

# **JOURNAL**

OF THE

# **SENATE**

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REGULAR SESSION

OF THE

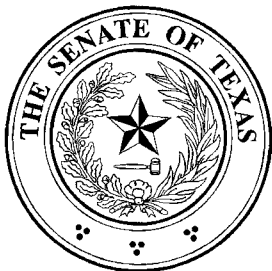
**EIGHTY-SECOND LEGISLATURE**

OF THE

**STATE OF TEXAS**

Convened January 11, 2011

Adjourned May 30, 2011



**VOLUME IV**

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# SENATE JOURNAL

EIGHTY-SECOND LEGISLATURE — REGULAR SESSION

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AUSTIN, TEXAS

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PROCEEDINGS

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SIXTY-SIXTH DAY

(Monday, May 23, 2011)

The Senate met at 10:16 a.m. pursuant to adjournment and was called to order by Senator Eltife.

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

The Presiding Officer announced that a quorum of the Senate was present.

Pastor John Valenzuela, Community Bible Church, San Antonio, was introduced by Senator Van de Putte and offered the invocation as follows:

Dear Lord, please bless those who lead this great state. I pray that You illuminate the minds and hearts of those in this historic room. I pray that You shower blessings upon the Senators of Your great state. I pray that You open all the doors and windows from heaven and saturate them with Your divine spirit. Anoint them. Appoint them. Transform them. Bring down a piece of heaven into their personal lives. Bless their homes. Bless their families. Bless their relationships. I pray that You give the Senators of Your great state the abundant life. Give them true health. Give them true wealth. Give them true love. Give them true peace. I pray that You lead and guide the Senators of Your great state down Your path, the path of righteousness, the path of grace, the path of mercy, and the path of justice. Direct their steps. Bring clarity in their decision-making. Teach them Your ways. As surely as the heaven is higher than the Earth, so are Your ways higher than theirs. I pray that You protect the Senators of Your great state. Place a hedge of protection around them and all they represent. Keep them safe. Keep them in peace. Keep them in security. In Your name I pray. Amen.

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

The motion prevailed without objection.

**SENATE RULE 11.13 SUSPENDED**  
**(Consideration of Bills in Committees)**

On motion of Senator Hegar and by unanimous consent, Senate Rule 11.13 was suspended to grant the conference committee on **HB 1** permission to meet while the Senate was meeting today.

**LEAVE OF ABSENCE**

On motion of Senator Whitmire, Senator Ogden was granted leave of absence on account of important business.

**MESSAGE FROM THE HOUSE**

HOUSE CHAMBER  
Austin, Texas  
Monday, May 23, 2011 - 1

The Honorable President of the Senate  
Senate Chamber  
Austin, Texas

Mr. President:

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

**THE HOUSE HAS PASSED THE FOLLOWING MEASURES:**

**HCR 158** Hartnett

Urging the federal government to grant a conditional green card to certain noncitizens to allow them to enlist in the United States armed forces and urging the federal government to award citizenship to these immigrants upon the completion of four years of honorable military service.

**SB 71** Nelson Sponsor: Raymond

Relating to certain reports submitted and analyses conducted regarding health and human services.

(Committee Substitute)

**SB 78** Nelson Sponsor: Laubenberg

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

(Committee Substitute)

**SB 176** Huffman Sponsor: Branch

Relating to student eligibility for tuition rebates offered by general academic teaching institutions.

(Committee Substitute)

**SB 209** Zaffirini Sponsor: Walle

Relating to juvenile case managers.

(Committee Substitute)

**SB 221** Nelson Sponsor: Gonzalez, Naomi  
Relating to the Department of Family and Protective Services, including protective services and investigations of alleged abuse, neglect, or exploitation for certain adults who are elderly or disabled; providing a criminal penalty.

(Committee Substitute/Amended)

**SB 222** Nelson Sponsor: Raymond  
Relating to access to certain long-term care services and supports under the medical assistance program.

(Committee Substitute)

**SB 263** Carona Sponsor: Kolkhorst  
Relating to the revocation or suspension of the license of a physician placed on deferred adjudication community supervision or arrested for certain offenses.

(Committee Substitute)

**SB 349** Eltife Sponsor: Hopson  
Relating to the hotel occupancy tax rate in certain municipalities.

(Committee Substitute)

**SB 408** Estes Sponsor: Keffer  
Relating to inspection of and the operation of watercraft on the John Graves Scenic Riverway; providing for the imposition of a criminal penalty.

(Committee Substitute)

**SB 502** West Sponsor: Thompson  
Relating to determinations of paternity; creating an offense.

(Committee Substitute)

**SB 512** Hegar Sponsor: Creighton  
Relating to the qualification of supervisors of a fresh water supply district.

**SB 629** Hegar Sponsor: Isaac  
Relating to the Ranch at Clear Fork Creek Municipal Utility District No. 1; providing authority to impose a tax and issue bonds; granting a limited power of eminent domain.

(Amended)

**SB 736** Hinojosa Sponsor: Dukes  
Relating to membership of local school health advisory councils.

(Committee Substitute)

**SB 747** Carona Sponsor: Hamilton  
Relating to the professions regulated by the Texas Real Estate Commission.

(Committee Substitute/Amended)

**SB 768** Watson Sponsor: Dukes  
Relating to the creation of the Rio de Vida Municipal Utility District No. 1; providing authority to impose a tax and issue bonds.

(Amended)

**SB 803** Hegar Sponsor: Hunter  
Relating to venue projects in certain counties.

(Committee Substitute)

- SB 942** Watson Sponsor: Lucio III  
Relating to the creation and financing of the Lakeway Regional Medical Center Defined Area in Travis County Water Control and Improvement District No. 17; providing authority to impose a tax and issue bonds.  
(Amended)
- SB 943** Carona Sponsor: Anchia  
Relating to the classification, use, and regulation of electric energy storage equipment or facilities.  
(Committee Substitute)
- SB 988** Van de Putte Sponsor: Larson  
Relating to the creation of a cybersecurity, education, and economic development council.  
(Committee Substitute)
- SB 1178** Nelson Sponsor: Raymond  
Relating to the regulation of certain shelter day-care facilities, child-care facilities, and individuals providing child-care services, and access to certain criminal history record information; providing an administrative penalty.  
(Committee Substitute)
- SB 1250** Lucio Sponsor: Lozano  
Relating to the applicability of certain restrictions on the location and operation of concrete crushing facilities.  
(Committee Substitute)
- SB 1251** Gallegos Sponsor: Alvarado  
Relating to the board of directors of the Greater East End Management District.  
(Amended)
- SB 1320** Lucio Sponsor: Gonzales, Veronica  
Relating to the execution of deeds conveying residential real estate in connection with certain transactions involving residential real estate.  
(Amended)
- SB 1331** Watson Sponsor: Gallego  
Relating to criminal offenses regarding the possession or consumption of alcoholic beverages by a minor and providing alcoholic beverages to a minor.  
(Amended)
- SB 1386** Lucio Sponsor: Oliveira  
Relating to the refusal to register motor vehicles by a county assessor-collector or the Texas Department of Motor Vehicles.  
(Amended)
- SB 1422** Nelson Sponsor: Solomons  
Relating to coordinated county transportation authorities; creating an offense.  
(Committee Substitute)



**SB 1477** Hegar Sponsor: Kleinschmidt  
 Relating to differential pay and benefits for certain employees of emergency services districts who are members of the armed forces.  
 (Committee Substitute)

**SB 1662** West Sponsor: Turner  
 Relating to the payment of costs associated with certain educational programs of Prairie View A&M University.

**SB 1736** Van de Putte Sponsor: Castro  
 Relating to the establishment of the College Credit for Heroes program.  
 (Committee Substitute)

**SB 1910** Rodriguez Sponsor: Margo  
 Relating to the delay of the transition to competition in the Western Electricity Coordinating Council service area and to net metering and energy efficiency goals and programs for utilities in that area.  
 (Committee Substitute)

**SCR 11** Hegar Sponsor: Morrison  
 Designating May 22 of each year from 2011 through 2020 as William Elmo Merrem Day in honor of the first Eagle Scout from Texas.

**SCR 16** Nelson Sponsor: Scott  
 Designating the month of March each year from 2011 through 2020 as Women Veterans Month in tribute to the immeasurable contributions that women in the military have made to this nation.

**SJR 16** Estes Sponsor: Ritter  
 Proposing a constitutional amendment providing for the appraisal for ad valorem tax purposes of open-space land devoted to water-stewardship purposes on the basis of its productive capacity.

Respectfully,

/s/Robert Haney, Chief Clerk  
House of Representatives

**SENATE RESOLUTION 1001**

Senator Jackson offered the following resolution:

**SR 1001**, Recognizing Eugene A. Cernan for his service to the nation as a naval aviator and astronaut.

The resolution was again read.

The resolution was previously adopted on Monday, May 16, 2011.

**GUESTS PRESENTED**

Senator Jackson was recognized and introduced to the Senate Gene Cernan, Dick Messbarger, Sandra Messbarger, and Jeannie Kranz.

The Senate welcomed its guests.

**CONCLUSION OF MORNING CALL**

The Presiding Officer at 10:34 a.m. announced the conclusion of morning call.

(Senator Jackson in Chair)

**SENATE BILL 141 WITH HOUSE AMENDMENTS**

Senator Eltife called **SB 141** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

**Amendment**

Amend **SB 141** by substituting in lieu thereof the following:

**A BILL TO BE ENTITLED  
AN ACT**

relating to debt management services and the regulation of debt management services providers.

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

SECTION 1. Section 394.202, Finance Code, is amended by adding Subdivisions (3-a), (9-a), and (11-a) and amending Subdivisions (6) and (10) to read as follows:

(3-a) "Concession" means assent to repayment of a debt on terms more favorable to a consumer than the terms of the agreement under which the consumer became indebted to the creditor.

(6) "Debt management service" means a service in which a provider obtains or seeks to obtain a concession from one or more creditors on behalf of a consumer[:

~~[(A) the receiving of money from a consumer for the purpose of distributing that money to or among one or more of the creditors of the consumer in full or partial payment of the consumer's obligations;~~

~~[(B) arranging or assisting a consumer to arrange for the distribution of one or more payments to or among one or more creditors of the consumer in full or partial payment of the consumer's obligations; or~~

~~[(C) exercising control, directly or indirectly, or arranging for the exercise of control over funds of a consumer for the purpose of distributing payments to or among one or more creditors of the consumer in full or partial payment of the consumer's obligations].~~

(9-a) "Principal amount of the debt" means the amount of a debt owed by a consumer at the time the consumer enters into a debt management service agreement.

(10) "Provider" means a person that acts as an intermediary between a consumer and one or more creditors and that provides or offers to provide [to a consumer in this state] a debt management service to a consumer in this state.

(11-a) "Settlement fee" means a charge that is imposed on or paid by a consumer in connection with a debt management service agreement after a creditor agrees to accept in full satisfaction of a debt an amount that is less than the principal amount of the debt.

SECTION 2. Section 394.204(k), Finance Code, is amended to read as follows:

(k) In addition to the power to refuse an initial application as specified in this section, the commissioner may suspend or revoke a provider's registration after notice and hearing if the commissioner finds that any of the following conditions are met:

(1) a fact or condition exists that if it had existed when the provider applied for registration would have been grounds for denying registration;

(2) a fact or condition exists that the commissioner was not aware of when the provider applied for registration and would have been grounds for denying registration;

(3) the provider violates this subchapter or rule or order of the commissioner under this subchapter;

(4) the provider is insolvent;

(5) the provider refuses to permit the commissioner to make an examination authorized by this subchapter;

(6) the provider fails to respond within a reasonable time and in an appropriate manner to communications from the commissioner;

(7) the provider has received money from or on behalf of a consumer for disbursement to a creditor under a debt management plan that provides for regular periodic payments to creditors in full repayment of the principal amount of the debts and the provider has failed to disburse money to the creditor [creditors] on behalf of the consumer [consumers] within a reasonable time, normally 30 days;

(8) the commissioner determines that the provider's trust account is not materially in balance with and reconciled to the consumer's account; or

(9) the provider fails to warrant the belief that the business will be operated lawfully and fairly and within the provisions and purposes of this subchapter.

SECTION 3. Section 394.206(b), Finance Code, is amended to read as follows:

(b) The bond or insurance must:

(1) run concurrently with the period of registration;

(2) be available to pay damages and penalties to consumers directly harmed by a violation of this subchapter;

(3) be in favor of this state for the use of this state and the use of a person who has a cause of action under this subchapter against the provider;

(4) if a bond:

(A) be in an amount equal to the average daily balance of the provider's trust account serving Texas consumers over the six-month period preceding the issuance of the bond, or in the case of an initial application, in an amount determined by the commissioner, but not less than \$25,000 or more than \$100,000, if the provider receives and holds money paid by or on behalf of a consumer for disbursement to the consumer's creditors; or

(B) be in the amount of \$50,000, if the provider does not receive and hold money paid by or on behalf of a consumer for disbursement to the consumer's creditors;

(5) if an insurance policy:

(A) provide coverage for professional liability, employee dishonesty, depositor's forgery, and computer fraud in an amount not less than \$100,000;

(B) be issued by a company rated at least "A-" or its equivalent by a nationally recognized rating organization; and

(C) provide for 30 days advance written notice of termination of the policy to be provided to the commissioner;

(6) be issued by a bonding, surety, or insurance company that is authorized to do business in the state; and

(7) be conditioned on the provider and its agents complying with all state and federal laws, including regulations, governing the business of debt management services.

SECTION 4. Sections 394.208(a), (d), and (f), Finance Code, are amended to read as follows:

(a) A provider may not enroll a consumer in a debt management plan unless, through the services of a counselor certified by an independent accreditation organization, the provider ~~has~~:

(1) has provided the consumer individualized counseling and educational information that at a minimum addresses the topics of managing household finances, managing credit and debt, and budgeting;

(2) has prepared an individualized financial analysis and an initial debt management plan for the consumer's debts with specific recommendations regarding actions the consumer should take;

(3) has determined that the consumer has a reasonable ability to make payments under the proposed debt management plan based on the information provided by the consumer;

(4) if the proposed debt management plan does not provide for a reduction of principal as a concession:

(A) has a reasonable expectation, provided that the consumer has provided accurate information to the provider, that each creditor of the consumer listed as a participating creditor in the plan will accept payment of the consumer's debts as provided in the initial plan; and

(B) has [~~(5)~~] prepared, for all creditors identified by the consumer or identified through additional investigation by the provider, a list, which must be provided to the consumer in a form the consumer may keep, of the creditors that the provider reasonably expects to participate in the plan; and

(5) has [~~(6)~~] provided a written document to the consumer in a form the consumer may keep that clearly and conspicuously contains the following statements:

(A) that debt management services are not suitable for all consumers and that consumers may request information about other ways, including bankruptcy, to deal with indebtedness;

(B) that if the provider is a nonprofit or tax-exempt organization the provider cannot require donations or contributions; and

(C) if applicable, that some of the provider's funding comes from contributions from creditors who participate in debt management plans, except that a provider may substitute for "some" the actual percentage of creditor contributions it received during the most recent reporting period.

(d) A provider may provide the information required by Subsections (a)(2), (4)(B), and (5) [~~and (6)~~] through its Internet website if the provider:

(1) has complied with the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001 et seq.);

(2) informs the consumer that, on electronic, telephonic, or written request the provider will make available to the consumer a paper copy or copies; and

(3) discloses on its Internet website:

- (A) the provider's name and each name under which it does business;
- (B) the provider's principal business address and telephone number;

and

(C) the names of the provider's principal officers.

(f) A provider who receives and disburses money to creditors on behalf of consumers for debt management services shall provide each consumer to [for] whom those services were provided [it provides debt management services] a written report accounting for:

- (1) the amount of money received from the consumer since the last report;
- (2) the amount and date of each disbursement made on the consumer's behalf to each creditor listed in the agreement since the last report;
- (3) any amount deducted from amounts received from the consumer; and
- (4) any amount held in reserve.

SECTION 5. Section 394.209(b), Finance Code, is amended to read as follows:

(b) Each debt management services agreement must:

- (1) be dated and signed by the consumer;
- (2) include the name and address of the consumer and the name, address, and telephone number of the provider;
- (3) describe the services to be provided;
- (4) state all fees, individually itemized, to be paid by the consumer;
- (5) if the proposed debt management plan does not provide for a reduction of principal as a concession, list in the agreement or accompanying document, to the extent the information is available to the provider at the time the agreement is executed, each participating creditor of the consumer to which payments will be made and, based on information provided by the consumer, the amount owed to each creditor and the schedule of payments the consumer will be required to make to the creditor, including the amount and date on which each payment will be due;
- (6) state the existence of a surety bond or insurance for consumer claims;
- (7) state that establishment of a debt management plan may impact the consumer's credit rating and credit score either favorably or unfavorably, depending on creditor policies and the consumer's payment history before and during participation in the debt management plan; and
- (8) state that either party may cancel the agreement without penalty at any time on 10 days' notice and that a consumer who cancels an agreement is entitled to a refund of all money that the consumer has paid to the provider that has not been disbursed.

SECTION 6. Subchapter C, Chapter 394, Finance Code, is amended by adding Section 394.2095 to read as follows:

Sec. 394.2095. CANCELLATION OF AGREEMENT BY EITHER PROVIDER OR CONSUMER. If a provider or a consumer cancels a debt management service agreement, the provider shall immediately return to the consumer:

- (1) any money of the consumer held in trust by the provider for the consumer's benefit; and

(2) 65 percent of any portion of the account set-up fee received under Section 394.210(g)(1) that has not been credited against settlement fees.

SECTION 7. Section 394.210, Finance Code, is amended by amending Subsections (c) through (f) and adding Subsections (g) through (n) to read as follows:

(c) A provider may not impose fees or other charges on a consumer or receive payment for debt management services until the consumer has entered into a debt management service agreement with the provider that complies with Section 394.209.

(d) If a consumer enters into a debt management service agreement with a provider, the provider may not impose a fee or other charge for debt counseling, education services, or similar services except as otherwise authorized by this section. The commissioner may authorize a provider to charge a fee based on the nature and extent of the counseling, education services, or other similar services furnished by the provider.

(e) Subsections (f)-(j) apply subject to an adjustment made under Section 394.2101.

(f) If a consumer is enrolled in a debt management plan that provides for a reduction of finance charges or fees for late payment, default, or delinquency as a concession from creditors, the provider may charge:

(1) a fee not to exceed \$100 for debt consultation or education services, including obtaining a credit report, setting up an account, and other similar services; and

(2) a monthly service fee, not to exceed the lesser of:

(A) \$10 multiplied by the number of accounts remaining in the plan on the day of the month the fee is assessed; or

(B) \$50.

(g) If a consumer is enrolled in a debt management plan that provides for settlement of debts for amounts that are less than the principal amounts of the debts as a concession from creditors, the provider may charge:

(1) a fee for debt consultation or education services, including obtaining a credit report, setting up an account, and other similar services, in an amount not to exceed the lesser of \$400 or four percent of the total amount of the outstanding debt included in the plan at the time the plan is established; and

(2) a monthly service fee, not to exceed the lesser of:

(A) \$10 multiplied by the number of accounts remaining in the plan on the day of the month the fee is assessed; or

(B) \$50; and

(3) one of the following:

(A) with respect to a debt management service agreement in which a flat fee is charged based on the total amount of debt that is included in a debt management plan, the total aggregate amount of fees charged to a consumer under this subchapter, including fees charged under Subdivisions (1) and (2), may not exceed 17 percent of the total principal amount of debt included in the debt management plan; or

(B) with respect to a debt management service agreement in which fees are computed as a percentage of the amount saved by a consumer as a result of a concession, in addition to fees charged under Subdivisions (1) and (2), a settlement fee may not exceed 30 percent of the excess of the outstanding amount of each debt over the amount actually paid to the creditor, as computed at the time of settlement.

(h) Settlement fees authorized under Subsection (g) may be charged only as debts are settled, and the total aggregate amount of fees charged to a consumer under this subchapter, including fees charged under Subsections (g)(1) and (2), may not exceed 20 percent of the principal amount of debt included in the debt management plan.

(i) The flat fee authorized under this subchapter shall be assessed in equal monthly payments for a period that is at least as long as the term of the debt management plan, as estimated when the debt management plan is established, unless:

(1) the fee payment period is voluntarily accelerated by the consumer in an addendum to the agreement or other separate agreement; and

(2) offers of settlement by creditors have been obtained on at least half of the outstanding debt included in the debt management plan.

(j) If a consumer is enrolled in a debt management plan that provides for the settlement of debts for amounts that are less than the principal amount of the debts as a concession from creditors, if fees for debt management services will not be charged or collected until the time a settlement agreement is reached with a creditor, and if at least one payment has been made toward the settlement agreement by or on behalf of the consumer, the fee limitations in Subsection (g) do not apply and the provider may charge reasonable settlement fees. The fee with respect to each debt included in the plan must:

(1) bear the same proportional relationship to the total fee for settling all debts included in the debt management plan as the principal amount of the particular debt bears to the total principal amount of the debt included in the plan; or

(2) be a percentage of the amount saved as a result of the settlement, determined as the difference between the principal amount of a debt and the amount actually paid to satisfy the debt. The percentage charged cannot change from one debt to another.

(k) A provider may impose fees or other charges or receive fees or payment under only one of Subsection (f), (g), or (j).

(l) If a consumer does not enter into a debt management service agreement with a provider, the provider may receive payment for debt counseling or education services provided to the consumer in an amount not to exceed \$100 or a greater amount, on approval of the commissioner. The commissioner may approve a fee in an amount greater than \$100 if the nature and extent of the educational and counseling services warrant the greater amount.

(m) If, before the expiration of the 90th day after the date debt counseling or education services are completed or canceled, a consumer enters into a debt management service agreement with a provider, the provider shall refund to the consumer any payments received under Subsection (l).

~~(n) Subject to an adjustment made under Section 394.2101, if any payment made by a consumer to a provider under this subchapter is dishonored, the provider may impose a reasonable charge on the consumer not to exceed the lesser of \$25 or an amount permitted by a law other than this chapter [Any fee charged by a provider must be fair and reasonable given the value of the products and services provided to the consumer, including consideration of the amount subject to debt management and the number of anticipated payments. A fee or a portion of a fee that is specifically related to a debt management plan may not be charged until the provider has complied with Sections 394.208(a) and (b) and 394.209.~~

~~[(d) A provider may charge a monthly maintenance fee if the fee is fair and reasonable.~~

~~[(e) A fee charged for a service other than a debt management service must be fair and reasonable.~~

~~[(f) The finance commission may establish maximum fair and reasonable fees under this section].~~

SECTION 8. Subchapter C, Chapter 394, Finance Code, is amended by adding Section 394.2101 to read as follows:

Sec. 394.2101. ADJUSTMENT OF AMOUNTS OF FEES OR OTHER CHARGES. (a) The commissioner shall compute and publish the dollar amounts of fees or other charges in amounts different from the amounts of fees or other charges specified in Section 394.210 to reflect inflation, as measured by the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor or, if that index is not available, another index adopted by finance commission rule. The commissioner shall adopt a base year and adjust the dollar amounts, effective on July 1 of each year, if the change in the index from the base year, as of December 31 of the preceding year, is at least 10 percent. The dollar amounts must be rounded to the nearest \$100, except that the amounts of the fees and other charges specified in Section 394.210 must be rounded to the nearest dollar.

(b) The commissioner shall notify registered providers of any change in dollar amounts made under Subsection (a) and make that information available to the public.

SECTION 9. Section 394.211(a), Finance Code, is amended to read as follows:

(a) A provider must use a trust account for the management of all money paid by or on behalf of a consumer and received by the provider for disbursement to the consumer's creditor. A provider may not commingle the money in a trust account established for the benefit of consumers with any operating funds of the provider. A provider shall exercise due care to appropriately manage the funds in the trust account.

SECTION 10. Section 394.213, Finance Code, is amended to read as follows:

Sec. 394.213. DUTIES OF PROPER MANAGEMENT. A provider has a duty to a consumer who receives debt management services from the provider to ensure that client money held by the provider is managed properly at all times.

SECTION 11. This Act takes effect September 1, 2011.



**Floor Amendment No. 1**

Amend **CSSB 141** (house committee printing) in added Section 394.210(h), Finance Code (page 11, line 6), by striking "Subsection (g)" and substituting "Subsection (g)(3)(B)".

The amendments were read.

Senator Eltife moved to concur in the House amendments to **SB 141**.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Ogden.

**SENATE BILL 61 WITH HOUSE AMENDMENT**

Senator Zaffirini called **SB 61** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

**Amendment**

Amend **SB 61** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to juvenile case managers.

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

SECTION 1. The heading to Article 45.056, Code of Criminal Procedure, is amended to read as follows:

Art. 45.056. [~~AUTHORITY TO EMPLOY~~] JUVENILE CASE MANAGERS[; ~~REIMBURSEMENT~~].

SECTION 2. Article 45.056, Code of Criminal Procedure, is amended by amending Subsection (d) and adding Subsections (f), (g), and (h) to read as follows:

(d) Pursuant to Article 102.0174, the court or governing body may pay the salary and benefits of a juvenile case manager and the costs of training, travel, office supplies, and other necessary expenses relating to the position of the juvenile case manager from the juvenile case manager fund.

(f) The governing body of the employing governmental entity under Subsection (a) shall adopt reasonable rules for juvenile case managers that provide:

(1) a code of ethics, and for the enforcement of the code of ethics;

(2) appropriate educational preservice and in-service training standards for juvenile case managers; and

(3) training in:

(A) the role of the juvenile case manager;

(B) case planning and management;

(C) applicable procedural and substantive law;

(D) courtroom proceedings and presentation;

(E) services to at-risk youth under Subchapter D, Chapter 264, Family

Code;

(F) local programs and services for juveniles and methods by which juveniles may access those programs and services; and

(G) detecting and preventing abuse, exploitation, and neglect of juveniles.

(g) The employing court or governmental entity under this article shall implement the rules adopted under Subsection (f).

(h) The commissioners court or governing body of the municipality that administers a juvenile case manager fund under Article 102.0174 shall require periodic review of juvenile case managers to ensure the implementation of the rules adopted under Subsection (f).

SECTION 3. Article 102.0174(g), Code of Criminal Procedure, is amended to read as follows:

(g) A fund created under this section may be used only to finance the salary, [and] benefits, training, travel expenses, office supplies, and other necessary expenses relating to the position of a juvenile case manager employed under Article 45.056. The fund may not be used to supplement the income of an employee whose primary role is not that of a juvenile case manager.

SECTION 4. Not later than December 1, 2011, the governing body of a governmental entity that employs a juvenile case manager under Article 45.056, Code of Criminal Procedure, as amended by this Act, shall adopt the rules required by that article.

SECTION 5. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2011.

The amendment was read.

Senator Zaffirini moved to concur in the House amendment to **SB 61**.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Ogden.

### **SENATE BILL 116 WITH HOUSE AMENDMENT**

Senator Uresti called **SB 116** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

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

Amend **SB 116** (house committee printing) as follows:

(1) In SECTION 2 of the bill, strike amended Section 71.0021(a), Family Code (page 1, lines 8-17), and substitute the following:

(a) "Dating violence" means an act, other than a defensive measure to protect oneself, by an actor [individual] that:

(1) is committed against a victim:

(A) [another individual] with whom the actor [that person] has or has had a dating relationship; or

(B) because of the victim's marriage to or dating relationship with an individual with whom the actor is or has been in a dating relationship or marriage; and

(2) ~~[that]~~ is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the victim ~~[individual]~~ in fear of imminent physical harm, bodily injury, assault, or sexual assault ~~[, but does not include defensive measures to protect oneself].~~

(2) Add the following appropriately numbered SECTION to the bill and renumber the SECTIONS of the bill appropriately:

SECTION \_\_\_\_\_. Section 82.002(b), Family Code, is amended to read as follows:

(b) With regard to family violence under Section 71.004(3), an application for a protective order to protect the applicant may be filed by:

(1) an adult member of the dating relationship; or

(2) an adult member of the marriage, if the victim is or was married as described by Section 71.0021(a)(1)(B).

(3) In SECTION 3 of the bill (page 1, lines 18-19), strike "Section 71.0021," and substitute "Sections 71.0021 and 82.002,".

The amendment was read.

Senator Uresti moved to concur in the House amendment to **SB 116**.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Ogden.

### SENATE BILL 690 WITH HOUSE AMENDMENT

Senator Carona called **SB 690** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

#### Floor Amendment No. 1

Amend **SB 690** (house committee printing) in SECTION 2 of the bill by striking proposed Subsection (a), Section 59.003, Property Code (page 1, lines 17 and 18), and substituting the following:

(a) The following provisions do ~~[Subchapter B, Chapter 54, does]~~ not apply to a self-service storage facility:

(1) Subchapter B, Chapter 54;

(2) Chapter 70; and

(3) Chapter 181, Health and Safety Code.

The amendment was read.

Senator Carona moved to concur in the House amendment to **SB 690**.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Ogden.

### SENATE BILL 544 WITH HOUSE AMENDMENT

Senator Seliger called **SB 544** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

**Amendment**

Amend **SB 544** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to unlawful acts against and criminal offenses involving the Medicaid program; providing penalties.

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

SECTION 1. Section 36.001, Human Resources Code, is amended by adding Subdivisions (5-a) and (7-a) to read as follows:

(5-a) "Material" means having a natural tendency to influence or to be capable of influencing.

