to be charged in its entirety to the accumulated depreciation account in a manner consistent with accounting treatment of regulated electric and gas utilities in this state. Those rates, methods, and accounts shall be utilized uniformly and consistently throughout the rate-setting and appeal proceedings.

(e) Every utility is required to keep and render its books, accounts, records, and memoranda accurately and faithfully in the manner and form prescribed by the utility commission and to comply with all directions of the regulatory authority relating to those books, accounts, records, and memoranda. The regulatory authority may require the examination and audit of all accounts.

SECTION 2.17. Section 13.132, Water Code, is amended to read as follows:

Sec. 13.132. POWERS OF UTILITY COMMISSION. (a) The utility commission may:

(1) require that water and sewer utilities report to it any information relating to themselves and affiliated interests both inside and outside this state that it considers useful in the administration of this chapter;

(2) establish forms for all reports;

(3) determine the time for reports and the frequency with which any reports are to be made;

(4) require that any reports be made under oath;

(5) require that a copy of any contract or arrangement between any utility and any affiliated interest be filed with it and require that such a contract or arrangement that is not in writing be reduced to writing;

(6) require that a copy of any report filed with any federal agency or any governmental agency or body of any other state be filed with it; and

(7) require that a copy of annual reports showing all payments of compensation, other than salary or wages subject to the withholding of federal income tax, made to residents of Texas, or with respect to legal, administrative, or legislative matters in Texas, or for representation before the Texas Legislature or any governmental agency or body be filed with it.

(b) On the request of the governing body of any municipality, the utility commission may provide sufficient staff members to advise and consult with the municipality on any pending matter.

SECTION 2.18. Subsection (b), Section 13.133, Water Code, is amended to read as follows:

(b) The regulatory authority may require, by order or subpoena served on any utility, the production within this state at the time and place it may designate of any books, accounts, papers, or records kept by that utility outside the state or verified copies of them if the regulatory authority [~~commission~~] so orders. A utility failing or refusing to comply with such an order or subpoena violates this chapter.

SECTION 2.19. Subsections (b) and (c), Section 13.136, Water Code, are amended to read as follows:

(b) Each utility annually shall file a service and financial report in a form and at times specified by utility commission rule.

(c) Every water supply or sewer service corporation shall file with the utility commission tariffs showing all rates that are subject to the appellate jurisdiction of the utility commission and that are in force at the time for any utility service, product, or commodity offered. Every water supply or sewer service corporation shall file with and as a part of those tariffs all rules and

regulations relating to or affecting the rates, utility service, product, or commodity furnished. The filing required under this subsection shall be for informational purposes only.

SECTION 2.20. Section 13.137, Water Code, is amended to read as follows:

Sec. 13.137. OFFICE AND OTHER BUSINESS LOCATIONS OF UTILITY; RECORDS; REMOVAL FROM STATE. (a) Every utility shall:

(1) make available and notify its customers of a business location where its customers may make payments to prevent disconnection of or to restore service:

(A) in each county in which the utility provides service; or

(B) not more than 20 miles from the residence of any residential customer if there is no location to receive payments in the county; and

(2) have an office in a county of this state or in the immediate area in which its property or some part of its property is located in which it shall keep all books, accounts, records, and memoranda required by the utility commission to be kept in this state.

(b) The utility commission by rule may provide for waiving the requirements of Subsection (a)(1) for a utility for which meeting those requirements would cause a rate increase or otherwise harm or inconvenience customers. The rules must provide for an additional 14 days to be given for a customer to pay before a utility that is granted a waiver may disconnect service for late payment.

(c) Books, accounts, records, or memoranda required by the regulatory authority to be kept in the state may not be removed from the state, except on conditions prescribed by the utility commission.

SECTION 2.21. Subsection (b), Section 13.139, Water Code, is amended to read as follows:

(b) The governing body of a municipality, as the regulatory authority for public utilities operating within its corporate limits, and the utility commission or the commission as the regulatory authority for public utilities operating outside the corporate limits of any municipality, after reasonable notice and hearing on its own motion, may:

(1) ascertain and fix just and reasonable standards, classifications, regulations, service rules, minimum service standards or practices to be observed and followed with respect to the service to be furnished;

(2) ascertain and fix adequate and reasonable standards for the measurement of the quantity, quality, pressure, or other condition pertaining to the supply of the service;

(3) prescribe reasonable regulations for the examination and testing of the service and for the measurement of service; and

(4) establish or approve reasonable rules, regulations, specifications, and standards to secure the accuracy of all meters, instruments, and equipment used for the measurement of any utility service.

SECTION 2.22. Section 13.1395, Water Code, is amended by adding Subsection (m) to read as follows:

(m) The commission shall coordinate with the utility commission in the administration of this section.

SECTION 2.23. Subsection (b), Section 13.142, Water Code, is amended to read as follows:

(b) The utility commission shall adopt rules concerning payment of utility bills that are consistent with Chapter 2251, Government Code.

SECTION 2.24. Section 13.144, Water Code, is amended to read as follows:

Sec. 13.144. NOTICE OF WHOLESALE WATER SUPPLY CONTRACT. A district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, a retail public utility, a wholesale water service, or other person providing a retail public utility with a wholesale water supply shall provide the utility commission and the commission with a certified copy of any wholesale water supply contract with a retail public utility within 30 days after the date of the execution of the contract. The submission must include the amount of water being supplied, term of the contract, consideration being given for the water, purpose of use, location of use, source of supply, point of delivery, limitations on the reuse of water, a disclosure of any affiliated interest between the parties to the contract, and any other condition or agreement relating to the contract.

SECTION 2.25. Subsection (a), Section 13.147, Water Code, is amended to read as follows:

(a) A retail public utility providing water service may contract with a retail public utility providing sewer service to bill and collect the sewer service provider's fees and payments as part of a consolidated process with the billing and collection of the water service provider's fees and payments. The water service provider may provide that service only for customers who are served by both providers in an area covered by both providers' certificates of public convenience and necessity. If the water service provider refuses to enter into a contract under this section or if the water service provider and sewer service provider cannot agree on the terms of a contract, the sewer service provider may petition the utility commission to issue an order requiring the water service provider to provide that service.

SECTION 2.26. Subsection (b), Section 13.181, Water Code, is amended to read as follows:

(b) Subject to this chapter, the utility commission has all authority and power of the state to ensure compliance with the obligations of utilities under this chapter. For this purpose the regulatory authority may fix and regulate rates of utilities, including rules and regulations for determining the classification of customers and services and for determining the applicability of rates. A rule or order of the regulatory authority may not conflict with the rulings of any federal regulatory body. The utility commission may adopt rules which authorize a utility which is permitted under Section 13.242(c) to provide service without a certificate of public convenience and necessity to request or implement a rate increase and operate according to rules, regulations, and standards of service



other than those otherwise required under this chapter provided that rates are just and reasonable for customers and the utility and that service is safe, adequate, efficient, and reasonable.

SECTION 2.27. Subsections (c) and (d), Section 13.182, Water Code, are amended to read as follows:

(c) For ratemaking purposes, the utility commission may treat two or more municipalities served by a utility as a single class wherever the utility commission considers that treatment to be appropriate.

(d) The utility commission by rule shall establish a preference that rates under a consolidated tariff be consolidated by region. The regions under consolidated tariffs must be determined on a case-by-case basis.

SECTION 2.28. Subsection (d), Section 13.183, Water Code, is amended to read as follows:

(d) A regulatory authority other than the utility commission may not approve an acquisition adjustment for a system purchased before the effective date of an ordinance authorizing acquisition adjustments.

SECTION 2.29. Subsection (a), Section 13.184, Water Code, is amended to read as follows:

(a) Unless the utility commission establishes alternate rate methodologies in accordance with Section 13.183(c), the utility commission may not prescribe any rate that will yield more than a fair return on the invested capital used and useful in rendering service to the public. The governing body of a municipality exercising its original jurisdiction over rates and services may use alternate ratemaking methodologies established by ordinance or by utility commission rule in accordance with Section 13.183(c). Unless the municipal regulatory authority uses alternate ratemaking methodologies established by ordinance or by utility commission rule in accordance with Section 13.183(c), it may not prescribe any rate that will yield more than a fair return on the invested capital used and useful in rendering service to the public.

SECTION 2.30. Subsections (d), (k), and (o), Section 13.187, Water Code, are amended to read as follows:

(d) Except as provided by Subsection (d-1), if the application or the statement of intent is not substantially complete or does not comply with the regulatory authority's rules, it may be rejected and the effective date of the rate change may be suspended until a properly completed application is accepted by the regulatory authority and a proper statement of intent is provided. The utility commission may also suspend the effective date of any rate change if the utility does not have a certificate of public convenience and necessity or a completed application for a certificate or to transfer a certificate pending before the utility commission or if the utility is delinquent in paying the assessment and any applicable penalties or interest required by Section 5.701(n) ~~[of this code]~~.

(k) If the regulatory authority receives at least the number of complaints from ratepayers required for the regulatory authority to set a hearing under Subsection (e), the regulatory authority may, pending the hearing and a decision,

suspend the date the rate change would otherwise be effective. Except as provided by Subsection (d-1), the proposed rate may not be suspended for longer than:

(1) 90 days by a local regulatory authority; or

(2) 150 days by the utility commission.

(o) If a regulatory authority other than the utility commission establishes interim rates or an escrow account, the regulatory authority must make a final determination on the rates not later than the first anniversary of the effective date of the interim rates or escrowed rates or the rates are automatically approved as requested by the utility.

SECTION 2.31. Subsection (a), Section 13.188, Water Code, is amended to read as follows:

(a) Notwithstanding any other provision in this chapter, the utility commission by rule shall adopt a procedure allowing a utility to file with the utility commission an application to timely adjust the utility's rates to reflect an increase or decrease in documented energy costs in a pass through clause. The utility commission, by rule, shall require the pass through of documented decreases in energy costs within a reasonable time. The pass through, whether a decrease or increase, shall be implemented on no later than an annual basis, unless the utility commission determines a special circumstance applies.

SECTION 2.32. Subsections (a) and (d), Section 13.241, Water Code, are amended to read as follows:

(a) In determining whether to grant or amend a certificate of public convenience and necessity, the utility commission shall ensure that the applicant possesses the financial, managerial, and technical capability to provide continuous and adequate service.

(d) Before the utility commission grants a new certificate of convenience and necessity for an area which would require construction of a physically separate water or sewer system, the applicant must demonstrate to the utility commission that regionalization or consolidation with another retail public utility is not economically feasible.

SECTION 2.33. Subsection (a), Section 13.242, Water Code, is amended to read as follows:

(a) Unless otherwise specified, a utility, a utility operated by an affected county, or a water supply or sewer service corporation may not in any way render retail water or sewer utility service directly or indirectly to the public without first having obtained from the utility commission a certificate that the present or future public convenience and necessity will require that installation, operation, or extension, and except as otherwise provided by this subchapter, a retail public utility may not furnish, make available, render, or extend retail water or sewer utility service to any area to which retail water or sewer utility service is being lawfully furnished by another retail public utility without first having obtained a certificate of public convenience and necessity that includes the area in which the consuming facility is located.

SECTION 2.34. Section 13.244, Water Code, is amended to read as follows:

Sec. 13.244. APPLICATION; MAPS AND OTHER INFORMATION; EVIDENCE AND CONSENT. (a) To obtain a certificate of public convenience and necessity or an amendment to a certificate, a public utility or water supply or sewer service corporation shall submit to the utility commission an application for a certificate or for an amendment as provided by this section.

(b) Each public utility and water supply or sewer service corporation shall file with the utility commission a map or maps showing all its facilities and illustrating separately facilities for production, transmission, and distribution of its services, and each certificated retail public utility shall file with the utility commission a map or maps showing any facilities, customers, or area currently being served outside its certificated areas.

(c) Each applicant for a certificate or for an amendment shall file with the utility commission evidence required by the commission to show that the applicant has received the required consent, franchise, or permit of the proper municipality or other public authority.

(d) An application for a certificate of public convenience and necessity or for an amendment to a certificate must contain:

(1) a description of the proposed service area by:

(A) a metes and bounds survey certified by a licensed state land surveyor or a registered professional land surveyor;

(B) the Texas State Plane Coordinate System;

(C) verifiable landmarks, including a road, creek, or railroad line;

or

(D) if a recorded plat of the area exists, lot and block number;

(2) a description of any requests for service in the proposed service area;

(3) a capital improvements plan, including a budget and estimated timeline for construction of all facilities necessary to provide full service to the entire proposed service area;

(4) a description of the sources of funding for all facilities;

(5) to the extent known, a description of current and projected land uses, including densities;

(6) a current financial statement of the applicant;

(7) according to the tax roll of the central appraisal district for each county in which the proposed service area is located, a list of the owners of each tract of land that is:

(A) at least 50 acres; and

(B) wholly or partially located within the proposed service area;

and

(8) any other item required by the utility commission.

SECTION 2.35. Subsections (b), (c), and (e), Section 13.245, Water Code, are amended to read as follows:

(b) Except as provided by Subsection (c), the utility commission may not grant to a retail public utility a certificate of public convenience and necessity for a service area within the boundaries or extraterritorial jurisdiction of a municipality without the consent of the municipality. The municipality may not

unreasonably withhold the consent. As a condition of the consent, a municipality may require that all water and sewer facilities be designed and constructed in accordance with the municipality's standards for facilities.

(c) If a municipality has not consented under Subsection (b) before the 180th day after the date the municipality receives the retail public utility's application, the utility commission shall grant the certificate of public convenience and necessity without the consent of the municipality if the utility commission finds that the municipality:

(1) does not have the ability to provide service; or

(2) has failed to make a good faith effort to provide service on reasonable terms and conditions.

(e) If the utility commission makes a decision under Subsection (d) regarding the grant of a certificate of public convenience and necessity without the consent of the municipality, the municipality or the retail public utility may appeal the decision to the appropriate state district court. The court shall hear the petition within 120 days after the date the petition is filed. On final disposition, the court may award reasonable fees to the prevailing party.

SECTION 2.36. Subsection (c), Section 13.2451, Water Code, is amended to read as follows:

(c) The utility commission, after notice to the municipality and an opportunity for a hearing, may decertify an area outside a municipality's extraterritorial jurisdiction if the municipality does not provide service to the area on or before the fifth anniversary of the date the certificate of public convenience and necessity was granted for the area. This subsection does not apply to a certificate of public convenience and necessity for an area:

(1) that was transferred to a municipality on approval of the utility commission; and

(2) in relation to which the municipality has spent public funds.

SECTION 2.37. Subsections (a), (a-1), (b), (c), (d), (f), (h), and (i), Section 13.246, Water Code, are amended to read as follows:

(a) If an application for a certificate of public convenience and necessity or for an amendment to a certificate is filed, the utility commission shall cause notice of the application to be given to affected parties and to each county and groundwater conservation district that is wholly or partly included in the area proposed to be certified. If requested, the utility commission shall fix a time and place for a hearing and give notice of the hearing. Any person affected by the application may intervene at the hearing.

(a-1) Except as otherwise provided by this subsection, in addition to the notice required by Subsection (a), the utility commission shall require notice to be mailed to each owner of a tract of land that is at least 25 acres and is wholly or partially included in the area proposed to be certified. Notice required under this subsection must be mailed by first class mail to the owner of the tract according to the most current tax appraisal rolls of the applicable central appraisal district at the time the utility commission received the application for the certificate or amendment. Good faith efforts to comply with the requirements of this subsection

shall be considered adequate notice to landowners. Notice under this subsection is not required for a matter filed with the utility commission or the commission under:

(1) Section 13.248 or 13.255; or

(2) Chapter 65.

(b) The utility commission may grant applications and issue certificates and amendments to certificates only if the utility commission finds that a certificate or amendment is necessary for the service, accommodation, convenience, or safety of the public. The utility commission may issue a certificate or amendment as requested, or refuse to issue it, or issue it for the construction of only a portion of the contemplated system or facility or extension, or for the partial exercise only of the right or privilege and may impose special conditions necessary to ensure that continuous and adequate service is provided.

(c) Certificates of public convenience and necessity and amendments to certificates shall be granted by the utility commission on a nondiscriminatory basis after consideration by the utility commission of:

(1) the adequacy of service currently provided to the requested area;

(2) the need for additional service in the requested area, including whether any landowners, prospective landowners, tenants, or residents have requested service;

(3) the effect of the granting of a certificate or of an amendment on the recipient of the certificate or amendment, on the landowners in the area, and on any retail public utility of the same kind already serving the proximate area;

(4) the ability of the applicant to provide adequate service, including meeting the standards of the commission, taking into consideration the current and projected density and land use of the area;

(5) the feasibility of obtaining service from an adjacent retail public utility;

(6) the financial ability of the applicant to pay for the facilities necessary to provide continuous and adequate service and the financial stability of the applicant, including, if applicable, the adequacy of the applicant's debt-equity ratio;

(7) environmental integrity;

(8) the probable improvement of service or lowering of cost to consumers in that area resulting from the granting of the certificate or amendment; and

(9) the effect on the land to be included in the certificated area.

(d) The utility commission may require an applicant for a certificate or for an amendment to provide a bond or other financial assurance in a form and amount specified by the utility commission to ensure that continuous and adequate utility service is provided.

(f) If two or more retail public utilities or water supply or sewer service corporations apply for a certificate of public convenience and necessity to provide water or sewer utility service to an uncertificated area located in an economically distressed area and otherwise meet the requirements for obtaining a new certificate, the utility commission shall grant the certificate to the retail

public utility or water supply or sewer service corporation that is more capable financially, managerially, and technically of providing continuous and adequate service.

(h) Except as provided by Subsection (i), a landowner who owns a tract of land that is at least 25 acres and that is wholly or partially located within the proposed service area may elect to exclude some or all of the landowner's property from the proposed service area by providing written notice to the utility commission before the 30th day after the date the landowner receives notice of a new application for a certificate of public convenience and necessity or for an amendment to an existing certificate of public convenience and necessity. The landowner's election is effective without a further hearing or other process by the utility commission. If a landowner makes an election under this subsection, the application shall be modified so that the electing landowner's property is not included in the proposed service area.

(i) A landowner is not entitled to make an election under Subsection (h) but is entitled to contest the inclusion of the landowner's property in the proposed service area at a hearing held by the utility commission regarding the application if the proposed service area is located within the boundaries or extraterritorial jurisdiction of a municipality with a population of more than 500,000 and the municipality or a utility owned by the municipality is the applicant.

SECTION 2.38. Subsection (a), Section 13.247, Water Code, is amended to read as follows:

(a) If an area is within the boundaries of a municipality, all retail public utilities certified or entitled to certification under this chapter to provide service or operate facilities in that area may continue and extend service in its area of public convenience and necessity within the area pursuant to the rights granted by its certificate and this chapter, unless the municipality exercises its power of eminent domain to acquire the property of the retail public utility under Subsection (d). Except as provided by Section 13.255, a municipally owned or operated utility may not provide retail water and sewer utility service within the area certificated to another retail public utility without first having obtained from the utility commission a certificate of public convenience and necessity that includes the areas to be served.

SECTION 2.39. Section 13.248, Water Code, is amended to read as follows:

Sec. 13.248. **CONTRACTS VALID AND ENFORCEABLE.** Contracts between retail public utilities designating areas to be served and customers to be served by those retail public utilities, when approved by the utility commission or the executive director of the utility commission after public notice [~~and hearing~~], are valid and enforceable and are incorporated into the appropriate areas of public convenience and necessity.

SECTION 2.40. Subsections (b), (c), and (e), Section 13.250, Water Code, are amended to read as follows:

(b) Unless the utility commission issues a certificate that neither the present nor future convenience and necessity will be adversely affected, the holder of a certificate or a person who possesses facilities used to provide utility service shall not discontinue, reduce, or impair service to a certified service area or part of a certified service area except for:

(1) nonpayment of charges for services provided by the certificate holder or a person who possesses facilities used to provide utility service;

(2) nonpayment of charges for sewer service provided by another retail public utility under an agreement between the retail public utility and the certificate holder or a person who possesses facilities used to provide utility service or under a utility commission-ordered arrangement between the two service providers;

(3) nonuse; or

(4) other similar reasons in the usual course of business.

(c) Any discontinuance, reduction, or impairment of service, whether with or without approval of the utility commission, shall be in conformity with and subject to conditions, restrictions, and limitations that the utility commission prescribes.

(e) Not later than the 48th hour after the hour in which a utility files a bankruptcy petition, the utility shall report this fact to the utility commission and the commission in writing.

SECTION 2.41. Subsection (d), Section 13.2502, Water Code, is amended to read as follows:

(d) This section does not limit or extend the jurisdiction of the utility commission under Section 13.043(g).

SECTION 2.42. Section 13.251, Water Code, is amended to read as follows:

Sec. 13.251. SALE, ASSIGNMENT, OR LEASE OF CERTIFICATE. Except as provided by Section 13.255 [~~of this code~~], a utility or a water supply or sewer service corporation may not sell, assign, or lease a certificate of public convenience and necessity or any right obtained under a certificate unless the commission has determined that the purchaser, assignee, or lessee is capable of rendering adequate and continuous service to every consumer within the certified area, after considering the factors under Section 13.246(c) [~~of this code~~]. The sale, assignment, or lease shall be on the conditions prescribed by the utility commission.

SECTION 2.43. Section 13.252, Water Code, is amended to read as follows:

Sec. 13.252. INTERFERENCE WITH OTHER RETAIL PUBLIC UTILITY. If a retail public utility in constructing or extending a line, plant, or system interferes or attempts to interfere with the operation of a line, plant, or system of any other retail public utility, or furnishes, makes available, renders, or extends retail water or sewer utility service to any portion of the service area of another retail public utility that has been granted or is not required to possess a certificate of public convenience and necessity, the utility commission may issue

an order prohibiting the construction, extension, or provision of service or prescribing terms and conditions for locating the line, plant, or system affected or for the provision of the service.

SECTION 2.44. Section 13.253, Water Code, is amended to read as follows:

Sec. 13.253. IMPROVEMENTS IN SERVICE; INTERCONNECTING SERVICE. (a) After notice and hearing, the utility commission or the commission may:

(1) order any retail public utility that is required by law to possess a certificate of public convenience and necessity or any retail public utility that possesses a certificate of public convenience and necessity and is located in an affected county as defined in Section 16.341 to:

(A) provide specified improvements in its service in a defined area if service in that area is inadequate or is substantially inferior to service in a comparable area and it is reasonable to require the retail public utility to provide the improved service; or

(B) develop, implement, and follow financial, managerial, and technical practices that are acceptable to the utility commission to ensure that continuous and adequate service is provided to any areas currently certificated to the retail public utility if the retail public utility has not provided continuous and adequate service to any of those areas and, for a utility, to provide financial assurance of the utility's ability to operate the system in accordance with applicable laws and rules, in the form of a bond or other financial assurance in a form and amount specified by the utility commission;

(2) order two or more public utilities or water supply or sewer service corporations to establish specified facilities for interconnecting service;

(3) order a public utility or water supply or sewer service corporation that has not demonstrated that it can provide continuous and adequate service from its drinking water source or sewer treatment facility to obtain service sufficient to meet its obligation to provide continuous and adequate service on at least a wholesale basis from another consenting utility service provider; or

(4) issue an emergency order, with or without a hearing, under Section 13.041.

(b) If the utility commission has reason to believe that improvements and repairs to a water or sewer service system are necessary to enable a retail public utility to provide continuous and adequate service in any portion of its service area and the retail public utility has provided financial assurance under Section 341.0355, Health and Safety Code, or under this chapter, the utility commission, after providing to the retail public utility notice and an opportunity to be heard by the commissioners at a ~~[commission]~~ meeting of the utility commission, may immediately order specified improvements and repairs to the water or sewer system, the costs of which may be paid by the bond or other financial assurance in an amount determined by the utility commission not to exceed the amount of the bond or financial assurance. The order requiring the improvements may be an emergency order if it is issued after the retail public utility has had an opportunity to be heard ~~[by the commissioners]~~ at a ~~[commission]~~ meeting of the utility



commission. After notice and hearing, the utility commission may require a retail public utility to obligate additional money to replace the financial assurance used for the improvements.

SECTION 2.45. Section 13.254, Water Code, is amended to read as follows:

Sec. 13.254. REVOCATION OR AMENDMENT OF CERTIFICATE. (a) The utility commission at any time after notice and hearing may ~~[- on its own motion or on receipt of a petition described by Subsection (a-1),]~~ revoke or amend any certificate of public convenience and necessity with the written consent of the certificate holder or if the utility commission ~~[#]~~ finds that:

(1) the certificate holder has never provided, is no longer providing, is incapable of providing, or has failed to provide continuous and adequate service in the area, or part of the area, covered by the certificate;

(2) in an affected county as defined in Section 16.341, the cost of providing service by the certificate holder is so prohibitively expensive as to constitute denial of service, provided that, for commercial developments or for residential developments started after September 1, 1997, in an affected county as defined in Section 16.341, the fact that the cost of obtaining service from the currently certificated retail public utility makes the development economically unfeasible does not render such cost prohibitively expensive in the absence of other relevant factors;

(3) the certificate holder has agreed in writing to allow another retail public utility to provide service within its service area, except for an interim period, without amending its certificate; or

(4) the certificate holder has failed to file a cease and desist action pursuant to Section 13.252 within 180 days of the date that it became aware that another retail public utility was providing service within its service area, unless the certificate holder demonstrates good cause for its failure to file such action within the 180 days.

(a-1) As an alternative to decertification under Subsection (a), the owner of a tract of land that is at least 50 acres and that is not in a platted subdivision actually receiving water or sewer service may petition the utility commission under this subsection for expedited release of the area from a certificate of public convenience and necessity so that the area may receive service from another retail public utility. The petitioner shall deliver, via certified mail, a copy of the petition to the certificate holder, who may submit information to the utility commission to controvert information submitted by the petitioner. The petitioner must demonstrate that:

(1) a written request for service, other than a request for standard residential or commercial service, has been submitted to the certificate holder, identifying:

(A) the area for which service is sought;

(B) the timeframe within which service is needed for current and projected service demands in the area;

(C) the level and manner of service needed for current and projected service demands in the area; and

(D) any additional information requested by the certificate holder that is reasonably related to determination of the capacity or cost for providing the service;

(2) the certificate holder has been allowed at least 90 calendar days to review and respond to the written request and the information it contains;

(3) the certificate holder:

(A) has refused to provide the service;

(B) is not capable of providing the service on a continuous and adequate basis within the timeframe, at the level, or in the manner reasonably needed or requested by current and projected service demands in the area; or

(C) conditions the provision of service on the payment of costs not properly allocable directly to the petitioner's service request, as determined by the utility commission; and

(4) the alternate retail public utility from which the petitioner will be requesting service is capable of providing continuous and adequate service within the timeframe, at the level, and in the manner reasonably needed or requested by current and projected service demands in the area.

(a-2) A landowner is not entitled to make the election described in Subsection (a-1) or (a-5) but is entitled to contest under Subsection (a) the involuntary certification of its property in a hearing held by the utility commission if the landowner's property is located:

(1) within the boundaries of any municipality or the extraterritorial jurisdiction of a municipality with a population of more than 500,000 and the municipality or retail public utility owned by the municipality is the holder of the certificate; or

(2) in a platted subdivision actually receiving water or sewer service.

(a-3) Within 90 calendar days from the date the utility commission determines the petition filed pursuant to Subsection (a-1) to be administratively complete, the utility commission shall grant the petition unless the utility commission makes an express finding that the petitioner failed to satisfy the elements required in Subsection (a-1) and supports its finding with separate findings and conclusions for each element based solely on the information provided by the petitioner and the certificate holder. The utility commission may grant or deny a petition subject to terms and conditions specifically related to the service request of the petitioner and all relevant information submitted by the petitioner and the certificate holder. In addition, the utility commission may require an award of compensation as otherwise provided by this section.

(a-4) Chapter 2001, Government Code, does not apply to any petition filed under Subsection (a-1). The decision of the utility commission on the petition is final after any reconsideration authorized by the utility commission's rules and may not be appealed.

(a-5) As an alternative to decertification under Subsection (a) and expedited release under Subsection (a-1), the owner of a tract of land that is at least 25 acres and that is not receiving water or sewer service may petition for expedited release of the area from a certificate of public convenience and necessity and is entitled to that release if the landowner's property is located in a county with a population

of at least one million, a county adjacent to a county with a population of at least one million, or a county with a population of more than 200,000 and less than 220,000.

(a-6) The utility commission shall grant a petition received under Subsection (a-5) not later than the 60th day after the date the landowner files the petition. The utility commission may not deny a petition received under Subsection (a-5) based on the fact that a certificate holder is a borrower under a federal loan program. The utility commission may require an award of compensation by the petitioner to a decertified retail public utility that is the subject of a petition filed under Subsection (a-5) as otherwise provided by this section.

(b) Upon written request from the certificate holder, the utility commission [~~executive director~~] may cancel the certificate of a utility or water supply corporation authorized by rule to operate without a certificate of public convenience and necessity under Section 13.242(c).

(c) If the certificate of any retail public utility is revoked or amended, the utility commission may require one or more retail public utilities with their consent to provide service in the area in question. The order of the utility commission shall not be effective to transfer property.

(d) A retail public utility may not in any way render retail water or sewer service directly or indirectly to the public in an area that has been decertified under this section without providing compensation for any property that the utility commission determines is rendered useless or valueless to the decertified retail public utility as a result of the decertification.

(e) The determination of the monetary amount of compensation, if any, shall be determined at the time another retail public utility seeks to provide service in the previously decertified area and before service is actually provided. The utility commission shall ensure that the monetary amount of compensation is determined not later than the 90th calendar day after the date on which a retail public utility notifies the utility commission of its intent to provide service to the decertified area.

(f) The monetary amount shall be determined by a qualified individual or firm serving as independent appraiser agreed upon by the decertified retail public utility and the retail public utility seeking to serve the area. The determination of compensation by the independent appraiser shall be binding on the utility commission. The costs of the independent appraiser shall be borne by the retail public utility seeking to serve the area.

(g) For the purpose of implementing this section, the value of real property owned and utilized by the retail public utility for its facilities shall be determined according to the standards set forth in Chapter 21, Property Code, governing actions in eminent domain and the value of personal property shall be determined according to the factors in this subsection. The factors ensuring that the compensation to a retail public utility is just and adequate shall include: the amount of the retail public utility's debt allocable for service to the area in question; the value of the service facilities of the retail public utility located within the area in question; the amount of any expenditures for planning, design,

or construction of service facilities that are allocable to service to the area in question; the amount of the retail public utility's contractual obligations allocable to the area in question; any demonstrated impairment of service or increase of cost to consumers of the retail public utility remaining after the decertification; the impact on future revenues lost from existing customers; necessary and reasonable legal expenses and professional fees; and other relevant factors. The utility commission shall adopt rules governing the evaluation of these factors.

(g-1) If the retail public utilities cannot agree on an independent appraiser within 10 calendar days after the date on which the retail public utility notifies the utility commission of its intent to provide service to the decertified area, each retail public utility shall engage its own appraiser at its own expense, and each appraisal shall be submitted to the utility commission within 60 calendar days. After receiving the appraisals, the utility commission shall appoint a third appraiser who shall make a determination of the compensation within 30 days. The determination may not be less than the lower appraisal or more than the higher appraisal. Each retail public utility shall pay half the cost of the third appraisal.

SECTION 2.46. Subsections (a), (b), (c), (d), (e), (g-1), (k), (l), and (m), Section 13.255, Water Code, are amended to read as follows:

(a) In the event that an area is incorporated or annexed by a municipality, either before or after the effective date of this section, the municipality and a retail public utility that provides water or sewer service to all or part of the area pursuant to a certificate of convenience and necessity may agree in writing that all or part of the area may be served by a municipally owned utility, by a franchised utility, or by the retail public utility. In this section, the phrase "franchised utility" shall mean a retail public utility that has been granted a franchise by a municipality to provide water or sewer service inside municipal boundaries. The agreement may provide for single or dual certification of all or part of the area, for the purchase of facilities or property, and for such other or additional terms that the parties may agree on. If a franchised utility is to serve the area, the franchised utility shall also be a party to the agreement. The executed agreement shall be filed with the utility commission, and the utility commission, on receipt of the agreement, shall incorporate the terms of the agreement into the respective certificates of convenience and necessity of the parties to the agreement.

(b) If an agreement is not executed within 180 days after the municipality, in writing, notifies the retail public utility of its intent to provide service to the incorporated or annexed area, and if the municipality desires and intends to provide retail utility service to the area, the municipality, prior to providing service to the area, shall file an application with the utility commission to grant single certification to the municipally owned water or sewer utility or to a franchised utility. If an application for single certification is filed, the utility commission shall fix a time and place for a hearing and give notice of the hearing to the municipality and franchised utility, if any, and notice of the application and hearing to the retail public utility.

(c) The utility commission shall grant single certification to the municipality. ~~The utility commission shall also determine whether single certification as requested by the municipality would result in property of a retail public utility being rendered useless or valueless to the retail public utility, and shall determine in its order the monetary amount that is adequate and just to compensate the retail public utility for such property. If the municipality in its application has requested the transfer of specified property of the retail public utility to the municipality or to a franchised utility, the utility commission shall also determine in its order the adequate and just compensation to be paid for such property pursuant to the provisions of this section, including an award for damages to property remaining in the ownership of the retail public utility after single certification. The order of the utility commission shall not be effective to transfer property. A transfer of property may only be obtained under this section by a court judgment rendered pursuant to Subsection (d) or (e) [of this section].~~ The grant of single certification by the utility commission shall go into effect on the date the municipality or franchised utility, as the case may be, pays adequate and just compensation pursuant to court order, or pays an amount into the registry of the court or to the retail public utility under Subsection (f). If the court judgment provides that the retail public utility is not entitled to any compensation, the grant of single certification shall go into effect when the court judgment becomes final. The municipality or franchised utility must provide to each customer of the retail public utility being acquired an individual written notice within 60 days after the effective date for the transfer specified in the court judgment. The notice must clearly advise the customer of the identity of the new service provider, the reason for the transfer, the rates to be charged by the new service provider, and the effective date of those rates.

(d) In the event the final order of the utility commission is not appealed within 30 days, the municipality may request the district court of Travis County to enter a judgment consistent with the order of the utility commission. In such event, the court shall render a judgment that:

(1) transfers to the municipally owned utility or franchised utility title to property to be transferred to the municipally owned utility or franchised utility as delineated by the utility commission's final order and property determined by the utility commission to be rendered useless or valueless by the granting of single certification; and

(2) orders payment to the retail public utility of adequate and just compensation for the property as determined by the utility commission in its final order.

(e) Any party that is aggrieved by a final order of the utility commission under this section may file an appeal with the district court of Travis County within 30 days after the order becomes final. The hearing in such an appeal before the district court shall be by trial de novo on all issues. After the hearing, if the court determines that the municipally owned utility or franchised utility is entitled to single certification under the provisions of this section, the court shall enter a judgment that:

(1) transfers to the municipally owned utility or franchised utility title to property requested by the municipality to be transferred to the municipally owned utility or franchised utility and located within the singly certificated area and property determined by the court or jury to be rendered useless or valueless by the granting of single certification; and

(2) orders payment in accordance with Subsection (g) ~~[of this section]~~ to the retail public utility of adequate and just compensation for the property transferred and for the property damaged as determined by the court or jury.

(g-1) The utility commission shall adopt rules governing the evaluation of the factors to be considered in determining the monetary compensation under Subsection (g). The utility commission by rule shall adopt procedures to ensure that the total compensation to be paid to a retail public utility under Subsection (g) is determined not later than the 90th calendar day after the date on which the utility commission determines that the municipality's application is administratively complete.

(k) The following conditions apply when a municipality or franchised utility makes an application to acquire the service area or facilities of a retail public utility described in Subsection (j)(2):

(1) the utility commission or court must determine that the service provided by the retail public utility is substandard or its rates are unreasonable in view of the reasonable expenses of the utility;

(2) if the municipality abandons its application, the court or the utility commission is authorized to award to the retail public utility its reasonable expenses related to the proceeding hereunder, including attorney fees; and

(3) unless otherwise agreed by the retail public utility, the municipality must take the entire utility property of the retail public utility in a proceeding hereunder.

(l) For an area incorporated by a municipality, the compensation provided under Subsection (g) shall be determined by a qualified individual or firm to serve as independent appraiser, who shall be selected by the affected retail public utility, and the costs of the appraiser shall be paid by the municipality. For an area annexed by a municipality, the compensation provided under Subsection (g) shall be determined by a qualified individual or firm to which the municipality and the retail public utility agree to serve as independent appraiser. If the retail public utility and the municipality are unable to agree on a single individual or firm to serve as the independent appraiser before the 11th day after the date the retail public utility or municipality notifies the other party of the impasse, the retail public utility and municipality each shall appoint a qualified individual or firm to serve as independent appraiser. On or before the 10th business day after the date of their appointment, the independent appraisers shall meet to reach an agreed determination of the amount of compensation. If the appraisers are unable to agree on a determination before the 16th business day after the date of their first meeting under this subsection, the retail public utility or municipality may petition the utility commission or a person the utility commission designates for the purpose to appoint a third qualified independent appraiser to reconcile the appraisals of the two originally appointed appraisers. The determination of the

third appraiser may not be less than the lesser or more than the greater of the two original appraisals. The costs of the independent appraisers for an annexed area shall be shared equally by the retail public utility and the municipality. The determination of compensation under this subsection is binding on the utility commission.

(m) The utility commission shall deny an application for single certification by a municipality that fails to demonstrate compliance with the commission's minimum requirements for public drinking water systems.

SECTION 2.47. Section 13.2551, Water Code, is amended to read as follows:

Sec. 13.2551. COMPLETION OF DECERTIFICATION. (a) As a condition to decertification or single certification under Section 13.254 or 13.255, and on request by an affected retail public utility, the utility commission may order:

(1) the retail public utility seeking to provide service to a decertified area to serve the entire service area of the retail public utility that is being decertified; and

(2) the transfer of the entire certificate of public convenience and necessity of a partially decertified retail public utility to the retail public utility seeking to provide service to the decertified area.

(b) The utility commission shall order service to the entire area under Subsection (a) if the utility commission finds that the decertified retail public utility will be unable to provide continuous and adequate service at an affordable cost to the remaining customers.