(7-a) "Obligation" means a duty, whether or not fixed, that arises from:

(A) an express or implied contractual, grantor-grantee, or licensor-licensee relationship;

(B) a fee-based or similar relationship;

(C) a statute or regulation; or

(D) the retention of any overpayment.

SECTION 2. Section 36.002, Human Resources Code, is amended to read as follows:

Sec. 36.002. UNLAWFUL ACTS. A person commits an unlawful act if the person:

(1) knowingly makes or causes to be made a false statement or misrepresentation of a material fact to permit a person to receive a benefit or payment under the Medicaid program that is not authorized or that is greater than the benefit or payment that is authorized;

(2) knowingly conceals or fails to disclose information that permits a person to receive a benefit or payment under the Medicaid program that is not authorized or that is greater than the benefit or payment that is authorized;

(3) knowingly applies for and receives a benefit or payment on behalf of another person under the Medicaid program and converts any part of the benefit or payment to a use other than for the benefit of the person on whose behalf it was received;

(4) knowingly makes, causes to be made, induces, or seeks to induce the making of a false statement or misrepresentation of material fact concerning:

(A) the conditions or operation of a facility in order that the facility may qualify for certification or recertification required by the Medicaid program, including certification or recertification as:

(i) a hospital;

(ii) a nursing facility or skilled nursing facility;

(iii) a hospice;

(iv) an intermediate care facility for the mentally retarded;

(v) an assisted living facility; or

(vi) a home health agency; or

(B) information required to be provided by a federal or state law, rule, regulation, or provider agreement pertaining to the Medicaid program;

(5) except as authorized under the Medicaid program, knowingly pays, charges, solicits, accepts, or receives, in addition to an amount paid under the Medicaid program, a gift, money, a donation, or other consideration as a condition to the provision of a service or product or the continued provision of a service or product if the cost of the service or product is paid for, in whole or in part, under the Medicaid program;

(6) knowingly presents or causes to be presented a claim for payment under the Medicaid program for a product provided or a service rendered by a person who:

(A) is not licensed to provide the product or render the service, if a license is required; or

(B) is not licensed in the manner claimed;

(7) knowingly makes or causes to be made a claim under the Medicaid program for:

(A) a service or product that has not been approved or acquiesced in by a treating physician or health care practitioner;

(B) a service or product that is substantially inadequate or inappropriate when compared to generally recognized standards within the particular discipline or within the health care industry; or

(C) a product that has been adulterated, debased, mislabeled, or that is otherwise inappropriate;

(8) makes a claim under the Medicaid program and knowingly fails to indicate the type of license and the identification number of the licensed health care provider who actually provided the service;

(9) knowingly enters into an agreement, combination, or conspiracy to defraud the state by obtaining or aiding another person in obtaining an unauthorized payment or benefit from the Medicaid program or a fiscal agent;

(10) is a managed care organization that contracts with the Health and Human Services Commission or other state agency to provide or arrange to provide health care benefits or services to individuals eligible under the Medicaid program and knowingly:

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

(B) fails to provide to the commission or appropriate state agency information required to be provided by law, commission or agency rule, or contractual provision; or

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

(11) knowingly obstructs an investigation by the attorney general of an alleged unlawful act under this section;

(12) knowingly makes, uses, or causes the making or use of a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to this state under the Medicaid program; or

(13) knowingly engages in conduct that constitutes a violation under Section 32.039(b).

SECTION 3. Section 36.052(a), Human Resources Code, is amended to read as follows:

(a) Except as provided by Subsection (c), a person who commits an unlawful act is liable to the state for:

(1) the amount of any payment or the value of any monetary or in-kind benefit provided under the Medicaid program, directly or indirectly, as a result of the unlawful act, including any payment made to a third party;

(2) interest on the amount of the payment or the value of the benefit described by Subdivision (1) at the prejudgment interest rate in effect on the day the payment or benefit was received or paid, for the period from the date the benefit was received or paid to the date that the state recovers the amount of the payment or value of the benefit;

(3) a civil penalty of:

(A) not less than \$5,500 or the minimum amount imposed as provided by 31 U.S.C. Section 3729(a), if that amount exceeds \$5,500, and not ~~[\$5,000 or]~~ more than \$15,000 or the maximum amount imposed as provided by 31 U.S.C. Section 3729(a), if that amount exceeds \$15,000, for each unlawful act committed by the person that results in injury to an elderly person, as defined by Section 48.002(a)(1), a disabled person, as defined by Section 48.002(a)(8)(A), or a person younger than 18 years of age; or

(B) not less than \$5,500 or the minimum amount imposed as provided by 31 U.S.C. Section 3729(a), if that amount exceeds \$5,500, and not ~~[\$5,000 or]~~ more than \$11,000 or the maximum amount imposed as provided by 31 U.S.C. Section 3729(a), if that amount exceeds \$11,000, ~~[\$10,000]~~ for each unlawful act committed by the person that does not result in injury to a person described by Paragraph (A); and

(4) two times the amount of the payment or the value of the benefit described by Subdivision (1).

SECTION 4. Section 36.110(c), Human Resources Code, is amended to read as follows:

(c) A payment to a person under this section shall be made from the proceeds of the action. A person receiving a payment under this section is also entitled to receive from the defendant an amount for reasonable expenses, reasonable attorney's fees, and costs that the court finds to have been necessarily incurred. The court's determination of expenses, fees, and costs to be awarded under this subsection shall be made only after the defendant has been found liable in the action or the state settles an action with a defendant that the court determined, after a hearing, was fair, adequate, and reasonable in accordance with Section 36.107(c).

SECTION 5. Section 36.113, Human Resources Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) A person may not bring an action under this subchapter that is based on the public disclosure of allegations or transactions in a criminal or civil hearing in which the state or an agent of the state is a party, in a legislative or administrative report, hearing, audit, or investigation, or from the news media, unless the person bringing the action is an original source of the information. In this subsection, "original source" means an individual who:

(1) has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the state before filing an action under this subchapter that is based on the information; or

(2) has knowledge that is independent of and materially adds to the publicly disclosed allegations and who has voluntarily provided the information to the state before filing an action under this subchapter that is based on the information.

(c) Before dismissing an action as barred under this section, the court shall give the attorney general an opportunity to oppose the dismissal.

SECTION 6. The heading to Section 36.115, Human Resources Code, is amended to read as follows:

Sec. 36.115. RETALIATION [~~BY EMPLOYER~~] AGAINST PERSON [~~BRINGING SUIT~~] PROHIBITED.

SECTION 7. Section 36.115(a), Human Resources Code, is amended to read as follows:

(a) A person, including an employee, contractor, or agent, who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment [~~by the person's employer~~] because of a lawful act taken by the person in furtherance of an action under this subchapter, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this subchapter, or other efforts taken by the person to stop one or more violations of Section 36.002 is entitled to:

(1) reinstatement with the same seniority status the person would have had but for the discrimination; and

(2) not less than two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney's fees.

SECTION 8. Section 35A.02(a), Penal Code, is amended to read as follows:

(a) A person commits an offense if the person:

(1) knowingly makes or causes to be made a false statement or misrepresentation of a material fact to permit a person to receive a benefit or payment under the Medicaid program that is not authorized or that is greater than the benefit or payment that is authorized;

(2) knowingly conceals or fails to disclose information that permits a person to receive a benefit or payment under the Medicaid program that is not authorized or that is greater than the benefit or payment that is authorized;

(3) knowingly applies for and receives a benefit or payment on behalf of another person under the Medicaid program and converts any part of the benefit or payment to a use other than for the benefit of the person on whose behalf it was received;

(4) knowingly makes, causes to be made, induces, or seeks to induce the making of a false statement or misrepresentation of material fact concerning:

(A) the conditions or operation of a facility in order that the facility may qualify for certification or recertification required by the Medicaid program, including certification or recertification as:

(i) a hospital;

(ii) a nursing facility or skilled nursing facility;

- (iii) a hospice;
- (iv) an intermediate care facility for the mentally retarded;
- (v) an assisted living facility; or
- (vi) a home health agency; or

(B) information required to be provided by a federal or state law, rule, regulation, or provider agreement pertaining to the Medicaid program;

(5) except as authorized under the Medicaid program, knowingly pays, charges, solicits, accepts, or receives, in addition to an amount paid under the Medicaid program, a gift, money, a donation, or other consideration as a condition to the provision of a service or product or the continued provision of a service or product if the cost of the service or product is paid for, in whole or in part, under the Medicaid program;

(6) knowingly presents or causes to be presented a claim for payment under the Medicaid program for a product provided or a service rendered by a person who:

(A) is not licensed to provide the product or render the service, if a license is required; or

(B) is not licensed in the manner claimed;

(7) knowingly makes or causes to be made a claim under the Medicaid program for:

(A) a service or product that has not been approved or acquiesced in by a treating physician or health care practitioner;

(B) a service or product that is substantially inadequate or inappropriate when compared to generally recognized standards within the particular discipline or within the health care industry; or

(C) a product that has been adulterated, debased, mislabeled, or that is otherwise inappropriate;

(8) makes a claim under the Medicaid program and knowingly fails to indicate the type of license and the identification number of the licensed health care provider who actually provided the service;

(9) knowingly enters into an agreement, combination, or conspiracy to defraud the state by obtaining or aiding another person in obtaining an unauthorized payment or benefit from the Medicaid program or a fiscal agent;

(10) is a managed care organization that contracts with the Health and Human Services Commission or other state agency to provide or arrange to provide health care benefits or services to individuals eligible under the Medicaid program and knowingly:

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

(B) fails to provide to the commission or appropriate state agency information required to be provided by law, commission or agency rule, or contractual provision; or

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



(11) knowingly obstructs an investigation by the attorney general of an alleged unlawful act under this section or under Section 32.039, 32.0391, or 36.002, Human Resources Code; or

(12) knowingly makes, uses, or causes the making or use of a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to this state under the Medicaid program.

SECTION 9. (a) The changes in law made by this Act to Section 36.002, Human Resources Code, and Section 35A.02, Penal Code, apply only to conduct that occurs on or after the effective date of this Act. Conduct that occurs before the effective date of this Act is governed by the law in effect at the time the conduct occurred, and that law is continued in effect for that purpose.

(b) For purposes of this section, conduct constituting an offense under the penal law of this state occurred before the effective date of this Act if any element of the offense occurred before that date.

SECTION 10. The changes in law made by this Act to Sections 36.052, 36.110, and 36.113, Human Resources Code, apply only to a civil action for a violation of Section 36.002, Human Resources Code, as amended by this Act, commenced on or after the effective date of this Act. A civil action commenced before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 11. This Act takes effect September 1, 2011.

The amendment was read.

Senator Seliger moved to concur in the House amendment to **SB 544**.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Ogden.

### **SENATE BILL 639 WITH HOUSE AMENDMENT**

Senator Van de Putte called **SB 639** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

#### **Amendment**

Amend **SB 639** by substituting in lieu thereof the following:

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

relating to tuition and fee exemptions at public institutions of higher education for certain military personnel, veterans, and dependents residing in this state.

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

SECTION 1. Section 54.203, Education Code, is amended by amending Subsections (a), (d), (k), (l), and (m) and adding Subsections (a-3), (k-1), and (n) to read as follows:

(a) The governing board of each institution of higher education shall exempt the following persons from the payment of tuition, dues, fees, and other required charges, including fees for correspondence courses but excluding general deposit fees, student services fees, and any fees or charges for lodging, board, or clothing, provided the

person seeking the exemption currently resides in this state and entered the service at a location in this state, declared this state as the person's home of record in the manner provided by the applicable military or other service, or would have been determined to be a resident of this state for purposes of Subchapter B at the time the person entered the service:

(1) all nurses and honorably discharged members of the armed forces of the United States who served during the Spanish-American War or during World War I;

(2) all nurses, members of the Women's Army Auxiliary Corps, members of the Women's Auxiliary Volunteer Emergency Service, and all honorably discharged members of the armed forces of the United States who served during World War II except those who were discharged from service because they were over the age of 38 or because of a personal request on the part of the person that the person be discharged from service;

(3) all honorably discharged men and women of the armed forces of the United States who served during the national emergency which began on June 27, 1950, and which is referred to as the Korean War; and

(4) all persons who were honorably discharged from the armed forces of the United States after serving on active military duty, excluding training, for more than 180 days and who served a portion of their active duty during:

(A) the Cold War which began on the date of the termination of the national emergency cited in Subdivision (3);

(B) the Vietnam era which began on December 21, 1961, and ended on May 7, 1975;

(C) the Grenada and Lebanon era which began on August 24, 1982, and ended on July 31, 1984;

(D) the Panama era which began on December 20, 1989, and ended on January 21, 1990;

(E) the Persian Gulf War which began on August 2, 1990, and ends on the date thereafter prescribed by Presidential proclamation or September 1, 1997, whichever occurs first;

(F) the national emergency by reason of certain terrorist attacks that began on September 11, 2001; or

(G) any future national emergency declared in accordance with federal law.

(a-3) A person who before the 2011-2012 academic year received an exemption provided by Subsection (a) continues to be eligible for the exemption provided by that subsection as that subsection existed on January 1, 2011, subject to the other provisions of this section other than the requirement of Subsection (a) that the person must currently reside in this state.

(d) The governing board of each institution of higher education granting an exemption under this section shall require each [every] applicant claiming the exemption to submit to the institution an application for the exemption and satisfactory evidence that the applicant qualifies for the exemption not later than one year after the earlier of the date the institution:

(1) provides written notice to the applicant of the applicant's eligibility for the exemption; or

(2) receives a written acknowledgement from the applicant evidencing the applicant's awareness of the applicant's eligibility for the exemption.

(k) The Texas Higher Education Coordinating Board by rule shall prescribe procedures to allow:

(1) a person who becomes eligible for an exemption provided by Subsection (a) to waive the person's right to any unused portion of the maximum number of cumulative credit hours for which the person could receive the exemption and assign the exemption for the unused portion of those credit hours to a child of the person; and

(2) following the death of a person who becomes eligible for an exemption provided by Subsection (a), the assignment of the exemption for the unused portion of the credit hours to a child of the person, to be made by the person's spouse or by the conservator, guardian, custodian, or other legally designated caretaker of the child, if the child does not otherwise qualify for an exemption under Subsection (b).

(k-1) The procedures under Subsection (k) must ~~shall~~ provide:

(1) the manner in which a person may waive the exemption;

(2) the manner in which ~~and designate~~ a child may be designated to receive the exemption;

(3) ~~[(2)]~~ a procedure permitting the designation of ~~person to designate~~ a different child to receive the exemption if the child previously designated to receive the exemption did not use the exemption under this section for all of the assigned portion of credit hours; and

(4) ~~[(3)]~~ a method of documentation to enable institutions of higher education to determine the eligibility of the designated child to receive the exemption.

(l) To be eligible to receive an exemption under Subsection (k), the child must:

(1) be a student who is classified as a resident under Subchapter B when the child enrolls in an institution of higher education; and

(2) make satisfactory academic progress in a degree, certificate, or continuing education program as determined by the institution at which the child is enrolled in accordance with the policy of the institution's financial aid department, except that the institution may not require the child to enroll in a minimum course load; and

~~[(3) be 25 years of age or younger on the first day of the semester or other academic term for which the exemption is claimed, except that the Texas Higher Education Coordinating Board by rule shall prescribe procedures by which a child who suffered from a severe illness or other debilitating condition that affected the child's ability to use the exemption before reaching that age may be granted additional time to use the exemption corresponding to the time the child was unable to use the exemption because of the illness or condition].~~

(m) For purposes of this section, a person is the child of another person if the person is 25 years of age or younger on the first day of the semester or other academic term for which the exemption is claimed and:

(1) the person is the stepchild or the biological or adopted child of the other person; or

(2) the other person claimed the person as a dependent on a federal income tax return filed for the preceding year or will claim the person as a dependent on a federal income tax return for the current year.

(n) The Texas Higher Education Coordinating Board by rule shall prescribe procedures by which a child who suffered from a severe illness or other debilitating condition that affected the child's ability to use the exemption before reaching the age described by Subsection (m) may be granted additional time to use the exemption corresponding to the time the child was unable to use the exemption because of the illness or condition.

SECTION 2. Subchapter D, Chapter 54, Education Code, is amended by adding Section 54.2031 to read as follows:

Sec. 54.2031. DEPENDENT CHILDREN OF RESIDENTS WHO ARE MEMBERS OF ARMED FORCES DEPLOYED ON COMBAT DUTY. (a) In this section:

(1) "Child" includes a stepchild or adopted child.

(2) "Dependent" means a person who:

(A) is claimed as a dependent on a federal income tax return filed for the preceding year; or

(B) will be claimed as a dependent on a federal income tax return filed for the current year.

(b) The governing board of an institution of higher education shall exempt from the payment of tuition at the institution a dependent child of a member of the armed forces of the United States who is a resident of this state or is entitled to pay resident tuition under this chapter, for any semester or other academic term during which the member of the armed forces is deployed on active duty for the purpose of engaging in a combative military operation outside the United States.

(c) The governing board of an institution of higher education granting an exemption under this section shall require each applicant claiming the exemption to submit satisfactory evidence that the applicant qualifies for the exemption.

(d) A person may not receive an exemption provided for by this section for more than a cumulative total of 150 semester credit hours.

(e) A person may not receive an exemption under this section if the person is in default on a loan made or guaranteed for educational purposes by the State of Texas.

(f) In determining whether to admit a person to any certificate program or any baccalaureate, graduate, postgraduate, or professional degree program, an institution of higher education may not consider the fact that the person is eligible for an exemption under this section.

(g) In its appropriations to institutions of higher education, the legislature shall, based on availability, provide sufficient money to cover the full costs of the exemptions provided for by this section.

(h) If sufficient money is not available to cover the full costs to the institutions of higher education of the exemptions provided for by this section, the Texas Higher Education Coordinating Board shall prorate the available funding to each institution for purposes of this section in proportion to the total amount the institution would

otherwise be entitled to receive for purposes of this section. An institution is required to grant an exemption from the payment of tuition under this section only to the extent money is available for that purpose.

(i) The Texas Higher Education Coordinating Board may adopt rules necessary to administer this section.

SECTION 3. Section 54.203(b-2), Education Code, is repealed.

SECTION 4. The change in law made by this Act applies beginning with tuition and fees for the 2011 fall semester. Tuition and fees for a term or semester before the 2011 fall semester are covered by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 5. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2011.

The amendment was read.

Senator Van de Putte moved to concur in the House amendment to **SB 639**.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Ogden.

#### **SENATE BILL 1431 WITH HOUSE AMENDMENT**

Senator Carona called **SB 1431** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

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

Amend **SB 1431** on third reading by striking all below the enacting clause and substituting the following:

SECTION 1. Section 823.002, Insurance Code, is amended by adding Subdivisions (3-a), (3-b), and (4-a) and amending Subdivision (6) to read as follows:

(3-a) "Divesting person" means a person who has control of a domestic insurer and who intends to divest control of the domestic insurer.

(3-b) "Divestiture" means an abandonment of control of a domestic insurer by a divesting person that does not result in the transfer of control to another person.

(4-a) "Enterprise risk" means any activity, circumstance, event, or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect on the financial condition or liquidity of the insurer or its insurance holding company system as a whole, including anything:

(A) that would cause the insurer's risk-based capital to fall into company action level; or

(B) that would cause the insurer to be in hazardous financial condition.

(6) "Insurer" means any insurance company organized under the laws of this state, a commercially domiciled insurer, or an insurer authorized to engage in the business of insurance in this state. The term includes a capital stock company, mutual company, farm mutual insurance company, title insurance company, fraternal benefit society, local mutual aid association, statewide mutual assessment company, county

mutual insurance company, Lloyd's plan, reciprocal or interinsurance exchange, stipulated premium insurance company, and group hospital service corporation. The term does not include an agency, authority, or instrumentality of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state~~[-, or an agency, authority, instrumentality,]~~ or political subdivision of a state.

SECTION 2. Section 823.010, Insurance Code, is amended by amending Subsections (c) and (d) and adding Subsections (e), (f), (g), and (h) to read as follows:

(c) Except as provided by Subsection (d), [After] the disclaimer shall be deemed to have been allowed unless, not later than 60 days after the receipt of a complete disclaimer, [is filed:

~~[(1) the insurer is not required to register or report under Subchapter B because of a duty that arises out of the insurer's relationship with the person unless] the commissioner notifies the filing party that [disallows] the disclaimer is disallowed[-, in which event the duty to register or report begins on the date of the disallowance; and~~

~~[(2) the person is not required to comply with Sections 823.154, 823.155, 823.159, and 823.160 unless the commissioner disallows the disclaimer].~~

(d) Notwithstanding Subsection (c), if the commissioner at any time determines that the information disclosed in the disclaimer is incomplete or inaccurate or is no longer accurate, the [The] commissioner may disallow the disclaimer [only after:

~~[(1) providing to each party in interest notice of and the opportunity to be heard on the disallowance; and~~

~~[(2) making specific findings of fact to support the disallowance].~~

(e) If the commissioner disallows a disclaimer, the party who filed the disclaimer may request an administrative hearing. The commissioner shall grant the request for the hearing.

(f) Except as provided by Subsection (h), if the commissioner allows a disclaimer:

(1) the insurer is not required to register or report under Subchapter B due to a duty arising from the insurer's relationship with the party who filed the disclaimer; and

(2) the party who filed the disclaimer is not required to comply with Section 823.154, 823.155, 823.159, or 823.160.

(g) If the commissioner allows a disclaimer, the commissioner at the same time may also waive another provision of this chapter with relation to the party who filed the disclaimer. The commissioner may require reasonable controls and safeguards that are consistent with the purposes of this chapter in granting a waiver under this subsection.

(h) If the commissioner disallows a disclaimer under Subsection (d):

(1) effective on the date of the disallowance, the insurer shall register and report as required by Subchapter B; and

(2) the party who filed the disclaimer shall comply with Sections 823.154, 823.155, 823.159, and 823.160.

SECTION 3. Section 823.011, Insurance Code, is amended by amending Subsections (a), (b) and (d) and adding Subsections (e), (f), (g), (h), and (i) to read as follows:

(a) This section applies only to information, including documents and copies of documents, that is:

(1) reported under Subchapter B; ~~or~~

(2) disclosed to the commissioner under Section 823.010; or

(3) obtained by or disclosed to the commissioner or another person in the course of an examination or investigation under Subchapter H.

(b) The information shall be confidential and privileged for all purposes ~~treated confidentially and is not subject to subpoena~~. Except as provided by Subsections (c) and (d), the information may not be disclosed without the prior written consent of the insurer to which it pertains.

(d) Except as provided by Subsection (e), if the recipient of documents or other information agrees in writing to maintain the confidential and privileged status of the documents or other information, and verifies in writing the legal authority to maintain the confidential and privileged status of the documents or information, the ~~The~~ commissioner or another person may disclose the information to any of the following entities functioning in an official capacity:

(1) a commissioner of insurance or an insurance department of another state;

(2) an authorized law enforcement official;

(3) a district attorney of this state;

(4) the attorney general; ~~or~~

(5) a grand jury;

(6) members of a supervisory college described by Section 823.0145; or

(7) the National Association of Insurance Commissioners and its affiliates and subsidiaries.

(e) Notwithstanding Subsection (d), the commissioner may share confidential and privileged information reported under Section 823.0595 only with the commissioner of insurance of a state that has a statute or rule substantially similar to Subsection (d) who agrees in writing not to disclose the information.

(f) Information described by Subsection (a), including information in the possession of the National Association of Insurance Commissioners under this section, is confidential and privileged for all purposes, including for purposes of:

(1) Chapter 552, Government Code;

(2) a response to a subpoena; or

(3) discovery or admissibility in evidence in a civil action.

(g) The commissioner shall enter into written agreements with the National Association of Insurance Commissioners that comply with the requirements of Subsection (d) regarding the sharing and use of information provided under this chapter. An agreement entered into under this subsection must:

(1) specify procedures and protocols regarding the confidentiality and security of information shared with the National Association of Insurance Commissioners and its affiliates and subsidiaries under this chapter, including procedures and protocols for sharing by the National Association of Insurance Commissioners with other state, federal, or international regulators;

(2) specify that ownership of information shared with the National Association of Insurance Commissioners and its affiliates and subsidiaries under this chapter remains with the commissioner, and that use of the information by the National Association of Insurance Commissioners is subject to the direction of the commissioner;

(3) require prompt notice to an insurer whose confidential information is in the possession of the National Association of Insurance Commissioners under this chapter that the information is subject to a request or subpoena to the National Association of Insurance Commissioners for disclosure or production; and

(4) require the National Association of Insurance Commissioners and its affiliates and subsidiaries to give consent to intervention by an insurer in any judicial or administrative action in which the National Association of Insurance Commissioners and its affiliates and subsidiaries may be required to disclose confidential information about the insurer shared with the National Association of Insurance Commissioners and its affiliates and subsidiaries under this chapter.

(h) This section may not be construed to prevent the commissioner from using information described by Subsection (a) for any purpose with respect to which the commissioner or the attorney general is otherwise authorized to act, including a regulatory or other legal action.

(i) The commissioner remains solely responsible for the administration, execution, and enforcement of this chapter, and the commissioner's sharing of information does not constitute a delegation of regulatory or rulemaking authority.

SECTION 4. Subchapter A, Chapter 823, Insurance Code, is amended by adding Section 823.0145 to read as follows:

Sec. 823.0145. SUPERVISORY COLLEGES. (a) With respect to any insurer registered under Subchapter B, and in accordance with Subsection (c), the commissioner may participate in a supervisory college for a domestic insurer that is part of an insurance holding company system with international operations in order to determine the insurer's compliance with this chapter. The commissioner may:

(1) initiate the establishment of a supervisory college;

(2) clarify the membership and participation of other entities in the supervisory college;

(3) clarify the functions of the supervisory college and the role of other entities in the supervisory college;

(4) establish a group-wide supervisor;

(5) coordinate the ongoing activities of the supervisory college, including meetings, regulatory activities, and processes for information sharing; and

(6) establish a crisis management plan.

(b) In order to assess the business strategy, financial position, legal and regulatory position, risk exposure, risk management and governance processes, and as part of the examination of individual insurers under Subchapter H, the commissioner



may participate in a supervisory college with other entities that regulate the insurer or its affiliates, including other state, federal, and international regulatory entities. The commissioner may enter into agreements under Section 823.011 to cooperate with other regulatory entities. Nothing in this section shall be construed as delegating to the supervisory college the commissioner's authority to regulate the insurer or its affiliates.

(c) A registered insurer subject to this section shall pay the reasonable expenses, including reasonable travel expenses, of the commissioner's participation in a supervisory college under Subsection (b). For purposes of this section, a supervisory college may be convened as either a temporary or permanent forum for communication and cooperation between the entities that regulate the insurer or its affiliates, and the commissioner may establish a regular assessment to the insurer for the payment of expenses related to the regulation of the insurer.

SECTION 5. Section 823.052, Insurance Code, is amended by amending Subsections (b) and (c) and adding Subsections (c-1) and (c-2) to read as follows:

(b) The registration statement must be in a format prescribed by the National Association of Insurance Commissioners or adopted by rule of the commissioner and contain current information about:

(1) the identity and relationship of each affiliate in the insurance holding company system of which the insurer is a part;

(2) the capital structure, general financial condition, and ownership and management of the insurer, the insurer's holding company, the insurer's subsidiaries, and, if the commissioner considers the information necessary, any of the insurer's other affiliates; and

(3) any pledge of stock of the insurer or a subsidiary or controlling affiliate of the insurer for a loan made to a member of the insurer's insurance holding company system.

(c) The registration statement must also contain information about:

(1) each outstanding loan the insurer makes to an affiliate of the insurer or an affiliate makes to the insurer;

(2) each purchase, sale, or exchange of securities or other investment between the insurer and an affiliate of the insurer;

(3) each purchase, sale, or exchange of assets between the insurer and an affiliate of the insurer;

(4) each management and service contract or cost-sharing arrangement between the insurer and an affiliate of the insurer;

(5) each reinsurance agreement between the insurer and an affiliate of the insurer that covers one or more lines of insurance of the ceding company;

(6) each agreement between the insurer and an affiliate of the insurer to consolidate federal income tax returns;

(7) each transaction between the insurer and an affiliated financial institution;

(8) each transaction between the insurer and an affiliate of the insurer that is not in the ordinary course of business;

(9) each guarantee or undertaking, other than an insurance contract entered into in the ordinary course of the insurer's business, for the benefit of an affiliate of the insurer that results in a contingent exposure of the insurer's assets to liability;

(10) each dividend or distribution to the insurer's shareholders; ~~and~~

(11) each transaction between the insurer and an affiliate of the insurer not specified by this subsection that is subject to Section 823.102, 823.103, or 823.104;

(12) the corporate governance and internal control responsibilities of the insurer's board of directors, including a statement that:

(A) the insurer's senior management or officers have approved and implemented, and continue to maintain and monitor, corporate governance and internal control procedures; and

(B) the insurer's board of directors oversees corporate governance and internal controls; and

(13) any other information that the commissioner requires by rule.