(c) The utility commission shall require the retail public utility seeking to provide service to the decertified area to provide continuous and adequate service to the remaining customers at a cost comparable to the cost of that service to its other customers and shall establish the terms under which the service must be provided. The terms may include:

(1) transferring debt and other contract obligations;

(2) transferring real and personal property;

(3) establishing interim service rates for affected customers during specified times; and

(4) other provisions necessary for the just and reasonable allocation of assets and liabilities.

(d) The retail public utility seeking decertification shall not charge the affected customers any transfer fee or other fee to obtain service other than the retail public utility's usual and customary rates for monthly service or the interim rates set by the utility commission, if applicable.

(e) The utility commission shall not order compensation to the decertified retail utility if service to the entire service area is ordered under this section.

SECTION 2.48. Subsections (e), (i), (r), and (s), Section 13.257, Water Code, are amended to read as follows:

(e) The notice must be given to the prospective purchaser before the execution of a binding contract of purchase and sale. The notice may be given separately or as an addendum to or paragraph of the contract. If the seller fails to provide the notice required by this section, the purchaser may terminate the contract. If the seller provides the notice at or before the closing of the purchase and sale contract and the purchaser elects to close even though the notice was not timely provided before the execution of the contract, it is conclusively presumed that the purchaser has waived all rights to terminate the contract and recover damages or pursue other remedies or rights under this section. Notwithstanding any provision of this section to the contrary, a seller, title insurance company, real estate broker, or examining attorney, or an agent, representative, or person acting on behalf of the seller, company, broker, or attorney, is not liable for damages under Subsection (m) or (n) or liable for any other damages to any person for:

(1) failing to provide the notice required by this section to a purchaser before the execution of a binding contract of purchase and sale or at or before the closing of the purchase and sale contract if:

(A) the utility service provider did not file the map of the certificated service area in the real property records of the county in which the service area is located and with the utility commission depicting the boundaries of the service area of the utility service provider as shown in the real property records of the county in which the service area is located; and

(B) the utility commission did not maintain an accurate map of the certificated service area of the utility service provider as required by this chapter; or

(2) unintentionally providing a notice required by this section that is incorrect under the circumstances before the execution of a binding contract of purchase and sale or at or before the closing of the purchase and sale contract.

(i) If the notice is given at closing as provided by Subsection (g), a purchaser, or the purchaser's heirs, successors, or assigns, may not maintain an action for damages or maintain an action against a seller, title insurance company, real estate broker, or lienholder, or any agent, representative, or person acting on behalf of the seller, company, broker, or lienholder, by reason of the seller's use of the information filed with the utility commission by the utility service provider or the seller's use of the map of the certificated service area of the utility service provider filed in the real property records to determine whether the property to be purchased is within the certificated service area of the utility service provider. An action may not be maintained against a title insurance company for the failure to disclose that the described real property is included within the certificated service area of a utility service provider if the utility service provider did not file in the real property records or with the utility commission the map of the certificated service area.

(r) A utility service provider shall:



(1) record in the real property records of each county in which the service area or a portion of the service area is located a certified copy of the map of the certificate of public convenience and necessity and of any amendment to the certificate as contained in the utility commission's records, and a boundary description of the service area by:

(A) a metes and bounds survey certified by a licensed state land surveyor or a registered professional land surveyor;

(B) the Texas State Plane Coordinate System;

(C) verifiable landmarks, including a road, creek, or railroad line;

or

(D) if a recorded plat of the area exists, lot and block number; and

(2) submit to the executive director of the utility commission evidence of the recording.

(s) Each county shall accept and file in its real property records a utility service provider's map presented to the county clerk under this section if the map meets filing requirements, does not exceed 11 inches by 17 inches in size, and is accompanied by the appropriate fee. The recording required by this section must be completed not later than the 31st day after the date a utility service provider receives a final order from the utility commission granting an application for a new certificate or for an amendment to a certificate that results in a change in the utility service provider's service area.

SECTION 2.49. Subsections (a) through (g), Section 13.301, Water Code, are amended to read as follows:

(a) A utility or a water supply or sewer service corporation, on or before the 120th day before the effective date of a sale, acquisition, lease, or rental of a water or sewer system that is required by law to possess a certificate of public convenience and necessity or the effective date of a merger or consolidation with such a utility or water supply or sewer service corporation, shall:

(1) file a written application with the utility commission; and

(2) unless public notice is waived by the executive director of the utility commission for good cause shown, give public notice of the action.

(b) The utility commission may require that the person purchasing or acquiring the water or sewer system demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and any areas currently certificated to the person.

(c) If the person purchasing or acquiring the water or sewer system cannot demonstrate adequate financial capability, the utility commission may require that the person provide a bond or other financial assurance in a form and amount specified by the utility commission to ensure continuous and adequate utility service is provided.

(d) The utility commission shall, with or without a public hearing, investigate the sale, acquisition, lease, or rental to determine whether the transaction will serve the public interest.

(e) Before the expiration of the 120-day notification period, the executive director of the utility commission shall notify all known parties to the transaction and the Office of Public Utility Counsel whether ~~(e)~~ the executive director of the

utility commission will ~~[director's decision whether to]~~ request that the utility commission hold a public hearing to determine if the transaction will serve the public interest. The executive director of the utility commission may request a hearing if:

(1) the application filed with the utility commission or the public notice was improper;

(2) the person purchasing or acquiring the water or sewer system has not demonstrated adequate financial, managerial, and technical capability for providing continuous and adequate service to the service area being acquired and to any areas currently certificated to the person;

(3) the person or an affiliated interest of the person purchasing or acquiring the water or sewer system has a history of:

(A) noncompliance with the requirements of the utility commission, the commission, or the ~~[Texas]~~ Department of State Health Services; or

(B) continuing mismanagement or misuse of revenues as a utility service provider;

(4) the person purchasing or acquiring the water or sewer system cannot demonstrate the financial ability to provide the necessary capital investment to ensure the provision of continuous and adequate service to the customers of the water or sewer system; or

(5) there are concerns that the transaction may not serve the public interest, after the application of the considerations provided by Section 13.246(c) for determining whether to grant a certificate of convenience and necessity.

(f) Unless the executive director of the utility commission requests that a public hearing be held, the sale, acquisition, lease, or rental may be completed as proposed:

(1) at the end of the 120-day period; or

(2) at any time after the executive director of the utility commission notifies the utility or water supply or sewer service corporation that a hearing will not be requested.

(g) If a hearing is requested or if the utility or water supply or sewer service corporation fails to make the application as required or to provide public notice, the sale, acquisition, lease, or rental may not be completed unless the utility commission determines that the proposed transaction serves the public interest.

SECTION 2.50. Section 13.302, Water Code, is amended to read as follows:

Sec. 13.302. PURCHASE OF VOTING STOCK IN ANOTHER PUBLIC UTILITY: REPORT. (a) A utility may not purchase voting stock in another utility doing business in this state and a person may not acquire a controlling interest in a utility doing business in this state unless the person or utility files a written application with the utility commission not later than the 61st day before the date on which the transaction is to occur.

(b) The utility commission may require that a person acquiring a controlling interest in a utility demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and any areas currently certificated to the person.

(c) If the person acquiring a controlling interest cannot demonstrate adequate financial capability, the utility commission may require that the person provide a bond or other financial assurance in a form and amount specified by the utility commission to ensure continuous and adequate utility service is provided.

(d) The executive director of the utility commission may request that the utility commission hold a public hearing on the transaction if the executive director of the utility commission believes that a criterion prescribed by Section 13.301(e) applies.

(e) Unless the executive director of the utility commission requests that a public hearing be held, the purchase or acquisition may be completed as proposed:

(1) at the end of the 60-day period; or

(2) at any time after the executive director of the utility commission notifies the person or utility that a hearing will not be requested.

(f) If a hearing is requested or if the person or utility fails to make the application to the utility commission as required, the purchase or acquisition may not be completed unless the utility commission determines that the proposed transaction serves the public interest. A purchase or acquisition that is not completed in accordance with the provisions of this section is void.

SECTION 2.51. Section 13.303, Water Code, is amended to read as follows:

Sec. 13.303. LOANS TO STOCKHOLDERS: REPORT. A utility may not loan money, stocks, bonds, notes, or other evidences of indebtedness to any corporation or person owning or holding directly or indirectly any stock of the utility unless the utility reports the transaction to the utility commission within 60 days after the date of the transaction.

SECTION 2.52. Section 13.304, Water Code, is amended to read as follows:

Sec. 13.304. FORECLOSURE REPORT. (a) A utility that receives notice that all or a portion of the utility's facilities or property used to provide utility service are being posted for foreclosure shall notify the utility commission and the commission in writing of that fact not later than the 10th day after the date on which the utility receives the notice.

(b) A financial institution that forecloses on a utility or on any part of the utility's facilities or property that are used to provide utility service is not required to provide the 120-day notice prescribed by Section 13.301, but shall provide written notice to the utility commission and the commission before the 30th day preceding the date on which the foreclosure is completed.

(c) The financial institution may operate the utility for an interim period prescribed by utility commission rule before transferring or otherwise obtaining a certificate of convenience and necessity. A financial institution that operates a utility during an interim period under this subsection is subject to each utility commission rule to which the utility was subject and in the same manner.

SECTION 2.53. Section 13.341, Water Code, is amended to read as follows:

Sec. 13.341. JURISDICTION OVER AFFILIATED INTERESTS. The utility commission has jurisdiction over affiliated interests having transactions with utilities under the jurisdiction of the utility commission to the extent of access to all accounts and records of those affiliated interests relating to such transactions, including but in no way limited to accounts and records of joint or general expenses, any portion of which may be applicable to those transactions.

SECTION 2.54. Section 13.342, Water Code, is amended to read as follows:

Sec. 13.342. DISCLOSURE OF SUBSTANTIAL INTEREST IN VOTING SECURITIES. The utility commission may require the disclosure of the identity and respective interests of every owner of any substantial interest in the voting securities of any utility or its affiliated interest. One percent or more is a substantial interest within the meaning of this section.

SECTION 2.55. Subsection (a), Section 13.343, Water Code, is amended to read as follows:

(a) The owner of a utility that supplies retail water service may not contract to purchase from an affiliated supplier wholesale water service for any of that owner's systems unless:

(1) the wholesale service is provided for not more than 90 days to remedy an emergency condition, as defined by utility commission or commission rule; or

(2) the executive director of the utility commission determines that the utility cannot obtain wholesale water service from another source at a lower cost than from the affiliate.

SECTION 2.56. Section 13.381, Water Code, is amended to read as follows:

Sec. 13.381. RIGHT TO JUDICIAL REVIEW; EVIDENCE. Any party to a proceeding before the utility commission or the commission is entitled to judicial review under the substantial evidence rule.

SECTION 2.57. Subsection (a), Section 13.382, Water Code, is amended to read as follows:

(a) Any party represented by counsel who alleges that existing rates are excessive or that rates prescribed by the utility commission are excessive and who is a prevailing party in proceedings for review of a utility commission order or decision may in the same action recover against the regulation fund reasonable fees for attorneys and expert witnesses and other costs incurred by him before the utility commission and the court. The amount of the attorney's fees shall be fixed by the court.

SECTION 2.58. Section 13.411, Water Code, is amended to read as follows:

Sec. 13.411. ACTION TO ENJOIN OR REQUIRE COMPLIANCE. (a) If the utility commission or the commission has reason to believe that any retail public utility or any other person or corporation is engaged in or is about to engage in any act in violation of this chapter or of any order or rule of the utility commission or the commission entered or adopted under this chapter or that any retail public utility or any other person or corporation is failing to comply with this chapter or with any rule or order, the attorney general on request of the utility commission or the commission, in addition to any other remedies provided in this chapter, shall bring an action in a court of competent jurisdiction in the name of and on behalf of the utility commission or the commission against the retail public utility or other person or corporation to enjoin the commencement or continuation of any act or to require compliance with this chapter or the rule or order.

(b) If the executive director of the utility commission or the executive director of the commission has reason to believe that the failure of the owner or operator of a water utility to properly operate, maintain, or provide adequate facilities presents an imminent threat to human health or safety, the executive director of the utility commission or the executive director of the commission shall immediately:

- (1) notify the utility's representative; and
- (2) initiate enforcement action consistent with:
  - (A) this subchapter; and
  - (B) procedural rules adopted by the utility commission or the

commission.

SECTION 2.59. Section 13.4115, Water Code, is amended to read as follows:

Sec. 13.4115. ACTION TO REQUIRE ADJUSTMENT TO CONSUMER CHARGE; PENALTY. In regard to a customer complaint arising out of a charge made by a public utility, if the utility commission [~~the executive director~~] finds that the utility has failed to make the proper adjustment to the customer's bill after the conclusion of the complaint process established by the utility commission, the utility commission may issue an order requiring the utility to make the adjustment. Failure to comply with the order within 30 days of receiving the order is a violation for which the utility commission may impose an administrative penalty under Section 13.4151.

SECTION 2.60. Subsections (a), (f), and (g), Section 13.412, Water Code, are amended to read as follows:

(a) At the request of the utility commission or the commission, the attorney general shall bring suit for the appointment of a receiver to collect the assets and carry on the business of a water or sewer utility that:

- (1) has abandoned operation of its facilities;
- (2) informs the utility commission or the commission that the owner is abandoning the system;

(3) violates a final order of the utility commission or the commission;

or

(4) allows any property owned or controlled by it to be used in violation of a final order of the utility commission or the commission.

(f) For purposes of this section and Section 13.4132, abandonment may include but is not limited to:

(1) failure to pay a bill or obligation owed to a retail public utility or to an electric or gas utility with the result that the utility service provider has issued a notice of discontinuance of necessary services;

(2) failure to provide appropriate water or wastewater treatment so that a potential health hazard results;

(3) failure to adequately maintain facilities, resulting in potential health hazards, extended outages, or repeated service interruptions;

(4) failure to provide customers adequate notice of a health hazard or potential health hazard;

(5) failure to secure an alternative available water supply during an outage;

(6) displaying a pattern of hostility toward or repeatedly failing to respond to the utility commission or the commission or the utility's customers; and

(7) failure to provide the utility commission or the commission with adequate information on how to contact the utility for normal business and emergency purposes.

(g) Notwithstanding Section 64.021, Civil Practice and Remedies Code, a receiver appointed under this section may seek [~~commission~~] approval from the utility commission and the commission to acquire the water or sewer utility's facilities and transfer the utility's certificate of convenience and necessity. The receiver must apply in accordance with Subchapter H.

SECTION 2.61. Section 13.413, Water Code, is amended to read as follows:

Sec. 13.413. PAYMENT OF COSTS OF RECEIVERSHIP. The receiver may, subject to the approval of the court and after giving notice to all interested parties, sell or otherwise dispose of all or part of the real or personal property of a water or sewer utility against which a proceeding has been brought under this subchapter to pay the costs incurred in the operation of the receivership. The costs include:

(1) payment of fees to the receiver for his services;

(2) payment of fees to attorneys, accountants, engineers, or any other person or entity that provides goods or services necessary to the operation of the receivership; and

(3) payment of costs incurred in ensuring that any property owned or controlled by a water or sewer utility is not used in violation of a final order of the utility commission or the commission.

SECTION 2.62. Section 13.4131, Water Code, is amended to read as follows:

Sec. 13.4131. SUPERVISION OF CERTAIN UTILITIES. (a) The utility commission, after providing to the utility notice and an opportunity for a hearing, may place a utility under supervision for gross or continuing mismanagement, gross or continuing noncompliance with this chapter or a rule adopted under this chapter [~~commission rules~~], or noncompliance with an order issued under this chapter [~~commission orders~~].

(b) While supervising a utility, the utility commission may require the utility to abide by conditions and requirements prescribed by the utility commission, including:

- (1) management requirements;
- (2) additional reporting requirements;
- (3) restrictions on hiring, salary or benefit increases, capital investment, borrowing, stock issuance or dividend declarations, and liquidation of assets; and
- (4) a requirement that the utility place the utility's funds into an account in a financial institution approved by the utility commission and use of those funds shall be restricted to reasonable and necessary utility expenses.

(c) While supervising a utility, the utility commission may require that the utility obtain [~~commission~~] approval from the utility commission before taking any action that may be restricted under Subsection (b) [~~of this section~~]. Any action or transaction which occurs without [~~commission~~] approval may be voided by the utility commission.

SECTION 2.63. Subsections (a) and (c), Section 13.4133, Water Code, are amended to read as follows:

(a) Notwithstanding the requirements of Section 13.187 [~~of this code~~], the utility commission may authorize an emergency rate increase for a utility for which a person has been appointed under Section 13.4132 [~~of this code~~] or for which a receiver has been appointed under Section 13.412 [~~of this code~~] if the increase is necessary to ensure the provision of continuous and adequate services to the utility's customers.

(c) The utility commission shall schedule a hearing to establish a final rate within 15 months after the date on which an emergency rate increase takes effect. The utility commission shall require the utility to provide notice of the hearing to each customer and to the Office of Public Utility Counsel. The additional revenues collected under an emergency rate increase are subject to refund if the utility commission finds that the rate increase was larger than necessary to ensure continuous and adequate service.

SECTION 2.64. Subsections (a) and (c), Section 13.414, Water Code, are amended to read as follows:

(a) Any retail public utility or affiliated interest that violates this chapter, fails to perform a duty imposed on it, or fails, neglects, or refuses to obey an order, rule, direction, or requirement of the utility commission or the commission or decree or judgment of a court is subject to a civil penalty of not less than \$100 nor more than \$5,000 for each violation.

(c) The attorney general shall institute suit on his own initiative or at the request of, in the name of, and on behalf of the utility commission or the commission in a court of competent jurisdiction to recover the penalty under this section.

SECTION 2.65. Subsections (a) through (k) and (m), Section 13.4151, Water Code, are amended to read as follows:

(a) If a person, affiliated interest, or entity subject to the jurisdiction of the utility commission or the commission violates this chapter or a rule or order adopted under this chapter, the utility commission or the commission, as applicable, may assess a penalty against that person, affiliated interest, or entity as provided by this section. The penalty may be in an amount not to exceed \$500 a day. Each day a violation continues may be considered a separate violation.

(b) In determining the amount of the penalty, the utility commission or the commission shall consider:

(1) the nature, circumstances, extent, duration, and gravity of the prohibited acts or omissions;

(2) with respect to the alleged violator:

(A) the history and extent of previous violations;

(B) the degree of culpability, including whether the violation was attributable to mechanical or electrical failures and whether the violation could have been reasonably anticipated and avoided;

(C) the demonstrated good faith, including actions taken by the person, affiliated interest, or entity to correct the cause of the violation;

(D) any economic benefit gained through the violation; and

(E) the amount necessary to deter future violations; and

(3) any other matters that justice requires.

(c) If, after examination of a possible violation and the facts surrounding that possible violation, the executive director of the utility commission or the executive director of the commission concludes that a violation has occurred, the executive director of the utility commission or the executive director of the commission may issue a preliminary report stating the facts on which that conclusion is based, recommending that a penalty under this section be imposed on the person, affiliated interest, or retail public utility charged, and recommending the amount of that proposed penalty. The executive director of the utility commission or the executive director of the commission shall base the recommended amount of the proposed penalty on the factors provided by Subsection (b) ~~[of this section]~~, and shall analyze each factor for the benefit of the agency ~~[commission]~~.