(c-1) On request of the commissioner, an insurer shall include with the statement a copy of all financial statements for the insurance holding company system and all affiliates of the holding company system, including annual audited financial statements filed with the United States Securities and Exchange Commission pursuant to the Securities Act of 1933 (15 U.S.C. Section 77a et seq.) or the Securities Exchange Act of 1934 (15 U.S.C. Section 78a et seq.). An insurer may not be required to submit financial statements for an affiliate that is privately owned by not more than five security holders, each of whom is an individual, unless the commissioner determines that the operations of the affiliate may materially affect the operations, management, or financial condition of an insurer in a holding company system. An affiliate may seek judicial review of a request for financial statements under this subsection.

(c-2) An insurer required by the commissioner to submit financial statements under this section, Section 823.201, or Section 823.351 may satisfy the requirement by submitting to the commissioner:

(1) the financial statements that the insurer's parent corporation most recently filed with the Securities and Exchange Commission; and

(2) if the insurer is required to submit financial statements for an affiliate, the financial statements that the affiliate most recently filed with an agency that regulates the affiliate.

SECTION 6. Subchapter B, Chapter 823, Insurance Code, is amended by adding Section 823.0595 to read as follows:

Sec. 823.0595. ENTERPRISE RISK REPORT. (a) Except as provided by Subsections (d) and (f), the ultimate controlling person, as defined by Section 823.055, of each insurer required to file an annual registration shall file with the registration an annual enterprise risk report. The report must, to the best of the ultimate controlling person's knowledge, identify the material risks within the insurance holding company system that may pose enterprise risk to the insurer. The report must be filed with the lead state commissioner of the insurance holding company system, as determined by the commissioner. In determining the lead state commissioner, the commissioner shall consider the procedures adopted by the National Association of Insurance Commissioners.

(b) The ultimate controlling person of an insurer shall file the first enterprise risk report required by this section with the first annual registration statement due after:

(1) January 1, 2013, if the total direct or assumed annual premiums of the insurer were \$5 billion or more during the preceding 12-month period;

(2) January 1, 2014, if the total direct or assumed annual premiums of the insurer were more than \$1 billion but less than \$5 billion during the preceding 12-month period;

(3) January 1, 2015, if the total direct or assumed annual premiums of the insurer were more than \$500 million but less than \$1 billion during the preceding 12-month period; or

(4) January 1, 2016, if the total direct or assumed annual premiums of the insurer were \$300 million or more but less than \$500 million during the preceding 12-month period.

(c) Subsection (b) and this subsection expire January 2, 2015.

(d) Except as provided by Subsection (e), the ultimate controlling person of an insurer with total direct or assumed annual premiums of less than \$300 million is not required to submit an enterprise risk report under Subsection (a).

(e) Regardless of total direct or assumed annual premium, the ultimate controlling person of an insurer that is not in compliance with applicable risk-based capital standards or that is otherwise in hazardous condition, as determined by the commissioner, shall file an enterprise risk report required by Subsection (a) as directed by the commissioner.

(f) An insurer or health maintenance organization that in the preceding calendar year had direct written and assumed premiums of more than \$300 million but less than \$500 million may request an exemption from the reporting requirements of Subsection (a) by filing with the commissioner a written statement describing the undue financial or organizational hardship the insurer or health maintenance organization would suffer as a result of complying with Subsection (a). The commissioner may grant the exemption if the commissioner finds that compliance with Subsection (a) would impose an undue financial or organizational hardship on the insurer or health maintenance organization.

(g) The ultimate controlling person of an insurance holding company system is not required to submit an enterprise risk report under Subsection (a) if:

(1) the ultimate controlling person:

(A) has owned a controlling interest in the voting securities of an insurer described by Subdivision (2) since September 1, 1991, or before;

(B) is a charitable foundation, trust, or both; and

(C) has not filed or received a disclaimer under Section 823.010; and

(2) the insurer in which the ultimate controlling person owns a controlling interest:

(A) was organized under the laws of this state before January 1, 1910;

(B) is registered under Subchapter B;

(C) has issued equity shares of stock registered under Section 12, Securities Exchange Act of 1934 (15 U.S.C. Section 781);

(D) on September 1, 2011, owns or controls an insurance company subsidiary that is party of the same insurance holding company system as the insurer; and

(E) files with the commissioner all registration statements and information relating to material changes of the insurance holding company system required under Subchapter B, including the financial statements of the ultimate controlling person described by Subdivision (1).

(h) An exemption under Subsection (g) applies only for the period during which the ultimate controlling person described by Subsection (g)(1) satisfies the requirements of Subsection (g) and expires on the date of a change in control of the insurer described by Subsection (g)(2) involving at least 50 percent of the voting securities of the insurer. An insurance holding company system may reapply for an exemption under Subsection (g) after the change in control if the system continues to meet the requirements of Subsection (g).

(i) An ultimate controlling person described by Subsection (g)(1) and an insurer described by Subsection (g)(2) shall respond to reasonable inquiries from the department related to the administration of Chapter 404.

SECTION 7. Section 823.060, Insurance Code, is amended to read as follows:

Sec. 823.060. VIOLATION OF SUBCHAPTER. The failure to file a registration statement or an amendment to a registration statement, or an enterprise risk report, within the time specified for filing the statement, ~~or~~ amendment, or report, as required by this subchapter, is a violation of this subchapter.

SECTION 8. The heading to Section 823.101, Insurance Code, is amended to read as follows:

Sec. 823.101. STANDARDS FOR TRANSACTION WITHIN AN INSURANCE HOLDING COMPANY SYSTEM ~~[WITH AFFILIATE]~~.

SECTION 9. Section 823.101, Insurance Code, is amended by amending Subsection (a) and adding Subsection (b-1) to read as follows:

(a) This section applies only to a material transaction within an insurance holding company system to which an ~~[between a registered insurer and an affiliate of the]~~ insurer subject to a registration under Section 843.052 is a party.

(b-1) An agreement, including an agreement for cost-sharing, services, or management, must include all provisions required by rule of the commissioner.

SECTION 10. Section 823.102, Insurance Code, is amended by amending Subsection (a) and adding Subsections (d) and (e) to read as follows:

(a) This section applies only to a sale, purchase, exchange, loan or other extension of credit, or investment between a domestic insurer and any person in the insurer's insurance holding company system, including an amendment or modification of an affiliate agreement previously filed under this section, that involves more than the lesser of 5 percent of the insurer's admitted assets or 25 percent of the insurer's surplus, as of December 31 of the year preceding the year in which the transaction occurs.

(d) The notice described by Subsection (c) must include:

- (1) the reasons for entering into or changing the transaction; and
- (2) the financial impact of the transaction on the domestic insurer.

(e) Not later than the 30th day after the termination of a previously filed agreement, the domestic insurer shall give notice of the termination to the commissioner.

SECTION 11. Section 823.103, Insurance Code, is amended by amending Subsection (a) and adding Subsections (e) and (f) to read as follows:

(a) This section applies only to:

(1) a sale, purchase, exchange, loan or other extension of credit, or investment between a domestic insurer and any person in the insurer's insurance holding company system, including an amendment or modification of an affiliate agreement previously filed under this section:

(A) that involves more than the lesser of one-half of one percent of the insurer's admitted assets or five percent of the insurer's surplus, as of December 31 of the year preceding the year in which the transaction occurs; and

(B) the approval of which is not required under Section 823.102;

(2) a reinsurance agreement, including a reinsurance treaty or pooling agreement, or an amendment or modification of an agreement previously filed under this section, between a domestic insurer and any person in the insurer's holding company system [~~or a modification of such an agreement~~];

(3) a rendering of services between a domestic insurer and any person in the insurer's holding company system on a regular or systematic basis, including a tax-allocation agreement, or an amendment or modification of an agreement previously filed under this section; or

(4) any material transaction between a domestic insurer and any person in the insurer's holding company system that is specified by rule and that the commissioner determines may adversely affect the interests of the insurer's policyholders or of the public, including an amendment or modification of an agreement previously filed under this section.

(e) The notice described by Subsection (c) must include:

(1) the reasons for entering into or changing the transaction; and

(2) the financial impact of the transaction on the domestic insurer.

(f) Not later than the 30th day after the termination of a previously filed agreement, the domestic insurer shall give notice of the termination to the commissioner.

SECTION 12. Section 823.154, Insurance Code, is amended to read as follows:

Sec. 823.154. REQUIREMENTS FOR ACQUISITION OR EXERCISE OF CONTROL OR DIVESTITURE OF DOMESTIC INSURER. (a) Before a person who directly or indirectly controls, or after the acquisition would directly or indirectly control, a domestic insurer may in any manner acquire a voting security of a domestic insurer or before a person may otherwise acquire control of a domestic insurer or exercise any control over a domestic insurer, or before a person may initiate a divestiture of control of a domestic insurer:

(1) the acquiring person shall file with the commissioner a statement that satisfies the requirements of Subchapter E; ~~and~~

(2) the acquisition or divestiture of control must be approved by the commissioner in accordance with this subchapter; and

(3) if the person is initiating a divestiture of control, the divesting person shall file with the commissioner a notice of divestiture on a form adopted by the National Association of Insurance Commissioners or adopted by the commissioner by rule.

(b) The acquiring person or divesting person shall send a copy of the statement filed under this section to the domestic insurer.

(c) A statement or notice filed under this section must be filed not later than the 60th day before the proposed effective date of the acquisition or change of control or divestiture and is subject to public inspection at the office of the commissioner.

(d) Notwithstanding Subsection (a), a divesting person is not required to provide the commissioner with notice of divestiture required by Subsection (a)(3) if an acquiring person submits the statement required by Subsection (a)(1) and that acquisition is approved by the commissioner.

SECTION 13. Section 823.157, Insurance Code, is amended to read as follows:

Sec. 823.157. APPROVAL OF ACQUISITION, CHANGE, OR DIVESTITURE OF CONTROL. (a) The commissioner shall approve or deny an acquisition, ~~or~~ change, or divestiture of control for which a statement or notice is filed under Section 823.154 not later than the 60th day after the date the statement required by that section is filed. The 60-day period may be waived by the person filing the statement or notice required by Section 823.154 and the domestic insurer. On the request of either the person filing the statement or notice required by Section 823.154, or the domestic insurer, the commissioner shall hold a hearing on a denial.

(b) In considering whether to approve or deny, the commissioner shall consider whether:

(1) immediately on the acquisition, ~~or~~ change, or divestiture of control the domestic insurer would not be able to satisfy the requirements for the issuance of a new certificate of authority to write the line or lines of insurance for which the insurer holds a certificate of authority;

(2) the effect of the acquisition, ~~or~~ change, or divestiture of control would be substantially to lessen competition in a line or subclassification lines of insurance in this state or tend to create a monopoly in a line or subclassification lines of insurance in this state;

(3) the financial condition of the acquiring person may jeopardize the financial stability of the domestic insurer or prejudice the interest of the domestic insurer's policyholders;

(4) the acquiring person has a plan or proposal to liquidate the domestic insurer or cause the insurer to declare dividends or make distributions, sell any of its assets, consolidate or merge with any person, make a material change in its business or corporate structure or management, or enter into a material agreement, arrangement, or transaction of any kind with any person, and that the plan or proposal is unfair, prejudicial, hazardous, or unreasonable to the insurer's policyholders and not in the public interest;

(5) due to a lack of competence, trustworthiness, experience, and integrity of the persons who would control the operation of the domestic insurer, the acquisition or change of control would not be in the interest of the insurer's policyholders and the public;

(5-a) the divestiture of control may jeopardize the financial stability of the domestic insurer or prejudice the interest of the domestic insurer's policyholders and other claimants; or

(6) the acquisition, ~~or~~ change, or divestiture of control will violate the law of this or another state or the United States.

(c) If a proposed acquisition, change, or divestiture of control will require the approval of more than one commissioner, the commissioner may participate in a public hearing referred to in this chapter held on a consolidated basis on request of the person filing the statement required by Section 823.154. The person filing the statement under Section 823.154 shall file the statement with the National Association of Insurance Commissioners within five days of making the request for a public hearing. A hearing conducted on a consolidated basis shall be public and shall be held within the United States before the commissioners of the states in which the insurers are domiciled. The commissioners shall hear and receive evidence at the hearing. The commissioner may attend the hearing in person or by telecommunication.

(d) This section does not require the commissioner to hold a hearing before approving or denying an acquisition, change, or divestiture of control.

SECTION 14. Section 823.201, Insurance Code, is amended by adding Subsections (d) and (e) to read as follows:

(d) The acquiring person shall agree to provide the annual enterprise risk report required by Section 823.0595 for as long as the acquiring person maintains control of the insurer.

(e) The acquiring person and all subsidiaries within the acquiring person's control in the insurance holding company system shall provide information to the commissioner on request of the commissioner as the commissioner deems necessary to evaluate enterprise risk to the insurer.

SECTION 15. Section 823.205, Insurance Code, is amended by adding Subsection (c) to read as follows:

(c) An insurer required to file information under Section 823.154 may satisfy the requirement of Section 823.052(c-1) by providing the commissioner with the most recently filed parent corporation reports that have been filed with the United States Securities and Exchange Commission, if required by the commissioner.

SECTION 16. Section 823.351, Insurance Code, is amended by amending Subsections (a) and (b) and adding Subsections (a-1) and (b-1) to read as follows:

(a) Subject to Section 823.352, the commissioner may order an insurer registered under Subchapter B to produce records, books, or other information papers in the possession of the insurer or an affiliate of the insurer that are necessary to ascertain the financial condition or legality of conduct of the insurer, including the enterprise risk to the insurer by the ultimate controlling party, or by any entity or combination of entities within the insurance holding company system, or by the insurance holding company system on a consolidated basis.

(a-1) To determine compliance with this chapter, the commissioner may order any insurer registered under Subchapter B to produce information not in the possession of the insurer if the insurer can obtain access to the information pursuant to contractual relationships, statutory obligations, or other methods. In the event that the insurer is unable to obtain the information requested by the commissioner, the insurer

shall provide the commissioner with a detailed explanation of the reason why the insurer is unable to obtain the information, and the identity of the holder of information. If it appears to the commissioner that the insurer's explanation is without merit, the commissioner may after notice and hearing:

(1) require the insurer to pay a penalty of not less than \$100 for each day the insurer delays producing the information; or

(2) suspend or revoke the insurer's license.

(b) If an insurer fails to comply with an order under this section [~~Subsection (a)~~], the commissioner by order may require the examination of each holding company of the insurer and each controlled person or affiliate in the insurer's insurance holding company system if the commissioner has cause to believe that:

(1) the operations of that person may materially affect the operations, management, or financial condition of any controlled insurer in that system; and

(2) the commissioner is unable to obtain relevant information from the controlled insurer.

(b-1) The commissioner may issue subpoenas, administer oaths, and examine under oath any person for purposes of determining compliance with this section. On the failure or refusal of a person to obey a subpoena, the commissioner may petition a court of competent jurisdiction, and on proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order is punishable as contempt of court. A person shall attend as a witness at the place specified in the subpoena, when subpoenaed, at any location in this state. The person is entitled to the same fees and mileage, if claimed, as a witness in district court. Fees, mileage, and actual expenses necessarily incurred in securing the attendance of a witness shall be itemized and charged against, and be paid by, the insurer being examined.

SECTION 17. Section 823.452, Insurance Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) If it appears to the commissioner that a person has committed a violation of Subchapter D that prevents the full understanding of the enterprise risk to the insurer by affiliates or by the insurance holding company system, the violation may serve as an independent basis for disapproving dividends or distributions and for issuing an order under Chapter 404 or Chapter 441.

SECTION 18. (a) Subject to Subsection (b) of this section, the Texas Department of Insurance may not implement Section 823.0595, Insurance Code, as added by this Act, until the date that the commissioner determines that the National Association of Insurance Commissioners has completed an enterprise risk form and has proposed a master confidentiality agreement and places notice of that determination in the Texas Register.

(b) An insurer is not required to file an enterprise risk report under Section 823.0595, Insurance Code, as added by this Act, until January 1, 2014.

SECTION 19. This Act takes effect September 1, 2011.

The amendment was read.

Senator Carona moved to concur in the House amendment to **SB 1431**.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Ogden.



### SENATE BILL 260 WITH HOUSE AMENDMENT

Senator West called **SB 260** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

#### Floor Amendment No. 1

Amend **SB 260** (house committee printing) by striking all below the enacting clause and substituting the following:

SECTION 1. Section 42.0421, Human Resources Code, is amended by amending Subsection (a) and adding Subsections (f) and (g) to read as follows:

(a) The minimum training standards prescribed by the department under Section 42.042(p) for an employee, director, or operator of a day-care center, ~~or~~ group day-care home, or registered family home must include:

(1) 24 ~~eight~~ hours of initial training that must be completed not later than the 90th day after the employee's first day of employment for an employee of a day-care center who has no previous training or less than two years of employment experience in a regulated child-care facility, eight hours of which must ~~be~~ completed before the employee is given responsibility for a group of children;

(2) 24 ~~15~~ hours of annual training for each employee of a day-care center or group day-care home, excluding the director, which must include at least six hours of training in one or more of the following areas:

- (A) child growth and development;
- (B) guidance and discipline;
- (C) age-appropriate curriculum; and
- (D) teacher-child interaction; and

(3) 30 ~~20~~ hours of annual training for each director of a day-care center or group day-care home, or operator of a registered family home, which must include at least six hours of training in one or more of the following areas:

- (A) child growth and development;
- (B) guidance and discipline;
- (C) age-appropriate curriculum; and
- (D) teacher-child interaction.

(f) In adopting the minimum training standards under Section 42.042(p), the department may not require more training hours than the number of hours prescribed by Subsection (a) for a day-care center, group day-care home, or a registered family home.

(g) The executive commissioner by rule shall adopt minimum training standards for before-school or after-school and school-age programs as required by Section 42.042(p). In adopting minimum training standards for before-school or after-school and school-age programs under this subsection, the executive commissioner may not require more initial or annual training hours than the number of hours required by Subsection (a) immediately before September 1, 2011.

SECTION 2. Section 42.0426, Human Resources Code, is amended by adding Subsection (c) to read as follows:

(c) Not later than the seventh day after the date an employee begins employment at a day-care center, group day-care home, or registered family home, the employee must complete an orientation to the facility.

SECTION 3. (a) Section 42.0421(a)(1), Human Resources Code, as amended by this Act, and Section 42.0426(c), Human Resources Code, as added by this Act, apply only to an employee who is initially employed by a child-care facility on or after the effective date of this Act. An employee who is initially employed by a child-care facility before that date is subject to the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

(b) Sections 42.0421(a)(2) and (3), Human Resources Code, as amended by this Act, apply to an employee or director of a child-care facility regardless of the date the person began employment with or service as director of the child-care facility.

SECTION 4. This Act takes effect September 1, 2011.

The amendment was read.

Senator West moved to concur in the House amendment to **SB 260**.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Ogden.

### HOUSE BILL 2949 ON SECOND READING

On motion of Senator Eltife and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 2949** at this time on its second reading:

**HB 2949**, Relating to the administration of the collection improvement program.

The bill was read second time.

Senator Eltife offered the following amendment to the bill:

#### Floor Amendment No. 1

Amend **HB 2949** (senate committee printing) by striking all below the enacting clause and substituting the following:

SECTION 1. Articles 103.0033(b), (c), (e), (f), (h), (i), and (j), Code of Criminal Procedure, are amended to read as follows:

(b) This article applies [~~only~~] to each[~~;~~]:

[~~(1) a~~] county in this state [~~with a population of 50,000 or greater;~~] and to each

[~~(2) a~~] municipality with a population of 100,000 or greater.

(c) Unless granted a waiver under Subsection (h), each [~~county and~~] municipality shall develop and implement a program that complies with the prioritized implementation schedule under Subsection (h). A county may develop and implement a program that complies with the prioritized implementation schedule under Subsection (h). A county program must include district, county, and justice courts.

(e) Not later than June 1 of each year, the office shall identify those counties and municipalities that:

(1) have not implemented a program; and

(2) are planning ~~[able]~~ to implement a program before April 1 of the following year.

(f) The ~~[comptroller, in cooperation with the]~~ office~~[-]~~ shall develop a methodology for determining the collection rate of counties and municipalities described by Subsection (e) before implementation of a program. The office ~~[comptroller]~~ shall determine the rate for each county and municipality not later than the first anniversary of the county's or municipality's adoption of a program.

(h) The office~~[-, in consultation with the comptroller,]~~ may:

(1) use case dispositions, population, revenue data, or other appropriate measures to develop a prioritized implementation schedule for programs; and

(2) for a municipality, determine whether it is not actually cost-effective to implement a program in the ~~[a county or]~~ municipality and grant a waiver to the ~~[county or]~~ municipality.

(i) Each county that implements a program and each municipality shall at least annually submit to the office ~~[and the comptroller]~~ a written report that includes updated information regarding the program, as determined by the office ~~[in cooperation with the comptroller]~~. The report must be in a form approved by the office ~~[in cooperation with the comptroller]~~.

(j) The office ~~[comptroller]~~ shall periodically audit ~~[counties and]~~ municipalities to verify information reported under Subsection (i) and confirm that the ~~[county or]~~ municipality is conforming with requirements relating to the program. ~~[The comptroller shall consult with the office in determining how frequently to conduct audits under this section.]~~

SECTION 2. Section 133.058(e), Local Government Code, is amended to read as follows:

(e) A municipality ~~[or county]~~ may not retain a service fee if, during an audit under ~~[Section 133.059 of this code or]~~ Article 103.0033(j), Code of Criminal Procedure, the Office of Court Administration of the Texas Judicial System ~~[comptroller]~~ determines that the municipality ~~[or county]~~ is not in compliance with Article 103.0033, Code of Criminal Procedure. The municipality ~~[or county]~~ may continue to retain a service fee under this section on receipt of a written confirmation from the office ~~[comptroller]~~ that the municipality ~~[or county]~~ is in compliance with Article 103.0033, Code of Criminal Procedure.

SECTION 3. Section 133.103(c-1), Local Government Code, is amended to read as follows:

(c-1) The treasurer shall send to the comptroller 100 percent of the fees collected under this section by a municipality ~~[to the comptroller]~~ if, during an audit under ~~[Section 133.059 of this code or]~~ Article 103.0033(j), Code of Criminal Procedure, the Office of Court Administration of the Texas Judicial System ~~[comptroller]~~ determines that the municipality ~~[or county]~~ is not in compliance with Article 103.0033, Code of Criminal Procedure. The municipality ~~[or county]~~ shall continue to dispose of fees as otherwise provided by this section on receipt of a written confirmation from the office ~~[comptroller]~~ that the municipality ~~[or county]~~ is in compliance with Article 103.0033, Code of Criminal Procedure.

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2011.

The amendment to **HB 2949** was read and was adopted by a viva voce vote.

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

Absent-excused: Ogden.

Senator Ellis offered the following amendment to the bill:

**Floor Amendment No. 2**

Amend **HB 2949** (senate committee printing) by striking all below the enacting clause and substituting the following:

SECTION 1. Articles 103.0033(a), (b), (c), (d), (e), (f), (h), (i), and (j), Code of Criminal Procedure, are amended to read as follows:

(a) In this article:

(1) "Eligible case" means a criminal case in which the judgment has been entered by a trial court. The term does not include a criminal case in which a defendant has been placed on deferred disposition or has elected to take a driving safety course.

(2) "Office" means the Office of Court Administration of the Texas Judicial System.

(3) [(2)] "Program" means the program to improve the collection of court costs, fees, and fines imposed in criminal cases, as developed and implemented under this article.

(b) This article applies [~~only~~] to each[~~:~~

[(1)-a] county in this state [with a population of 50,000 or greater;] and to each

[(2)-a] municipality with a population of 100,000 or greater.

(c) Unless granted a waiver under Subsection (h), each [~~county and~~] municipality shall develop and implement a program that complies with the prioritized implementation schedule under Subsection (h). A county may develop and implement a program that complies with the prioritized implementation schedule under Subsection (h). A county program must include district, county, and justice courts.

(d) The program must consist of:

(1) a component that conforms with a model developed by the office and designed to improve in-house collections for eligible cases through the application of best practices; and

(2) a component designed to improve the collection of balances for eligible cases more than 60 days past due, which may be implemented by entering into a contract with a private attorney or public or private vendor in accordance with Article 103.0031.

(e) Not later than June 1 of each year, the office shall identify those counties and municipalities that:

(1) have not implemented a program; and  
 (2) are planning [~~able~~] to implement a program before April 1 of the following year.

(f) The [~~comptroller, in cooperation with the~~] office[;] shall develop a methodology for determining the collection rate of counties and municipalities described by Subsection (e) before implementation of a program. The office [~~comptroller~~] shall determine the rate for each county and municipality not later than the first anniversary of the county's or municipality's adoption of a program.

(h) The office[~~, in consultation with the comptroller,~~] may:

(1) use case dispositions, population, revenue data, or other appropriate measures to develop a prioritized implementation schedule for programs; and

(2) for a municipality, determine whether it is not actually cost-effective to implement a program in the [~~a county or~~] municipality and grant a waiver to the [~~county or~~] municipality.

(i) Each county that implements a program and each municipality shall at least annually submit to the office [~~and the comptroller~~] a written report that includes updated information regarding the program, as determined by the office [~~in cooperation with the comptroller~~]. The report must be in a form approved by the office [~~in cooperation with the comptroller~~].

(j) The office [~~comptroller~~] shall periodically audit [~~counties and~~] municipalities to verify information reported under Subsection (i) and confirm that the [~~county or~~] municipality is conforming with requirements relating to the program. [~~The comptroller shall consult with the office in determining how frequently to conduct audits under this section.~~]

SECTION 2. Section 133.058(e), Local Government Code, is amended to read as follows:

(e) A municipality [~~or county~~] may not retain a service fee if, during an audit under [~~Section 133.059 of this code or~~] Article 103.0033(j), Code of Criminal Procedure, the Office of Court Administration of the Texas Judicial System [~~comptroller~~] determines that the municipality [~~or county~~] is not in compliance with Article 103.0033, Code of Criminal Procedure, and if the municipality is unable to reestablish compliance on or before the 180th day after the date the municipality receives written notice of noncompliance from the office. After any period in which the municipality becomes unable to retain a service fee under this subsection, the [~~The~~] municipality [~~or county~~] may begin once more [~~continue~~] to retain the [~~a service~~] fee only [~~under this section~~] on receipt of a written confirmation from the office [~~comptroller~~] that the municipality [~~or county~~] is in compliance with Article 103.0033, Code of Criminal Procedure.

SECTION 3. Section 133.103(c-1), Local Government Code, is amended to read as follows:

(c-1) The treasurer shall send to the comptroller 100 percent of the fees collected under this section by a municipality [~~to the comptroller~~] if, during an audit under [~~Section 133.059 of this code or~~] Article 103.0033(j), Code of Criminal Procedure, the Office of Court Administration of the Texas Judicial System [~~comptroller~~] determines that the municipality [~~or county~~] is not in compliance with Article 103.0033, Code of Criminal Procedure, and if the municipality is unable to reestablish

compliance on or before the 180th day after the date the municipality receives written notice of noncompliance from the office. After any period in which the treasurer is required under this subsection to send 100 percent of the fees collected under this section to the comptroller, the ~~The~~ municipality ~~[or county]~~ shall begin once more ~~[continue]~~ to dispose of fees as otherwise provided by this section on receipt of a written confirmation from the office ~~[comptroller]~~ that the municipality ~~[or county]~~ is in compliance with Article 103.0033, Code of Criminal Procedure.

SECTION 4. Section 706.005(a), Transportation Code, is amended to read as follows:

(a) A political subdivision shall immediately notify the department that there is no cause to continue to deny renewal of a person's driver's license based on the person's previous failure to appear or failure to pay or satisfy a judgment ordering the payment of a fine and cost in the manner ordered by the court in a matter involving an offense described by Section 706.002(a), on payment of a fee as provided by Section 706.006 and:

(1) the perfection of an appeal of the case for which the warrant of arrest was issued or judgment arose;

(2) the dismissal of the charge for which the warrant of arrest was issued or judgment arose;

(3) the posting of bond or the giving of other security to reinstate the charge for which the warrant was issued;

(4) the payment or discharge of the fine and cost owed on an outstanding judgment of the court; or

(5) other suitable arrangement to pay the fine and cost within the court's discretion.

SECTION 5. The change in law made by this Act in amending Sections 133.058(e) and 133.103(c-1), Local Government Code, applies only to an audit commenced on or after the effective date of this Act. An audit commenced before the effective date of this Act is governed by the law in effect when the audit was commenced, and the former law is continued in effect for that purpose.

SECTION 6. The change in law made by this Act in amending Article 103.0033, Code of Criminal Procedure, applies only to a court cost, fee, or fine imposed in a criminal case on or after the effective date of this Act. A court cost, fee, or fine imposed in a criminal case before the effective date of this Act is governed by the law in effect on the date the cost, fee, or fine was imposed, and the former law is continued in effect for that purpose.

SECTION 7. This Act takes effect September 1, 2011.

The amendment to **HB 2949** was read and was adopted by a viva voce vote.

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

Absent-excused: Ogden.

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

**HB 2949** as amended was passed to third reading by a viva voce vote.

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

Absent-excused: Ogden.

### **HOUSE BILL 2949 ON THIRD READING**

Senator Eltife moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2949** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Ogden.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

### **COMMITTEE SUBSTITUTE HOUSE BILL 1756 ON SECOND READING**

On motion of Senator Watson and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 1756** at this time on its second reading:

**CSHB 1756**, Relating to the creation of the Pilot Knob Municipal Utility District No. 2; providing authority to impose a tax and issue bonds.

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

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

Absent-excused: Ogden.

### **COMMITTEE SUBSTITUTE HOUSE BILL 1756 ON THIRD READING**

Senator Watson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 1756** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Ogden.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

### **COMMITTEE SUBSTITUTE HOUSE BILL 2810 ON SECOND READING**

On motion of Senator Estes and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 2810** at this time on its second reading:

**CSHB 2810**, Relating to an exemption from the sales and use tax for tangible personal property incorporated into or attached to certain agricultural structures.

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

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

Absent-excused: Ogden.

#### **COMMITTEE SUBSTITUTE HOUSE BILL 2810 ON THIRD READING**

Senator Estes moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 2810** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Ogden.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

#### **HOUSE BILL 675 ON SECOND READING**

Senator Lucio moved to suspend the regular order of business to take up for consideration **HB 675** at this time on its second reading:

**HB 675**, Relating to football helmet safety requirements in public schools.

The motion prevailed.

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

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

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

Nays: Birdwell.

Absent-excused: Ogden.

#### **HOUSE BILL 675 ON THIRD READING**

Senator Lucio moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 675** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Birdwell.

Absent-excused: Ogden.

The bill was read third time and was passed by the following vote: Yeas 29, Nays 1. (Same as previous roll call)



**COMMITTEE SUBSTITUTE  
HOUSE BILL 1619 ON SECOND READING**

On motion of Senator Patrick and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 1619** at this time on its second reading:

**CSHB 1619**, Relating to emergency service districts.

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

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

Absent-excused: Ogden.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1619 ON THIRD READING**

Senator Patrick moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 1619** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Ogden.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

**COMMITTEE SUBSTITUTE  
HOUSE BILL 3109 ON SECOND READING**

On motion of Senator Seliger and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 3109** at this time on its second reading:

**CSHB 3109**, Relating to the rulemaking power of certain groundwater conservation districts.

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

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

Absent-excused: Ogden.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 3109 ON THIRD READING**

Senator Seliger moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 3109** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Ogden.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

### HOUSE BILL 1178 ON SECOND READING

On motion of Senator Birdwell and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 1178** at this time on its second reading:

**HB 1178**, Relating to employment protection for members of the state military forces.

The bill was read second time.

Senator Seliger offered the following amendment to the bill:

#### Floor Amendment No. 1

Amend **HB 1178** by adding the following SECTIONS and renumbering subsequent SECTIONS accordingly:

SECTION \_\_\_\_\_. Subchapter D, Chapter 504, Transportation Code, is amended by adding Section 504.317.

Sec. 504.317. WOMEN VETERANS. The department shall issue specialty license plates for female active or former members of the United States armed forces, Texas National Guard, or Texas State Guard. The license plates must include the words "Woman Veteran" in red.

The amendment to **HB 1178** was read and was adopted by a viva voce vote.

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

Absent-excused: Ogden.

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

**HB 1178** as amended was passed to third reading by a viva voce vote.

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

Absent-excused: Ogden.

### HOUSE BILL 1178 ON THIRD READING

Senator Birdwell moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1178** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Ogden.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

**COMMITTEE SUBSTITUTE  
HOUSE BILL 2136 ON SECOND READING**

On motion of Senator Zaffirini and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 2136** at this time on its second reading:

**CSHB 2136**, Relating to regional contracted brokers and subcontractors of regional contracted brokers providing Medicaid nonemergency medical transportation services.

The bill was read second time.

Senator Zaffirini offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 2136** (Senate Committee Printing) as follows:

In SECTION 1 strike added Section 531.02414(a)(1)(B), Government Code, in its entirety.

The amendment to **CSHB 2136** was read and was adopted by a viva voce vote.

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

Absent-excused: Ogden.

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

**CSHB 2136** as amended was passed to third reading by a viva voce vote.

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

Absent-excused: Ogden.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 2136 ON THIRD READING**

Senator Zaffirini moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 2136** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Ogden.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

**HOUSE BILL 2226 ON SECOND READING**

On motion of Senator Carona and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 2226** at this time on its second reading:

**HB 2226**, Relating to authorized investments for governmental entities.

The bill was read second time.

Senator Carona offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 2226** (senate committee printing) as follows:

(1) In SECTION 5 of the bill, in amended Section 2256.010(b)(4), Government Code (page 3, line 1), strike "or" and substitute "2".

(2) In SECTION 5 of the bill, in amended Section 2256.010(b)(4), Government Code (page 3, line 1), between "Section 2257.041(d)," and "[acts]", insert "or a clearing broker-dealer registered with the Securities and Exchange Commission and operating pursuant to Securities and Exchange Commission Rule 15c3-3 (17 C.F.R. Section 240.15c3-3).".

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

SECTION \_\_\_\_\_. Section 2256.011(a), Government Code, is amended to read as follows:

(a) A fully collateralized repurchase agreement is an authorized investment under this subchapter if the repurchase agreement:

(1) has a defined termination date;

(2) is secured by a combination of cash and obligations described by Section 2256.009(a)(1); and

(3) requires the securities being purchased by the entity or cash held by the entity to be pledged to the entity, held in the entity's name, and deposited at the time the investment is made with the entity or with a third party selected and approved by the entity; and

(4) is placed through a primary government securities dealer, as defined by the Federal Reserve, or a financial institution doing business in this state.

The amendment to **HB 2226** was read and was adopted by a viva voce vote.

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

Absent-excused: Ogden.

Senator Carona offered the following amendment to the bill:

**Floor Amendment No. 2**

Amend **HB 2226** (senate committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Sec. 12.027, Agriculture Code, is amended by adding Subsection (d) to read as follows:

(d) In addition to a program described under Subsection (a), the department may actively seek funding to establish and administer additional economic development programs for the benefit of the state.

The amendment to **HB 2226** was read and was adopted by a viva voce vote.

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

Absent-excused: Ogden.

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

**HB 2226** as amended was passed to third reading by a viva voce vote.

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

Absent-excused: Ogden.

#### **HOUSE BILL 2226 ON THIRD READING**

Senator Carona moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2226** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Ogden.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

#### **HOUSE BILL 2902 ON SECOND READING**

On motion of Senator Hegar and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 2902** at this time on its second reading:

**HB 2902**, Relating to the extraterritorial jurisdiction of certain municipalities.

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

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

Absent-excused: Ogden.

#### **HOUSE BILL 2902 ON THIRD READING**

Senator Hegar moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2902** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Ogden.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

#### **COMMITTEE SUBSTITUTE HOUSE BILL 1757 ON SECOND READING**

On motion of Senator Watson and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 1757** at this time on its second reading:

**CSHB 1757**, Relating to the creation of the Pilot Knob Municipal Utility District No. 1; providing authority to impose a tax and issue bonds.

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

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

Absent-excused: Ogden.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1757 ON THIRD READING**

Senator Watson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 1757** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Ogden.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

**HOUSE BILL 336 ON SECOND READING**

Senator Rodriguez moved to suspend the regular order of business to take up for consideration **HB 336** at this time on its second reading:

**HB 336**, Relating to the filing and posting on the Internet of reports of political contributions and expenditures required in connection with the office of member of the board of trustees of certain school districts.

The motion prevailed.

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

The bill was read second time.

Senator Deuell offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 336** (senate committee printing) on page 1 by striking lines 17-20 and substituting the following:

Sec. 254.04011. AVAILABILITY OF REPORTS OF SCHOOL TRUSTEES ON INTERNET. (a) This section applies only to a school district:

(1) located wholly or partly in a municipality with a population of more than 500,000; and

(2) with a student enrollment of more than 15,000.

The amendment to **HB 336** was read and was adopted by a viva voce vote.

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

Absent-excused: Ogden.

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

**HB 336** as amended was passed to third reading by a viva voce vote.

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

Nays: Huffman.

Absent-excused: Ogden.

### HOUSE BILL 336 ON THIRD READING

Senator Rodriguez moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 336** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Huffman.

Absent-excused: Ogden.

The bill was read third time and was passed by the following vote: Yeas 29, Nays 1. (Same as previous roll call)

### COMMITTEE SUBSTITUTE HOUSE BILL 2490 ON SECOND READING

Senator Carona moved to suspend the regular order of business to take up for consideration **CSHB 2490** at this time on its second reading:

**CSHB 2490**, Relating to the regulation of crafted precious metal dealers; providing criminal penalties.

The motion prevailed.

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

The bill was read second time.

Senator Carona offered the following amendment to the bill:

#### Floor Amendment No. 1

Amend **CSHB 2490** (senate committee report), by striking all below the enacting clause and substituting the following:

SECTION 1. Section 1956.051, Occupations Code, is amended by amending Subdivision (1) and adding Subdivision (1-a) to read as follows:

(1) "Commissioner" means the consumer credit commissioner.

(1-a) "Crafted precious metal" means jewelry, silverware, an art object, or another object, other than a coin or commemorative medallion, made in whole or in part from precious metal.

SECTION 2. Subchapter B, Chapter 1956, Occupations Code, is amended by adding Sections 1956.0611 through 1956.0615 to read as follows:

Sec. 1956.0611. REGISTRATION AS DEALER. (a) A person may not engage in the business of purchasing and selling crafted precious metal unless the person is registered with the commissioner as a dealer under this section.

(b) To register as a dealer, a person must provide to the commissioner, on or before December 31 preceding each calendar year in which the person seeks to act as a dealer:

(1) a list of each location in this state at which the person will conduct business as a dealer; and

(2) a processing fee for each location included on the list furnished under Subdivision (1).

(c) The commissioner shall prescribe the processing fee in an amount necessary to cover the costs of administering this section.

(d) After the December 31 deadline, a dealer may amend the registration required under Subsection (a) to reflect any change in the information provided by the registration.

(e) The commissioner shall make available to the public a list of dealers registered under this section.

(f) The commissioner may prescribe the registration form.

(g) A reference to a registration in another subchapter of this chapter does not apply to a person to the extent the person is registered under this subchapter.

Sec. 1956.0612. INVESTIGATION BY COMMISSIONER. The commissioner shall:

(1) monitor the operations of a dealer to ensure compliance with this chapter; and

(2) receive and investigate complaints against a dealer or a person acting as a dealer.

Sec. 1956.0613. REVOCATION OF REGISTRATION. (a) The commissioner may revoke the registration of a dealer if the commissioner concludes that the dealer has violated this chapter. The commissioner shall recite the basis of the decision in an order revoking the registration.

(b) If the commissioner proposes to revoke a registration, the dealer is entitled to a hearing before the commissioner or a hearings officer, who shall propose a decision to the commissioner. The commissioner or hearings officer shall prescribe the time and place of the hearing. The hearing is governed by Chapter 2001, Government Code.

(c) A dealer aggrieved by a ruling, order, or decision of the commissioner is entitled to appeal to a district court in the county in which the hearing was held. An appeal under this subsection is governed by Chapter 2001, Government Code.

Sec. 1956.0615. ADMINISTRATIVE PENALTY. The commissioner may assess an administrative penalty not to exceed \$500 against a person for each knowing and willful violation of this chapter.

SECTION 3. Not later than November 1, 2011, the consumer credit commission shall prescribe the forms and fees necessary to implement Subchapter B, Chapter 1956, Occupations Code, as amended by this Act.

SECTION 4. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2011.

(b) Section 1956.0611, Occupations Code, as added by this Act, takes effect December 1, 2011.

The amendment to **CSHB 2490** was read and was adopted by a viva voce vote.

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

Absent-excused: Ogden.



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

**CSHB 2490** as amended was passed to third reading by a viva voce vote.

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

Absent-excused: Ogden.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 2490 ON THIRD READING**

Senator Carona moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 2490** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Ogden.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

**COMMITTEE SUBSTITUTE  
HOUSE BILL 2779 ON SECOND READING**

On motion of Senator Patrick and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 2779** at this time on its second reading:

**CSHB 2779**, Relating to provisions in the dedicatory instruments of property owners' associations regarding display of flags.

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

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

Absent-excused: Ogden.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 2779 ON THIRD READING**

Senator Patrick moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 2779** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Ogden.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

### HOUSE BILL 2380 ON SECOND READING

On motion of Senator Shapiro and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 2380** at this time on its second reading:

**HB 2380**, Relating to employment by school districts of certain persons under probationary contracts.

The bill was read second time.

Senator Shapiro offered the following amendment to the bill:

#### Floor Amendment No. 1

Amend **HB 2380** (senate committee printing) as follows:

(1) Strike SECTION 2 of the bill (page 1, lines 27-31) and substitute the following SECTION, appropriately numbered:

SECTION \_\_\_\_\_. (a) Except as provided by Subsection (b) of this section:

(1) this Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution; and

(2) if this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2011.

(b) Sections 21.0521, 21.0522, and 21.0523, Education Code, as added by this Act, take effect September 1, 2013.

(2) Add the following appropriately numbered SECTIONS to the bill and remove subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Subsection (b), Section 21.041, Education Code, is amended to read as follows:

(b) The board shall propose rules that:

(1) provide for the regulation of educators and the general administration of this subchapter in a manner consistent with this subchapter;

(2) specify the classes of educator certificates to be issued, including probationary, provisional, standard, and emergency certificates;

(3) specify the period for which each class of educator certificate is valid;

(4) specify the requirements for the issuance and renewal of an educator certificate;

(5) provide for the issuance of an educator certificate to a person who holds a similar certificate issued by another state or foreign country, subject to Section 21.052;

(6) provide for special or restricted certification of educators, including certification of instructors of American Sign Language;

(7) provide for disciplinary proceedings, including the suspension or revocation of an educator certificate, as provided by Chapter 2001, Government Code;

(8) provide for the adoption, amendment, and enforcement of an educator's code of ethics; and

(9) provide for continuing education requirements[; and

~~[(10) provide for certification of persons performing appraisals under Subchapter H].~~

SECTION \_\_\_\_ . Subchapter B, Chapter 21, Education Code, is amended by adding Sections 21.0521, 21.0522, and 21.0523 to read as follows:

Sec. 21.0521. PROBATIONARY CERTIFICATE. (a) The board may issue a probationary certificate to a person enrolled in an alternative certification program or a postbaccalaureate certification program who has not completed all certification program requirements.

(b) A probationary certificate issued under this section expires on the first anniversary of the date on which the certificate was issued and may be renewed only for two additional one-year periods.

(c) A person who is issued a probationary certificate under this section and is employed under a probationary contract for a total of three years is eligible to receive a standard certificate on completion of all requirements under Section 21.0523(a).

(d) A person who is issued a probationary certificate may only be employed by a school district under a probationary contract and is not eligible to be employed under a term contract.

Sec. 21.0522. PROVISIONAL CERTIFICATE. (a) The board shall issue a provisional certificate to a person who has not previously been certified as an educator in this state and who has:

(1) successfully completed an educator preparation program;

(2) performed satisfactorily on the certification examination required by

Section 21.048; and

(3) completed all other requirements for educator certification.

(b) A provisional certificate issued under this section:

(1) expires on the third anniversary of the date on which the certificate was issued; and

(2) is not renewable.

(c) A person enrolled in an alternative certification program or a postbaccalaureate certification program who has not completed all certification program requirements is not eligible for a provisional certificate. On completion of all requirements of the program, including an internship of one year, the person is eligible for a provisional certificate under this section.

(d) An educator who has been issued a probationary certificate and is employed under a probationary contract may receive a provisional certificate that expires on the third anniversary of the date on which the person was originally employed under the probationary contract.

(e) A person who is issued a provisional certificate under this section may be employed by a school district under a term contract as provided by Subchapter E.

Sec. 21.0523. STANDARD CERTIFICATE. (a) On the expiration of a person's provisional certificate or at the end of a person's third probationary contract term, the board shall issue a standard certificate to the person if the person has:

(1) demonstrated that the person is an effective educator; and

(2) completed all required continuing education hours.

(b) Notwithstanding Section 21.355, to assist the board in determining whether a person is an effective educator, the person applying for a standard certificate must submit to the board a copy of all educator appraisals of the person. The board shall take appropriate measures to maintain the confidentiality of the appraisals.

(c) The commissioner shall adopt rules to establish criteria for determining whether a person is an effective educator for purposes of this section.

SECTION \_\_\_\_\_. (a) Sections 21.0521, 21.0522, and 21.0523, Education Code, as added by this Act, apply to a person who has never been certified to teach in this state who applies for certification on or after September 1, 2013. A person who has never been certified to teach in this state who applies for certification before September 1, 2013, or a person who is certified to teach in this state on September 1, 2013, is governed by the law in effect immediately before September 1, 2013, and that law is continued in effect for that purpose.

(b) Not later than January 1, 2012, the State Board for Educator Certification shall propose rules as required by this Act.

The amendment to **HB 2380** was read and was adopted by a viva voce vote.

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

Absent-excused: Ogden.

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

**HB 2380** as amended was passed to third reading by a viva voce vote.

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

Absent-excused: Ogden.

#### **HOUSE BILL 2380 ON THIRD READING**

Senator Shapiro moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2380** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Ogden.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

#### **COMMITTEE SUBSTITUTE HOUSE BILL 1732 ON SECOND READING**

On motion of Senator Hinojosa and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 1732** at this time on its second reading:

**CSHB 1732**, Relating to the applicability of the constitutional limit on state debt payable from the general revenues of the state to bonds issued by the Texas Water Development Board.

The bill was read second time.

Senator Hinojosa offered the following amendment to the bill:

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

Amend **CSHB 1732** (Senate Committee Report) by adding a new SECTION \_\_\_\_ as follows:

SECTION \_\_\_\_\_. Section 15.9751, Water Code is amended as follows:

Sec. 15.9751. PRIORITY FOR APPLICATIONS [~~WATER CONSERVATION~~].

The board shall give priority to applications for funds for the implementation of water supply projects in the state water plan based on factors determined by the board, including but not limited to recommended implementation date, historical need for water supply infrastructure investment, per capita water supply need, ability of the applicant to finance the project, and whether an applicant [~~by entities that~~]:

(1) has [~~have~~] already demonstrated significant water conservation savings;

or

(2) will achieve significant water conservation savings by implementing the proposed project for which the financial assistance is sought.

The amendment to **CSHB 1732** was read and was adopted by a viva voce vote.

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

Absent-excused: Ogden.

Senator Seliger offered the following amendment to the bill:

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

Amend **CSHB 1732** by adding the following SECTIONS and renumbering the subsequent SECTIONS accordingly:

SECTION \_\_\_\_\_. Section 15.975, Water Code, is amended by adding Subsection (d) to read as follows:

(d) The board may not approve an application if the applicant has failed to satisfactorily complete a request by the executive administrator or a regional planning group for information relevant to the project, including a water infrastructure financing survey under Section 16.053(q).

SECTION \_\_\_\_\_. Section 15.912, Water Code, is amended to read as follows:

Sec. 15.912. CONSIDERATIONS IN ACTING ON APPLICATION. (a) In acting on an application for financial assistance, the board shall consider:

(1) the needs of the area to be served by the project and the benefit of the project to the area in relation to the needs of other areas requiring state assistance in any manner and the benefits of those projects to the other areas;

(2) the availability of revenue to the political subdivision or water supply corporation from all sources for any necessary repayment of the cost of the project, including all interest;

(3) the relationship of the project to overall statewide needs; and

(4) any other factors that the board considers relevant.

(b) The board may not accept an application for a loan or grant of financial assistance from the fund for a project recommended through the state and regional water planning processes under Sections 16.051 and 16.053 if the applicant has failed to satisfactorily complete a request by the executive administrator or a regional planning group for information relevant to the project, including a water infrastructure financing survey under Section 16.053(q).

SECTION \_\_\_\_\_. Section 16.131, Water Code, is amended to read as follows:

Sec. 16.131. AUTHORIZED PROJECTS. (a) The board may use the state participation account of the development fund to encourage optimum regional development of projects including the design, acquisition, lease, construction, reconstruction, development, or enlargement in whole or part of:

(1) reservoirs and storm water retention basins for water supply, flood protection, and groundwater recharge;

(2) facilities for the transmission and treatment of water; and

(3) treatment works as defined by Section 17.001 [~~of this code~~].

(b) the board may not use the state participation account of the development fund to finance a project recommended through the state and regional water planning processes under Sections 16.051 and 16.053 if the applicant has failed to satisfactorily complete a request by the executive administrator or a regional planning group for information relevant to the project, including a water infrastructure financing survey under Section 16.053(q).

The amendment to **CSHB 1732** was read and was adopted by a viva voce vote.

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

Absent-excused: Ogden.

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

**CSHB 1732** as amended was passed to third reading by a viva voce vote.

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

Absent-excused: Ogden.

### **COMMITTEE SUBSTITUTE HOUSE BILL 1732 ON THIRD READING**

Senator Hinojosa moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 1732** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Ogden.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

### **HOUSE BILL 1010 ON SECOND READING**

On motion of Senator Jackson and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 1010** at this time on its second reading:

**HB 1010**, Relating to enforcement of commercial motor vehicle safety standards in certain municipalities.

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

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

Absent-excused: Ogden.

#### **HOUSE BILL 1010 ON THIRD READING**

Senator Jackson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1010** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Ogden.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

#### **HOUSE BILL 1353 ON SECOND READING**

On motion of Senator Williams and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 1353** at this time on its second reading:

**HB 1353**, Relating to speed limits.

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

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

Absent-excused: Ogden.

#### **HOUSE BILL 1353 ON THIRD READING**

Senator Williams moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1353** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Ogden.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

#### **HOUSE BILL 3111 ON SECOND READING**

On motion of Senator Seliger and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 3111** at this time on its second reading:

**HB 3111**, Relating to fees to finance capital improvements in certain municipalities.

The bill was read second time.

Senator Seliger offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 3111** by adding the following SECTIONS and renumbering the subsequent SECTIONS accordingly:

SECTION \_\_\_\_\_. Subtitle I, Title 6, Special District Local Laws Code, is amended by adding Chapter 9016 to read as follows:

CHAPTER 9016. MIDLAND COUNTY UTILITY DISTRICT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 9016.001. DEFINITIONS. In this chapter:

- (1) "Board" means the district's board of directors.
- (2) "Commission" means the Texas Commission on Environmental Quality.
- (3) "County" means Midland County.
- (4) "Director" means a board member.
- (5) "District" means the Midland County Utility District.
- (6) "Municipality" means a municipality in whose corporate limits or extraterritorial jurisdiction any part of the district is located.

Sec. 9016.002. NATURE OF DISTRICT. The district is a water control and improvement district created under Section 59, Article XVI, Texas Constitution.

Sec. 9016.003. 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. 9016.004. CONSENT OF MUNICIPALITY REQUIRED. The temporary directors may not hold an election under Section 9016.003 until each municipality has consented by ordinance or resolution to the creation of the district and to the inclusion of land in the district.

Sec. 9016.005. 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 a water control and improvement district as provided by general law and Section 59, Article XVI, Texas Constitution.

Sec. 9016.006. INITIAL DISTRICT TERRITORY. (a) The district is initially composed of the territory described by Section 2 of the Act enacting this chapter.

(b) The boundaries and field notes contained in Section 2 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 9016.007-9016.050 reserved for expansion]

SUBCHAPTER B. BOARD OF DIRECTORS

Sec. 9016.051. GOVERNING BODY; TERMS. (a) Except as provided by Subsection (c), the district is governed by a board of five elected directors.



(b) Except as provided by Section 9016.052, directors serve staggered four-year terms.

(c) If the municipality annexes any part of the territory of the district, the municipality shall appoint one ex officio member to the board to serve as a sixth director.

Sec. 9016.052. TEMPORARY DIRECTORS. (a) The temporary board consists of:

- (1) Shelton Viney;
- (2) Susie Hitchcock-Hall;
- (3) Alan Lang;
- (4) David Orr; and
- (5) Israel Rodriguez.

(b) Temporary directors serve until the earlier of:

- (1) the date permanent directors are elected under Section 9016.003; or
- (2) September 1, 2015.

(c) If permanent directors have not been elected under Section 9016.003 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 9016.003; 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.

Sec. 9016.053. NOTICE OF MEETINGS. The district shall provide the municipality with written notice before a meeting of the board.

[Sections 9016.054-9016.100 reserved for expansion]

#### SUBCHAPTER C. POWERS AND DUTIES

Sec. 9016.101. GENERAL POWERS AND DUTIES. The district has the powers and duties necessary to accomplish the purposes for which the district is created.

Sec. 9016.102. WATER CONTROL AND IMPROVEMENT DISTRICT POWERS AND DUTIES. The district has the powers and duties provided by the general law of this state, including Chapters 49 and 51, Water Code, applicable to water control and improvement districts created under Section 59, Article XVI, Texas Constitution.

Sec. 9016.103. COMPLIANCE WITH MUNICIPAL CONSENT ORDINANCE OR RESOLUTION. The district shall comply with all applicable requirements of any ordinance or resolution that is adopted under Section 42.042, Local Government Code, and Section 9016.004 and that consents to the creation of the district or to the inclusion of land in the district.

Sec. 9016.104. COMPLIANCE WITH MUNICIPAL REGULATIONS. (a) Any water, sanitary sewer, drainage, or other infrastructure or public facilities constructed, acquired, improved, maintained, or operated by the district shall comply with any applicable regulations of the municipality in whose corporate limits or extraterritorial jurisdiction the infrastructure or facilities are located.

(b) Any water system constructed, acquired, improved, maintained, or operated by the district shall:

(1) comply with any applicable regulations of the municipality regarding specifications for rural density; and

(2) contain distribution lines that are:

(A) four inches or more in diameter; and

(B) sufficient to provide fire hydrant service according to the municipality's specifications for rural density.

Sec. 9016.105. COUNTY RIGHT-OF-WAY. The district must obtain the approval of the county's governing body of the plans and specifications of any facilities to be installed on property located in a county right-of-way.

Sec. 9016.106. LIABILITY. (a) Neither the county nor the municipality is liable for any claims arising from the operation of the district's water system or other actions or inactions of the district, including labor, safety, or signage, or contamination or other environmental issues.

(b) Any action taken by the municipality is a governmental function.

Sec. 9016.107. COSTS OF LINE RELOCATION. (a) The district is solely responsible for the expense associated with the relocation of any district water line required by:

(1) the county or a municipality; or

(2) a state or federal highway authority, including the Texas Department of Transportation and the Federal Highway Administration.

(b) The district will not unreasonably delay any requested line relocation.

Sec. 9016.108. SERVICES TO BE PROVIDED BY THE DISTRICT, COUNTY, OR MUNICIPALITY. (a) The district may enter into an interlocal contract with the county or municipality to provide governmental functions, including fire protection, trash collection and disposal, and ambulance service.

(b) Notwithstanding Subsection (a), the municipality is authorized to provide sewer and drainage service in the district. The municipality shall establish the amount of the fees to be charged to recipients of sewer and drainage service under this subsection.

(c) Notwithstanding Subsection (a), the district may not provide any services within the territorial limits of the municipality as those limits exist on September 1, 2011.

Sec. 9016.109. ANNEXATION BY MUNICIPALITY. (a) The municipality may annex a part of the territory of the district without annexing the entire territory of the district.

(b) If the municipality annexes all or part of the district:

(1) the annexed territory is not removed from the district; and

(2) the district is not:

(A) dissolved; or

(B) prevented from providing district services to the annexed territory.

(c) If any territory inside the district is annexed, the owner of the property shall pay the same rate of ad valorem tax to the municipality as other residents of the municipality.

(d) By annexing territory in the district, the municipality does not assume any debt of the district.

(e) The district may not contest an annexation by the municipality.

Sec. 9016.110. WATER SERVICE DEADLINE. The district must begin operation of a water system serving at least a part of the district not later than the sixth anniversary of the date that district voters approve the issuance of bonds to provide for the development of the water system.

Sec. 9016.111. LIMITATION ON USE OF EMINENT DOMAIN. The district may not exercise the power of eminent domain:

(1) outside the district to acquire a site or easement for a recreational facility as defined by Section 49.462, Water Code; or

(2) in the corporate limits of the municipality as those limits exist on September 1, 2011.

Sec. 9016.112. PROHIBITION ON DIVISION OF DISTRICT. The district may not divide into two or more districts.

[Sections 9016.113-9016.150 reserved for expansion]

#### SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

Sec. 9016.151. 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 9016.153.

(b) The district must hold an election in the manner provided by Chapters 49 and 51, 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. 9016.152. OPERATION AND MAINTENANCE TAX. (a) If authorized at an election held under Section 9016.151, 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. 9016.153. 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 9016.154-9016.200 reserved for expansion]

**SUBCHAPTER E. BONDS AND OTHER OBLIGATIONS**

**Sec. 9016.201. 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. 9016.202. 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 Section 51.433, Water Code.

**Sec. 9016.203. LIMITATION ON TAX RATE.** Notwithstanding any other provision of this chapter, the projected combined operation, maintenance, and debt service tax rates as of the date of the issuance of any bonds, as described by the commission in a commission order approving the issuance of the bonds, may not exceed 65 cents for each \$100 of assessed valuation of property in the district.

**Sec. 9016.204. BONDS AND OTHER OBLIGATIONS NOT TO BE PAID BY MUNICIPALITY OR COUNTY.** Bonds or other obligations of the district:

(1) may not be paid wholly or partly by taxes imposed by the county or the municipality;

(2) are not debts of the county or municipality; and

(3) do not give rise to a claim against the county or municipality.