(d) Not later than the 10th day after the date on which the report is issued, the executive director of the utility commission or the executive director of the commission shall give written notice of the report to the person, affiliated interest, or retail public utility charged with the violation. The notice shall include a brief summary of the charges, a statement of the amount of the penalty recommended, and a statement of the right of the person, affiliated interest, or retail public utility charged to a hearing on the occurrence of the violation, the amount of the penalty, or both.



(e) Not later than the 20th day after the date on which notice is received, the person, affiliated interest, or retail public utility charged may give the agency ~~[commission]~~ written consent to the ~~[executive director's]~~ report described by Subsection (c), including the recommended penalty, or may make a written request for a hearing.

(f) If the person, affiliated interest, or retail public utility charged with the violation consents to the penalty recommended in the report described by Subsection (c) ~~[by the executive director]~~ or fails to timely respond to the notice, the utility commission or the commission by order shall assess that penalty or order a hearing to be held on the findings and recommendations in the ~~[executive director's]~~ report. If the utility commission or the commission assesses the penalty recommended by the report, the utility commission or the commission shall give written notice to the person, affiliated interest, or retail public utility charged of its decision.

(g) If the person, affiliated interest, or retail public utility charged requests or the utility commission or the commission orders a hearing, the agency ~~[commission]~~ shall call a hearing and give notice of the hearing. As a result of the hearing, the agency ~~[commission]~~ by order may find that a violation has occurred and may assess a civil penalty, may find that a violation has occurred but that no penalty should be assessed, or may find that no violation has occurred. All proceedings under this subsection are subject to Chapter 2001, Government Code. In making any penalty decision, the agency ~~[commission]~~ shall analyze each of the factors provided by Subsection (b) ~~[of this section]~~.

(h) The utility commission or the commission shall give notice of its decision to the person, affiliated interest, or retail public utility charged, and if the agency ~~[commission]~~ finds that a violation has occurred and has assessed a penalty, the agency ~~[commission]~~ shall give written notice to the person, affiliated interest, or retail public utility charged of its findings, of the amount of the penalty, and of the person's, affiliated interest's, or retail public utility's right to judicial review of the agency's ~~[commission's]~~ order. If the agency ~~[commission]~~ is required to give notice of a penalty under this subsection or Subsection (f) ~~[of this section]~~, the agency ~~[commission]~~ shall file notice of the agency's ~~[its]~~ decision in the Texas Register not later than the 10th day after the date on which the decision is adopted.

(i) Within the 30-day period immediately following the day on which the agency's ~~[commission's]~~ order is final, as provided by Subchapter F, Chapter 2001, Government Code, the person, affiliated interest, or retail public utility charged with the penalty shall:

(1) pay the penalty in full; or

(2) if the person, affiliated interest, or retail public utility seeks judicial review of the fact of the violation, the amount of the penalty, or both:

(A) forward the amount of the penalty to the agency ~~[commission]~~ for placement in an escrow account; or

(B) post with the agency ~~[commission]~~ a supersedeas bond in a form approved by the agency ~~[commission]~~ for the amount of the penalty to be effective until all judicial review of the order or decision is final.

(j) Failure to forward the money to or to post the bond with the agency [~~commission~~] within the time provided by Subsection (i) [~~of this section~~] constitutes a waiver of all legal rights to judicial review. If the person, affiliated interest, or retail public utility charged fails to forward the money or post the bond as provided by Subsection (i) [~~of this section~~], the agency [~~commission~~] or the executive director of the agency may forward the matter to the attorney general for enforcement.

(k) Judicial review of the order or decision of the agency [~~commission~~] assessing the penalty shall be under the substantial evidence rule and may be substituted by filing a petition with a district court in Travis County, as provided by Subchapter G, Chapter 2001, Government Code.

(m) Notwithstanding any other provision of law, the agency [~~commission~~] may compromise, modify, extend the time for payment of, or remit, with or without condition, any penalty imposed under this section.

SECTION 2.66. Section 13.417, Water Code, is amended to read as follows:

Sec. 13.417. CONTEMPT PROCEEDINGS. If any person or retail public utility fails to comply with any lawful order of the utility commission or the commission or with any subpoena or subpoena duces tecum or if any witness refuses to testify about any matter on which he may be lawfully interrogated, the utility commission or the commission may apply to any court of competent jurisdiction to compel obedience by proceedings for contempt.

SECTION 2.67. Section 13.418, Water Code, is amended to read as follows:

Sec. 13.418. DISPOSITION OF FINES AND PENALTIES; WATER UTILITY IMPROVEMENT ACCOUNT. (a) Fines and penalties collected under this chapter from a retail public utility that is not a public utility in other than criminal proceedings shall be [~~paid to the commission and~~] deposited in the general revenue fund.

(b) Fines and penalties collected from a public utility under this chapter in other than criminal proceedings shall be [~~paid to the commission and~~] deposited in the water utility improvement account as provided by Section 341.0485, Health and Safety Code.

SECTION 2.68. Subdivision (7), Section 13.501, Water Code, is amended to read as follows:

(7) "Multiple use facility" means commercial or industrial parks, office complexes, marinas, and others specifically identified in utility commission rules with five or more units.

SECTION 2.69. Subsection (e), Section 13.502, Water Code, is amended to read as follows:

(e) An owner of an apartment house, manufactured home rental community, or multiple use facility or a manager of a condominium may not change from submetered billing to allocated billing unless:

(1) the executive director of the utility commission approves of the change in writing after a demonstration of good cause, including meter reading or billing problems that could not feasibly be corrected or equipment failures; and

(2) the property owner meets rental agreement requirements established by the utility commission.

SECTION 2.70. Subsections (a), (b), and (e), Section 13.503, Water Code, are amended to read as follows:

(a) The utility commission shall encourage submetering of individual rental or dwelling units by master meter operators or building owners to enhance the conservation of water resources.

(b) Notwithstanding any other law, the utility commission shall adopt rules and standards under which an owner, operator, or manager of an apartment house, manufactured home rental community, or multiple use facility that is not individually metered for water for each rental or dwelling unit may install submetering equipment for each individual rental or dwelling unit for the purpose of fairly allocating the cost of each individual rental or dwelling unit's water consumption, including wastewater charges based on water consumption. In addition to other appropriate safeguards for the tenant, the rules shall require that, except as provided by this section, an apartment house owner, manufactured home rental community owner, multiple use facility owner, or condominium manager may not impose on the tenant any extra charges, over and above the cost per gallon and any other applicable taxes and surcharges that are charged by the retail public utility to the owner or manager, and that the rental unit or apartment house owner or manager shall maintain adequate records regarding submetering and make the records available for inspection by the tenant during reasonable business hours. The rules shall allow an owner or manager to charge a tenant a fee for late payment of a submetered water bill if the amount of the fee does not exceed five percent of the bill paid late. All submetering equipment is subject to the rules and standards established by the utility commission for accuracy, testing, and record keeping of meters installed by utilities and to the meter-testing requirements of Section 13.140 ~~[of this code]~~.

(e) The utility commission may authorize a building owner to use submetering equipment that relies on integrated radio based meter reading systems and remote registration in a building plumbing system using submeters that comply with nationally recognized plumbing standards and are as accurate as utility water meters in single application conditions.

SECTION 2.71. Section 13.5031, Water Code, is amended to read as follows:

Sec. 13.5031. NONSUBMETERING RULES. Notwithstanding any other law, the utility commission shall adopt rules and standards governing billing systems or methods used by manufactured home rental community owners, apartment house owners, condominium managers, or owners of other multiple use facilities for prorating or allocating among tenants nonsubmetered master metered utility service costs. In addition to other appropriate safeguards for the tenant, those rules shall require that:

(1) the rental agreement contain a clear written description of the method of calculation of the allocation of nonsubmetered master metered utilities for the manufactured home rental community, apartment house, or multiple use facility;

(2) the rental agreement contain a statement of the average manufactured home, apartment, or multiple use facility unit monthly bill for all units for any allocation of those utilities for the previous calendar year;

(3) except as provided by this section, an owner or condominium manager may not impose additional charges on a tenant in excess of the actual charges imposed on the owner or condominium manager for utility consumption by the manufactured home rental community, apartment house, or multiple use facility;

(4) the owner or condominium manager shall maintain adequate records regarding the utility consumption of the manufactured home rental community, apartment house, or multiple use facility, the charges assessed by the retail public utility, and the allocation of the utility costs to the tenants;

(5) the owner or condominium manager shall maintain all necessary records concerning utility allocations, including the retail public utility's bills, and shall make the records available for inspection by the tenants during normal business hours; and

(6) the owner or condominium manager may charge a tenant a fee for late payment of an allocated water bill if the amount of the fee does not exceed five percent of the bill paid late.

SECTION 2.72. Section 13.505, Water Code, is amended to read as follows:

Sec. 13.505. ENFORCEMENT. In addition to the enforcement provisions contained in Subchapter K [~~of this chapter~~], if an apartment house owner, condominium manager, manufactured home rental community owner, or other multiple use facility owner violates a rule of the utility commission regarding submetering of utility service consumed exclusively within the tenant's dwelling unit or multiple use facility unit or nonsubmetered master metered utility costs, the tenant may recover three times the amount of any overcharge, a civil penalty equal to one month's rent, reasonable attorney's fees, and court costs from the owner or condominium manager. However, an owner of an apartment house, manufactured home rental community, or other multiple use facility or condominium manager is not liable for a civil penalty if the owner or condominium manager proves the violation was a good faith, unintentional mistake.

SECTION 2.73. Section 13.512, Water Code, is amended to read as follows:

Sec. 13.512. AUTHORITY TO ENTER INTO PRIVATIZATION CONTRACTS. Any eligible city is authorized to enter into privatization contracts if such action is recommended by the board of utility trustees and authorized by the governing body of the eligible city pursuant to an ordinance. Any privatization contract entered into prior to the effective date of this Act is validated, ratified, and approved. Each eligible city shall file a copy of its privatization contract with the utility commission, for information purposes only, within 60 days of execution or the effective date of this Act, whichever is later.

SECTION 2.74. Section 13.513, Water Code, is amended to read as follows:

Sec. 13.513. ELECTION BY ELIGIBLE CITY TO EXEMPT SERVICE PROVIDER FROM UTILITY COMMISSION JURISDICTION. A service provider shall not constitute a "water and sewer utility," a "public utility," a "utility," or a "retail public utility" within the meaning of this chapter [~~Chapter 13~~] as a result of entering into or performing a privatization contract, if the governing body of the eligible city shall so elect by ordinance and provide notice thereof in writing to the utility commission; provided, however, this provision shall not affect the application of this chapter [~~Chapter 13~~] to an eligible city itself. Notwithstanding anything contained in this section, any service provider who seeks to extend or render sewer service to any person or municipality other than, or in addition to, an eligible city may be a "public utility" for the purposes of this chapter [~~Chapter 13~~] with respect to such other person or municipality.

SECTION 2.75. Subsection (a), Section 5.013, Water Code, is amended to read as follows:

(a) The commission has general jurisdiction over:

(1) water and water rights including the issuance of water rights permits, water rights adjudication, cancellation of water rights, and enforcement of water rights;

(2) continuing supervision over districts created under Article III, Sections 52(b)(1) and (2), and Article XVI, Section 59, of the Texas Constitution;

(3) the state's water quality program including issuance of permits, enforcement of water quality rules, standards, orders, and permits, and water quality planning;

(4) the determination of the feasibility of certain federal projects;

(5) the adoption and enforcement of rules and performance of other acts relating to the safe construction, maintenance, and removal of dams;

(6) conduct of the state's hazardous spill prevention and control program;

(7) the administration of the state's program relating to inactive hazardous substance, pollutant, and contaminant disposal facilities;

(8) the administration of a portion of the state's injection well program;

(9) the administration of the state's programs involving underground water and water wells and drilled and mined shafts;

(10) the state's responsibilities relating to regional waste disposal;

(11) the responsibilities assigned to the commission by Chapters 361, 363, 382, and 401, Health and Safety Code; and

(12) ~~administration of the state's water rate program under Chapter 13 of this code; and~~

~~(13)~~ any other areas assigned to the commission by this code and other laws of this state.

SECTION 2.76. (a) On June 1, 2012, the following are transferred from the Texas Commission on Environmental Quality to the Public Utility Commission of Texas:

(1) the powers, duties, functions, programs, and activities of the Texas Commission on Environmental Quality relating to the economic regulation of water and sewer utilities, including the issuance and transfer of certificates of

convenience and necessity, the determination of rates, and the administration of hearings and proceedings involving those matters, under Chapter 13, Water Code, as provided by this article;

(2) any obligations and contracts of the Texas Commission on Environmental Quality that are directly related to implementing a power, duty, function, program, or activity transferred under this article; and

(3) all property and records in the custody of the Texas Commission on Environmental Quality that are related to a power, duty, function, program, or activity transferred under this article and all funds appropriated by the legislature for that power, duty, function, program, or activity.

(b) The Texas Commission on Environmental Quality and the Public Utility Commission of Texas shall enter into a memorandum of understanding that:

(1) identifies in detail the applicable powers and duties that are transferred by this article;

(2) establishes a plan for the identification and transfer of the records, personnel, property, and unspent appropriations of the Texas Commission on Environmental Quality that are used for purposes of the commission's powers and duties directly related to the regulation of water and sewer utilities under Chapter 13, Water Code, as amended by this article; and

(3) establishes a plan for the transfer of all pending applications, hearings, rulemaking proceedings, and orders relating to the economic regulation of water and sewer utilities under Chapter 13, Water Code, as amended by this article, from the Texas Commission on Environmental Quality to the Public Utility Commission of Texas.

(c) The memorandum of understanding described by this section is not required to be adopted by rule under Section 5.104, Water Code.

(d) The executive directors of the Texas Commission on Environmental Quality and the Public Utility Commission of Texas may agree in the memorandum of understanding under this section to transfer to the Public Utility Commission of Texas any personnel of the Texas Commission on Environmental Quality whose functions predominantly involve powers, duties, obligations, functions, and activities related to the regulation of water and sewer utilities under Chapter 13, Water Code, as amended by this article.

(e) The Texas Commission on Environmental Quality and the Public Utility Commission of Texas shall appoint a transition team to accomplish the purposes of this section. The transition team shall establish guidelines on how the two agencies will cooperate regarding:

- (1) meeting federal drinking water standards;
- (2) maintaining adequate supplies of water;
- (3) meeting established design criteria for wastewater treatment plants;
- (4) demonstrating the economic feasibility of regionalization; and
- (5) serving the needs of economically distressed areas.

(f) A rule, form, policy, procedure, or decision of the Texas Commission on Environmental Quality related to a power, duty, function, program, or activity transferred under this article continues in effect as a rule, form, policy, procedure, or decision of the Public Utility Commission of Texas and remains in effect until amended or replaced by that agency.

(g) The memorandum required by this section must be completed by April 1, 2012.

(h) The Public Utility Commission of Texas and the Texas Commission on Environmental Quality shall adopt rules to implement the changes in law made by this article to Chapter 13, Water Code, not later than November 1, 2012.

SECTION 2.77. (a) The Public Utility Commission of Texas shall conduct a comparative analysis of the ratemaking authority of the commission before the effective date of this Act and the ratemaking authority of the commission after the transition described in Section 2.75 of this article, to identify potential for procedural standardization. The Public Utility Commission of Texas shall issue a report of the analysis, with recommendations regarding rate standardization, for consideration by the 83rd Legislature.

(b) The Public Utility Commission of Texas shall prepare a report describing staffing changes related to the transition described in Section 2.75 of this article, including reductions in staff that the commission may realize as a result of consolidated functions. The Public Utility Commission of Texas shall submit the report to the Legislative Budget Board and the governor with the legislative appropriations request for the 2014-2015 biennium.

SECTION 2.78. (a) On June 1, 2012, the following are transferred from the office of public interest counsel of the Texas Commission on Environmental Quality to the Office of Public Utility Counsel:

(1) the powers, duties, functions, programs, and activities of the office of public interest counsel of the Texas Commission on Environmental Quality relating to the representation of the public interest in matters related to the regulation of water and sewer utilities under Chapter 13, Water Code, as amended by this article;

(2) any obligations and contracts of the office of public interest counsel of the Texas Commission on Environmental Quality that are directly related to implementing a power, duty, function, program, or activity transferred under this article; and

(3) all property and records in the custody of the office of public interest counsel of the Texas Commission on Environmental Quality that are related to a power, duty, function, program, or activity transferred under this article and all funds appropriated by the legislature for that power, duty, function, program, or activity.

(b) The office of public interest counsel of the Texas Commission on Environmental Quality and the Office of Public Utility Counsel shall enter into a memorandum of understanding that:

(1) identifies in detail the applicable powers and duties that are transferred by this article; and

(2) establishes a plan for the identification and transfer of the records, personnel, property, and unspent appropriations of the Texas Commission on Environmental Quality that are used for purposes of the office of public interest counsel's powers and duties directly related to the representation of the public interest in matters relating to the regulation of water and sewer utilities under Chapter 13, Water Code, as amended by this article.

(c) The memorandum of understanding described by this section is not required to be adopted by rule under Section 5.104, Water Code.

(d) The office of public interest counsel of the Texas Commission on Environmental Quality and the Office of Public Utility Counsel may agree in the memorandum of understanding under this section to transfer to the Office of Public Utility Counsel any personnel of the office of public interest counsel whose functions predominantly involve powers, duties, obligations, functions, and activities related to the representation of the public interest in matters relating to the regulation of water and sewer utilities under Chapter 13, Water Code, as amended by this article.

(e) The office of public interest counsel of the Texas Commission on Environmental Quality and the Office of Public Utility Counsel shall appoint a transition team to accomplish the purposes of this section.

(f) A rule, form, policy, procedure, or decision of the office of public interest counsel of the Texas Commission on Environmental Quality related to a power, duty, function, program, or activity transferred under this article continues in effect as a rule, form, policy, procedure, or decision of the Office of Public Utility Counsel and remains in effect until amended or replaced by that agency.

(g) The memorandum required by this section must be completed by April 1, 2012.

(h) The Office of Public Utility Counsel and the office of public interest counsel of the Texas Commission on Environmental Quality shall adopt rules to implement the changes in law made by this article to Chapter 13, Water Code, not later than November 1, 2012.

### ARTICLE 3. OTHER WATER AND SEWER DUTIES OF PUBLIC UTILITY COMMISSION OF TEXAS

SECTION 3.01. Section 11.002, Water Code, is amended by adding Subdivision (21) to read as follows:

(21) "Utility commission" means the Public Utility Commission of Texas.

SECTION 3.02. Section 11.041, Water Code, is amended to read as follows:

Sec. 11.041. DENIAL OF WATER: COMPLAINT. (a) Any person entitled to receive or use water from any canal, ditch, flume, lateral, dam, reservoir, or lake or from any conserved or stored supply may present to the utility commission a written petition showing:

(1) that the person ~~[he]~~ is entitled to receive or use the water;

(2) that the person ~~[he]~~ is willing and able to pay a just and reasonable price for the water;



(3) that the party owning or controlling the water supply has water not contracted to others and available for the petitioner's use; and

(4) that the party owning or controlling the water supply fails or refuses to supply the available water to the petitioner, or that the price or rental demanded for the available water is not reasonable and just or is discriminatory.

(b) If the petition is accompanied by a deposit of \$25, the executive director of the utility commission shall have a preliminary investigation of the complaint made and determine whether or not there are probable grounds for the complaint.

(c) If, after preliminary investigation, the executive director of the utility commission determines that probable grounds exist for the complaint, the utility commission shall enter an order setting a time and place for a hearing on the petition.

(d) The utility commission may require the complainant to make an additional deposit or execute a bond satisfactory to the utility commission in an amount fixed by the utility commission conditioned on the payment of all costs of the proceeding.

(e) At least 20 days before the date set for the hearing, the utility commission shall transmit by registered mail a certified copy of the petition and a certified copy of the hearing order to the person against whom the complaint is made.

(f) The utility commission shall hold a hearing on the complaint at the time and place stated in the order. It may hear evidence orally or by affidavit in support of or against the complaint, and it may hear arguments. The commission may participate in the hearing for the purpose of presenting evidence on the availability of the water requested by the petitioner. On completion of the hearing, the utility commission shall render a written decision.

(g) If, after the preliminary investigation, the executive director of the utility commission determines that no probable grounds exist for the complaint, the executive director of the utility commission shall dismiss the complaint. The utility commission may either return the deposit or pay it into the State Treasury.

SECTION 3.03. Section 12.013, Water Code, is amended to read as follows:

Sec. 12.013. RATE-FIXING POWER. (a) The utility commission shall fix reasonable rates for the furnishing of raw or treated water for any purpose mentioned in Chapter 11 or 12 of this code.

(b) In this section, [~~The term~~] "political subdivision" [~~when used in this section~~] means incorporated cities, towns or villages, counties, river authorities, water districts, and other special purpose districts.

(c) The utility commission in reviewing and fixing reasonable rates for furnishing water under this section may use any reasonable basis for fixing rates as may be determined by the utility commission to be appropriate under the circumstances of the case being reviewed; provided, however, the utility commission may not fix a rate which a political subdivision may charge for furnishing water which is less than the amount required to meet the debt service and bond coverage requirements of that political subdivision's outstanding debt.

(d) The utility commission's jurisdiction under this section relating to incorporated cities, towns, or villages shall be limited to water furnished by such city, town, or village to another political subdivision on a wholesale basis.

(e) The utility commission may establish interim rates and compel continuing service during the pendency of any rate proceeding.

(f) The utility commission may order a refund or assess additional charges from the date a petition for rate review is received by the utility commission of the difference between the rate actually charged and the rate fixed by the utility commission, plus interest at the statutory rate.

~~[(g) No action or proceeding commenced prior to January 1, 1977, before the Texas Water Rights Commission shall be affected by the enactment of this section.]~~

~~[(h) Nothing herein contained shall affect the jurisdiction of the Public Utility Commission.]~~

(9) Redesignate SECTIONS 12 and 13 of the bill as ARTICLE 4, name the ARTICLE "GENERAL PROVISIONS", and renumber the SECTIONS appropriately.

Amendment No. 7 was adopted.

#### LEAVE OF ABSENCE GRANTED

The following member was granted leave of absence for the remainder of today because of illness:

Villarreal on motion of Madden.

#### CSSB 635 - (consideration continued)

#### Amendment No. 8

Representative Aycock offered the following amendment to **CSSB 635**:

Amend **CSSB 635** (house committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS accordingly:

SECTION \_\_\_\_ Subchapter B, Chapter 11, Water Code, is amended by adding Section 11.0392 to read as follows:

Sec. 11.0392. COMMISSION REVIEW OF CERTAIN RIVER AUTHORITY WATER MANAGEMENT PLANS. (a) In this section:

(1) "Authority" means a river authority to which this section applies under Subsection (b).

(2) "Firm water" means a supply of stored water that could be supplied without shortage during each year of a simulated repeat of the drought of record, while honoring all senior water rights. During a drought of record, the supply of water for firm water customers has a higher priority than that of interruptible water customers.

(3) "Interruptible water" means a stored supply of water for customers of an authority that must be curtailed before the authority curtails firm water supplies.

(b) This section applies only to a river authority whose water management plan consists of a reservoir operation plan for the operation of two water supply reservoirs and was:

(1) developed by an applicant for a permit under this chapter; and

(2) originally required by a court order adjudicating the water rights for those reservoirs.

(c) Before approving an authority's water management plan, the commission shall require that the plan:

(1) ensures that adequate firm water supplies are available to meet the existing and projected demands of firm water customers to the extent:

(A) provided by previously adjudicated water rights; and

(B) other supplies are not available to the authority to meet those firm water customer demands; and

(2) provides for curtailing water supplies under interruptible commitments before requesting that firm water customers institute voluntary drought contingency measures.

#### **Amendment No. 8 - Point of Order**

Representative D. Miller raised a point of order against further consideration of Amendment No. 8 under Rule 11, Section 2 of the House Rules on the grounds that the amendment is not germane to the bill.

The chair overruled the point of order.

Amendment No. 8 failed of adoption by (Record 1393): 11 Yeas, 128 Nays, 4 Present, not voting.

Yeas — Alonzo; Aycock; Darby; Guillen; Hochberg; Jackson; Lavender; Patrick; Reynolds; Schwertner; Workman.

Nays — Aliseda; Allen; Anchia; Anderson, C.; Anderson, R.; Beck; Berman; Bohac; Bonnen; Brown; Burkett; Burnam; Button; Cain; Carter; Castro; Chisum; Christian; Coleman; Cook; Craddick; Creighton; Crownover; 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; Gutierrez; Hamilton; Hancock; Hardcastle; Harper-Brown; Hernandez Luna; Hopson; Howard, C.; Howard, D.; Huberty; Hughes; Hunter; Isaac; Johnson; Keffer; King, P.; King, S.; King, T.; Kleinschmidt; Kolkhorst; Kuempel; Landtroop; Larson; Laubenberg; Legler; Lewis; Lozano; Lucio; Lyne; Madden; Mallory Caraway; Margo; Martinez; Martinez Fischer; McClendon; Menendez; Miles; Miller, D.; Miller, S.; Morrison; Muñoz; Murphy; Naishtat; Nash; Oliveira; Orr; Otto; Parker; Paxton; Perry; Phillips; Pickett; Pitts; Price; Quintanilla; Raymond; Riddle; Ritter; Rodriguez; Scott; Sheets; Sheffield; Shelton; Simpson; Smith, T.; Smith, W.; Smithee; Solomons; Strama; Taylor, V.; Thompson; Torres; Truitt; Turner; Veasey; Vo; Walle; Weber; White; Woolley; Zedler; Zerwas.

Present, not voting — Mr. Speaker; Hartnett; Hilderbran; Taylor, L.(C).

Absent, Excused — Harless; Peña; Villarreal.

Absent — Alvarado; Branch; Callegari; Marquez.

### STATEMENTS OF VOTE

When Record No. 1393 was taken, I was in the house but away from my desk. I would have voted no.

Alvarado

I was shown voting present, not voting on Record No. 1393. I intended to vote yes.

Hilderbran

### Amendment No. 9

Representative Dutton offered the following amendment to **CSSB 635**:

Amend **CSSB 635** by adding the following appropriately numbered SECTION to the bill and renumbering the subsequent SECTIONS of the bill appropriately:

SECTION \_\_\_\_\_. (a) Section 13.185(h), Water Code, is amended to read as follows:

(h) The regulatory authority may not include for ratemaking purposes:

(1) legislative advocacy expenses, whether made directly or indirectly, including legislative advocacy expenses included in trade association dues;

(2) costs of processing a refund or credit under Section 13.187 of this chapter;

(3) legal expenses, including court costs and attorney's, consultant, and expert witness fees, incurred by a water and sewer utility in a contested proceeding under Section 13.187 or an appeal of that proceeding, other than legal expenses described by Section 13.084; or

(4) ~~(3)~~ any expenditure found by the regulatory authority to be unreasonable, unnecessary, or not in the public interest, including executive salaries, advertising expenses, legal expenses, and civil penalties or fines.

(b) Section 13.185(h), Water Code, as amended by this section, applies only to a statement of intent for which a regulatory authority has not issued a final decision before the effective date of this section. A statement of intent for which a regulatory authority has issued a final decision before the effective date of this section is governed by the law in effect on the date that final decision was issued, and that law is continued in effect for that purpose.

(c) Notwithstanding any other provision of this Act, this section takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this section takes effect September 1, 2011.

### MESSAGE FROM THE SENATE

A message from the senate was received at this time (see the addendum to the daily journal, Messages from the Senate, Message No. 8).

**CSSB 635 - (consideration continued)**

Amendment No. 9 was adopted.

**CSSB 635**, as amended, was passed to third reading by (Record 1394): 100 Yeas, 38 Nays, 2 Present, not voting.

Yeas — Allen; Anderson, C.; Anderson, R.; Aycock; Beck; Berman; Bohac; Bonnen; Branch; Brown; Burkett; Button; Callegari; Carter; Chisum; Christian; Cook; Craddick; Creighton; Darby; Davis, J.; Davis, S.; Driver; Dutton; Eissler; Elkins; Farias; Fletcher; Frullo; Garza; Geren; Gonzales, L.; Gonzales, V.; Gonzalez; Gooden; Guillen; Hamilton; Hancock; Hardcastle; Hartnett; Hilderbran; Hopson; Howard, C.; Huberty; Hughes; Isaac; Jackson; Keffer; King, P.; King, S.; Kleinschmidt; Kolkhorst; Kuempel; Larson; Lavender; Legler; Lewis; Lozano; Lyne; Madden; Margo; Miles; Miller, D.; Miller, S.; Morrison; Muñoz; Murphy; Nash; Oliveira; Orr; Otto; Parker; Patrick; Phillips; Pickett; Pitts; Price; Quintanilla; Raymond; Riddle; Ritter; Schwertner; Scott; Sheets; Sheffield; Shelton; Simpson; Smith, T.; Smith, W.; Smithee; Solomons; Torres; Truitt; Vo; Walle; Weber; Woolley; Workman; Zedler; Zerwas.

Nays — Aliseda; Alonzo; Alvarado; Anchia; Burnam; Cain; Castro; Davis, Y.; Deshotel; Dukes; Flynn; Gallego; Giddings; Gutierrez; Hernandez Luna; Hochberg; Howard, D.; Hunter; Johnson; Landtroop; Laubenberg; Lucio; Mallory Caraway; Marquez; Martinez; Martinez Fischer; McClendon; Menendez; Naishtat; Paxton; Perry; Reynolds; Rodriguez; Strama; Taylor, V.; Thompson; Turner; Veasey.

Present, not voting — Mr. Speaker; Taylor, L.(C).

Absent, Excused — Harless; Peña; Villarreal.

Absent — Coleman; Crownover; Eiland; Farrar; Harper-Brown; King, T.; White.

**STATEMENT OF VOTE**

When Record No. 1394 was taken, I was in the house but away from my desk. I would have voted yes.

White

(Speaker in the chair)

**SB 542 - VOTE RECONSIDERED**

Representative Walle moved to reconsider the vote by which **SB 542** was passed earlier today.

The motion to reconsider prevailed.

**SB 542 ON THIRD READING**

(Fletcher - House Sponsor)

The speaker laid before the house, on its third reading and final passage,

**SB 542**, A bill to be entitled An Act relating to the regulation of law enforcement officers by the Commission on Law Enforcement Officer Standards and Education.

**SB 542** was read third time earlier today and was passed.

**Amendment No. 1**

Representative Walle offered the following amendment to **SB 542**:

Amend **SB 542** on third reading by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. The heading to Subchapter M, Chapter 1701, Occupations Code, is amended to read as follows:

**SUBCHAPTER M. SCHOOL ~~[VISITING]~~ RESOURCE OFFICERS AND  
[OFFICER IN PUBLIC] SCHOOL DISTRICT PEACE OFFICERS**

SECTION \_\_\_\_\_. Subchapter M, Chapter 1701, Occupations Code, is amended by adding Section 1701.604 to read as follows:

Sec. 1701.604. EDUCATION AND TRAINING PROGRAM. (a) Except as provided by Subsection (b), this section applies only to:

(1) a school district peace officer commissioned under Section 37.081, Education Code; or

(2) a school resource officer, as defined by Section 1701.601.

(b) This section does not apply to a peace officer while the peace officer is assigned to a school-sponsored event at which formal classroom instruction is not offered.

(c) A peace officer may not serve as a school district peace officer for more than one calendar year unless the peace officer has completed a 16-hour or longer education and training program approved by the commission under this section, except as provided by Subsection (d), and has received a certificate under Subsection (e). A peace officer may not serve as a school resource officer for more than one calendar year unless the officer has completed a 16-hour or longer education and training program approved by the commission under this section, except as provided by Subsection (d), and has received a certificate under Subsection (e). This subsection applies only after the commission determines that regular and online education and training courses are available in the major regions of this state.

(d) A peace officer who has received comparable education and training through the Bexar County children's crisis intervention training program or the Texas School Safety Center at Texas State University is not required to complete the education and training program approved by the commission under this section to serve as a school district peace officer or school resource officer.

(e) The commission shall issue a professional achievement or proficiency certificate to a peace officer on successful completion of an education and training program:

(1) approved by the commission under this section; or

(2) described by Subsection (d).

(f) The commission shall appoint 12 members to a school resource curriculum committee to develop the curriculum for the education and training program under this section. The school resource curriculum committee shall be composed as follows:

(1) one representative of the Bexar County children's crisis intervention training program;

(2) one representative of the Texas School Safety Center at Texas State University;

(3) one representative of the commission;

(4) one representative of the Texas Municipal Police Association;

(5) one representative of the Texas Education Agency;

(6) one representative of a local mental health authority, as defined by Section 571.003, Health and Safety Code;

(7) a peace officer with certification in crisis intervention;

(8) a school district peace officer;

(9) one representative of an organization that advocates for juvenile justice;

(10) one representative of an organization that advocates for civil liberties;

(11) one representative of an organization representing parents of public school students; and

(12) one representative of the Texas School District Police Chiefs' Association.

(g) Members of the school resource curriculum committee serve terms of two years.

(h) The school resource curriculum committee shall develop the curriculum for the education and training program under this section based on the model curriculum used for the Bexar County children's crisis intervention training program and in accordance with Subsection (i). The curriculum must be approved by the commission. After developing the program, the committee may review and revise the curriculum for the program annually or as the committee determines necessary. Any revision must be approved by the commission. In carrying out its duties, the committee may use technology, including teleconferencing or videoconferencing, to eliminate travel expenses. Not later than December 1 of each even-numbered year, the commission shall review the committee's continuation and functions and make any recommendations to the legislature concerning statutory changes regarding the committee that the commission considers appropriate.

(i) The curriculum for the education and training program under this section must incorporate learning objectives regarding:

(1) child and adolescent development and psychology;

(2) positive behavioral interventions and supports, conflict resolution techniques, and restorative justice techniques;

(3) force usage limitations, including physical restraint, and de-escalation techniques;

(4) children with disabilities or special needs, including mental or behavioral health needs; and

(5) cultural competency.

(j) The education and training program under this section may be provided:

(1) as a collaborative model within a community that:

(A) involves local stakeholders; and

(B) incorporates didactic and experiential training using the best practice model of the Bexar County children's crisis intervention training program;

(2) by a school determined appropriate for operation under Section 1701.251; or

(3) as an online training program sponsored by an online training provider if the training provider also provides training under Section 1701.251.

(k) A school district may offer additional, commission-approved preparatory education or training to its school district peace officers and school resource officers.

(l) The superintendent of a school district that employs a peace officer or to which a school resource officer is assigned shall maintain on file the certification issued to the officer under Subsection (e).

(m) Notwithstanding Section 1701.351(a), the commission may not suspend the license of a peace officer solely because the peace officer fails to meet the requirements of this section.

SECTION \_\_\_\_\_. Not later than March 31, 2012, the Commission on Law Enforcement Officer Standards and Education shall approve the curriculum for the education and training program as required by Section 1701.604, Occupations Code, as added by this Act.

SECTION \_\_\_\_\_. Section 1701.604, Occupations Code, as added by this Act, applies only to a school district peace officer or school resource officer who is serving or has been assigned, appointed, commissioned, or employed by a school district to serve in that capacity on or after March 31, 2012.

Amendment No. 1 was adopted.

**SB 542**, as amended, was passed by (Record 1395): 141 Yeas, 0 Nays, 1 Present, not voting.

Yeas — 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; Darby; Davis, J.; Davis, S.; Davis, Y.; Deshotel; Driver; Dukes; Dutton; Eiland; Eissler; Elkins; Farrar; Fletcher; Flynn; Frullo; Gallego; Garza; Geren; Giddings; Gonzales, L.; Gonzales, V.; Gonzalez; Gooden; Guillen; Gutierrez; Hamilton; Hancock; Hardcastle; 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; 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; Perry; Phillips; Pickett; Pitts; Price; Quintanilla; Raymond; Reynolds; Riddle; Ritter; Rodriguez; Schwertner; Scott; Sheets; Shelton; Simpson; Smith, T.; Smith, W.; Smithee; Solomons; Strama; Taylor, V.; Thompson; Torres; Truitt; Turner; Veasey; Vo; Walle; Weber; White; Woolley; Workman; Zedler; Zerwas.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Harless; Peña; Villarreal.

Absent — Crownover; Farias; Lyne; Sheffield; Taylor, L.

**GENERAL STATE CALENDAR  
(consideration continued)**

**SB 472 ON SECOND READING  
(Giddings - House Sponsor)**

**SB 472**, A bill to be entitled An Act relating to voting practices and elections of property owners' associations.

**SB 472** was passed to third reading by (Record 1396): 103 Yeas, 40 Nays, 1 Present, not voting.

Yeas — Aliseda; Allen; Alonzo; Alvarado; Anderson, C.; Anderson, R.; Aycock; Beck; Berman; Bohac; Bonnen; Branch; Brown; Burnam; Button; Castro; Coleman; Craddick; Crownover; Darby; Davis, J.; Davis, S.; Davis, Y.; Driver; Dukes; Dutton; Eiland; Elkins; Farias; Farrar; Flynn; Frullo; Gallego; Garza; Geren; Giddings; Gonzales, L.; Gonzales, V.; Gonzalez; Gooden; Guillen; Gutierrez; Hamilton; Hancock; Hardcastle; Hernandez Luna; Hilderbran; Hopson; Howard, C.; Howard, D.; Isaac; Jackson; Johnson; Keffer; King, T.; Kleinschmidt; Laubenberg; Lewis; Lozano; Lucio; Lyne; Madden; Mallory Caraway; Marquez; Martinez; Martinez Fischer; McClendon; Menendez; Miles; Muñoz; Murphy; Naishtat; Oliveira; Orr; Otto; Patrick; Pickett; Pitts; Quintanilla; Raymond; Ritter; Rodriguez; Scott; Sheets; Sheffield; Shelton; Smith, T.; Smith, W.; Smithee; Solomons; Strama; Taylor, L.; Thompson; Torres; Truitt; Turner; Veasey; Vo; Walle; Woolley; Workman; Zedler; Zerwas.