**SECTION \_\_\_\_.** The Midland County Utility District initially includes all the territory contained in the following area:

54,050 Acres of Land

Located in Various Sections and Blocks,

T&P RR Co. Survey, Midland County, Texas.

Boundary Being More Fully Described By Metes and Bounds As Follows:

BEGINNING at (Y= 10,677,038' and X= 1,736,917') a point in the west line of Section 7, Block 39, T2S and a southerly line of Midland city limits and being the most westerly northwest corner of this tract;

THENCE S 14°19' E, a distance of 2685 feet to the southwest corner of said Section 7 and being an ell corner of this tract;

THENCE N 75°10' E with the south right-of-way line of West County Road 120, a distance of 7031 feet to a point in the north line of Section 17 this block for a point of deflection of this tract;

THENCE S 64°46' E, a distance of 4725 feet to a point in the east line of said Section 17 and in the west right-of-way line of South County Road 1210 also being a point of deflection of this tract;

THENCE S 14°23' E with the west right-of-way line of said South County Road 1210, a distance of 6340 feet to a point in the north right-of-way line of West County Road 138 and being an ell corner of this tract;

THENCE S 75°41' W with the north right-of-way line of said West County Road 138, a distance of 3340 feet to a point in the west right-of-way line of South County Road 1216 and being an ell corner of this tract;

THENCE S 14°52' E with the west right-of-way line of said South County Road 1216, a distance of 1272 feet to a point in the north right-of-way line of West County Road 140 and being an ell corner of this tract;

THENCE S 75°29' W with the north right-of-way line of said West County Road 140, a distance of 1974 feet to a point near the northwest corner of Section 29, Block 39, T2S and being an ell corner of this tract;

THENCE S 14°16' E, a distance of 26,411 feet to a point near the southwest corner of Section 6, Block 39, T3S and being the most southerly southwest corner of this tract;

THENCE N 75°59' E, a distance of 15,901 feet to a point in the east right-of-way line of State Highway 349 and being the most southerly southeast corner of this tract;

THENCE N 14°08' W with the east right-of-way line of said State Highway 349, a distance of 18,548 feet to a point near the southwest corner of Condor Aviation Co. Inc. tract and being an ell corner of this tract;

THENCE N 75°17' E, a distance of 5227 feet to a point in the east line of Section 35, Block 39, T2S and being an ell corner of this tract;

THENCE N 14°23' W, a distance of 1604 feet to a point for an ell corner of this tract;

THENCE N 76°20' E, a distance of 5414 feet to a point in the east right-of-way line of Farm to Market Road 715 and being an ell corner of this tract;

THENCE N 14°21' W with the east right-of-way line of said Farm to Market Road 715, a distance of 664 feet to a point for an ell corner of this tract;

THENCE N 75°23' E, a distance of 2628 feet to a point in the west half of Section 24, Block 38, T2S and being an ell corner of this tract;

THENCE S 14°03' E, a distance of 8251 feet to a point for an ell corner of this tract;

THENCE N 76°09' E, a distance of 2658 feet to a point in the east right-of-way line of South County Road 1160 and being an ell corner of this tract;

N 14°22' W with the east right-of-way line of said South County Road 1160, a distance of 3359 feet to a point in the south right-of-way line of East County Road 160 and being an ell corner of this tract;

THENCE N 75°38' E with the south right-of-way line of said East County Road 160, a distance of 10,581 feet to a point near the southeast corner of Section 22, Block 38, T2S and being an ell corner of this tract;

THENCE N 14°07' W with the east line of said Section 22, a distance of 5353 feet to a point near the northeast corner of said Section 22 and being an ell corner of this tract;

THENCE N 75°40' E, a distance of 1381 feet to a point near the southeast corner of George V. Anderson Jr. tract and the southwest corner of Donna Johnson tract also being an ell corner of this tract;

THENCE N 14°03' W with the west line of said Donna Johnson tract and the east line of said George V. Anderson Jr. tract, a distance of 1926 feet to a point near the northwest corner of said Donna Johnson tract and being an ell corner of this tract;

THENCE N 75°43' E, a distance of 1355 feet to a point in the east right-of-way line of South County Road 1136 and being an ell corner this tract;

THENCE N 13°52' W with the east right-of-way line of said South County Road 1136, a distance of 8663 feet to a point in the southwesterly right-of-way of State Highway 158 and the south right-of-way line of East County Road 130 also being an ell corner of this tract;

THENCE N 75°27' E with the south right-of-way line of said East County Road 130, a distance of 3996 feet to a point for an ell corner of this tract;

THENCE N 13°57' W, a distance of 5272 feet to a point in the south right-of-way line of East County Road 120 and being an ell corner of this tract;  
THENCE N 75°41' E with the south right-of-way line of said East County road 120, a distance of 14,750 feet to a point for an ell corner of this tract;  
THENCE N 14°17' W, a distance of 5276 feet to a point near the northwest corner of Section 51, Block 37, T2S and being an ell corner of this tract;  
THENCE N 74°54' E, a distance of 10,567 feet to a point in the east right-of-way line of Farm to Market Road 1379 and being the most easterly southeast corner of this tract;  
THENCE N 13°59' W with the east right-of-way line of said Farm to Market Road 1379, a distance of 3955 feet to a point of deflection of this tract;  
THENCE N 14°17' W, a distance of 20,565 feet to a point in the southeasterly right-of-way of Interstate Highway 20 and being the most easterly northeast corner of this tract;  
THENCE S 59°40' W with the southeasterly right-of-way of said Interstate Highway 20, a distance of 22,345 feet to a point in the projection of North County Road 1120 and being a point of deflection of this tract;  
THENCE N 14°09' W, a distance of 8118 feet to a point near the northeast Section 26, Block 38, T1S and being an ell corner of this tract;  
THENCE S 75°33' W with the north line of said Section 26, a distance of 2741 feet to a point for an ell corner of this tract;  
THENCE N 13°46' W, a distance of 3300 feet to a point for an ell corner of this tract;  
THENCE S 75°45' W, a distance of 2696 feet to a point in the west line of Section 23 and the east line of Section 22, Block 38, T1S and being an ell corner of this tract;  
THENCE S 14°37' E with the west line of said Section 23 and the east line of said Section 22, a distance of 668 feet to a point for an ell corner of this tract;  
THENCE S 75°34' W, a distance of 7949 feet to a point near the middle of Section 21, Block 38, T1S and being an ell corner of this tract;  
THENCE N 14°18' W, a distance of 2716 feet to a point in the north line of said Section 21 and being an ell corner of this tract;  
THENCE S 75°23' W, a distance of 4294 feet to a point in the north line of Section 20, Block 38, T1S and being a point of deflection of this tract;  
THENCE S 66°10' W, a distance of 3034 feet to a point in an easterly line of the Midland city limits and being the most northerly northwest corner of this tract;  
THENCE S 14°33' E with said city limits, a distance of 5372 feet to an ell corner of said city limits and being an ell corner of this tract;  
THENCE S 75°36' W with said city limits, a distance of 2511 feet to an ell corner of said city limits and being an ell corner of this tract;  
THENCE S 14°34' E with said city limits, a distance of 180 feet to an ell corner of said city limits and being an ell corner of this tract;  
THENCE S 75°36' W with said city limits, a distance of 835 feet to an ell corner of said city limits and being an ell corner of this tract;  
THENCE S 14°34' E with said city limits, a distance of 3832 feet to an ell corner of said city limits and being an ell corner of this tract;  
THENCE N 75°36' E with said city limits, a distance of 2208 feet to an ell corner of said city limits and being an ell corner of this tract;

THENCE N 14°34' W with said city limits, a distance of 1204 feet to an ell corner of said city limits and being an ell corner of this tract;

THENCE N 75°36' E with said city limits, a distance of 1138 feet to an ell corner of said city limits and being an ell corner of this tract;

THENCE S 15°14' E with said city limits, a distance of 645 feet to an ell corner of said city limits and being an ell corner of this tract;

THENCE N 75°36' E with said city limits, a distance of 4603 feet to an ell corner of said city limits and being an ell corner of this tract;

THENCE S 14°35' E with said city limits, a distance of 5122 feet to an ell corner of said city limits and being an ell corner of this tract;

THENCE N 75°37' E with said city limits, a distance of 659 feet to an ell corner of said city limits and being an ell corner of this tract;

THENCE S 14°36' E with said city limits, a distance of 2879 feet to a point in the northwesterly right-of-way line of Business Interstate Highway 20 (US Highway 80) and the most easterly southeast corner of said city limits also being a point of deflection of this tract;

THENCE N 59°41' E with the northwesterly right-of-way line of said Business Interstate Highway 20, a distance of 4829 feet to a point near the northwest corner of Section 40, Block 38, T1S and being a point of deflection of this tract;

THENCE S 14°24' E, a distance of 7260 feet to a point in the east line of Section 45, Block 38, T1S and being 1000 feet southerly of the southeasterly right-of-way line of Interstate Highway 20 and being a point of deflection of this tract;

THENCE S 45°05' W 1000 feet southerly and parallel to the southeasterly right-of-way line of said Interstate Highway 20, a distance of 6527 feet to a point in the north line of Section 5, Block 38, T2S and in the south right-of-way line of Farm to Market Road 307 also being a point of deflection of this tract;

THENCE N 76°37' E with the south right-of-way line of said Farm to Market Road 307, a distance of 2882 feet to a point near the northeast corner of a 320 acre City of Midland tract in Section 4, Block 38, T2S and being an ell corner of this tract;

THENCE S 14°25' E with the east line of said 320 acre tract, a distance of 5252 feet to a point in the south line of said Section 4 and the north line of Section 9, Block 38, T2S and being an ell corner of this tract;

THENCE N 75°36' E with the north line of said Section 9, a distance of 2768 feet to a point near the northeast corner of said Section 9 and in the west right-of-way South County Road 1140 also being an ell corner of this tract;

THENCE S 14°36' E with the west right-of-way line of said South County Road 1140, a distance of 5313 feet to a point in the north right-of-way line of East County Road 120 and being an ell corner of this tract;

THENCE S 75°56' W with the north right-of-way line of said East County Road 120, a distance of 5150 to a point in the northeasterly right-of-way line of State Highway 158 and being a point of deflection of this tract;

THENCE N 70°55' W with the northeasterly right-of-way line of said State Highway 158, a distance of 4453 to a point near the most southerly southwest corner of a 365.58 acre City of Midland tract as described in Volume 2308, Page 3, Official Public Records of Midland County and the southeast corner of Ralph H White tract also being a point of deflection of this tract;

THENCE N 15°31' W with the east line of said Ralph H White tract and a west line of said City of Midland Tract, a distance of 732 feet to a point near the northeast corner of said Ralph H White tract and being a point of deflection of this tract;

THENCE N 70°36' W with the north line of said Ralph H White tract, a distance of 171 feet to a point near the northwest corner of said Ralph H White tract and in the east line of a 1.00 acre City of Midland tract as described in Volume 2308, Page 3, Official Public Records of Midland County and being a point of deflection of this tract;

THENCE S 15°31' E with the west line of said Ralph H White tract and the east line of said 1.00 acre City of Midland tract, a distance of 733 feet to a point in the northeasterly right-of-way line of said State Highway 158 and being a point of deflection of this tract;

THENCE N 70°55' W with the south line of said 1.00 acre City of Midland tract and the northeasterly right-of-way line of said State Highway 158, a distance of 415 feet to the southwest corner of said 1.00 acre City of Midland tract and being a point of deflection of this tract;

THENCE N 15°31' W with the west line of said 1.00 acre City of Midland tract, a distance of 1252 feet to the northwest corner of said 1.00 acre City of Midland and being a point of deflection of said 365.58 acre City of Midland tract also being a point of deflection of this tract;

THENCE S 75°57' W with a south line of said 365.58 acre City of Midland tract, a distance of 1419 feet to a point in the west line of Section 8, Block 38, T2S and being an ell corner of this tract;

THENCE N 14°10' W with the west line of said Section 8, a distance of 1274 feet to a point near the northwest corner of said Section 8 and being an ell corner of this tract;

THENCE N 75°49' E with the north line of said Section 8, a distance of 36 feet to a point near the southeast corner of Section 6, Block 38, T2S and being an ell corner of this tract;

THENCE N 14°12' W with the east line of said Section 6, a distance of 2124 feet to a point 1000 feet southerly of the southeasterly right-of-way line of said Interstate Highway 20 and being a point of deflection of this tract;

THENCE S 44°40' W southerly and parallel to the southeasterly right-of-way line of said Interstate Highway 20, a distance of 3968 feet to a point in the Midland city limits and being a point of deflection of this tract;

THENCE S 14°09' E with said city limits, a distance of 611 feet to the most southerly southeast corner of said city limits and being an ell corner of this tract;

THENCE S 75°32' W with the south line of said city limits, a distance of 10,595 feet to an ell corner of said city limits and being an ell corner of this tract;

THENCE S 14°23' E with the said city limits, a distance of 750 feet to an ell corner of said city limits and being an ell corner of this tract;

THENCE S 75°29' W with said city limits, a distance of 677 feet to an ell corner of said city limits and being an ell corner of this tract;

THENCE S 14°32' E with said city limits, a distance of 781 feet to an ell corner of said city limits and being an ell corner of this tract;

THENCE S 75°24' W with said city limits, a distance of 1675 feet to an ell corner of said city limits and being an ell corner of this tract;



THENCE N 14°23' W with said city limits, a distance of 1041 feet to an ell corner of said city limits and being an ell corner of this tract;  
THENCE S 75°29' W with said city limits, a distance of 1000 feet to an ell corner of said city limits and being an ell corner of this tract;  
THENCE N 14°23' W with said city limits, a distance of 500 feet to an ell corner of said city limits and being an ell corner of this tract;  
THENCE S 75°37' W with said city limits, a distance of 3137 feet to an ell corner of said city limits and being an ell corner of this tract;  
THENCE S 14°18' E with said city limits, a distance of 570 feet to an ell corner of said city limits and being an ell corner of this tract;  
THENCE S 75°42' W with said city limits, a distance of 1660 feet to an ell corner of said city limits and being an ell corner of this tract;  
THENCE N 14°18' W with said city limits, a distance of 567 feet to an ell corner of said city limits and being an ell corner of this tract;  
THENCE S 75°37' W with said city limits, a distance of 3390 feet to an ell corner of said city limits and being an ell corner of this tract;  
THENCE S 15°02' E with said city limits, a distance of 709 feet to an ell corner of said city limits and being an ell corner of this tract;  
THENCE S 74°54' W with said city limits, a distance of 1040 feet to an ell corner of said city limits and being an ell corner of this tract;  
THENCE S 15°03' E with said city limits, a distance of 90 feet to an ell corner of said city limits and being an ell corner of this tract;  
THENCE S 75°34' W with said city limits, a distance of 1064 feet to an ell corner of said city limits and being an ell corner of this tract;  
THENCE N 14°40' W with said city limits, a distance of 817 feet to an ell corner of said city limits and being an ell corner of this tract;  
THENCE S 75°44' W with said city limits, a distance of 559 feet to a point of curvature of said city limits and this tract;  
THENCE around a curve to the left in a southwesterly direction and with said city limits, said curve having a radius length of 10,509 feet, a delta angle of 16°04', an arc length of 2947 feet and a chord length of 2937 feet bearing S 67°42' W to a point of tangency of said city limits and this tract;  
THENCE S 59°40' W with said city limits, a distance of 6362 feet to the Point of Beginning, containing approximately 54,050 acres of land, more or less.  
Bearings, distances and coordinates are relative to the Texas Coordinate System, 1983 NAD, Central Zone based on City of Midland's G.I.S Digital Map.

SECTION \_\_\_\_\_. (a) The legal notice of the intention to introduce this Act, setting forth the general substance of this Act, has been published as provided by law, and the notice and a copy of this Act have been furnished to all persons, agencies, officials, or entities to which they are required to be furnished under Section 59, Article XVI, Texas Constitution, and Chapter 313, Government Code.

(b) The governor, one of the required recipients, has submitted the notice and Act to the Texas Commission on Environmental Quality.

(c) The Texas Commission on Environmental Quality has filed its recommendations relating to this Act with the governor, the lieutenant governor, and the speaker of the house of representatives within the required time.

(d) All requirements of the constitution and laws of this state and the rules and procedures of the legislature with respect to the notice, introduction, and passage of this Act are fulfilled and accomplished.

SECTION \_\_\_\_\_. (a) Section 9016.111, Special District Local Laws Code, as added by Section 1 of this Act, 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 9016, Special District Local Laws Code, as added by Section 1 of this Act, is amended by adding Section 9016.111 to read as follows:

Sec. 9016.111. 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.

The amendment to **HB 3111** was read.

Senator Uresti offered the following amendment to Floor Amendment No. 1:

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

Amend Amendment No. 1 by Seliger to **HB 3111** as follows:

(1) At the end of added Subdivision (1), Section 9016.1111, Special District Local Laws Code (on page 6 of the amendment, line 28), strike "or".

(2) At the end of added Subdivision (2), Section 9016.1111, Special District Local Laws Code (on page 6 of the amendment, line 30), between "2011" and the period, insert the following:

; or

(3) outside the county

The amendment to Floor Amendment No. 1 to **HB 3111** was read and was adopted by a viva voce vote.

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

Absent-excused: Ogden.

Question recurring on the adoption of Floor Amendment No. 1 to **HB 3111**, the amendment as amended was adopted by the following vote: Yeas 29, Nays 1.

Nays: West.

Absent-excused: Ogden.

Senator Seliger offered the following amendment to the bill:

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

Amend **HB 3111** by adding the following SECTION and renumbering subsequent SECTIONS accordingly:

SECTION \_\_\_\_\_. Subsection (b), Section 431.102, Transportation Code, is amended to read as follows:

(b) The property of a local government corporation and a transaction to acquire the property is exempt from taxation in the same manner as a corporation created under Chapter 394, Local Government Code, except that property of a local government corporation created by a municipal power agency that was created under Subchapter C, Chapter 163, Utilities Code, is not exempt from ad valorem taxation if the property is located outside of the boundaries of each of the municipalities that created the municipal power agency.

The amendment to **HB 3111** was read.

#### **POINT OF ORDER**

Senator West raised a point of order that Floor Amendment No. 3 to **HB 3111** was not germane to the body of the bill.

#### **POINT OF ORDER WITHDRAWN**

Senator West withdrew the point of order.

Senator Seliger withdrew Floor Amendment No. 3.

Senator Seliger offered the following amendment to the bill:

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

Amend **HB 3111** by adding the following SECTIONS and renumbering subsequent SECTIONS accordingly:

WHEREAS, William James Stroman, Jr., individually and as the independent executor of the estate of William James Stroman and attorney-in-fact for Cleo Lane Stroman (collectively referred to as "Stroman"), alleges that:

(1) the State of Texas, through the board of regents of The University of Texas System ("the board"), owns university blocks 23, 24, and 26 ("university lands") located in Pecos County, Texas, and exercises sole and exclusive management and control of the lands set aside and appropriated to or acquired by the permanent university fund, which was created and is governed by Sections 10, 11, 15, and 18, Article VII, Texas Constitution;

(2) Stroman owns property adjoining the west line of the university lands, referred to as the Stroman Ranch;

(3) during the year 2008, the board began removing a fence located on or about the true boundary of the university lands and began constructing a new fence west of the true boundary of the university lands and entered the Stroman Ranch without consent and staked a new fence line west of the true boundary of the university lands;

(4) the board informed Stroman that it would be constructing a new fence on the new staked fence line and stated that the location of the new fence was based on a survey performed by Frank F. Friend, the field notes of which were filed in the General Land Office in 1939;

(5) the university lands were originally surveyed in 1879 by R. M. Thomson, and Friend later resurveyed the university lands in 1936, purportedly under the authority of Section 66.41, Education Code, which called for lands to be resurveyed when it was impracticable to establish lines and corners as originally surveyed;

(6) the Friend survey placed the western boundary of the university lands west of the previously established line and clearly on the Stroman Ranch;

(7) Stroman informed the board of the error in the location of the western boundary line; however, the board did not correct the error and stated that the board disputed Stroman's claim of ownership;

(8) in an attempt to resolve the dispute, Stroman hired J. Stan Piper, a licensed state land surveyor, to establish the proper western boundary of the university lands, and Piper located the correct boundary between the university lands and the Stroman Ranch, based on the original 1879 R. M. Thomson survey and field notes, as well as subsequent surveys;

(9) Piper's conclusive findings, including locations of monuments from the original R. M. Thomson survey, establish the true boundary between the university lands and the Stroman Ranch and demonstrate that the Friend survey was unnecessary and did not establish the proper boundary; and

(10) the board intends to complete the fence along the incorrect boundary between the university lands and the Stroman Ranch, thereby trespassing on Stroman's property and denying Stroman access to the property; now, therefore, be it

RESOLVED by the Legislature of the State of Texas, That William James Stroman, Jr., individually and as the independent executor of the estate of William James Stroman and attorney-in-fact for Cleo Lane Stroman, is granted permission to sue the State of Texas and the board of regents of The University of Texas System subject to Chapter 107, Civil Practice and Remedies Code; and, be it further

RESOLVED, That Stroman may not seek recovery of monetary damages from the state, but may only seek a determination of the boundary of Stroman's property and a determination of Stroman's rights through a court order that fixes and determines the true boundary between the university lands and the Stroman Ranch; and, be it further

RESOLVED, That the suit authorized by this resolution may be brought in Pecos or Travis County; and, be it further

RESOLVED, That the relief awarded in the suit authorized by this resolution is limited to the relief authorized under Chapter 37, Civil Practice and Remedies Code, or Chapter 22, Property Code, or both; and, be it further

RESOLVED, That the secretary of the board of regents of The University of Texas System be served process as provided by Section 107.002(a)(3), Civil Practice and Remedies Code.

The amendment to **HB 3111** was read.

Senator Seliger withdrew Floor Amendment No. 4.

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

**HB 3111** as amended was passed to third reading by a viva voce vote.

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

Absent-excused: Ogden.

**HOUSE BILL 3111 ON THIRD READING**

Senator Seliger moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3111** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Ogden.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

**GUEST PRESENTED**

Senator Estes was recognized and introduced to the Senate Dr. Kenneth Cooper.

The Senate welcomed its guest.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 2396 ON SECOND READING**

Senator Zaffirini moved to suspend the regular order of business to take up for consideration **CSHB 2396** at this time on its second reading:

**CSHB 2396**, Relating to the pledge of advanced transportation district sales and use taxes to certain bonds.

The motion prevailed.

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

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

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

Nays: Birdwell, Shapiro.

Absent-excused: Ogden.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 2396 ON THIRD READING**

Senator Zaffirini moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 2396** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 2.

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

Nays: Birdwell, Shapiro.

Absent-excused: Ogden.

The bill was read third time and was passed by the following vote: Yeas 28, Nays 2. (Same as previous roll call)

**COMMITTEE SUBSTITUTE**  
**HOUSE BILL 2173 ON SECOND READING**

On motion of Senator Van de Putte and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 2173** at this time on its second reading:

**CSHB 2173**, Relating to the adoption of certain voting procedures and to certain elections, including procedures necessary to implement the federal Military and Overseas Voter Empowerment Act, deadlines for declaration of candidacy and dates for certain elections, and to terms of certain elected officials.

The bill was read second time.

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

**Floor Amendment No. 1**

Amend **CSHB 2173** (senate committee printing) in SECTION 37 of the bill, in amended Section 172.082(c), Election Code (page 11, line 58), by striking "fourth Tuesday" and substituting "third Tuesday".

The amendment to **CSHB 2173** was read and was adopted by a viva voce vote.

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

Absent-excused: Ogden.

Senator Watson, on behalf of Senator Estes, offered the following amendment to the bill:

**Floor Amendment No. 2**

Amend **CSHB 2173** (senate committee printing) in SECTION 30 of the bill, by striking amended Section 171.0231(d), Election Code (page 10, lines 58-66) and substituting the following:

(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].~~

The amendment to **CSHB 2173** was read and was adopted by a viva voce vote.

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

Absent-excused: Ogden.

Senator Shapiro offered the following amendment to the bill:

**Floor Amendment No. 3**

1) Amend **CSHB 2173**, SECTION 43, Subsection (e), Section 11.059, Education Code, to read as follows:

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

The amendment to **CSHB 2173** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 3 except as follows:

Absent-excused: Ogden.

Senator Van de Putte temporarily postponed further consideration of **CSHB 2173**.

Question — Shall **CSHB 2173** as amended be passed to third reading?

#### GUEST PRESENTED

Senator Huffman was recognized and introduced to the Senate Harris County District Attorney Pat Lykos.

The Senate welcomed its guest.

#### COMMITTEE SUBSTITUTE HOUSE BILL 2408 ON SECOND READING

On motion of Senator Harris and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 2408** at this time on its second reading:

**CSHB 2408**, Relating to title insurance.

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

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

Absent-excused: Ogden.

#### COMMITTEE SUBSTITUTE HOUSE BILL 2408 ON THIRD READING

Senator Harris moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 2408** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Ogden.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1371 ON SECOND READING**

On motion of Senator Rodriguez and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 1371** at this time on its second reading:

**CSHB 1371**, Relating to vehicle parking requirements in certain municipal housing authority communities.

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

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

Absent-excused: Ogden.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1371 ON THIRD READING**

Senator Rodriguez moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 1371** be passed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Ogden.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

**VOTE RECONSIDERED ON  
HOUSE BILL 2277**

On motion of Senator Williams and by unanimous consent, the vote by which **HB 2277** was finally passed was reconsidered:

**HB 2277**, Relating to life settlements and the sale, exchange, or replacement of life insurance and annuity contracts.

Question — Shall **HB 2277** be finally passed?

Senator Carona offered the following amendment to the bill:

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

Amend **HB 2277** on third reading as follows:

(1) In the SECTION that adds Chapter 1111A, Insurance Code, in added Section 1111A.002(18)(K), Insurance Code (Senate Floor Amendment No. 1, by Carona, page 10, lines 13 - 14), strike "Section 230.144A," and the substitute "Sections 230.501 and 230.144A, respectively."

(2) In the SECTION that adds Chapter 1111A, Insurance Code, in added Section 1111A.025(1), Insurance Code (Senate Floor Amendment No. 1, by Carona, page 37, line 24), strike "541."

The amendment to **HB 2277** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1 on Third Reading except as follows:

Absent-excused: Ogden.



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

**HB 2277** as again amended was again finally passed by the following vote: Yeas 30, Nays 0.

Absent-excused: Ogden.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1942 ON SECOND READING**

Senator Van de Putte moved to suspend the regular order of business to take up for consideration **CSHB 1942** at this time on its second reading:

**CSHB 1942**, Relating to bullying in public schools.

The motion prevailed.

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

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

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

Nays: Birdwell, Nelson, Patrick.

Absent-excused: Ogden.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1942 ON THIRD READING**

Senator Van de Putte moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 1942** be placed on its third reading and final passage.

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

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

Nays: Birdwell, Nelson, Patrick.

Absent-excused: Ogden.

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

**GUESTS PRESENTED**

Senator Whitmire was recognized and introduced to the Senate the parents of Asher Brown, Amy and David Truong.

The Senate welcomed its guests.

**SENATOR ANNOUNCED PRESENT**

Senator Ogden, who had previously been recorded as "Absent-excused," was announced "Present."

**RECESS**

On motion of Senator Whitmire, the Senate at 1:26 p.m. recessed until 2:00 p.m. today.

**AFTER RECESS**

The Senate met at 2:25 p.m. and was called to order by President Pro Tempore Ogden.

**BILLS AND RESOLUTION SIGNED**

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

**SB 860, SB 882, SB 896, SB 910, SB 953, SB 992, SB 1047, SB 1057, SB 1154, SB 1187, SB 1208, SB 1248, SB 1295, SB 1311, SB 1352, SB 1410, SB 1414, SB 1578, SB 1598, SB 1660, SB 1667, SB 1668, SB 1669, SB 1687, SB 1692, SB 1719, SB 1755, SB 1831, SCR 57.**

**SENATE RULE 5.14(a) SUSPENDED  
(Intent Calendar)**

Senator Eltife moved to suspend Senate Rule 5.14(a) to extend the time to allow Members to place bills and resolutions on the Intent Calendar until 6:00 p.m. today.

The motion prevailed without objection.

**HOUSE BILL 3722 ON SECOND READING**

Senator Zaffirini moved to suspend the regular order of business to take up for consideration **HB 3722** at this time on its second reading:

**HB 3722**, Relating to the boater education program of the Parks and Wildlife Department.

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

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

Nays: Birdwell, Fraser, Harris, Nichols, Shapiro.

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

**HOUSE BILL 3722 ON THIRD READING**

Senator Zaffirini moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3722** be placed on its third reading and final passage.

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

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

Nays: Birdwell, Fraser, Harris, Nichols, Shapiro.

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1568 ON SECOND READING**

On motion of Senator Gallegos and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 1568** at this time on its second reading:

**CSHB 1568**, Relating to the authority of certain local governmental entities in certain populous counties to appoint, contract for, or employ physicians.

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

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1568 ON THIRD READING**

Senator Gallegos moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 1568** be placed on its third reading and final passage.

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

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1758 ON SECOND READING**

On motion of Senator Watson and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 1758** at this time on its second reading:

**CSHB 1758**, Relating to the creation of the Pilot Knob Municipal Utility District No. 3; providing authority to impose a tax and issue bonds.