Nays — Anchia; Burkett; Cain; Callegari; Carter; Chisum; Christian; Cook; Creighton; Eissler; Fletcher; Harper-Brown; Hochberg; Huberty; Hughes; Hunter; King, P.; King, S.; Kolkhorst; Kuempel; Landtroop; Larson; Lavender; Legler; Margo; Miller, D.; Miller, S.; Morrison; Nash; Parker; Paxton; Perry; Phillips; Price; Riddle; Schwertner; Simpson; Taylor, V.; Weber; White.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Harless; Peña; Villarreal.

Absent — Deshotel; Hartnett; Reynolds.

**STATEMENTS OF VOTE**

I was shown voting no on Record No. 1396. I intended to vote yes.

Callegari

I was shown voting yes on Record No. 1396. I intended to vote no.

Otto

I was shown voting no on Record No. 1396. I intended to vote yes.

Schwertner

(Peña now present)

**SB 516 ON SECOND READING**  
**(Fletcher - House Sponsor)**  
**RULES SUSPENDED**

Representative Bonnen moved to suspend all necessary rules to take up and consider at this time **SB 516**.

The motion prevailed by (Record 1397): 146 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Aliseda; Allen; Alonzo; Alvarado; Anchia; Anderson, C.; Anderson, R.; Aycock; Beck; Berman; Bohac; Bonnen; Branch; Brown; Burkett; 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; 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; Vo; Walle; Weber; White; Woolley; Workman; Zedler; Zerwas.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Harless; Villarreal.

Absent — Burnam.

The speaker laid before the house, on its second reading and passage to third reading,

**SB 516**, A bill to be entitled An Act Relating to the exemption from ad valorem taxation of all or part of the appraised value of the residence homestead of the surviving spouse of a 100 percent or totally disabled veteran.

**SB 516** was read second time and was passed to third reading by (Record 1398): 146 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Aliseda; Allen; Alonzo; Alvarado; Anchia; Anderson, C.; Anderson, R.; Aycock; Beck; Berman; Bohac; Bonnen; Branch; Brown; Burkett; Burnam; Button; Cain; Callegari; 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; 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; Vo; Walle; Weber; White; Woolley; Workman; Zedler; Zerwas.

Present, not voting — Mr. Speaker(C); Carter.

Absent, Excused — Harless; Villarreal.

#### STATEMENT OF VOTE

I was shown voting present, not voting on Record No. 1398. I intended to vote yes.

Carter

#### POSTPONED BUSINESS

The following bills were laid before the house as postponed business:

#### SB 498 ON SECOND READING

(Phillips - House Sponsor)

**SB 498**, A bill to be entitled An Act relating to the trapping and transport of surplus white-tailed deer.

**SB 498** was read second time earlier today, amendments were offered and disposed of, and **SB 498** was postponed until this time.

**SB 498**, as amended, was passed to third reading by (Record 1399): 133 Yeas, 11 Nays, 2 Present, not voting.

Yeas — Aliseda; Allen; Alonzo; Alvarado; Anchia; Anderson, C.; Anderson, R.; Aycock; Beck; Berman; Bonnen; Branch; Brown; Burkett; Button; Callegari; Carter; Castro; Chisum; Christian; Cook; Craddick; Creighton; Crownover; Darby; Davis, J.; Davis, S.; Davis, Y.; Deshotel; Driver; Dukes; Dutton; Eissler; Elkins; Farias; Farrar; Fletcher; Flynn; Frullo; Gallego; Garza; Geren; Giddings; Gonzales, L.; Gonzales, V.; Gonzalez; Gooden; Guillen; Gutierrez; Hamilton; Hardcastle; Hartnett; Hernandez Luna; Hochberg; Hopson; Howard, C.; Howard, D.; Huberty; Hunter; Isaac; Jackson; Johnson; Keffer;

King, P.; 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; Ritter; Rodriguez; Schwertner; Scott; Sheets; Sheffield; Shelton; Simpson; Smith, T.; Smith, W.; Smithee; Solomons; Strama; Taylor, L.; Taylor, V.; Thompson; Torres; Truitt; Veasey; Vo; Walle; Weber; Woolley; Workman; Zerwas.

Nays — Bohac; Burnam; Cain; Coleman; Eiland; Hancock; Hilderbran; Hughes; King, S.; White; Zedler.

Present, not voting — Mr. Speaker(C); Turner.

Absent, Excused — Harless; Villarreal.

Absent — Harper-Brown; Riddle.

**GENERAL STATE CALENDAR**  
(consideration continued)

**SB 975 ON SECOND READING**  
(Muñoz and Patrick - House Sponsors)

**SB 975**, A bill to be entitled An Act relating to the operation of dropout recovery programs by certain public junior colleges in partnership with school districts.

**SB 975** was passed to third reading by (Record 1400): 94 Yeas, 50 Nays, 1 Present, not voting.

Yeas — Aliseda; Allen; Alonzo; Alvarado; Anchia; Anderson, C.; Aycock; Beck; Brown; Burkett; Burnam; Callegari; Castro; Chisum; Coleman; Cook; Darby; Davis, S.; Davis, Y.; Deshotel; Driver; Dukes; Dutton; Eiland; Eissler; Farias; Farrar; Garza; Geren; Giddings; Gonzales, L.; Gonzales, V.; Gonzalez; Guillen; Gutierrez; Hardcastle; Hernandez Luna; Hochberg; Hopson; Howard, C.; Howard, D.; Huberty; Hughes; Hunter; Isaac; Jackson; Johnson; Keffer; King, S.; King, T.; Kleinschmidt; Larson; Lewis; Lozano; Lucio; Lyne; Mallory Caraway; Margo; Marquez; Martinez; Martinez Fischer; McClendon; Menendez; Miles; Miller, D.; Miller, S.; Muñoz; Naishtat; Oliveira; Patrick; Peña; Pickett; Pitts; Quintanilla; Raymond; Reynolds; Ritter; Rodriguez; Schwertner; Scott; Shelton; Simpson; Smith, T.; Smith, W.; Smithee; Strama; Thompson; Torres; Truitt; Turner; Veasey; Vo; Walle; Woolley.

Nays — Anderson, R.; Berman; Bonnen; Branch; Button; Cain; Christian; Craddick; Creighton; Crownover; Davis, J.; Elkins; Fletcher; Flynn; Frullo; Gooden; Hamilton; Hancock; Harper-Brown; Hartnett; Hilderbran; King, P.; Kolkhorst; Kuempel; Landtroop; Laubenberg; Lavender; Legler; Madden; Morrison; Murphy; Nash; Orr; Otto; Parker; Paxton; Perry; Phillips; Price; Riddle; Sheets; Sheffield; Solomons; Taylor, L.; Taylor, V.; Weber; White; Workman; Zedler; Zerwas.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Harless; Villarreal.

Absent — Bohac; Carter; Gallego.

#### STATEMENTS OF VOTE

When Record No. 1400 was taken, I was in the house but away from my desk. I would have voted no.

Carter

I was shown voting yes on Record No. 1400. I intended to vote no.

Truitt

#### REASON FOR VOTE

I intended to vote no because the program's estimated cost would be \$27.8 million in 2014, and we cannot afford such costs as a state.

Carter

#### SB 1130 ON SECOND READING (Kleinschmidt - House Sponsor)

**SB 1130**, A bill to be entitled An Act relating to the exception from required public disclosure of certain records of an appraisal district.

#### Amendment No. 1

Representative Garza offered the following amendment to **SB 1130**:

Amend **SB 1130** (senate committee printing) as follows:

Add the following appropriately numbered SECTIONS to the bill:

SECTION \_\_\_\_\_. Section 11.1826, Tax Code, is amended by adding Subsection (g) to read as follows:

(g) For purposes of determining whether an organization has satisfied the requirements of Subsection (b) or (e) of this section in order to qualify for an exemption under Section 11.1825 or 11.182, respectively, an opinion included in an audit of the organization prepared by an independent auditor who is licensed by this state as a certified public accountant or a determination of tax-exempt status under Section 501(c), Internal Revenue Code of 1986, issued by the United States Internal Revenue Service is prima facie evidence of the facts stated in the opinion or determination.

SECTION \_\_\_\_\_. This Act applies only to ad valorem taxes imposed for a tax year beginning on or after the effective date of this Act.

Amendment No. 1 was withdrawn.

**SB 1130** was passed to third reading.

#### SB 1360 ON SECOND READING (Hunter and Naishtat - House Sponsors)

**SB 1360**, A bill to be entitled An Act relating to continuing education for physicians and nurses regarding the treatment of tick-borne diseases.

**SB 1360** was passed to third reading.

**SB 1560 ON SECOND READING**  
(L. Taylor - House Sponsor)

**SB 1560**, A bill to be entitled An Act relating to liability of certain local emergency management or homeland security organizations.

**SB 1560** was passed to third reading by (Record 1401): 139 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Aliseda; Allen; Alonzo; Alvarado; Anchia; Anderson, C.; Anderson, R.; Beck; Berman; Bohac; Bonnen; Brown; Burkett; Button; Cain; Callegari; Carter; 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; Hancock; Hardcastle; Harper-Brown; 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; Orr; Otto; Parker; Patrick; Paxton; Peña; Perry; Phillips; Pickett; Pitts; Price; Quintanilla; Raymond; Reynolds; Riddle; Ritter; Schwertner; Scott; Sheets; Sheffield; Shelton; Simpson; Smith, T.; Smith, W.; Smithee; Solomons; Strama; Taylor, L.; Taylor, V.; Thompson; Torres; Truitt; Turner; Veasey; Vo; Walle; Weber; White; Woolley; Workman; Zedler; Zerwas.

Present, not voting — Mr. Speaker(C); Hartnett.

Absent, Excused — Harless; Villarreal.

Absent — Aycock; Branch; Burnam; Castro; Hamilton; Oliveira; Rodriguez.

**SB 1617 ON SECOND READING**  
(Aliseda - House Sponsor)

**SB 1617**, A bill to be entitled An Act relating to the discretionary transfer from a juvenile court to a criminal court of certain alleged offenses arising out of a single criminal transaction.

**SB 1617** was passed to third reading.

**SB 1843 ON SECOND READING**  
(Frullo, Gallego, Hartnett, Christian, and Y. Davis - House Sponsors)

**SB 1843**, A bill to be entitled An Act relating to investigations of certain offenses involving the Internet-based sexual exploitation of a minor; creating the Internet crimes against children account to support those activities.

**SB 1843** was passed to third reading.

### POINT OF ORDER

Representative S. Miller raised a point of order against further consideration of the calendar under Rule 8, Section 13(c) of the House Rules on the grounds that the deadline for consideration of senate bills on second reading had passed.

The speaker sustained the point of order.

(Schwertner in the chair)

### BILLS AND RESOLUTIONS SIGNED BY THE SPEAKER

Notice was given at this time that the speaker had signed bills and resolutions in the presence of the house (see the addendum to the daily journal, Signed by the Speaker, Senate List No. 33).

### PROVIDING FOR RECESS

Representative Workman moved that, at the conclusion of the reading of bills and resolutions on first reading and referral to committees, the house recess until 10 a.m. today, Wednesday, May 25.

The motion prevailed.

### RESOLUTIONS REFERRED TO COMMITTEES

Resolutions were at this time laid before the house and referred to committees. (See the addendum to the daily journal, Referred to Committees, List No. 1.)

### RECESS

In accordance with a previous motion, the house, at 12:14 a.m. Wednesday, May 25, recessed until 10 a.m. today.

---

### ADDENDUM

---

### REFERRED TO COMMITTEES

The following bills and joint resolutions were today laid before the house, read first time, and referred to committees, and the following resolutions were today laid before the house and referred to committees. If indicated, the chair today corrected the referral of the following measures:

#### List No. 1

**HR 2297** (By Reynolds), Commending Naomi Showers for her service as a participant in the Texas Legislative Internship Program.

To Rules and Resolutions.

**HR 2298** (By Reynolds), Honoring Jazz Education Inc. on the occasion of the grand opening of the 40 Seasons of Jazz Photo Exhibition.

To Rules and Resolutions.

**HR 2299** (By Reynolds), Honoring Stafford mayor Leonard Scarcella for his 42 years of service.

To Rules and Resolutions.

**HR 2300** (By Reynolds), Commending Donald Bankston for serving as a Democratic Party precinct chair in Fort Bend County.

To Rules and Resolutions.

**HR 2301** (By Reynolds), Commending Emmanuel Barnes for serving as a Democratic Party precinct chair in Fort Bend County.

To Rules and Resolutions.

**HR 2302** (By Reynolds), Commending Evelyn Barnet for serving as a Democratic Party precinct chair in Fort Bend County.

To Rules and Resolutions.

**HR 2303** (By Reynolds), Commending Skip Belt for serving as a Democratic Party precinct chair in Fort Bend County.

To Rules and Resolutions.

**HR 2304** (By Reynolds), Commending Cynthia Bennett for serving as a Democratic Party precinct chair in Fort Bend County.

To Rules and Resolutions.

**HR 2305** (By Reynolds), Commending Jacqueline Booker for serving as a Democratic Party precinct chair in Fort Bend County.

To Rules and Resolutions.

**HR 2306** (By Reynolds), Commending Clifford Brown for serving as a Democratic Party precinct chair in Fort Bend County.

To Rules and Resolutions.

**HR 2307** (By Reynolds), Commending Shirley Connally for serving as a Democratic Party precinct chair in Fort Bend County.

To Rules and Resolutions.

**HR 2308** (By Reynolds), Commending Wintress Cornish for serving as a Democratic Party precinct chair in Fort Bend County.

To Rules and Resolutions.

**HR 2309** (By Reynolds), Commending Margaret Darby for serving as a Democratic Party precinct chair in Fort Bend County.

To Rules and Resolutions.

**HR 2310** (By Reynolds), Commending Wanda Davila for serving as a Democratic Party precinct chair in Fort Bend County.

To Rules and Resolutions.

**HR 2311** (By Reynolds), Commending Andrea Downey for serving as a Democratic Party precinct chair in Fort Bend County.

To Rules and Resolutions.

**HR 2312** (By Reynolds), Commending Iris Galvan for serving as a Democratic Party precinct chair in Fort Bend County.

To Rules and Resolutions.



**HR 2313** (By Reynolds), Commending Ted Garcia for serving as a Democratic Party precinct chair in Fort Bend County.

To Rules and Resolutions.

**HR 2314** (By Reynolds), Commending Cynthia Ginyard for serving as a Democratic Party precinct chair in Fort Bend County.

To Rules and Resolutions.

**HR 2315** (By Reynolds), Commending Alvin Gipson for serving as a Democratic Party precinct chair in Fort Bend County.

To Rules and Resolutions.

**HR 2316** (By Reynolds), Commending Dana "Bart" Gohr for serving as a Democratic Party precinct chair in Fort Bend County.

To Rules and Resolutions.

**HR 2317** (By Reynolds), Commending Rodney Griffin for serving as a Democratic Party precinct chair in Fort Bend County.

To Rules and Resolutions.

**HR 2318** (By Reynolds), Commending Debra Hill for serving as a Democratic Party precinct chair in Fort Bend County.

To Rules and Resolutions.

**HR 2319** (By Reynolds), Commending Dorothy James for serving as a Democratic Party precinct chair in Fort Bend County.

To Rules and Resolutions.

**HR 2320** (By Reynolds), Commending Barbara Jones for serving as a Democratic Party precinct chair in Fort Bend County.

To Rules and Resolutions.

**HR 2321** (By Reynolds), Commending Connie Meisgeier for serving as a Democratic Party precinct chair in Fort Bend County.

To Rules and Resolutions.

**HR 2322** (By Reynolds), Commending Doshie Murphy for serving as a Democratic Party precinct chair in Fort Bend County.

To Rules and Resolutions.

**HR 2323** (By Reynolds), Commending Rosemary Parker Hogue for serving as a Democratic Party precinct chair in Fort Bend County.

To Rules and Resolutions.

**HR 2324** (By Reynolds), Commending Lela Pickens for serving as a Democratic Party precinct chair in Fort Bend County.

To Rules and Resolutions.

**HR 2325** (By Reynolds), Commending Mary Ross for serving as a Democratic Party precinct chair in Fort Bend County.

To Rules and Resolutions.

**HR 2326** (By Reynolds), Commending James Scott for serving as a Democratic Party precinct chair in Fort Bend County.

To Rules and Resolutions.

**HR 2327** (By Reynolds), Commending Farhan Shamsi for serving as a Democratic Party precinct chair in Fort Bend County.

To Rules and Resolutions.

**HR 2328** (By Reynolds), Commending Constance Simpson for serving as a Democratic Party precinct chair in Fort Bend County.

To Rules and Resolutions.

**HR 2329** (By Reynolds), Commending Vivian Singleton for serving as a Democratic Party precinct chair in Fort Bend County.

To Rules and Resolutions.

**HR 2330** (By Reynolds), Commending Donna Thomas for serving as a Democratic Party precinct chair in Fort Bend County.

To Rules and Resolutions.

**HR 2331** (By Reynolds), Commending Rose Wall for serving as a Democratic Party precinct chair in Fort Bend County.

To Rules and Resolutions.

**HR 2332** (By Reynolds), Commending Janie Warstler for serving as a Democratic Party precinct chair in Fort Bend County.

To Rules and Resolutions.

**HR 2333** (By Reynolds), Commending Christine Washington for serving as a Democratic Party precinct chair in Fort Bend County.

To Rules and Resolutions.

**HR 2334** (By Reynolds), Commending Gerri Wells for serving as a Democratic Party precinct chair in Fort Bend County.

To Rules and Resolutions.

**HR 2335** (By Anchia), Honoring the Reverend Albert K. Haynes, Sr., on his 40th pastoral anniversary.

To Rules and Resolutions.

**HR 2336** (By L. Taylor), Honoring Jenny Rebecca Sykes for her service to the Republican Party of Texas.

To Rules and Resolutions.

**HR 2337** (By Riddle), Honoring Michael Christopher Riddle, Jr., on his graduation from The University of Texas Medical Branch at Galveston.

To Rules and Resolutions.

**HR 2338** (By Peña), Commending Maricela De Leon for her service in the office of State Representative Aaron Pena.

To Rules and Resolutions.

**HR 2339** (By Peña), In memory of U.S. Marine Lance Corporal Derek Hernandez of Edinburg.

To Rules and Resolutions.

**HR 2340** (By Madden), Commending Sheryl Mills for her service to the Collin County Republican Party on the occasion of her retirement as its executive director.

To Rules and Resolutions.

**HR 2341** (By Torres), In memory of Humberto Lozano Lopez.

To Rules and Resolutions.

**HR 2342** (By Peña), Honoring the Garcia family of Rio Grande City.

To Rules and Resolutions.

**HR 2344** (By Reynolds), Honoring Stafford City Council member Ken Mathew for his service.

To Rules and Resolutions.

**HR 2345** (By Reynolds), Honoring Stafford City Council member Wen Guerra for his service.

To Rules and Resolutions.

**HR 2346** (By Reynolds), Honoring Stafford City Council member and mayor pro tem Felecia Evans-Smith.

To Rules and Resolutions.

**HR 2347** (By Reynolds), Honoring Stafford City Council member Robert Sorbet for his service.

To Rules and Resolutions.

**HR 2348** (By Reynolds), Honoring Stafford City Council member Cecil Willis for his service.

To Rules and Resolutions.

**HR 2349** (By Reynolds), Honoring Stafford City Council member Fred Woolridge for his service.

To Rules and Resolutions.

**HR 2350** (By Burnam), Honoring Mayra Mendez as a participant in the 2011 Moreno/Rangel Legislative Leadership Program.