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

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1758 ON THIRD READING**

Senator Watson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 1758** be placed on its third reading and final passage.

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

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

**GUESTS PRESENTED**

Senator Van de Putte was recognized and introduced to the Senate a City Center Health Careers delegation.

The Senate welcomed its guests.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 2207 ON SECOND READING**

On motion of Senator Lucio and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 2207** at this time on its second reading:

**CSHB 2207**, Relating to the authority of the board of trustees to set rates for certain municipal utility systems.

The bill was read second time.

Senator Uresti offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 2207** by adding the following appropriately numbered SECTION to the bill and renumbering the remaining SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. (a) Subsection (a), Section 1502.056, Government Code, is amended to read as follows:

(a) If the revenue of a utility system, park, or swimming pool secures the payment of public securities issued or obligations incurred under this chapter, each expense of operation and maintenance, including all salaries, labor, materials, interest, repairs and extensions necessary to provide efficient service, and each proper item of expense, is a first lien against that revenue. For a municipality with a population of more than one million but less than two million, the first lien against the revenue of a municipally owned [~~electric or gas~~] utility system that secures the payment of public securities issued or obligations incurred under this chapter also applies to funding, as a necessary operations expense, for a bill payment assistance program for utility system customers who have been threatened with disconnection from service for nonpayment of bills and who have been determined by the municipality to be low-income customers.

(b) 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.

The amendment to **CSHB 2207** was read and was adopted by a viva voce vote.

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

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

**CSHB 2207** as amended was passed to third reading by a viva voce vote.

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 2207 ON THIRD READING**

Senator Lucio moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 2207** be placed on its third reading and final passage.

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

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

**HOUSE BILL 2560 ON SECOND READING**

Senator Estes moved to suspend the regular order of business to take up for consideration **HB 2560** at this time on its second reading:

**HB 2560**, Relating to transporting a foster child in a vehicle where a handgun is in the possession of a foster parent licensed to carry a concealed handgun.

The motion prevailed.

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

The bill was read second time.

Senator Uresti offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 2560**, in SECTION 1 of the bill (senate committee report page 1, lines 18-19) by striking "in the possession and control" and substituting "concealed on the person".

The amendment to **HB 2560** was read and was adopted by a viva voce vote.

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

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

**HB 2560** as amended was passed to third reading by a viva voce vote.

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

Nays: Rodriguez.

**HOUSE BILL 2560 ON THIRD READING**

Senator Estes moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2560** be placed on its third reading and final passage.

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

Nays: Rodriguez.

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

**HOUSE BILL 33 ON SECOND READING**

On motion of Senator Zaffirini and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 33** at this time on its second reading:

**HB 33**, Relating to measures to increase the affordability of textbooks used for courses at public or private institutions of higher education.

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

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

**HOUSE BILL 33 ON THIRD READING**

Senator Zaffirini moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 33** be placed on its third reading and final passage.

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

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1228 ON SECOND READING**

Senator West moved to suspend the regular order of business to take up for consideration **CSHB 1228** at this time on its second reading:

**CSHB 1228**, Relating to payment and collection of assessments and other charges owed to a property owners' association and foreclosure of a property owners' association assessment lien.

The motion prevailed.

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

The bill was read second time.

Senator West offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 1228** (senate committee printing) as follows:

(1) In SECTION 2 of the bill, in added Section 209.0062(c), Property Code (page 1, line 34), strike "is not required to" and substitute "may not".

(2) In SECTION 2 of the bill, in added Section 209.0062(c), Property Code (page 1, line 36), strike "plan or" and substitute "plan. The association is not required".

The amendment to **CSHB 1228** was read and was adopted by a viva voce vote.

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

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

**CSHB 1228** as amended was passed to third reading by a viva voce vote.

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

Nays: Nelson.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1228 ON THIRD READING**

Senator West moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 1228** be placed on its third reading and final passage.

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

Nays: Nelson.

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

**HOUSE BILL 1812 ON SECOND READING**

On motion of Senator Seliger and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 1812** at this time on its second reading:

**HB 1812**, Relating to the type of newspaper required for publication of notice in certain counties.

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

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

**HOUSE BILL 1812 ON THIRD READING**

Senator Seliger moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1812** be placed on its third reading and final passage.

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

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 2173 ON SECOND READING**

The President Pro Tempore laid before the Senate **CSHB 2173** sponsored by Senator Van de Putte on its second reading. The bill had been read second time, amended, and further consideration temporarily postponed:

**CSHB 2173**, Relating to the adoption of certain voting procedures and to certain elections, including procedures necessary to implement the federal Military and Overseas Voter Empowerment Act, deadlines for declaration of candidacy and dates for certain elections, and to terms of certain elected officials.

Question — Shall **CSHB 2173** as amended be passed to third reading?

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

**Floor Amendment No. 4**

Amend **CSHB 2173** (senate committee printing) in SECTION 5, Section 41.0052, Election Code (page 7, line 31) 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.

The amendment to **CSHB 2173** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 4.

Senator Patrick offered the following amendment to the bill:

**Floor Amendment No. 5**

Amend **CSHB 2173** by adding the following appropriately numbered SECTION to the bill and renumbering the remaining SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 101.001, Election Code, is amended to read as follows:

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

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

(2) the person is:

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

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

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

(b) Notwithstanding Subsection (a) and Chapter 114, a person who indicates on a federal postcard application that the person is a United States citizen residing outside the United States indefinitely is entitled to vote a full ballot as provided by this chapter if the person is otherwise eligible to vote under this chapter and is a registered voter at the address contained on the application.

SECTION \_\_\_\_\_. Section 101.004, Election Code, is amended by adding Subsection (n) to read as follows:

(n) The early voting clerk shall provide notice to a person who indicates on a federal postcard application that the person is a United States citizen residing outside the United States indefinitely, other than a person described by Section 101.001(b), that as a result of the person's indication, the person is only eligible to vote a federal ballot as provided by Chapter 114. The secretary of state shall prescribe the form and manner of the notice provided under this subsection.

SECTION \_\_\_\_\_. Chapter 101, Election Code, is amended by adding Section 101.014 to read as follows:



Sec. 101.014. NOTICE ON COUNTY WEBSITE FOR CITIZENS RESIDING OUTSIDE OF UNITED STATES INDEFINITELY. If a county maintains an Internet website to provide information on voting, the website must include information that describes the effects on the ballot a person will receive under state law if the person indicates on a federal postcard application that the person is a United States citizen residing outside the United States indefinitely.

SECTION \_\_\_\_\_. Section 114.002, Election Code, is amended to read as follows:

Sec. 114.002. ELIGIBILITY. A United States citizen residing [dwelling] outside the United States is eligible to vote a federal ballot by mail if:

(1) the citizen's most recent domicile in the United States was in this state and the citizen is residing outside the United States indefinitely [~~citizen's intent to return to this state is uncertain~~];

(2) the citizen would be eligible for registration as a voter in this state if a resident; and

(3) the citizen is not eligible to vote on federal offices in any other state.

SECTION \_\_\_\_\_. The change in law made by this Act applies to a federal postcard application that requests a ballot for an election that is held on or after the effective date of this Act.

SECTION \_\_\_\_\_. This Act takes effect September 1, 2011.

The amendment to **CSHB 2173** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 5.

Senator Watson offered the following amendment to the bill:

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

Amend **CSHB 2173** by inserting an appropriately numbered SECTION to read as follows:

SECTION \_\_\_\_\_. Section 41.0053, Election Code, is repealed.

The amendment to **CSHB 2173** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 6.

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

**CSHB 2173** as amended was passed to third reading by a viva voce vote.

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

### **COMMITTEE SUBSTITUTE HOUSE BILL 2173 ON THIRD READING**

Senator Van de Putte moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 2173** be placed on its third reading and final passage.

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

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

(Senator Eltife in Chair)

**HOUSE BILL 3268 ON SECOND READING**

On motion of Senator Estes and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 3268** at this time on its second reading:

**HB 3268**, Relating to permits for air contaminant emissions of stationary natural gas engines used in combined heating and power systems.

The bill was read second time.

Senator Estes offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 3268** as follows:

On page 1, line 18, after "vehicle" insert "as defined by Section 382.003(9-a), Health and Safety Code."

The amendment to **HB 3268** was read and was adopted by a viva voce vote.

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

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

**HB 3268** as amended was passed to third reading by a viva voce vote.

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

**HOUSE BILL 3268 ON THIRD READING**

Senator Estes moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3268** be placed on its third reading and final passage.

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

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

**HOUSE BILL 1932 ON SECOND READING**

On motion of Senator Ogden and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 1932** at this time on its second reading:

**HB 1932**, Relating to the powers and duties of the Williamson-Liberty Hill Municipal Utility District.

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

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

**HOUSE BILL 1932 ON THIRD READING**

Senator Ogden moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1932** be placed on its third reading and final passage.

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

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 3324 ON SECOND READING**

On motion of Senator Watson and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 3324** at this time on its second reading:

**CSHB 3324**, Relating to the operations and monitoring of fusion centers in this state.

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

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 3324 ON THIRD READING**

Senator Watson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 3324** be placed on its third reading and final passage.

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

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 2784 ON SECOND READING**

On motion of Senator Hinojosa and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 2784** at this time on its second reading:

**CSHB 2784**, Relating to the refund policy for courses and programs at career schools and colleges.

The bill was read second time.

Senator Hinojosa offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 2784** (senate committee printing) in SECTION 1 of the bill, by striking amended Section 132.061(f), Education Code (page 2, lines 57 through 67), and substituting the following:

(f) A career school or college shall record a grade of "incomplete" for a student who withdraws during the portion of a course or program for which the student is not eligible to collect a refund under Subsection (b)(4) ~~[but is not entitled to a refund under Subsection (b)(4)(F)]~~ if the student requests the grade at the time the student withdraws and the student withdraws for an appropriate reason unrelated to the student's academic status. A student who receives a grade of incomplete may re-enroll

in the course or program during the 12-month period following the date the student withdraws and complete those incomplete subjects without payment of additional tuition for that portion of the course or program.

The amendment to **CSHB 2784** was read and was adopted by a viva voce vote.

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

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

**CSHB 2784** as amended was passed to third reading by a viva voce vote.

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

#### **COMMITTEE SUBSTITUTE HOUSE BILL 2784 ON THIRD READING**

Senator Hinojosa moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 2784** be placed on its third reading and final passage.

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

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

#### **HOUSE BILL 826 ON SECOND READING**

On motion of Senator Zaffirini and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 826** at this time on its second reading:

**HB 826**, Relating to facilitating the enrollment in or transfer to a public school district of a student in the conservatorship of the state.

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

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

#### **HOUSE BILL 826 ON THIRD READING**

Senator Zaffirini moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 826** be placed on its third reading and final passage.

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

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

#### **COMMITTEE SUBSTITUTE HOUSE BILL 3161 ON SECOND READING**

On motion of Senator Van de Putte and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 3161** at this time on its second reading:

**CSHB 3161**, Relating to limited purpose subsidiary life insurance companies.

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

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 3161 ON THIRD READING**

Senator Van de Putte moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 3161** be placed on its third reading and final passage.

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

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1821 ON SECOND READING**

On motion of Senator West and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 1821** at this time on its second reading:

**CSHB 1821**, Relating to certain information or guidelines provided by or concerning a property owners' association or concerning subdivisions that are subject to restrictive covenants.

The bill was read second time.

Senator West offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 1821** (senate committee printing) as follows:

(1) In SECTION 7 of the bill, in added Section 209.0062(d), Property Code (page 4, line 32), strike "is not required to" and substitute "may not".

(2) In SECTION 7 of the bill, in added Section 209.0062(d), Property Code (page 4, line 34), strike "plan or" and substitute "plan. The association is not required".

The amendment to **CSHB 1821** was read and was adopted by a viva voce vote.

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

Senator Wentworth offered the following amendment to the bill:

**Floor Amendment No. 2**

Amend **CSHB 1821** (senate committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. 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) Section 207.006, as added by H.B. No. 1821, Acts of the 82nd Legislature, Regular Session, 2011, does not apply to a timeshare property or timeshare association.

(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 H.B. No. 1821, 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; and
- (3) Section 207.003.

The amendment to **CSHB 1821** was read and failed of adoption by the following vote: Yeas 14, Nays 15.

Yeas: Davis, Deuell, Duncan, Ellis, Eltife, Fraser, Gallegos, Hinojosa, Lucio, Rodriguez, Seliger, Van de Putte, Wentworth, West.

Nays: Birdwell, Carona, Estes, Harris, Hegar, Huffman, Jackson, Nelson, Nichols, Patrick, Shapiro, Uresti, Watson, Whitmire, Zaffirini.

Absent: Ogden, Williams.

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

**CSHB 1821** as amended was passed to third reading by a viva voce vote.

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

### **COMMITTEE SUBSTITUTE HOUSE BILL 1821 ON THIRD READING**

Senator West moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 1821** be placed on its third reading and final passage.

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

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

### **LEAVE OF ABSENCE**

On motion of Senator Whitmire, Senator Ogden was granted leave of absence on account of important business.

### **HOUSE BILL 530 ON SECOND READING**

On motion of Senator Davis and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 530** at this time on its second reading:

**HB 530**, Relating to the definition of local law enforcement authority for purposes of the sex offender registration program.

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

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

Absent-excused: Ogden.

#### **HOUSE BILL 530 ON THIRD READING**

Senator Davis moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 530** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Ogden.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

#### **COMMITTEE SUBSTITUTE HOUSE BILL 3278 ON SECOND READING**

On motion of Senator Shapiro and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 3278** at this time on its second reading:

**CSHB 3278**, Relating to membership of the commissioner of education and the Texas Education Agency in certain advisory committees, commissions, task forces, and other similar entities.

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

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

Absent-excused: Ogden.

#### **COMMITTEE SUBSTITUTE HOUSE BILL 3278 ON THIRD READING**

Senator Shapiro moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 3278** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Ogden.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

#### **COMMITTEE SUBSTITUTE HOUSE BILL 1335 ON SECOND READING**

Senator Van de Putte moved to suspend the regular order of business to take up for consideration **CSHB 1335** at this time on its second reading:

**CSHB 1335**, Relating to certain resources available to teachers of a public school student with a disability under the statewide plan for delivery of services to public school students with disabilities.

The motion prevailed.

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

The bill was read second time.

Senator Davis offered the following amendment to the bill:

### Floor Amendment No. 1

Amend **CSHB 1335** (senate committee report) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

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

#### SUBCHAPTER M. INTRA-DISTRICT SPECIAL SERVICES TRANSFER PROGRAM

Sec. 29.501. DEFINITIONS. In this subchapter:

(1) "Parent" includes a guardian, custodian, or other person with authority to act on behalf of a student.

(2) "Pervasive developmental disorder" includes, as defined by the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders:

(A) autism;

(B) Asperger's syndrome;

(C) Rett's syndrome;

(D) childhood disintegrative disorder; and

(E) a pervasive developmental disorder, not otherwise specified.

(3) "Program" means the special services transfer program for eligible students created by this subchapter.

Sec. 29.502. SPECIAL SERVICES TRANSFER PROGRAM. (a) An eligible student under Section 29.503 may, at the option of the student's parent, attend any public school in the district in which the student resides that provides a program appropriate to the student's needs.

(b) Each school year, a school district shall provide written notice of the opportunity to transfer under this subchapter to the parent of a student who is eligible to participate in the program under Section 29.503.

Sec. 29.503. ELIGIBLE STUDENT. (a) A student is eligible to participate in the program if the student:

(1) is receiving public school services;

(2) is eligible to participate in a school district's special education program under Section 29.003; and

(3) has been diagnosed by a medical doctor with:

(A) a pervasive developmental disorder; or

(B) an intellectual disability.

(b) Each school year, the school district and the student's parent shall review:

(1) the continued applicability of the student's original diagnosis; and

(2) the student's continued eligibility for participation in the program.



(c) If a parent disagrees with a school district's decision that a student does not initially meet or does not continue to meet the requirements for eligibility under Subsection (a), the parent may seek a second diagnosis by a second medical doctor. The parent is responsible for obtaining and paying the costs of a second diagnosis. Not later than the 30th day following the date of the second diagnosis as provided by this subsection, the school district and the parent shall meet to discuss the results of the second diagnosis. The second diagnosis determines whether the student meets the eligibility requirements under Subsection (a).

Sec. 29.504. ADMISSIONS. (a) A campus that has more applications for attendance under this subchapter than available positions must fill the available positions in the order the campus receives the applications.

(b) In determining the number of available positions, a campus may consider staff needs and facility space.

Sec. 29.505. PROGRAM COMPLIANCE. The agency may withhold funding from any district that violates this subchapter or a rule adopted under this subchapter. Agency decisions are final and may not be appealed.

Sec. 29.506. RULES. The commissioner may adopt rules to implement this subchapter.

SECTION \_\_\_\_. (a) The Texas Education Agency shall make the intra-district special services transfer program under Subchapter M, Chapter 29, Education Code, as added by this Act, available for participation beginning with the 2012-2013 academic school year.

(b) As soon as practicable, the commissioner of education shall adopt and implement rules necessary for the administration of the program.

The amendment to **CSHB 1335** was read and was adopted by the following vote: Yeas 17, Nays 13.

Yeas: Davis, Deuell, Ellis, Eltife, Gallegos, Hegar, Hinojosa, Lucio, Patrick, Rodriguez, Seliger, Uresti, Van de Putte, Watson, West, Whitmire, Zaffirini.

Nays: Birdwell, Carona, Duncan, Estes, Fraser, Harris, Huffman, Jackson, Nelson, Nichols, Shapiro, Wentworth, Williams.

Absent-excused: Ogden.

Senator Patrick offered the following amendment to the bill:

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

Amend **CSHB 1335** (senate committee printing) as follows:

Insert the following appropriately numbered SECTION and renumber the subsequent SECTIONS appropriately.

SECTION \_\_. Section 29.005, Education Code, is amended by adding Subsection (f) to read as follows:

(f) The written statement of a student's individualized education program may be required to include only information included in the model form developed under Section 29.0051(a).

SECTION \_\_. Subchapter A, Chapter 29, Education Code, is amended by adding Section 29.0051 to read as follows:

Sec. 29.0051. MODEL FORM. (a) The agency shall develop a model form for use in developing an individualized education program under Section 29.005(b). The form must be clear, concise, well organized, and understandable to parents and educators and may include only:

(1) the information included in the model form developed under 20 U.S.C. Section 1417(e)(1);

(2) a state-imposed requirement relevant to an individualized education program not required under federal law; and

(3) the requirements identified under 20 U.S.C. Section 1407(a)(2).

(b) The agency shall post on the agency's Internet website the form developed under Subsection (a).

(c) A school district may use the form developed under Subsection (a) to comply with the requirements for an individualized education program under 20 U.S.C. Section 1414(d).

SECTION \_\_. Not later than December 1, 2011, the Texas Education Agency shall develop the model form required under Section 29.0051, Education Code, as added by this Act.

The amendment to **CSHB 1335** was read and was adopted by a viva voce vote.

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

Absent-excused: Ogden.

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

**CSHB 1335** as amended was passed to third reading by a viva voce vote.

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

Nays: Nichols.

Absent-excused: Ogden.

### **COMMITTEE SUBSTITUTE HOUSE BILL 1335 ON THIRD READING**

Senator Van de Putte moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 1335** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Nichols.

Absent-excused: Ogden.

The bill was read third time and was passed by the following vote: Yeas 29, Nays 1. (Same as previous roll call)

### **HOUSE BILL 1969 ON SECOND READING**

On motion of Senator Nichols and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 1969** at this time on its second reading:

**HB 1969**, Relating to the applicability of commercial fertilizer regulations to a substance containing animal manure or plant remains.

The bill was read second time.

Senator Nichols offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 1969** (senate committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_ Subchapter A, Chapter 63, Agriculture Code, is amended by adding Section 63.0025 to read as follows:

Sec. 63.0025. CERTAIN ANALYSES NOT GUARANTEE OF NUTRIENT LEVELS. A representative laboratory analysis conducted for purposes of fulfilling a requirement established by a federal agency or a state agency other than the department may not:

(1) be considered a guarantee of nutrient levels for:

(A) fertilizer material;

(B) mixed fertilizer;

(C) manipulated manure; or

(D) specialty fertilizer; or

(2) be used to determine whether animal manure, plant remains, or mixtures of those substances are commercial fertilizers under Section 63.002(c).

The amendment to **HB 1969** was read and was adopted by a viva voce vote.

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

Absent-excused: Ogden.

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

**HB 1969** as amended was passed to third reading by a viva voce vote.

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

Absent-excused: Ogden.

**HOUSE BILL 1969 ON THIRD READING**

Senator Nichols moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1969** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Ogden.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

**HOUSE BILL 2911 ON SECOND READING**

On motion of Senator Patrick and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 2911** at this time on its second reading:

**HB 2911**, Relating to guaranteed student loans and alternative education loans.

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

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

Absent-excused: Ogden.

#### **HOUSE BILL 2911 ON THIRD READING**

Senator Patrick moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2911** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Ogden.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

#### **COMMITTEE SUBSTITUTE HOUSE BILL 1616 ON SECOND READING**

On motion of Senator Estes and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 1616** at this time on its second reading:

**CSHB 1616**, Relating to the reporting of political contributions, political expenditures, and personal financial information, and to complaints filed with the Texas Ethics Commission.

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

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

Absent-excused: Ogden.

Senator Estes temporarily postponed further consideration of **CSHB 1616**.

#### **HOUSE BILL 2707 ON SECOND READING**

Senator Davis moved to suspend the regular order of business to take up for consideration **HB 2707** at this time on its second reading:

**HB 2707**, Relating to the holding of an interest in certain alcoholic beverage licenses, permits, or premises by certain persons whose alcoholic beverage license or permit has been revoked.

The motion prevailed.

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

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

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

Nays: Hegar, Nelson, Shapiro.

Absent-excused: Ogden.

### HOUSE BILL 2707 ON THIRD READING

Senator Davis moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2707** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 2.

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

Nays: Nelson, Shapiro.

Absent-excused: Ogden.

The bill was read third time and was passed by the following vote: Yeas 27, Nays 3.

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

Nays: Hegar, Nelson, Shapiro.

Absent-excused: Ogden.

### HOUSE BILL 2093 ON SECOND READING

Senator Van de Putte moved to suspend the regular order of business to take up for consideration **HB 2093** at this time on its second reading:

**HB 2093**, Relating to the operation and regulation of certain consolidated insurance programs.

The motion prevailed.

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

The bill was read second time.

Senator Duncan offered the following amendment to the bill:

#### Floor Amendment No. 1

Amend **HB 2093** (Senate committee report) as follows:

(1) In SECTION 1 (page 1) in added Section 151.001, Insurance Code, line 27, strike "single-family home, duplex, triplex, or quadruplex" and substitute "single family house, townhouse, duplex, or land development directly related thereto".

(2) In SECTION 1 (page 1) in added Section 151.001, Insurance Code, strike lines 32-37 and substitute the following and renumber any subsequent subdivisions and update any cross-references accordingly:

(4) "Claim" includes a loss or liability for a claim, damage, expense, or governmentally imposed fine, penalty, administrative action, or other action.

(5) "Construction contract" means a contract, subcontract, or agreement, or a performance bond assuring the performance of any of the foregoing, entered into or made by an owner, architect, engineer, contractor, construction manager, subcontractor, supplier, or material or equipment lessor for the design, construction, alteration, renovation, remodeling, repair, or maintenance of, or for the furnishing of material or equipment for, a building, structure, appurtenance, or other improvement to or on public or private real property, including moving, demolition, and excavation connected with the real property. The term includes an agreement to which an architect, engineer, or contractor and an owner's lender are parties regarding an assignment of the construction contract or other modifications thereto.

(6) "Indemnitor" means a party to a construction contract that is required to provide indemnification or additional insured status to another party to the construction contract or to a third party.

(7) "Insurer" has the meaning assigned by Section 560.001.

(3) In SECTION 1 (page 1, between lines 48 and 49), in added Chapter 151, Insurance Code, insert the following new Subchapter C and renumber and reletter any subsequent sections and subchapters and update any cross-references accordingly:

#### SUBCHAPTER C. REQUIREMENTS RELATED TO INDEMNIFICATION

Sec. 151.101. APPLICABILITY. (a) This subchapter applies to a construction contract for a construction project for which an indemnitor is provided or procures insurance subject to:

(1) this chapter; or

(2) Title 10.

(b) Subsection (a) applies regardless of whether the insurance is provided or procured before or after execution of the contract.

Sec. 151.102. AGREEMENT VOID AND UNENFORCEABLE. Except as provided by Section 151.103, a provision in a construction contract, or in an agreement collateral to or affecting a construction contract, is void and unenforceable as against public policy to the extent that it requires an indemnitor to indemnify, hold harmless, or defend a party, including a third party, against a claim caused by the negligence or fault, the breach or violation of a statute, ordinance, governmental regulation, standard, or rule, or the breach of contract of the indemnitee, its agent or employee, or any third party under the control or supervision of the indemnitee, other than the indemnitor or its agent, employee, or subcontractor of any tier.

Sec. 151.103. EXCEPTION FOR EMPLOYEE CLAIM. Section 151.102 does not apply to a provision in a construction contract that requires a person to indemnify, hold harmless, or defend another party to the construction contract or a third party against a claim for the bodily injury or death of an employee of the indemnitor, its agent, or its subcontractor of any tier.

Sec. 151.104. UNENFORCEABLE ADDITIONAL INSURANCE PROVISION. (a) Except as provided by Subsection (b), a provision in a construction contract that requires the purchase of additional insured coverage, or any coverage endorsement, or provision within an insurance policy providing additional insured coverage, is void and unenforceable to the extent that it requires or provides coverage the scope of which is prohibited under this subchapter for an agreement to indemnify, hold harmless, or defend.

(b) This section does not apply to a provision in an insurance policy, or an endorsement to an insurance policy, issued under a consolidated insurance program to the extent that the provision or endorsement lists, adds, or deletes named insureds to the policy.

Sec. 151.105. EXCLUSIONS. This subchapter does not affect:

(1) an insurance policy, including a policy issued under an owner-controlled or owner-sponsored consolidated insurance program or a contractor-controlled or contractor-sponsored consolidated insurance program, except as provided by Section 151.104;

(2) a cause of action for breach of contract or warranty that exists independently of an indemnity obligation;

(3) indemnity provisions contained in loan and financing documents, other than construction contracts to which the contractor and owner's lender are parties as provided under Section 151.001(5);

(4) general agreements of indemnity required by sureties as a condition of execution of bonds for construction contracts;

(5) the benefits and protections under the workers' compensation laws of this state;

(6) the benefits or protections under the governmental immunity laws of this state;

(7) agreements subject to Chapter 127, Civil Practices and Remedies Code;

(8) a license agreement between a railroad company and a person that permits the person to enter the railroad company's property as an accommodation to the person for work under a construction contract that does not primarily benefit the railroad company;

(9) an indemnity provision pertaining to a claim based upon copyright infringement;

(10) an indemnity provision in a construction contract, or in an agreement collateral to or affecting a construction contract, pertaining to:

(A) a single family house, townhouse, duplex, or land development directly related thereto; or

(B) a public works project of a municipality; or

(11) a joint defense agreement entered into after a claim is made.

(4) In SECTION 1, in added Section 151.002, Insurance Code (page 1, line 41), strike "this chapter" and substitute "Subchapter B".

(5) Insert the following appropriately numbered SECTION and renumber any subsequent SECTIONS accordingly:

SECTION \_\_\_\_ . Section 2252.902, Government Code, is repealed.

(6) In SECTION 2, line 52, between the period and "Chapter", insert "(a)".

(7) In SECTION 2, between lines 58 and 59, insert the following:

(b) The changes in law made by this Act apply only to an original construction contract with an owner of an improvement or contemplated improvement that is entered into on or after the effective date of this Act. If an original construction contract with an owner of an improvement or contemplated improvement is entered into on or after the effective date of this Act, the changes in law made by this Act apply to a related subcontract, purchase order contract, personal property lease agreement, and insurance policy. If an original construction contract with an owner of an improvement or contemplated improvement is entered into before the effective date of this Act, that original construction contract and a related subcontract, purchase order contract, personal property lease agreement, and insurance policy 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.

(8) In SECTION 3, line 59, strike "September 1, 2011" and substitute "January 1, 2012".

The amendment to **HB 2093** was read and was adopted by a viva voce vote.

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

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

Absent-excused: Ogden.

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

**HB 2093** as amended was passed to third reading by the following vote: Yeas 18, Nays 11.

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

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

Absent: Williams.

Absent-excused: Ogden.

### **HOUSE BILL 1839 ON SECOND READING**

On motion of Senator Jackson and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 1839** at this time on its second reading:

**HB 1839**, Relating to excluding a provider of recreational classes that do not lead to an educational credential from regulation as a career school or college.

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

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

Absent-excused: Ogden.



**HOUSE BILL 1839 ON THIRD READING**

Senator Jackson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1839** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Ogden.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

**COMMITTEE SUBSTITUTE  
HOUSE BILL 411 ON SECOND READING**

Senator Deuell moved to suspend the regular order of business to take up for consideration **CSHB 411** at this time on its second reading:

**CSHB 411**, Relating to the confidentiality of newborn screening information.

The motion prevailed.

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

The bill was read second time.

Senator Deuell offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 411** (senate committee printing) as follows:

(1) In the recital to SECTION 1 of the bill (page 1, line 15), strike "and (i)" and substitute "(i), and (j)".

(2) In SECTION 1 of the bill, strike amended Sections 33.017(b) and (c), Health and Safety Code (page 1, line 35, through page 2, line 27), and substitute the following:

(b) Notwithstanding other law, reports, records, and information obtained or developed by the department under this chapter may be disclosed:

(1) for purposes of diagnosis or follow-up authorized under Section 33.014;

(2) with the consent of each identified individual or an individual authorized to consent on behalf of an identified child;

(3) as authorized by court order;

(4) to a medical examiner authorized to conduct an autopsy on a child or an inquest on the death of a child; ~~or~~

(5) to public health programs of the department for public health research purposes, provided that the disclosure is approved by:

(A) the commissioner or the commissioner's designee; and

(B) an institutional review board or privacy board of the department as authorized by the federal privacy requirements adopted under the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E;

(6) for purposes relating to review or quality assurance of the department's newborn screening under this chapter or the department's newborn screening program services under Subchapter C, provided that no disclosure occurs outside of the department's newborn screening program;

(7) for purposes related to obtaining or maintaining federal certification, including related quality assurance, for the department's laboratory, provided that no disclosure occurs outside of the department's newborn screening program; or

(8) for purposes relating to improvement of the department's newborn screening under this chapter or the department's newborn screening program services under Subchapter C, provided that the disclosure is approved by the commissioner or the commissioner's designee.

(c) Notwithstanding other law, reports, records, and information that do not identify a child or the family of a child may be released without consent if the disclosure is for:

(1) statistical purposes;

(2) purposes related to obtaining or maintaining federal certification, including related review and [approval, or] quality assurance:

(A) for the department's laboratory that require disclosure outside of the department's newborn screening program; or

(B) for a public or private laboratory to perform newborn screening tests that are not part of inter-laboratory exchanges required for federal certification of the department's laboratory, provided that the disclosure is approved by the commissioner or the commissioner's designee; or

(3) other [purposes relating to review, quality assurance, or improvement of the department's newborn screening under this chapter or the department's newborn screening program services under Subchapter C;

[(4) research purposes, provided that the disclosure is approved by an institutional review board or privacy board of the department; or

[(5)] quality assurance purposes related to public health testing equipment and supplies, provided that the disclosure is approved by:

(A) the commissioner or the commissioner's designee [assessment is performed by a person who is not a laboratory]; and

(B) [only newborn screening specimens are disclosed; and

[(C) the disclosure is approved by] an institutional review board or privacy board of the department.

(3) In SECTION 1 of the bill, in added Section 33.017(c-1), Health and Safety Code (page 2, line 30), between "public health research purposes" and "if", insert "not described by Subsection (b)(5)".

(4) In SECTION 1 of the bill, in added Section 33.017(c-1)(1), Health and Safety Code (page 2, line 31), strike "a parent" and substitute "a parent, managing conservator, or guardian".

(5) In SECTION 1 of the bill, in added Section 33.017(e), Health and Safety Code (page 2, line 39), strike "Subsection (c)(4)" and substitute "Subsection (c)(3)".

(6) In SECTION 1 of the bill, in added Section 33.017(g), Health and Safety Code (page 2, line 53), strike "approves" and substitute "reviews a potential".

(7) In SECTION 1 of the bill, strike added Sections 33.017(h) and (i), Health and Safety Code (page 2, lines 56-66), and substitute the following:

(h) Nothing in this section affects the requirement that screening tests be performed under Section 33.011.

(i) If a parent, managing conservator, or guardian of a child consents to disclosure under this section:

(1) the parent, managing conservator, or guardian who consented to the disclosure may revoke the consent, in writing, at any time by using a form designated by the department; and

(2) the child may revoke the consent, in writing, at any time on or after the date the child attains the age of majority by using a form designated by the department.

(j) If a person revokes consent under Subsection (i), the department shall destroy any genetic material obtained from the child as provided by Section 33.012.

(8) In SECTION 2 of the bill, strike Subsection (b) (page 3, lines 4-5) and substitute the following:

(b) The changes made to Sections 33.0111 and 33.0112, Health and Safety Code, as amended by this Act, and Section 33.017(c-1), as added by this Act, take effect June 1, 2012.

(9) Add the following appropriately numbered SECTIONS to the bill and renumber SECTIONS of the bill accordingly:

SECTION \_\_\_\_. The heading to Section 33.0111, Health and Safety Code, is amended to read as follows:

Sec. 33.0111. DISCLOSURE STATEMENT AND CONSENT.

SECTION \_\_\_\_. Section 33.0111, Health and Safety Code, is amended by amending Subsections (a), (b), and (d) and adding Subsections (e), (f), and (g) to read as follows:

(a) The department shall develop a disclosure statement that clearly discloses to the parent, managing conservator, or guardian of a newborn child subjected to screening tests under Section 33.011:

(1) that the department or a laboratory established or approved by the department under Section 33.016 may retain for use by the department or laboratory genetic material used to conduct the newborn screening tests and discloses how the material is managed and used subject to this section and Sections 33.0112 and 33.017; and

(2) that reports, records, and information obtained by the department under this chapter that do not identify a child or the family of a child will not be released for public health research purposes under Section 33.017(c-1) unless a parent, managing conservator, or guardian of the child consents to disclosure; and

(3) that newborn screening blood spots and associated data are confidential under law and may only be used as described by Section 33.017 ~~[that the parent, managing conservator, or guardian may limit the use of the genetic material by providing to the department in accordance with Section 33.0112 a written statement prohibiting the department or laboratory from retaining the genetic material or using the genetic material for any purpose other than the conduct of newborn screening tests authorized under this chapter].~~

(b) The disclosure statement required by Subsection (a) must be included on the form developed by the department to inform parents about newborn screening. The disclosure statement must:

(1) ~~be on a separate sheet of the form;~~

~~[(2)] be [presented together with the written statement described by Subsection (a)(2)]~~ in a format that allows a parent, managing conservator, or guardian of a newborn child to consent to disclosure under Section 33.017(c-1) ~~[either:~~

~~[(A) sign, detach, and mail a portion of the form to the department to require the department or laboratory to destroy the genetic material on completion of the newborn screening tests; or~~

~~[(B) check a box and sign next to the box on the form a statement indicating the parent, managing conservator, or guardian is requiring the department or laboratory to destroy the genetic material on completion of the newborn screening tests];~~

~~(2) [(3)] include instructions on how to complete the portions of the form described by Subdivision (1) [Subdivisions (2)(A) and (B)];~~

~~(3) [(4)] include the department's mailing address; and~~

~~(4) describe how [(5) be made available to] a parent, managing conservator, or guardian of a newborn child may obtain information regarding consent through alternative sources.~~

(d) The department shall establish procedures for a physician attending a newborn child or the person attending the delivery of a newborn child to provide verification to the department that the physician or person has provided the parent, managing conservator, or guardian of the newborn child the disclosure statement required under this section.

(e) The physician attending a newborn child or the person attending the delivery of a newborn child that is not attended by a physician shall submit any document required by the department.

(f) This section does not supersede the requirements imposed by Section 33.017.

(g) A reference in this section to Section 33.017 means Section 33.017 as added by Chapter 179 (H.B. 1672), Acts of the 81st Legislature, Regular Session, 2009.

SECTION \_\_\_\_ . Section 33.0112, Health and Safety Code, is amended to read as follows:

Sec. 33.0112. ~~DESTRUCTION [STATEMENT PROHIBITING RETENTION]~~ OF GENETIC MATERIAL. (a) The department shall destroy any genetic material obtained from a child under this chapter not later than the second anniversary of the date the department receives the genetic material unless a parent, managing conservator, or guardian of the child consents to disclosure under Section 33.017(c-1) [A parent, managing conservator, or guardian of a newborn child may file with the department a signed written statement prohibiting the department or a laboratory established or approved by the department from retaining any genetic material related to the newborn screening tests conducted under this chapter or using the genetic material for any purpose other than the conduct of the newborn screening tests. A parent, managing conservator, or guardian may file the written statement on a form provided by the department].

(b) The department shall destroy any genetic material obtained from a child under this chapter not later than the second anniversary of the date the department receives the genetic material if:

(1) a parent, managing conservator, or guardian of the child consents to disclosure under Section 33.017(c-1);

(2) the parent, managing conservator, or guardian who consented to the disclosure revokes the consent under Section 33.017(i); and

(3) the department receives the written revocation of consent under Section 33.017(i) not later than the second anniversary of the date the department received the genetic material [Not later than the 60th day after the department receives the written statement, the department or laboratory shall destroy the genetic material used in the screening tests].

(c) The department shall destroy any genetic material obtained from a child under this chapter not later than the 60th day after the date the department receives a written revocation of consent under Section 33.017(i) if:

(1) a parent, managing conservator, or guardian of the child consented to disclosure under Section 33.017(c-1);

(2) the parent, managing conservator, or guardian who consented to the disclosure or the child revokes the consent under Section 33.017(i); and

(3) the department receives the written revocation of consent later than the second anniversary of the date the department received the genetic material [An adult individual may file with the department a written statement instructing the department or a laboratory established or approved by the department to destroy any genetic material of the individual that is retained and used under this chapter].

(d) A reference in this section to Section 33.017 means Section 33.017 as added by Chapter 179 (H.B. 1672), Acts of the 81st Legislature, Regular Session, 2009.

The amendment to **CSHB 411** was read and was adopted by a viva voce vote.

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

Absent-excused: Ogden.

Senator Uresti offered the following amendment to the bill:

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

Amend **CSHB 411** (senate committee printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_ . Subdivision (2), Section 47.001, Health and Safety Code, is amended to read as follows:

(2) "Birthing facility" means:

(A) a hospital licensed under Chapter 241 that offers obstetrical services ~~[and is located in a county with a population of more than 50,000]; [or]~~

(B) a birthing center licensed under Chapter 244;

(C) a children's hospital; or

(D) a facility, maintained or operated by this state or an agency of this state, that provides obstetrical services [that is located in a county with a population of more than 50,000 and that has 100 or more births per year].

SECTION \_\_\_\_ . Section 47.003, Health and Safety Code, is amended by amending Subsections (a), (c), (d), and (e) and adding Subsections (a-1) and (f) to read as follows:

(a) A birthing facility, through a program certified by the department under Section 47.004, shall perform, either directly or through a transfer agreement, ~~[offer the parents of a newborn]~~ a hearing screening ~~[for the newborn]~~ for the identification of hearing loss on each newborn or infant born at the facility before the newborn or infant is discharged from the facility unless:

(1) the parent declines the screening;

(2) the newborn or infant is transferred to another facility before the screening is performed; or

(3) the screening has previously been completed.

(a-1) The birthing facility [screening] shall inform the parents [be offered] during [the birth] admission that:

(1) the facility is required by law to screen a newborn or infant for hearing loss; and

(2) the parents may decline the screening[, and the parents shall be informed that information may be provided to the department upon their written consent].

(c) Subject to Section 47.008, the [The] department shall [may] maintain data and information on each newborn or infant who receives a hearing screening under Subsection (a) [services under a program].

(d) The department shall ensure that intervention is available to families for a newborn or infant identified as having hearing loss and that the intervention is managed by state programs operating under the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.).

(e) The department shall ensure that the intervention described by Subsection (d) is available for a newborn or infant identified as having hearing loss not later than the sixth month after the newborn's or infant's birth and through the time the child is an infant unless the infant has been hospitalized since birth.

(f) If a newborn or an infant receives medical intervention services, including a hearing aid or cochlear implant, the intervention specialist shall report the results of the intervention to the department.

SECTION \_\_\_\_. Chapter 47, Health and Safety Code, is amended by adding Section 47.0031 to read as follows:

Sec. 47.0031. FOLLOW-UP SCREENING. (a) The program that performed the hearing screening under Section 47.003 shall provide the newborn's or infant's parents with the screening results. A birthing facility, through the program, shall offer a follow-up hearing screening to the parents of a newborn or infant who does not pass the screening, or refer the parents to another program for the follow-up hearing screening. The follow-up hearing screening should be performed not later than the 30th day after the date the newborn or infant is discharged from the facility.

(b) If a newborn or an infant does not pass the screening in a follow-up hearing screening, the program that performed the follow-up hearing screening on the newborn or infant shall:

(1) provide the newborn's or infant's parents with the screening results;

(2) assist in scheduling a diagnostic audiological evaluation for the newborn or infant, consistent with the most current guidelines in the Joint Committee on Infant Hearing Position Statement, or refer the newborn or infant to a licensed audiologist who provides diagnostic audiological evaluations for newborns or infants that are consistent with the most current guidelines in the Joint Committee on Infant Hearing Position Statement; and

(3) refer the newborn or infant to early childhood intervention services.

SECTION \_\_\_\_. Subsections (b) and (d), Section 47.004, Health and Safety Code, are amended to read as follows:

(b) In order to be certified, the program must:

- (1) provide hearing screening using equipment recommended by the department;
- (2) use appropriate staff to provide the screening;
- (3) maintain and report data electronically as required by the department;
- (4) distribute family, health care provider, and physician educational materials standardized by the department; ~~and~~
- (5) provide information, as recommended by the department, to the parents on follow-up services for newborns and infants who do not pass the ~~[with abnormal]~~ screening; and
- (6) be supervised by:
- (A) a physician;
- (B) an audiologist;
- (C) a registered nurse; or
- (D) a physician assistant ~~[results].~~

(d) The department may renew the certification of a program on a periodic basis as established by board rule in order to ensure quality services to newborns, infants, and families.

SECTION \_\_\_\_\_. Section 47.005, Health and Safety Code, is amended by amending Subsections (a) and (b) and adding Subsections (d) and (e) to read as follows:

(a) A birthing facility that operates a program shall distribute to the parents of each newborn or infant who is screened educational materials that are standardized by the department regarding screening results and follow-up care.

(b) A birthing facility that operates a program shall report screening results to:

- (1) the parents;
- (2) [;] the newborn's or infant's attending physician, primary care physician, or other applicable health care provider; [;] and
- (3) the department.

(d) The department may coordinate the diagnostic audiological evaluation required under Section 47.0031(b)(2). A diagnostic audiological evaluation must be completed on the newborn or infant:

(1) not later than the third month after the newborn's or infant's birth unless the newborn or infant has been hospitalized since birth; or

(2) upon referral by the newborn's or infant's primary care physician or other applicable health care provider.

(e) An audiologist who performs a diagnostic audiological evaluation under this chapter shall report the results of the evaluation to:

- (1) the parents;
- (2) the newborn's or infant's primary care physician or other applicable health care provider; and
- (3) the department under Section 47.007(b).

SECTION \_\_\_\_\_. Section 47.007, Health and Safety Code, is amended by amending Subsection (b) and adding Subsections (d) through (h) to read as follows:

(b) Subject to Section 47.008, a ~~[A]~~ qualified hearing screening provider, hospital, health care provider, physician, audiologist, or intervention specialist shall ~~[may]~~ access the information management, reporting, and tracking system to provide information~~[-, where available,]~~ to the department and may obtain information from the department~~[-, including information]~~ relating to:

(1) the results of each hearing screening performed under Section 47.003(a) or 47.0031(a);

(2) the results of each diagnostic audiological evaluation required under Section 47.0031(b)(2);

(3) [~~4~~] infants who receive follow-up care;

(4) [~~2~~] infants identified with hearing loss;

(5) [~~3~~] infants who are referred for intervention services; and

(6) [~~4~~] case level information necessary to report required statistics to:

(A) the Maternal and Child Health Bureau on an annual basis; and

(B) the federal Centers for Disease Control and Prevention.

(d) A birthing facility described by Subsection (a) shall report the resulting information in the format and within the time frame specified by the department.

(e) A qualified hearing screening provider, audiologist, intervention specialist, educator, or other person who receives a referral from a program under this chapter shall:

(1) provide the services needed by the newborn or infant or refer the newborn or infant to a person who provides the services needed by the newborn or infant; and

(2) provide, with the consent of the newborn's or infant's parent, the following information to the department or the department's designee:

(A) results of follow-up care;

(B) results of audiologic testing of an infant identified with hearing

loss; and

(C) reports on the initiation of intervention services.

(f) A qualified hearing screening provider, audiologist, intervention specialist, educator, or other person who provides services to an infant who is diagnosed with hearing loss shall provide, with the consent of the infant's parent, the following information to the department or the department's designee:

(1) results of follow-up care;

(2) results of audiologic testing; and

(3) reports on the initiation of intervention services.

(g) A hospital that provides services under this chapter shall use the information management, reporting, and tracking system described by this section, access to which has been provided to the hospital by the department, to report, with the consent of the infant's parent, the following information to the department or the department's designee:

(1) results of all follow-up services for an infant who does not pass the screening described by Section 47.003(a) if the hospital provides the follow-up services; or

(2) the name of the provider or facility to which the hospital refers an infant who does not pass the screening described by Section 47.003(a) for follow-up services.

(h) Subject to Section 47.008, a qualified hearing screening provider, hospital, health care provider, physician, audiologist, or intervention specialist may obtain information from the department relating to:

(1) the results of each hearing screening performed under Section 47.003(a) or 47.0031(a);

(2) the results of each diagnostic audiological evaluation required under Section 47.0031(b)(2);

(3) infants who receive follow-up care;

(4) infants identified with hearing loss; and

(5) infants who are referred for intervention services.



SECTION \_\_\_\_\_. Chapter 47, Health and Safety Code, is amended by adding Sections 47.010 and 47.011 to read as follows:

Sec. 47.010. RULEMAKING. (a) The executive commissioner of the Health and Human Services Commission may adopt rules for the department to implement this chapter.

(b) If the executive commissioner adopts rules, the executive commissioner shall consider the most current guidelines established by the Joint Committee on Infant Hearing.

Sec. 47.011. DUTIES OF MIDWIFE. (a) In this section, "midwife" has the meaning assigned by Section 203.002, Occupations Code, and includes a nurse midwife described by Section 301.152, Occupations Code.

(b) A midwife who attends the birth of a newborn:

(1) is not required to offer the parents of the newborn a hearing screening for the newborn for the identification of hearing loss; and

(2) shall refer the parents of the newborn to a birthing facility or a provider that participates in the program and make a record of the referral.

SECTION \_\_\_\_\_. Section 47.002, Health and Safety Code, is repealed.

SECTION \_\_\_\_\_. (a) Not later than January 1, 2012, the executive commissioner of the Health and Human Services Commission shall prescribe a form to document a parent's decision to decline screening under Subdivision (1), Subsection (a), Section 47.003, Health and Safety Code, as added by this Act, in consultation with persons and organizations interested in newborn hearing screening.

(b) The Department of State Health Services may post the form prescribed under Subsection (a) of this section on the department's Internet website.

(c) A person or facility is not required to comply with the changes in law made by this Act to Chapter 47, Health and Safety Code, until January 1, 2012.

The amendment to **CSHB 411** was read and was adopted by a viva voce vote.

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

Absent-excused: Ogden.

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

**CSHB 411** as amended was passed to third reading by a viva voce vote.

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

Nays: Zaffirini.

Absent-excused: Ogden.

### COMMITTEE SUBSTITUTE HOUSE BILL 411 ON THIRD READING

Senator Deuell moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 411** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Zaffirini.

Absent-excused: Ogden.

The bill was read third time and was passed by the following vote: Yeas 29, Nays 1. (Same as previous roll call)

### HOUSE BILL 2169 ON SECOND READING

On motion of Senator Shapiro and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 2169** at this time on its second reading:

**HB 2169**, Relating to the authority of the governing body of a taxing unit to rescind a discount for early payment of ad valorem taxes.

The bill was read second time.

Senator Shapiro offered the following amendment to the bill:

#### Floor Amendment No. 1

Amend **HB 2169** (house committee printing) as follows:

(1) On page 1, line 10, strike "beginning in" and substitute "in the tax year following".

(2) On page 1, lines 10-12, strike ", except that the rescission takes effect beginning in the following year if the discount is rescinded after September 1".

The amendment to **HB 2169** was read and was adopted by a viva voce vote.

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

Absent-excused: Ogden.

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

**HB 2169** as amended was passed to third reading by a viva voce vote.

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

Absent-excused: Ogden.

### HOUSE BILL 2169 ON THIRD READING

Senator Shapiro moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2169** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Ogden.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

**COMMITTEE SUBSTITUTE  
HOUSE BILL 2608 ON SECOND READING**

On motion of Senator Hinojosa and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 2608** at this time on its second reading:

**CSHB 2608**, Relating to the continuation and functions of the Texas Department of Housing and Community Affairs.

The bill was read second time.

Senator Lucio offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 2608** by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Subsection (a), Section 2306.542, Government Code, is amended by adding new subdivision (1) to read as follows:

(a) Using the natural disaster housing reconstruction plan developed under this subchapter, the director and advisory committee shall develop, for implementation under Subsections (b) and (c), housing reconstruction demonstration pilot programs for three areas, each of which was affected by one of the three most recent federally declared natural disasters. The pilot programs must provide for the replacement of at least 20 houses in each area to test the feasibility of implementing the plan in the large-scale production of replacement housing for victims of federally declared natural disasters.

(1) If local requirements, regulations or environmental factors of an area require elevation of houses, the department may deviate from the 20 house requirement under subsection (a) and determine the amount of houses needed to test the feasibility of implementing the plan.

The amendment to **CSHB 2608** was read and was adopted by a viva voce vote.

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

Absent-excused: Ogden.

Senator West offered the following amendment to the bill:

**Floor Amendment No. 2**

Amend **CSHB 2608** (senate committee printing) by adding the following appropriately numbered SECTIONS to ARTICLE 1 of the bill and renumbering the remaining SECTIONS of that ARTICLE accordingly:

SECTION 1. \_\_\_\_\_. Section 2306.072(c), Government Code, is amended to read as follows:

(c) The report must include:

- (1) a complete operating and financial statement of the department;
- (2) a comprehensive statement of the activities of the department during the preceding year to address the needs identified in the state low income housing plan prepared as required by Section 2306.0721, including:

(A) a statistical and narrative analysis of the department's performance in addressing the housing needs of individuals and families of low and very low income;

(B) the ethnic and racial composition of individuals and families applying for and receiving assistance from each housing-related program operated by the department; ~~and~~

(C) the department's progress in meeting the goals established in the previous housing plan, including efforts to address the populations described by Section 2306.0721(c)(1); and

(D) recommendations on how to improve the coordination of department services to the populations described by Section 2306.0721(c)(1);

(3) an explanation of the efforts made by the department to ensure the participation of individuals of low income and their community-based institutions in department programs that affect them;

(4) a statement of the evidence that the department has made an affirmative effort to ensure the involvement of individuals of low income and their community-based institutions in the allocation of funds and the planning process;

(5) a statistical analysis, delineated according to each ethnic and racial group served by the department, that indicates the progress made by the department in implementing the state low income housing plan in each of the uniform state service regions;

(6) an analysis, based on information provided by the fair housing sponsor reports required under Section 2306.0724 and other available data, of fair housing opportunities in each housing development that receives financial assistance from the department that includes the following information for each housing development that contains 20 or more living units:

(A) the street address and municipality or county in which the property is located;

(B) the telephone number of the property management or leasing agent;

(C) the total number of units, reported by bedroom size;

(D) the total number of units, reported by bedroom size, designed for individuals who are physically challenged or who have special needs and the number of these individuals served annually;

(E) the rent for each type of rental unit, reported by bedroom size;

(F) the race or ethnic makeup of each project;

(G) the number of units occupied by individuals receiving government-supported housing assistance and the type of assistance received;

(H) the number of units occupied by individuals and families of extremely low income, very low income, low income, moderate income, and other levels of income;

(I) a statement as to whether the department has been notified of a violation of the fair housing law that has been filed with the United States Department of Housing and Urban Development, the Commission on Human Rights, or the United States Department of Justice; and

(J) a statement as to whether the development has any instances of material noncompliance with bond indentures or deed restrictions discovered through the normal monitoring activities and procedures that include meeting occupancy requirements or rent restrictions imposed by deed restriction or financing agreements;

(7) a report on the geographic distribution of low income housing tax credits, the amount of unused low income housing tax credits, and the amount of low income housing tax credits received from the federal pool of unused funds from other states; and

(8) a statistical analysis, based on information provided by the fair housing sponsor reports required by Section 2306.0724 and other available data, of average rents reported by county.

SECTION 1.\_\_\_\_. Section 2306.0721(c), Government Code, is amended to read as follows:

(c) The plan must include:

(1) an estimate and analysis of the size and the different housing needs of the following populations in each uniform state service region:

(A) individuals and families of moderate, low, very low, and extremely low income;

(B) individuals with special needs; ~~and~~

(C) homeless individuals;

(D) veterans;

(E) farmworkers; and

(F) youth who are aging out of foster care;

(2) a proposal to use all available housing resources to address the housing needs of the populations described by Subdivision (1) by establishing funding levels for all housing-related programs;

(3) an estimate of the number of federally assisted housing units available for individuals and families of low and very low income and individuals with special needs in each uniform state service region;

(4) a description of state programs that govern the use of all available housing resources;

(5) a resource allocation plan that targets all available housing resources to individuals and families of low and very low income and individuals with special needs in each uniform state service region;

(6) a description of the department's efforts to monitor and analyze the unused or underused federal resources of other state agencies for housing-related services and services for homeless individuals and the department's recommendations to ensure the full use by the state of all available federal resources for those services in each uniform state service region;

(7) strategies to provide housing for individuals and families with special needs in each uniform state service region;

(8) a description of the department's efforts to encourage in each uniform state service region the construction of housing units that incorporate energy efficient construction and appliances;

(9) an estimate and analysis of the housing supply in each uniform state service region;

(10) an inventory of all publicly and, where possible, privately funded housing resources, including public housing authorities, housing finance corporations, community housing development organizations, and community action agencies;

(11) strategies for meeting rural housing needs;

(12) a biennial action plan for colonias that:

(A) addresses current policy goals for colonia programs, strategies to meet the policy goals, and the projected outcomes with respect to the policy goals; and

(B) includes information on the demand for contract-for-deed conversions, services from self-help centers, consumer education, and other colonia resident services in counties some part of which is within 150 miles of the international border of this state;

(13) a summary of public comments received at a hearing under this chapter or from another source that concern the demand for colonia resident services described by Subdivision (12); and

(14) any other housing-related information that the state is required to include in the one-year action plan of the consolidated plan submitted annually to the United States Department of Housing and Urban Development.

The amendment to **CSHB 2608** was read and was adopted by a viva voce vote.

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

Absent-excused: Ogden.

Senator Hinojosa offered the following amendment to the bill:

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

Amend **CSHB 2608** (senate committee report) by adding the following appropriately numbered ARTICLE to the bill and renumbering subsequent ARTICLES and SECTIONS of the bill accordingly:

ARTICLE \_\_\_. REPEALER

SECTION \_\_\_.01. Section 2306.6710(f), Government Code, is repealed.

The amendment to **CSHB 2608** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 3 except as follows:

Absent-excused: Ogden.

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

**CSHB 2608** as amended was passed to third reading by a viva voce vote.

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

Absent-excused: Ogden.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 2608 ON THIRD READING**

Senator Hinojosa moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 2608** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Ogden.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1616 ON THIRD READING**

The Presiding Officer laid before the Senate **CSHB 1616** sponsored by Senator Estes on its third reading. The bill had been read second time, passed to third reading, and further consideration postponed.

Senator Estes moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 1616** be placed on its third reading and final passage:

**CSHB 1616**, Relating to the reporting of political contributions, political expenditures, and personal financial information, and to complaints filed with the Texas Ethics Commission.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Ogden.

The bill was read third time.

Senator Jackson offered the following amendment to the bill:

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

Amend **CSHB 1616** (senate committee printing) on third reading as follows:

(1) In SECTION 6 of the bill, amending Section 571.123(b), Government Code (page 3, line 6), strike "and" and substitute "[~~and~~]".

(2) In SECTION 6 of the bill, amending Section 571.123(b), Government Code (page 3, line 8), between "Section 571.124(e)" and the period, insert the following:  
; and

(4) if applicable, state that the respondent has 14 business days to correct the report that is the basis of the complaint, as provided by Section 254.0406, Election Code

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

SECTION \_\_\_\_\_. Subchapter B, Chapter 254, Election Code, is amended by adding Section 254.0406 to read as follows:

Sec. 254.0406. CORRECTION OF FILED REPORT. A person who files a report under this chapter may correct the report if:

(1) the correction is made not later than the 14th business day after the person receives written notice of a complaint filed with the commission with regard to the report; and

(2) the original report was made in good faith and without an intent to mislead or to misrepresent the information contained in the report.

SECTION \_\_\_\_ . Subchapter E, Chapter 571, Government Code, is amended by adding Section 571.1223 to read as follows:

Sec. 571.1223. **DISMISSAL OF COMPLAINT AFTER CORRECTION OF POLITICAL REPORT.** If, not later than the 14th business day after a person receives written notice of a complaint alleging that the person failed to properly file a report required under Chapter 254, Election Code, the person corrects the report that is the basis of the complaint, the commission shall dismiss the complaint, provided that the original report was made in good faith and without an intent to mislead or to misrepresent the information contained in the report.