To Rules and Resolutions.

**HR 2351** (By Sheffield), Recognizing June 9, 2011, as Food First Day.

To Rules and Resolutions.

**HR 2352** (By Sheffield), Congratulating George and Frances Svatek of Temple on their 50th wedding anniversary.

To Rules and Resolutions.

**HR 2353** (By Sheffield), In memory of Mamie Sue Moon Zabcik.

To Rules and Resolutions.

**HR 2354** (By Sheffield), Commending Lieutenant General Robert W. Cone on his command of III Corps and Fort Hood and congratulating him on his promotion to the rank of four-star general.

To Rules and Resolutions.

**HR 2355** (By Strama), In memory of U.S. Army Sergeant Mario Rodriguez, Jr.

To Rules and Resolutions.

**HR 2356** (By Strama), Congratulating Bobby Spisak on his 2011 graduation from the Texas School for the Deaf.

To Rules and Resolutions.

**HR 2357** (By Hunter), In memory of newspaper publisher and philanthropist Edward H. Harte.

To Rules and Resolutions.

**HR 2358** (By Elkins), Congratulating Ashley Williams on placing second at the African American National Spelling Bee Championships.

To Rules and Resolutions.

**HR 2359** (By Elkins), Congratulating Niaha Dyson on placing third at the African American National Spelling Bee Championships.

To Rules and Resolutions.

**HR 2360** (By Elkins), Congratulating Mary Bello on winning the African American National Spelling Bee Championships.

To Rules and Resolutions.

**HR 2361** (By Raymond), In memory of Maria Hermelinda Saenz Perez of Laredo.

To Rules and Resolutions.

**HR 2362** (By Larson), In memory of Louis Herbert Stumberg.

To Rules and Resolutions.

**HR 2363** (By Naishtat), In memory of Margaret Johnson Herman of Austin.

To Rules and Resolutions.

**HR 2364** (By Branch), Honoring Wade Emmert on his election as chair of the Dallas County Republican Party.

To Rules and Resolutions.

**HR 2365** (By Lozano), In memory of Fernando "Freddy" Ramirez of Raymondville.

To Rules and Resolutions.

**HR 2366** (By Kleinschmidt), In memory of Bastrop County commissioner Lee Edward Dildy of Elgin.

To Rules and Resolutions.

**HR 2367** (By Elkins), Commending Robert L. Garner, Jr., founder of the African American National Spelling Bee Championships, Inc.

To Rules and Resolutions.

**HR 2368** (By Woolley), Congratulating LaKesha Hammonds of the Memorial Villages Police Department on being named a 2011 Telecommunicator of the Year by the Commission on State Emergency Communications.

To Rules and Resolutions.

**HR 2369** (By Woolley), In memory of Charles Richard Bergstrom III.  
To Rules and Resolutions.

**HR 2370** (By Woolley), Congratulating Anne Marie Kight of Houston on her graduation from Memorial High School.  
To Rules and Resolutions.

**HR 2371** (By Woolley), Congratulating Courtney Corinne Wood of Houston on her graduation from Memorial High School.  
To Rules and Resolutions.

**HR 2372** (By Madden), Congratulating Robert Michel Delcambre of Richardson on achieving the rank of Eagle Scout.  
To Rules and Resolutions.

**HR 2373** (By Martinez Fischer), Commending chef Chris Carlson for his contributions to the success of the Sandbar Fish House and Market in San Antonio.  
To Rules and Resolutions.

**HR 2374** (By Gutierrez), Congratulating Velma Sue De Leon on being elected president of the Texas Funeral Directors Association.  
To Rules and Resolutions.

**HR 2375** (By Quintanilla), Congratulating Jesse Guerra on winning the UIL 2A state singles tennis championship.  
To Rules and Resolutions.

#### **SIGNED BY THE SPEAKER**

The following bills and resolutions were today signed in the presence of the house by the speaker:

#### **House List No. 36**

**HB 8, HB 91, HB 159, HB 240, HB 252, HB 350, HB 417, HB 441, HB 442, HB 499, HB 675, HB 886, HB 1057, HB 1075, HB 1127, HB 1137, HB 1469, HB 1573, HB 1814, HB 1899, HB 2080, HB 2118, HB 2383, HB 2417, HB 2476, HB 2488, HB 2507, HB 2518, HB 2609, HB 2716, HB 2902, HB 2907, HB 2959, HB 2973, HB 3342, HB 3372, HB 3510, HB 3531, HB 3803**

#### **Senate List No. 33**

**SB 32, SB 54, SB 61, SB 77, SB 86, SB 116, SB 141, SB 149, SB 150, SB 162, SB 187, SB 189, SB 192, SB 193, SB 226, SB 260, SB 290, SB 335, SB 482, SB 494, SB 496, SB 512, SB 519, SB 530, SB 544, SB 626, SB 639, SB 690, SB 743, SB 796, SB 811, SB 851, SB 855, SB 867, SB 886, SB 899, SB 957, SB 1002, SB 1043, SB 1103, SB 1159, SB 1228, SB 1292, SB 1361, SB 1404, SB 1421, SB 1431, SB 1610, SB 1613, SB 1638, SB 1662, SB 1698, SB 1751, SB 1887, SB 1907, SB 1914, SB 1927, SCR 11, SCR 16, SJR 16**

**MESSAGES FROM THE SENATE**

The following messages from the senate were today received by the house:

**Message No. 1**

MESSAGE FROM THE SENATE  
SENATE CHAMBER  
Austin, Texas  
Tuesday, May 24, 2011

The Honorable Speaker of the House  
House Chamber  
Austin, Texas

Mr. Speaker:

I am directed by the senate to inform the house that the senate has taken the following action:

THE SENATE HAS PASSED THE FOLLOWING MEASURES:

**HB 1720** Davis, John SPONSOR: Patrick  
Relating to improving health care provider accountability and efficiency under the child health plan and Medicaid programs.  
(Amended)

**HB 3275** Coleman SPONSOR: Ellis  
Relating to the operation and governance of tax increment financing reinvestment zones.  
(Amended)

Respectfully,  
Patsy Spaw  
Secretary of the Senate

**Message No. 2**

MESSAGE FROM THE SENATE  
SENATE CHAMBER  
Austin, Texas  
Tuesday, May 24, 2011 - 2

The Honorable Speaker of the House  
House Chamber  
Austin, Texas

Mr. Speaker:

I am directed by the senate to inform the house that the senate has taken the following action:

THE SENATE HAS PASSED THE FOLLOWING MEASURES:  
LOCAL AND UNCONTESTED CALENDAR

**HB 174** Jackson, Jim SPONSOR: Duncan  
Relating to the cancellation of the voter registration and to the eligibility to vote of persons who are deceased or not citizens of the United States.

(Committee Substitute)

**HB 308** Menendez SPONSOR: Watson  
Relating to life preserving devices on recreational vessels.

(Committee Substitute)

**HB 343** Fletcher SPONSOR: Huffman  
Relating to the reporting and recording of a motor vehicle accident involving an official vehicle driven by a peace officer, firefighter, or an emergency medical services employee in the course of official duties.

**HB 360** Jackson, Jim SPONSOR: Duncan  
Relating to ballot language for a proposition to approve the imposition, increase, or reduction of a tax or the issuance of bonds.

(Committee Substitute)

**HB 412** Aycock SPONSOR: Hegar  
Relating to the requirement that certain impaired veterinarians participate in a peer assistance program.

**HB 528** Solomons SPONSOR: Van de Putte  
Relating to the provision of pharmaceutical services through informal and voluntary networks in the workers' compensation system; providing an administrative violation.

**HB 577** McClendon SPONSOR: Deuell  
Relating to emergency prehospital care provided by emergency services personnel.

**HB 588** Guillen SPONSOR: Whitmire  
Relating to surcharges under the Driver Responsibility Program.

**HB 630** Pickett SPONSOR: Nichols  
Relating to the environmental review process for transportation projects.  
(Committee Substitute)

**HB 654** Solomons SPONSOR: Shapiro  
Relating to a report regarding the municipality or county of origin of certain tax revenue collected by the comptroller.

**HB 692** Farias SPONSOR: Van de Putte  
Relating to high school graduation requirements for a student who is unable to participate in physical activity due to disability or illness.

**HB 787** Kuempel SPONSOR: Wentworth  
Relating to abandoned, wrecked, dismantled, discarded, and inoperable aircraft and vessels.

**HB 788** Kuempel SPONSOR: Wentworth  
Relating to the establishment and use of a private family cemetery by certain organizations in certain counties.  
(Committee Substitute)

**HB 805** Callegari SPONSOR: Hegar  
Relating to the requirement that certain water service providers ensure emergency operations during an extended power outage.  
(Committee Substitute)

- HB 990** Rodriguez, Eddie SPONSOR: Watson  
Relating to certain homestead preservation reinvestment zones.
- HB 1040** Gallego SPONSOR: Uresti  
Relating to the validation of the creation of, and certain acts related to, a venue project, and the dissolution of certain venue districts.  
(Committee Substitute)
- HB 1048** Cain SPONSOR: Eltife  
Relating to the terms of the 102nd District Court in Red River County.
- HB 1060** Kleinschmidt SPONSOR: Hegar  
Relating to the de-annexation of land in Bastrop County by the Barton Springs-Edwards Aquifer Conservation District.
- HB 1070** Scott SPONSOR: Hinojosa  
Relating to the taking of a defendant's bail bond by county jailers.
- HB 1116** Harper-Brown SPONSOR: Shapiro  
Relating to prohibiting the sale and use of certain radar interference devices; creating an offense.
- HB 1144** Cain SPONSOR: Deuell  
Relating to the Hopkins County Hospital District.
- HB 1148** Smith, Wayne SPONSOR: Hinojosa  
Relating to an exemption for certain disabled veterans from the payment of a fee for the issuance of a personal identification certificate.
- HB 1163** Keffer SPONSOR: Hegar  
Relating to tuition and fee exemptions at public institutions of higher education for certain peace officers and firefighters.
- HB 1226** Dutton SPONSOR: Ellis  
Relating to the eligibility of certain persons who have received deferred adjudication to vote.
- HB 1235** Schwertner SPONSOR: Ogden  
Relating to the transfer of certain state property from the Texas Department of Transportation to the Parks and Wildlife Department.
- HB 1274** Pena SPONSOR: Wentworth  
Relating to an exemption from the payment of a toll for unmarked military vehicles conducting or training for emergency operations.
- HB 1301** Guillen SPONSOR: Eltife  
Relating to making a voluntary contribution to the Parks and Wildlife Department when registering a motor vehicle or renewing a motor vehicle registration.  
(Committee Substitute)
- HB 1305** Bonnen SPONSOR: Huffman  
Relating to the issuance of oversize or overweight vehicle permits by certain port authorities.
- HB 1341** Walle SPONSOR: Zaffirini  
Relating to the manner of payment of tuition and mandatory fees at public institutions of higher education.
- HB 1456** Orr SPONSOR: Deuell



Relating to the waiver and release of a mechanic's, contractor's, or materialman's lien or payment bond claim and to the creation of a mechanic's, contractor's, or materialman's lien for certain landscaping.

**HB 1486** Gutierrez SPONSOR: Wentworth  
Relating to signs posted under the memorial sign program for victims of certain vehicle accidents.

**HB 1499** Larson SPONSOR: Wentworth  
Relating to the designation of the Scenic Loop Road–Boerne Stage Road–Toutant Beauregard Road Historic Corridor.

**HB 1504** Munoz, Jr. SPONSOR: Hinojosa  
Relating to statutory references to the common electronic infrastructure project formerly known as TexasOnline.  
(Committee Substitute)

**HB 1523** Phillips SPONSOR: Watson  
Relating to the offense of transporting household goods without registration; providing a penalty.

**HB 1593** Isaac SPONSOR: Huffman  
Relating to the inclusion of a candidate's e-mail address on an official application for a place on the ballot.

**HB 1608** Strama SPONSOR: Watson  
Relating to participation in and contributions to the state employee charitable campaign by retired state employees.

**HB 1658** Davis, Yvonne SPONSOR: Whitmire  
Relating to the refund of a cash bond to a defendant in a criminal case.  
(Committee Substitute)

**HB 1907** Madden SPONSOR: Whitmire  
Relating to notification requirements concerning offenses committed by students and school district discretion over admission or placement of certain students.  
(Committee Substitute)

**HB 1959** Thompson SPONSOR: Carona  
Relating to appeal of the certification of an area's wet or dry status.

**HB 1981** Smith, Wayne SPONSOR: Gallegos  
Relating to measuring, monitoring, and reporting emissions.  
(Committee Substitute)

**HB 2015** Thompson SPONSOR: Van de Putte  
Relating to certain conduct indicating a need for supervision and the sealing of records related to that conduct.  
(Committee Substitute)

**HB 2038** Price SPONSOR: Deuell  
Relating to prevention, treatment, and oversight of concussions affecting public school students participating in interscholastic athletics.

**HB 2077** Rodriguez, Eddie SPONSOR: Deuell

Relating to a pilot program under the loanstar revolving loan program to promote the use of energy efficiency measures and renewable energy technology by certain nonprofit organizations.

**HB 2103** Jackson, Jim SPONSOR: Carona  
Relating to the consideration of a letter of credit issued by a federal home loan bank as an eligible security for collateral to secure public funds.

**HB 2109** Truitt SPONSOR: Uresti  
Relating to agency action concerning assisted living facilities, including regulation of inappropriate placement of residents at facilities; providing a penalty.

**HB 2120** Miller, Doug SPONSOR: Duncan  
Relating to the composition of the board of trustees of the Teacher Retirement System of Texas.

**HB 2127** Geren SPONSOR: Harris  
Relating to the municipal regulation of the discharge of firearms and certain other weapons in certain counties.

**HB 2132** Reynolds SPONSOR: Hegar  
Relating to the creation of magistrates in certain counties.

**HB 2139** Guillen SPONSOR: Zaffirini  
Relating to the establishment of an Adopt-A-Library program and state employee charitable contributions to the program.

**HB 2172** Torres SPONSOR: Van de Putte  
Relating to the eligibility of certain children under group life insurance policies.  
(Committee Substitute)

**HB 2195** Hartnett SPONSOR: Carona  
Relating to requirements for certain arrangements or agreements of certain regional transportation authorities.

**HB 2223** Davis, Yvonne SPONSOR: Carona  
Relating to the contracts of certain regional transportation authorities that are required to be competitively bid.

**HB 2280** Eiland SPONSOR: Jackson  
Relating to the composition of the permanent advisory committee to advise the Texas Commission on Environmental Quality regarding the implementation of the ad valorem tax exemption for pollution control property.

**HB 2292** Hunter SPONSOR: Van de Putte  
Relating to payment of claims to pharmacies and pharmacists.

**HB 2313** Coleman SPONSOR: Wentworth  
Relating to certain notice requirements for municipalities and counties under the open meetings law.  
(Committee Substitute)

**HB 2325** McClendon SPONSOR: Wentworth  
Relating to the competitive bidding and notice requirements for contracts of certain mass transportation authorities.

**HB 2330** King, Phil SPONSOR: Estes

Relating to the statutory county courts in Wise County.  
(Committee Substitute)

**HB 2359** Hopson SPONSOR: Williams  
Relating to direct campaign expenditures.

**HB 2382** Murphy SPONSOR: Estes  
Relating to notice required upon nonrenewal of property and casualty insurance policies.

**HB 2422** Thompson SPONSOR: Harris  
Relating to the procedure for providing a copy of the final decree of dissolution of a marriage to a party who waived service of process.

**HB 2469** Phillips SPONSOR: Estes  
Relating to a memorial sign program for victims of motorcycle accidents.  
(Committee Substitute)

**HB 2471** Phillips SPONSOR: Deuell  
Relating to limiting the civil liability of certain persons who obtain or provide medical care and treatment for certain animals.

**HB 2477** Harless SPONSOR: Ellis  
Relating to provision of bilingual election materials.  
(Committee Substitute)

**HB 2510** Lavender SPONSOR: Eltife  
Relating to exempting the intrastate manufacture of certain incandescent light bulbs from federal regulation.

**HB 2579** Davis, John SPONSOR: Deuell  
Relating to relief for certain employers from penalties and sanctions under the Texas Unemployment Compensation Act.

**HB 2610** Guillen SPONSOR: Deuell  
Relating to facilitating access to certain public assistance benefits programs and health care providers and services through a community-based navigator program and through promotoras and community health workers.

**HB 2619** Callegari SPONSOR: Whitmire  
Relating to emergency preparedness information about water facilities.

**HB 2632** Driver SPONSOR: Wentworth  
Relating to access to the criminal history record information of certain persons by the Texas Facilities Commission.

**HB 2636** Kolkhorst SPONSOR: Nelson  
Relating to a council to study neonatal intensive care units.  
(Committee Substitute)

**HB 2703** Truitt SPONSOR: Uresti  
Relating to the regulation of orthotists and prosthetists.

**HB 2717** Darby SPONSOR: Carona  
Relating to the duties and responsibilities of certain county officials and the functions of county government.  
(Committee Substitute)

- HB 2758** Pena SPONSOR: Zaffirini  
Relating to mandatory emergency alert systems at institutions of higher education.
- HB 2769** Frullo SPONSOR: Wentworth  
Relating to the authority of the Texas Facilities Commission regarding gifts, grants, and donations.
- HB 2826** Murphy SPONSOR: Huffman  
Relating to the issuance of a certificate for a municipal setting designation.
- HB 2869** Harper-Brown SPONSOR: Shapiro  
Relating to the powers and duties of certain master mixed-use property owners' associations.  
(Committee Substitute)
- HB 2903** Zerwas SPONSOR: Deuell  
Relating to the program of all-inclusive care for the elderly.  
(Committee Substitute)
- HB 2940** King, Tracy O. SPONSOR: Zaffirini  
Relating to the form of death certificates and fetal death certificates.
- HB 3002** Hughes SPONSOR: Eltife  
Relating to certain conservation and reclamation districts exempted from filing a full audit.  
(Committee Substitute)
- HB 3017** Smithee SPONSOR: Duncan  
Relating to the prohibited use of discretionary clauses in certain health maintenance organization and insurance contracts.
- HB 3093** Lewis SPONSOR: Duncan  
Relating to the amendment of certain reports of political contributions and expenditures.
- HB 3167** Callegari SPONSOR: Carona  
Relating to the abolishment of the state regulation of talent agencies and personnel services.
- HB 3270** Veasey SPONSOR: Deuell  
Relating to the list of candidates compiled by a state or county party chair for a primary election.
- HB 3309** Rodriguez, Eddie SPONSOR: Nichols  
Relating to the authority to set maximum weights for state highways, roads, and bridges.
- HB 3311** Carter SPONSOR: Nelson  
Relating to the duty of an attorney ad litem appointed for a child to meet with the child or individual with whom the child resides before each court hearing.
- HB 3314** Carter SPONSOR: Nelson  
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.
- HB 3333** Pena SPONSOR: Hegar

Relating to the authority of the governor to order the disconnection of state computer networks from the Internet.

(Committee Substitute)

**HB 3336** Coleman SPONSOR: Deuell  
Relating to information regarding pertussis for parents of newborn children.

**HB 3337** Gonzales, Veronica SPONSOR: Hinojosa  
Relating to the emergency medical services that give rise to an emergency medical services lien.

**HB 3578** Gonzales, Larry SPONSOR: Zaffirini  
Relating to clarification of the authorized uses for loans under public institution of higher education emergency loan programs.

**HB 3579** Gonzales, Larry SPONSOR: Zaffirini  
Relating to repayment assistance for certain physician education loans.

**HB 3796** Gallego SPONSOR: Uresti  
Relating to the composition of certain judicial districts.

**HB 3808** King, Tracy O. SPONSOR: Uresti  
Relating to fishing with certain archery equipment in certain counties.

**HCR 24** Darby SPONSOR: Duncan  
Designating Nymphaea Texas Dawn as the official State Waterlily of Texas.

**HCR 130** Button SPONSOR: Carona  
Designating the city of Richardson as the official International Business Capital of North Texas.

**SB 1460** Harris  
Relating to energy savings performance contracts.

Respectfully,  
Patsy Spaw  
Secretary of the Senate

**Message No. 3**

MESSAGE FROM THE SENATE  
SENATE CHAMBER  
Austin, Texas  
Tuesday, May 24, 2011 - 3

The Honorable Speaker of the House  
House Chamber  
Austin, Texas

Mr. Speaker:

I am directed by the senate to inform the house that the senate has taken the following action:

THE SENATE HAS PASSED THE FOLLOWING MEASURES:

**HB 90** Cook SPONSOR: Birdwell  
Relating to eligibility to obtain a driver's license.

(Amended)

**HB 149** Raymond SPONSOR: Zaffirini  
Relating to the appointment of a parenting coordinator or parenting facilitator in a suit affecting the parent-child relationship.

**HB 274** Creighton SPONSOR: Huffman  
Relating to the reform of certain remedies and procedures in civil actions and family law matters.  
(Committee Substitute)

**HB 300** Kolkhorst SPONSOR: Nelson  
Relating to the privacy of protected health information; providing administrative and civil penalties.  
(Committee Substitute/Amended)

**HB 326** Guillen SPONSOR: Zaffirini  
Relating to the reporting requirements of a state agency that is undergoing review by the Sunset Advisory Commission.  
(Committee Substitute)

**HB 628** Callegari SPONSOR: Jackson  
Relating to contracts by governmental entities and related professional services and to public works performance and payment bonds.  
(Amended)

**HB 968** Strama SPONSOR: Watson  
Relating to expulsion from school or placement in a disciplinary alternative education program.  
(Committee Substitute)

**HB 1129** Kolkhorst SPONSOR: Hegar  
Relating to a study by the attorney general of the effects on state law and authority of certain international and other agreements and bodies.

**HB 1241** Zedler SPONSOR: Harris  
Relating to surety bond requirements for reserve deputy constables.

**HB 1768** Munoz, Jr. SPONSOR: Hinojosa  
Relating to the regulation of roadside vendors and solicitors in certain counties.  
(Committee Substitute)

**HB 1788** Farias SPONSOR: Uresti  
Relating to capturing reptiles and amphibians by nonlethal means; providing a penalty.  
(Committee Substitute/Amended)

**HB 1904** Sheffield SPONSOR: Estes  
Relating to the deadlines for write-in candidates for the office of county or precinct chair of a political party.  
(Committee Substitute)

**HB 2006** Bonnen SPONSOR: Huffman  
Relating to the release of a photograph of a police officer and access to records maintained by internal investigative divisions in certain municipalities.

**HB 2284** Hardcastle SPONSOR: Deuell

Relating to the practice of architecture and engineering.  
(Committee Substitute/Amended)

**HB 2357** Pickett SPONSOR: Williams

Relating to motor vehicles; providing penalties.  
(Committee Substitute/Amended)

**HB 2367** Parker SPONSOR: Uresti

Relating to the creation of an advisory panel to study certain parental rights relating to possession of or access to the parent's child.  
(Amended)

**HB 2387** Menendez SPONSOR: Lucio

Relating to the selection, compensation, and duties of the general counsel to an appraisal district.

**HB 2425** Thompson SPONSOR: Hegar

Relating to notice to the attorney general of challenges to the constitutionality of Texas statutes.

**HB 2649** Allen SPONSOR: Ellis

Relating to the award of diligent participation credit to defendants confined in a state jail felony facility.

**HB 3033** Naishtat SPONSOR: Watson

Relating to retirement under public retirement systems for employees of certain municipalities.  
(Committee Substitute)

**HB 3090** Creighton SPONSOR: Nichols

Relating to the frequency of water audits by certain retail public utilities.  
(Committee Substitute)

**HB 3133** Rodriguez, Eddie SPONSOR: Hinojosa

Relating to the appraisal for ad valorem tax purposes of property on which housing is being or has been built or repaired for sale or rent to a low-income individual or family.  
(Committee Substitute/Amended)

**HB 3352** Smith, Wayne SPONSOR: Gallegos

Relating to the sale of park land owned by certain municipalities.

**HB 3439** Raymond SPONSOR: Rodriguez

Relating to missing children; providing a criminal penalty.

**HB 3691** Gallego SPONSOR: Carona

Relating to community supervision and corrections departments and community justice plans.  
(Committee Substitute)

**HB 3815** Lewis SPONSOR: Seliger

Relating to the authority of the Ector County Hospital District to employ and commission peace officers.

**HB 3828** Hochberg SPONSOR: Gallegos

Relating to the creation of the Gulfton Area Municipal Management District; providing authority to impose a tax, levy an assessment, and issue bonds.

(Committee Substitute)

**HB 3829** Anderson, Charles "Doc" SPONSOR: Birdwell  
Relating to gifts and donations to the McLennan County Juvenile Board.

**HB 3831** Marquez SPONSOR: Rodriguez  
Relating to the creation of the Montecillo Municipal Management District No. 1;  
providing authority to levy an assessment, impose a tax, and issue bonds.  
(Amended)

**HB 3836** Pitts SPONSOR: Birdwell  
Relating to the creation of the Windsor Hills Municipal Management District No.  
1; providing authority to levy an assessment and issue bonds.

**HB 3862** Smith, Wayne SPONSOR: Whitmire  
Relating to temporary directors and the continuation in existence of the Harris  
County Municipal Utility District No. 510.

Respectfully,  
Patsy Spaw  
Secretary of the Senate

**Message No. 4**

MESSAGE FROM THE SENATE

SENATE CHAMBER

Austin, Texas

Tuesday, May 24, 2011 - 4

The Honorable Speaker of the House  
House Chamber  
Austin, Texas

Mr. Speaker:

I am directed by the senate to inform the house that the senate has taken the  
following action:

THE SENATE HAS PASSED THE FOLLOWING MEASURES:

**HB 736** Patrick, Diane SPONSOR: West  
Relating to required online information regarding public institutions of higher  
education.  
(Committee Substitute/Amended)

**HB 1043** Christian SPONSOR: Lucio  
Relating to creating an offense for engaging in certain conduct relating to  
cockfighting.  
(Amended)

**HB 1244** Castro SPONSOR: West  
Relating to developmental education courses and the assessment of student  
readiness under the Texas Success Initiative for public institutions of higher  
education.  
(Amended)

**HB 1728** Keffer SPONSOR: Harris



Relating to energy savings performance contracts and energy efficiency planning.  
(Amended)

**HB 1781** Price SPONSOR: Nelson  
Relating to obsolete or redundant reporting requirements applicable to state agencies.  
(Committee Substitute/Amended)

**HB 2449** Aliseda SPONSOR: Hegar  
Relating to the illegal possession of another person's ballot to be voted by mail.  
(Amended)

**HB 2999** Lewis SPONSOR: Zaffirini  
Relating to a fixed tuition rate program for certain students who transfer to a state university after completing an associate degree program.  
(Committee Substitute)

**HB 3145** Naishtat SPONSOR: Zaffirini  
Relating to the regulation of chemical dependency counselors.

**HB 3182** Ritter SPONSOR: Williams  
Relating to the imposition of state taxes, including the sales and use, motor vehicle sales and use, and hotel occupancy tax, on certain oilfield portable units.

**HB 3423** Lozano SPONSOR: Hinojosa  
Relating to certain criminal offenses committed in relation to a federal special investigator; providing criminal penalties.

**HB 3595** Chisum SPONSOR: Carona  
Relating to energy efficiency goals and energy efficiency programs.  
(Committee Substitute/Amended)

**HB 3819** Crownover SPONSOR: Nelson  
Relating to the creation of the Valencia Municipal Management District No. 1; providing authority to levy an assessment and issue bonds.  
(Committee Substitute)

**HB 3821** Eiland SPONSOR: Huffman  
Relating to temporary directors and the continuation in existence of the Bolivar Yacht Basin Water Control and Improvement District No. 1 of Galveston County.

**HB 3823** Thompson SPONSOR: Ellis  
Relating to the regulation of certain telecommunicators; providing penalties.

**HB 3852** Pitts SPONSOR: Birdwell  
Relating to the creation of the Midlothian Municipal Management District No. 2; providing authority to impose a tax, levy an assessment, and issue bonds.

**HB 3859** Laubenberg SPONSOR: Deuell  
Relating to the creation of the Club Municipal Management District No. 1; providing authority to levy an assessment and issue bonds.  
(Amended)

Respectfully,  
Patsy Spaw  
Secretary of the Senate

**Message No. 5**

## MESSAGE FROM THE SENATE

## SENATE CHAMBER

Austin, Texas

Tuesday, May 24, 2011 - 5

The Honorable Speaker of the House  
House Chamber  
Austin, Texas

Mr. Speaker:

I am directed by the senate to inform the house that the senate has taken the following action:

## THE SENATE HAS PASSED THE FOLLOWING MEASURES:

**HB 9** Branch SPONSOR: Zaffirini  
Relating to student success-based funding for and reporting regarding public institutions of higher education.  
(Committee Substitute/Amended)

**HB 213** Rodriguez, Eddie SPONSOR: Lucio  
Relating to certain loans secured by a lien on residential real property and to other transactions involving residential real property; providing civil penalties.  
(Committee Substitute/Amended)

**HB 963** Hartnett SPONSOR: Rodriguez  
Relating to the costs associated with proceedings regarding cruelly treated animals.

**HB 1400** Elkins SPONSOR: West  
Relating to the boundaries and financing of public improvement districts designated by a municipality or county.  
(Committee Substitute/Amended)

**HB 2098** Davis, John SPONSOR: Uresti  
Relating to the authority of physicians and physician assistants to form certain entities.

**HB 2329** Zedler SPONSOR: Van de Putte  
Relating to the confidentiality of certain information regarding victims of trafficking of persons and to the issuance and enforcement of protective orders to protect victims of trafficking of persons; providing penalties.  
(Amended)

**HB 2365** Eissler SPONSOR: Shapiro  
Relating to certain responsibilities of education research centers and to a joint advisory board for education research centers.  
(Amended)

**HB 2466** Phillips SPONSOR: Carona  
Relating to the licensing and operation of motor vehicles by minors.  
(Amended)

**HB 2472** Marquez SPONSOR: Rodriguez

Relating to the reporting of certain warrant or *capias* information to the national crime information center.

**HB 2663** Chisum SPONSOR: Seliger  
 Relating to the effect of rules and standards adopted by the Railroad Commission of Texas relating to the liquefied petroleum gas industry on ordinances, orders, or rules adopted by political subdivisions relating to that industry.  
 (Committee Substitute)

**HB 2761** Garza SPONSOR: West  
 Relating to meetings, elections, and records of certain property owners' associations.  
 (Committee Substitute/Amended)

**HB 2792** Hunter SPONSOR: Hegar  
 Relating to the power of the Aransas County Navigation District to determine the amount of a check or bond necessary to purchase land from the district.

**HB 2872** Orr SPONSOR: Davis  
 Relating to restrictions on the sale of certain motor vehicles at vehicle shows or exhibitions.

**HB 3833** Phillips SPONSOR: Harris  
 Relating to the adoption of a uniform collaborative law Act in regard to family law matters.

Respectfully,  
 Patsy Spaw  
 Secretary of the Senate

**Message No. 6**

MESSAGE FROM THE SENATE  
 SENATE CHAMBER  
 Austin, Texas  
 Tuesday, May 24, 2011 - 6

The Honorable Speaker of the House  
 House Chamber  
 Austin, Texas

Mr. Speaker:

I am directed by the senate to inform the house that the senate has taken the following action:

THE SENATE HAS PASSED THE FOLLOWING MEASURES:

**SCR 58** Watson  
 Instructing the enrolling clerk of the senate to make corrections in S.B. No. 768.

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

**SB 768** (30 Yeas, 0 Nays)

Respectfully,  
 Patsy Spaw

Secretary of the Senate

**Message No. 7**

MESSAGE FROM THE SENATE  
SENATE CHAMBER

Austin, Texas

Tuesday, May 24, 2011 - 7

The Honorable Speaker of the House  
House Chamber  
Austin, Texas

Mr. Speaker:

I am directed by the senate to inform the house that the senate has taken the following action:

THE SENATE HAS PASSED THE FOLLOWING MEASURES:

**HB 3** Thompson SPONSOR: Huffman  
Relating to the imposition of a sentence of life without parole on certain defendants who commit certain sexual offenses.  
(Committee Substitute)

**HB 6** Eissler SPONSOR: Shapiro  
Relating to the foundation curriculum, the establishment of the instructional materials allotment, and the adoption, review, and purchase of instructional materials and technological equipment for public schools.  
(Committee Substitute/Amended)

**HB 890** Howard, Charlie SPONSOR: Davis  
Relating to certain custom vehicles and street rods.

**HB 971** King, Phil SPONSOR: Fraser  
Relating to removal of the requirement that an electric utility designate a preferred route for a transmission line in an application for a certificate of convenience and necessity.  
(Amended)

**HB 1103** Lucio III SPONSOR: Ellis  
Relating to the civil and criminal consequences of certain criminal offenses involving animal cruelty.  
(Committee Substitute/Amended)

**HB 1517** Isaac SPONSOR: Hegar  
Relating to the disposition of fines for traffic violations collected by certain municipalities.  
(Amended)

**HB 1541** McClendon SPONSOR: Wentworth  
Relating to the prevention of automobile burglary and theft.  
(Amended)

**HB 1754** Gallego SPONSOR: Wentworth

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.

(Committee Substitute/Amended)

**HB 2439**

Gallego

SPONSOR: Watson

Relating to posting suggestions and ideas on cost-efficiency and certain budget documents on certain state agency websites.

(Committee Substitute/Amended)

**HB 3647**

Turner

SPONSOR: Ogden

Relating to directing payment, after approval, of certain miscellaneous claims and judgments against the state out of funds designated by this Act; making appropriations.

(Committee Substitute)

THE SENATE HAS REFUSED TO CONCUR IN THE HOUSE AMENDMENTS TO THE FOLLOWING MEASURES AND REQUESTS THE APPOINTMENT OF A CONFERENCE COMMITTEE TO ADJUST THE DIFFERENCES BETWEEN THE TWO HOUSES:

**SB 156**

Senate Conferees: Huffman - Chair/Deuell/Duncan/Nelson/Uresti

**SB 958**

Senate Conferees: Wentworth - Chair/Eltife/Hegar/Uresti/Watson

**SB 1320**

Senate Conferees: Lucio - Chair/Carona/Eltife/Estes/Van de Putte

**SB 1338**

Senate Conferees: Eltife - Chair/Hegar/Seliger/Uresti/Zaffirini

**SB 1489**

Senate Conferees: Whitmire - Chair/Harris/Hinojosa/Huffman/Shapiro

**SB 1534**

Senate Conferees: Shapiro - Chair/Eltife/Harris/Jackson/Zaffirini

**SB 1816**

Senate Conferees: Zaffirini - Chair/Carona/Fraser/Lucio/Rodriguez

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

**HB 1951**

Senate Conferees: Hegar - Chair/Huffman/Nelson/Uresti/Williams

**HB 2499**

Senate Conferees: Nichols - Chair/Hegar/Hinojosa/Huffman/Whitmire

**HB 2817**

Senate Conferees: Duncan - Chair/Ellis/Jackson/Van de Putte/Williams

**HB 3577**

Senate Conferees: Zaffirini - Chair/Carona/Duncan/Eltife/Watson

THE SENATE HAS ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

**SB 201**

(31 Yeas, 0 Nays)

**SB 316**

(31 Yeas, 0 Nays)

Respectfully,  
Patsy Spaw  
Secretary of the Senate

**Message No. 8**

MESSAGE FROM THE SENATE  
SENATE CHAMBER

Austin, Texas

Tuesday, May 24, 2011 - 8

The Honorable Speaker of the House  
House Chamber  
Austin, Texas

Mr. Speaker:

I am directed by the senate to inform the house that the senate has taken the following action:

THE SENATE HAS PASSED THE FOLLOWING MEASURES:

**HB 2770** Smith, Wayne SPONSOR: Williams  
Relating to the powers and duties of navigation districts, port authorities, and certain municipalities.  
(Amended)

**HB 3396** Hernandez Luna SPONSOR: Patrick  
Relating to the prosecution of and punishment for the offense of breach of computer security.  
(Amended)

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

**SB 329** (29 Yeas, 2 Nays)

Respectfully,  
Patsy Spaw  
Secretary of the Senate

---

**APPENDIX**

---

**STANDING COMMITTEE REPORTS**

Favorable reports have been filed by committees as follows:

**May 23**

Culture, Recreation, and Tourism - **HCR 156, HCR 165**

## Licensing and Administrative Procedures - SB 411, SB 923, SB 1399

**ENROLLED**

May 23 - HB 8, HB 91, HB 150, HB 240, HB 252, HB 350, HB 361, HB 441, HB 442, HB 499, HB 596, HB 707, HB 960, HB 969, HB 1057, HB 1075, HB 1110, HB 1120, HB 1127, HB 1137, HB 1215, HB 1379, HB 1395, HB 1481, HB 1525, HB 1614, HB 1666, HB 1682, HB 1771, HB 1814, HB 1830, HB 1866, HB 1899, HB 1906, HB 2080, HB 2118, HB 2286, HB 2295, HB 2366, HB 2370, HB 2383, HB 2417, HB 2418, HB 2518, HB 2519, HB 2582, HB 2690, HB 2716, HB 2742, HB 2809, HB 2825, HB 2937, HB 2978, HB 3146, HB 3174, HB 3307, HB 3465, HB 3506, HB 3531, HB 3573, HB 3803, HB 3818, HB 3857, HCR 151

**SENT TO THE GOVERNOR**

May 23 - HB 34, HB 114, HB 123, HB 253, HB 282, HB 345, HB 399, HB 413, HB 451, HB 533, HB 549, HB 627, HB 649, HB 824, HB 930, HB 942, HB 962, HB 1123, HB 1128, HB 1135, HB 1136, HB 1146, HB 1245, HB 1381, HB 1529, HB 1559, HB 1643, HB 1694, HB 1772, HB 1774, HB 1840, HB 1841, HB 1908, HB 1965, HB 1983, HB 2061, HB 2069, HB 2108, HB 2162, HB 2189, HB 2245, HB 2258, HB 2312, HB 2354, HB 2727, HB 2759, HB 2793, HB 2859, HB 2908, HB 2928, HB 3065, HB 3272, HB 3547, HB 3814, HCR 18, HCR 63, HCR 68, HCR 90, HCR 133, HCR 164