SECTION \_\_\_\_ . Section 571.124, Government Code, is amended by amending Subsection (a) and adding Subsection (g) to read as follows:

(a) Except as provided by Subsection (g), the [The] commission staff shall promptly conduct a preliminary review on receipt of a written complaint that is in compliance with the form requirements of Section 571.122.

(g) The commission may not conduct a preliminary review of a complaint alleging that a person failed to properly file a report required under Chapter 254, Election Code, until the period for correcting the report has expired as provided by Section 254.0406, Election Code.

(4) Renumber the subsequent SECTIONS of the bill accordingly.

The amendment to **CSHB 1616** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1 on Third Reading except as follows:

Present-not voting: Estes.

Absent-excused: Ogden.

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

**CSHB 1616** as amended was finally passed by the following vote: Yeas 30, Nays 0.

Absent-excused: Ogden.

### **HOUSE BILL 3404 ON SECOND READING**

Senator Watson moved to suspend the regular order of business to take up for consideration **HB 3404** at this time on its second reading:

**HB 3404**, Relating to establishing a child care advisory committee to advise the Texas Facilities Commission.

The motion prevailed.

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



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

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

Nays: Patrick.

Absent-excused: Ogden.

#### **HOUSE BILL 3404 ON THIRD READING**

Senator Watson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3404** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Patrick.

Absent-excused: Ogden.

The bill was read third time and was passed by the following vote: Yeas 29, Nays 1. (Same as previous roll call)

#### **COMMITTEE SUBSTITUTE HOUSE BILL 2592 ON SECOND READING**

Senator Carona moved to suspend the regular order of business to take up for consideration **CSHB 2592** at this time on its second reading:

**CSHB 2592**, Relating to notice and disclosure requirements for certain credit services organizations regarding charges and consumer borrowing; providing an administrative penalty.

The motion prevailed.

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

Senator Davis asked to be recorded as "Present-not voting" on suspension of the regular order of business.

The bill was read second time.

#### **(President in Chair)**

Senator Davis offered the following amendment to the bill:

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

Amend **CSHB 2592** (senate committee printing) in SECTION 1 of the bill, in added Section 393.221(2), Finance Code (page 1, lines 25 and 26), by striking "does not preclude repayment in more than one installment." and substituting "does not preclude repayment in more than one installment, provided that the combined fees charged by the credit access business and interest for the transaction do not exceed the finance charge allowable by law for installment loans subject to Subchapter E or F, Chapter 342.".

The amendment to **CSHB 2592** was read.

Senator Davis withdrew Floor Amendment No. 1.

**CSHB 2592** was passed to third reading by a viva voce vote.

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

Nays: Birdwell.

Present-not voting: Davis.

Absent-excused: Ogden.

### **COMMITTEE SUBSTITUTE HOUSE BILL 2592 ON THIRD READING**

Senator Carona moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 2592** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 1, Present-not voting 1.

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

Nays: Birdwell.

Present-not voting: Davis.

Absent-excused: Ogden.

The bill was read third time and was passed by the following vote: Yeas 27, Nays 2, Present-not voting 1.

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

Nays: Birdwell, Lucio.

Present-not voting: Davis.

Absent-excused: Ogden.

### **HOUSE BILL 2594 ON SECOND READING**

Senator Carona moved to suspend the regular order of business to take up for consideration **HB 2594** at this time on its second reading:

**HB 2594**, Relating to the licensing and regulation of certain credit services organizations and the regulation of certain extensions of consumer credit obtained by those organizations or with regard to which the organizations provide assistance; providing an administrative penalty.

The motion prevailed.

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

Senator Davis asked to be recorded as "Present-not voting" on suspension of the regular order of business.

The bill was read second time.

Senator Carona offered the following committee amendment to the bill:

**Committee Amendment No. 1**

Amend **HB 2594** (engrossed version) as follows:

(1) On page 13, line 24, strike "license holder" and substitute "credit access business or license holder".

The amendment to **HB 2594** was read.

Senator Carona offered the following amendment to Committee Amendment No. 1:

**Floor Amendment No. 1**

Amend Senate Committee Amendment No. 1 to **HB 2594** (senate committee printing, page 1, between lines 9 and 10) by adding the following item:

(2) In SECTION 2 of the bill, after added Section 393.628(a), Finance Code (page 6, between lines 27 and 28), insert the following subsection and reletter subsequent subsections of Section 393.628, Finance Code, appropriately:

(b) The commissioner shall remit to the comptroller amounts received under Subsection (a) for deposit in an interest-bearing deposit account in the Texas Treasury Safekeeping Trust Company. Money in the account may be spent by the finance commission only for the purposes provided by this section. Amounts in the account may be invested and reinvested in the same manner as funds of the Employees Retirement System of Texas, and the interest from those investments shall be deposited to the credit of the account.

The amendment to Committee Amendment No. 1 to **HB 2594** was read and was adopted by a viva voce vote.

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

Absent-excused: Ogden.

Question recurring on the adoption of Committee Amendment No. 1 to **HB 2594**, the amendment as amended was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Committee Amendment No. 1 as amended except as follows:

Absent-excused: Ogden.

Senator Carona offered the following committee amendment to the bill:

**Committee Amendment No. 2**

Amend **HB 2594** (engrossed version) as follows:

(1) On page 2, line 27, add after the underlined period "For purposes of this chapter, this definition does not preclude repayment in more than one installment."

The amendment to **HB 2594** was read.

Question — Shall Committee Amendment No. 2 to **HB 2594** be adopted?

**SENATOR ANNOUNCED PRESENT**

Senator Ogden, who had previously been recorded as "Absent-excused," was announced "Present."

Question — Shall Committee Amendment No. 2 to **HB 2594** be adopted?

Senator Davis offered the following amendment to Committee Amendment No. 2:

**Floor Amendment No. 2**

Amend Committee Amendment No. 2 to **HB 2594** (senate committee printing, page 1, line 14) by inserting between "installment" and the underlined period, " provided that the combined fees charged by the credit access business and interest for the transaction do not exceed the finance charge allowable by law for installment loans subject to Subchapter E or F, Chapter 342".

The amendment to Committee Amendment No. 2 to **HB 2594** was read.

Senator Davis withdrew Floor Amendment No. 2.

Question recurring on the adoption of Committee Amendment No. 2 to **HB 2594**, the amendment was adopted by the following vote: Yeas 24, Nays 6.

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

Nays: Davis, Ellis, Lucio, Rodriguez, Wentworth, West.

Absent: Whitmire.

Senator Carona offered the following amendment to the bill:

**Floor Amendment No. 3**

Amend **HB 2594** (senate committee printing) as follows:

(1) In SECTION 2 of the bill, strike added Section 393.602(b), Finance Code (page 2, lines 21-25), and substitute the following:

(b) A credit access business may assess fees for its services as agreed to between the parties. A credit access business fee may be calculated daily, biweekly, monthly, or on another periodic basis. A credit access business is permitted to charge amounts allowed by other laws, as applicable. A fee may not be charged unless it is disclosed.

(2) In SECTION 2 of the bill, strike added Section 393.622(c), Finance Code (page 5, lines 32-35), and substitute the following:

(c) Nothing in Section 393.201(c) or Sections 393.601-393.628 grants authority to the finance commission or the Office of Consumer Credit Commissioner to establish a limit on the fees charged by a credit access business.

The amendment to **HB 2594** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 3.

Senator West offered the following amendment to the bill:

**Floor Amendment No. 4**

Amend **HB 2594** in SECTION 2 of the bill, in added Section 393.602(b), Finance Code (senate committee printing, page 2, lines 23-25), by striking "In connection with a determination of usury, the fees charged by a credit access business conducting business under this chapter do not constitute interest."

The amendment to **HB 2594** was read.

Senator West withdrew Floor Amendment No. 4.

Senator West offered the following amendment to the bill:

**Floor Amendment No. 5**

Amend **HB 2594** (senate committee printing) as follows:

(1) In SECTION 2 of the bill, strike added Section 393.622(c), Finance Code (page 5, lines 32-35).

(2) In SECTION 2 of the bill, following added Section 393.628, Finance Code (page 6, between lines 51 and 52), insert the following:

Sec. 393.629. DEFERRED PRESENTMENT TRANSACTIONS OBTAINED FOR CONSUMERS BY CREDIT ACCESS BUSINESS; RESTRICTIONS APPLICABLE. (a) The combined fees charged by a credit access business for obtaining for a consumer or assisting a consumer in obtaining an extension of consumer credit in the form of a deferred presentment transaction may not exceed 15 percent of the amount advanced under the deferred presentment transaction.

(b) A credit access business on behalf of a lender or on its own behalf may not charge or receive in addition to the charges provided by this section any additional amount, whether in the form of broker fees, placement fees, or another fee or charge.

(c) A credit access business may not obtain for a consumer or assist a consumer in obtaining an extension of consumer credit in the form of a deferred presentment transaction in which the amount of cash advanced exceeds 35 percent of the consumer's gross monthly income. For purposes of this subsection, a credit access business is not responsible for an individual consumer's failure to provide accurate information relating to the consumer's income.

(d) A credit access business may not for a fee obtain or assist a consumer in obtaining an extension of consumer credit in which a deferred presentment transaction will be renewed, rolled over, or otherwise consolidated by a lender for a fee. For purposes of this subsection, "rolled over" means refinancing or paying all or part of the finance charges and advance of a deferred presentment transaction with a new deferred presentment transaction.

(e) In this subsection, "consecutive loan" means a new extension of consumer credit in the form of a deferred presentment transaction that a credit access business obtains for a consumer or assists a consumer in obtaining on or before the seventh day after the date a previous deferred presentment transaction made by the same lender to the same consumer is paid in full. If a consumer enters into a third consecutive loan and the consumer is unable to pay in full on the due date the outstanding amount of the loan, the consecutive loan must be automatically converted at no additional cost into a written repayment plan under which the consumer must be allowed to repay the

debt in not less than four substantially equal installments, notwithstanding the period prescribed by Section 393.201(b)(2). A lender is not required to enter into a repayment plan with a consumer more frequently than once every 12 months. The consumer must agree not to enter into an additional deferred presentment transaction during the repayment plan term.

(f) A credit access business may not impose a charge in connection with a consumer's default on an extension of consumer credit in the form of a deferred presentment transaction that a credit access business obtains for the consumer or assists the consumer in obtaining.

Sec. 393.630. MOTOR VEHICLE TITLE LOANS OBTAINED FOR CONSUMERS BY CREDIT ACCESS BUSINESS; RESTRICTIONS APPLICABLE. (a) The combined fees charged by a credit access business for obtaining for a consumer or assisting a consumer in obtaining an extension of consumer credit in the form of a motor vehicle title loan may not exceed:

(1) 20 percent of the portion of the amount advanced that does not exceed \$700;

(2) 18 percent of the portion of the amount advanced that is greater than \$700 but does not exceed \$1,400; and

(3) 15 percent of the portion of the amount advanced that is greater than \$1,400.

(b) A credit access business on behalf of a lender or on its own behalf may not charge or receive in addition to the charges provided by this section any additional amount, whether in the form of broker fees, placement fees, or another fee or charge.

(c) If a consumer is unable to pay in full on the due date the outstanding amount of a motor vehicle title loan that a credit access business obtains for a consumer or assists a consumer in obtaining and that has been renewed or rolled over three times, or after a consumer enters into a third consecutive loan that a consumer is unable to pay in full when due, the debt must be automatically converted at no additional cost into a written repayment plan under which the consumer must be allowed to repay the debt in not less than four substantially equal installments, notwithstanding the period prescribed by Section 393.201(b)(2). A lender is not required to enter into a repayment plan with a consumer more frequently than once every 12 months. In this subsection:

(1) "Consecutive loan" means a new motor vehicle title loan that a credit access business obtains for a consumer or assists a consumer in obtaining on or before the seventh day after the date a previous motor vehicle title loan made by the same lender to the same consumer is paid in full.

(2) "Renewed" means a transaction in which a consumer refinances all or part of the finance charges and advance of a motor vehicle title loan with a new motor vehicle title loan.

(d) A credit access business may not impose a charge in connection with a consumer's default on a motor vehicle title loan obtained for the consumer by the credit access business or that the credit access business assisted the consumer in obtaining.

The amendment to **HB 2594** was read.

Senator West withdrew Floor Amendment No. 5.

Senator Davis offered the following amendment to the bill:

**Floor Amendment No. 6**

Amend **HB 2594** (senate committee printing) in SECTION 2 of the bill, after added Section 393.626, Finance Code (page 5, between lines 58 and 59), by inserting the following:

Sec. 393.6265. ACCEPTANCE OF PARTIAL PAYMENT. (a) A credit access business may not obtain or assist in obtaining for a consumer an extension of consumer credit in the form of a deferred presentment transaction or motor vehicle title loan for which partial payment of the principal amount is not accepted.

(b) A lender must accept partial payment of the outstanding principal balance of an extension of consumer credit described by Section 393.602(a) at no penalty to the consumer at any time during the lender's regular business hours.

The amendment to **HB 2594** was read.

Senator Davis withdrew Floor Amendment No. 6.

Senator Davis offered the following amendment to the bill:

**Floor Amendment No. 7**

Amend **HB 2594** (senate committee printing) in SECTION 2 of the bill, in added Section 393.625, Finance Code (page 5, line 52), between "obtaining" and "must comply" by inserting "may not exceed a term of 90 days and".

The amendment to **HB 2594** was read.

Senator Davis withdrew Floor Amendment No. 7.

Senator West offered the following amendment to the bill:

**Floor Amendment No. 8**

Amend **HB 2594** (senate committee printing) as follows:

(1) In SECTION 2 of the bill, in added Section 393.607(a)(1)(B), Finance Code (page 3, line 34), after the underlined semicolon, strike "and".

(2) In SECTION 2 of the bill, in added Section 393.607(a)(2), Finance Code (page 3, line 37), between "393.611" and the underlined period, insert the following:  
; and

(3) public convenience and necessity warrants the granting of the application, considering the location of other credit access businesses and the population density within the surrounding community

The amendment to **HB 2594** was read.

On motion of Senator Carona, Floor Amendment No. 8 was tabled by the following vote: Yeas 20, Nays 11.

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

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

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

**HB 2594** as amended was passed to third reading by a viva voce vote.

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

Nays: Birdwell, Rodriguez.

Present-not voting: Davis.

### **HOUSE BILL 2594 ON THIRD READING**

Senator Carona moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2594** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 2, Present-not voting 1.

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

Nays: Birdwell, Rodriguez.

Present-not voting: Davis.

The bill was read third time and was passed by the following vote: Yeas 28, Nays 2, Present-not voting 1. (Same as previous roll call)

### **BILLS AND RESOLUTION SIGNED**

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

**SB 31, SB 36, SB 41, SB 58, SB 74, SB 80, SB 122, SB 131, SB 155, SB 219, SB 246, SB 247, SB 256, SB 258, SB 264, SB 310, SB 311, SB 315, SB 387, SB 400, SB 402, SB 419, SB 431, SB 432, SB 436, SB 514, SB 520, SB 540, SB 545, SB 558, SB 601, SB 794, SB 795, SB 813, SB 822, HB 2809, HB 2825, HB 2937, HB 2978, HB 3146, HB 3174, HB 3307, HB 3465, HB 3470, HB 3506, HB 3573, HB 3818, HB 3857, HCR 151.**

### **MESSAGE FROM THE HOUSE**

HOUSE CHAMBER

Austin, Texas

Monday, May 23, 2011 - 2

The Honorable President of the Senate  
Senate Chamber  
Austin, Texas

Mr. President:

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



## THE HOUSE HAS PASSED THE FOLLOWING MEASURES:

**HCR 147** Button

Encouraging cities to promote long-term economic development and job growth by working together on the regional level to attract and retain business investment.

**HCR 152** Torres

Designating the first full week of May as Texas Teacher Appreciation Week for a 10-year period, 2012 to 2021.

**HCR 159** Hughes

Designating Marshall as the official Birthplace of Boogie Woogie.

**SB 29** Zaffirini Sponsor: Branch

Relating to the eligibility of certain postdoctoral fellows and graduate students to participate in health benefit programs at public institutions of higher education.

**SB 32** Zaffirini Sponsor: Branch

Relating to the consolidation of related higher education programs governing tuition, fee exemptions, and waivers respective to specific target populations.

**SB 43** Zaffirini Sponsor: Raymond

Relating to the civil liability of an employer or former employer of a mental health services provider who engages in sexual exploitation of a patient or former patient.

**SB 54** Zaffirini Sponsor: Eissler

Relating to certification to teach public school students who have visual impairments.

**SB 77** Nelson Sponsor: Raymond

Relating to certain requirements for certain sponsoring organizations and other institutions participating in the Child and Adult Care Food Program.

**SB 86** Nelson Sponsor: Miller, Sid

Relating to municipal contracts for enforcement of outstanding traffic violation arrest warrants.

**SB 149** West Sponsor: Castro

Relating to rules adopted and reporting required under the school district college credit program.

**SB 150** West Sponsor: Miller, Sid

Relating to granting limited state law enforcement authority to special agents of the Office of Inspector General of the United States Department of Veterans Affairs and to updating certain references related to the grant of that authority to other federal law enforcement personnel.

**SB 162** Shapiro Sponsor: Branch

Relating to developing a developmental education plan for students entering public institutions of higher education.

**SB 187** Nelson Sponsor: Zerwas

Relating to human body and anatomical specimen donation.

**SB 189** Nelson Sponsor: Zerwas

Relating to the eligibility of certain aliens for a license to practice medicine in this state.

- SB 192** Nelson Sponsor: Howard, Donna  
Relating to patient advocacy activities by nurses and certain other persons; providing an administrative penalty.
- SB 193** Nelson Sponsor: King, Susan  
Relating to the regulation of the practice of nursing.
- SB 226** Nelson Sponsor: Smith, Todd  
Relating to reporting individual student performance on a physical fitness assessment instrument to the Texas Education Agency.
- SB 266** Williams Sponsor: Harless  
Relating to notice required in connection with possessory liens on motor vehicles.
- SB 267** Williams Sponsor: Elkins  
Relating to a joint statement regarding the transfer of a motor vehicle as the result of a gift.
- SB 290** Watson Sponsor: Hernandez Luna  
Relating to including a personal financial literacy component in public school mathematics instruction.
- SB 335** Fraser Sponsor: Eiland  
Relating to an exemption from regulation as health spas for certain governmental hospitals and clinics.
- SB 350** Williams Sponsor: Truitt  
Relating to the restructuring of fund obligations and accounts of the Texas Municipal Retirement System and related actuarial and accounting procedures.
- SB 367** Ogden Sponsor: Cook  
Relating to the review by the attorney general of invoices related to legal services provided to state agencies by outside counsel.
- SB 422** Duncan Sponsor: Frullo  
Relating to the authority of a municipality or county to contract with another entity to collect certain assessments levied by the municipality or county.
- SB 461** Williams Sponsor: Huberty  
Relating to the design and issuance of license plates for United States paratroopers.
- SB 471** West Sponsor: Parker  
Relating to public school, child-placing agency, and day-care center policies addressing sexual abuse and other maltreatment of children.
- SB 481** Harris Sponsor: Jackson, Jim  
Relating to the removal of a guardian of an incapacitated person ordered by a court.
- SB 482** Harris Sponsor: Jackson, Jim  
Relating to authorization agreements between parents and nonparent relatives of a child.
- SB 489** Fraser Sponsor: King, Susan  
Relating to the Texas State Technical College System.
- SB 494** Fraser Sponsor: Craddick  
Relating to the authority of certain local governmental entities to borrow money for a public hospital.

- SB 496** Fraser Sponsor: Hilderbran  
Relating to the punishment for the offense of evading arrest or detention.
- SB 519** Hegar Sponsor: Hartnett  
Relating to the period during which a motion for a new trial in a criminal proceeding in a justice or municipal court must be made.
- SB 530** Huffman Sponsor: Miller, Sid  
Relating to granting limited state law enforcement authority to special agents of the Office of Inspector General of the United States Social Security Administration and to updating certain references related to the grant of that authority to other federal law enforcement personnel.
- SB 578** Fraser Sponsor: Hartnett  
Relating to the testimony of children in criminal cases.
- SB 609** Rodriguez Sponsor: Gonzalez, Naomi  
Relating to the exemption of certain property from municipal drainage service charges and from related ordinances, resolutions, and rules.
- SB 626** Carona Sponsor: Thompson  
Relating to lottery winnings, including assignment of winnings, periodic payments of winnings, and the deduction of child support delinquency amounts from winnings paid to a prize winner.
- SB 627** Davis Sponsor: Veasey  
Relating to the participation by certain taxing units in tax increment financing and the payment of tax increments into the tax increment fund for a reinvestment zone.
- SB 682** Huffman Sponsor: Elkins  
Relating to access to criminal history record information that relates to a person who is an applicant for appointment to an appraisal review board.
- SB 735** Carona Sponsor: Smithee  
Relating to prohibition of certain extra hazardous coverages by title insurance companies.
- SB 743** Hegar Sponsor: Kleinschmidt  
Relating to the designation of a segment of State Highway 71 as the 95th Division Memorial Highway.
- SB 791** Duncan Sponsor: Jackson, Jim  
Relating to electronic notification of certain state officials and agencies of certain rules and rulemaking filings.
- SB 792** Duncan Sponsor: Branch  
Relating to the duties of the secretary of state.
- SB 796** Nelson Sponsor: King, Susan  
Relating to reporting on and assessing programs for the prevention and treatment of diabetes in the state.
- SB 799** Nelson Sponsor: Geren  
Relating to the definition of "first sale" for purposes of the taxes imposed on certain liquor.

- SB 811** Zaffirini Sponsor: Hardcastle  
Relating to the regulation of the practice of veterinary medicine.
- SB 851** Zaffirini Sponsor: Branch  
Relating to a uniform deadline for student financial assistance for public institutions of higher education other than public junior colleges.
- SB 855** Duncan Sponsor: Hilderbran  
Relating to assistance provided by the Office of Public Utility Counsel to interested parties on certain electricity matters involving certificates of convenience and necessity.
- SB 867** Deuell Sponsor: Jackson, Jim  
Relating to testing accommodations for a person with dyslexia taking a licensing examination administered by a state agency.
- SB 886** Carona Sponsor: Darby  
Relating to the execution docket and other records of certain court clerks.
- SB 889** Carona Sponsor: Davis, Sarah  
Relating to assignment of rents to holders of certain security interests in real property.
- SB 899** Ogden Sponsor: Schwertner  
Relating to the legislature's consent or approval of a settlement of a claim or action against this state.
- SB 957** Birdwell Sponsor: Anderson, Charles "Doc"  
Relating to the clarification of terminology relating to the Waco Center for Youth.
- SB 959** Wentworth Sponsor: Pickett  
Relating to toll collection and enforcement.
- SB 966** Uresti Sponsor: Pickett  
Relating to high school diplomas for certain military veterans.
- SB 987** Hegar Sponsor: Kleinschmidt  
Relating to the term of office and qualifications for a director of the Colorado County Groundwater Conservation District.
- SB 1002** Van de Putte Sponsor: Menendez  
Relating to the designation of program costs for providing bill payment assistance to certain military veterans as a necessary operating expense that is a first lien against revenue of certain electric and gas utilities' revenue securing certain public securities or obligations.
- SB 1030** Carona Sponsor: Anchia  
Relating to notice by sign requirement for sexually oriented businesses.
- SB 1043** Watson Sponsor: Martinez, "Mando"  
Relating to the criminal penalty for the discarding of certain burning materials.
- SB 1044** Watson Sponsor: Ritter  
Relating to authorizing counties to finance the acquisition of conservation easements.
- SB 1046** Duncan Sponsor: Pena  
Relating to information regarding deceased registered voters.

- SB 1103** Carona Sponsor: Carter  
Relating to the venue for prosecution of certain theft offenses.
- SB 1159** Wentworth Sponsor: Jackson, Jim  
Relating to an exception to the residency requirements for filing a suit for dissolution of a marriage in this state for certain spouses of military personnel.
- SB 1167** Carona Sponsor: Hernandez Luna  
Relating to cemeteries and perpetual care cemetery corporations; providing a penalty.
- SB 1176** Jackson Sponsor: Davis, John  
Relating to the definition of a postsecondary program in regard to non-baccalaureate career schools and colleges.
- SB 1220** Hinojosa Sponsor: Gonzales, Veronica  
Relating to the advisory committee on Medicaid and child health plan program rate and expenditure disparities between the Texas-Mexico border region and other areas of the state.
- SB 1228** Hegar Sponsor: Jackson, Jim  
Relating to the duties of district clerks regarding certain electronic filing systems.
- SB 1231** Estes Sponsor: Laubenberg  
Relating to the regulation of health spas by the secretary of state.
- SB 1273** Williams Sponsor: Hamilton  
Relating to the lawful manufacture, distribution, and possession of and prescriptions for controlled substances under the Texas Controlled Substances Act.
- SB 1292** Hegar Sponsor: Fletcher  
Relating to the issuance of a driver's license to a peace officer that includes an alternative to the officer's residence address.
- SB 1308** Seliger Sponsor: McClendon  
Relating to the standards for attorneys representing indigent defendants in capital cases.
- SB 1322** Fraser Sponsor: Hilderbran  
Relating to the operation of the Kimble County, McCulloch County, Mason County, and Menard County Juvenile Boards.
- SB 1330** Watson Sponsor: Naishtat  
Relating to driving safety courses for individuals younger than 25 years of age receiving deferred disposition for certain traffic offenses.
- SB 1361** Estes Sponsor: Hardcastle  
Relating to the audit report exemption for certain general and special law districts.
- SB 1404** Hinojosa Sponsor: Davis, Yvonne  
Relating to the deadline for filing a suit to compel an appraisal review board to change an appraisal roll.
- SB 1421** Nelson Sponsor: Schwertner  
Relating to the awarding of grants provided by the Cancer Prevention and Research Institute of Texas.

- SB 1438** Van de Putte Sponsor: Hopson  
Relating to the program for impaired pharmacists and disciplinary proceedings conducted by the Texas State Board of Pharmacy.
- SB 1441** Ellis Sponsor: Davis, Yvonne  
Relating to the correction of an ad valorem tax appraisal roll.
- SB 1480** Hegar Sponsor: Darby  
Relating to the regulation of exotic aquatic species by the Parks and Wildlife Department; providing penalties.
- SB 1493** Uresti Sponsor: Farias  
Relating to the directors of a defense base management authority and to a study on the effectiveness of the authority.
- SB 1521** Uresti Sponsor: Gallego  
Relating to the distribution of money appropriated from a municipal court building security fund.
- SB 1522** Hinojosa Sponsor: Madden  
Relating to the entering of a plea in a criminal case by a defendant confined in a penal institution.
- SB 1557** Carona Sponsor: Strama  
Relating to the Texas High Performance Schools Consortium.
- SB 1610** Lucio Sponsor: Hamilton  
Relating to seat belt requirements for certain vehicles.
- SB 1613** Ogden Sponsor: Brown  
Relating to the application of the public meetings and public information laws to public power utilities.
- SB 1638** Davis Sponsor: Geren  
Relating to the exception of certain personal information from required disclosure under the public information law.
- SB 1698** Williams Sponsor: Callegari  
Relating to reporting concerning inmates who are confined in county jails and subject to federal immigration detainers.
- SB 1737** Van de Putte Sponsor: Flynn  
Relating to accrual and use of leave of absence for certain training or duty, including military training or duty, by public employees and officers.
- SB 1751** Uresti Sponsor: Thompson  
Relating to calculation of the net resources of a person ordered to pay child support.
- SB 1787** Patrick Sponsor: Martinez Fischer  
Relating to the information provided by a peace officer before requesting a specimen to determine intoxication.
- SB 1789** Patrick Sponsor: Bohac  
Relating to platting requirements affecting subdivision golf courses in certain counties.

- SB 1807** Lucio Sponsor: Lozano  
Relating to the composition of the 444th Judicial District.
- SB 1812** Nichols Sponsor: Hamilton  
Relating to criminal history record information of certain applicants for a certificate of registration issued by the Texas Real Estate Commission.
- SB 1857** Zaffirini Sponsor: Truitt  
Relating to the administration of medication for persons with intellectual and developmental disabilities.
- SB 1875** Hinojosa Sponsor: Munoz, Jr.  
Relating to the governing body and the powers of the Agua Special Utility District.
- SB 1880** Huffman Sponsor: Howard, Charlie  
Relating to the powers and duties of the Imperial Redevelopment District; providing authority to impose a tax and issue bonds.
- SB 1887** Harris Sponsor: Smith, Todd  
Relating to the appointment of bailiffs in certain county criminal courts of Tarrant County.
- SB 1907** Wentworth Sponsor: Geren  
Relating to access to certain archaic information.
- SB 1914** Watson Sponsor: Rodriguez, Eddie  
Relating to the creation of the Southeast Travis County Municipal Utility District No. 2; providing authority to impose a tax and issue bonds.
- SB 1915** Watson Sponsor: Rodriguez, Eddie  
Relating to the creation of the Southeast Travis County Municipal Utility District No. 3; providing authority to impose a tax and issue bonds.
- SB 1927** Zaffirini Sponsor: Garza  
Relating to the authority of certain volunteer firefighter and emergency services organizations to hold tax-free sales or auctions.
- SB 1928** Ellis Sponsor: Allen  
Relating to an African American Texans memorial monument on the Capitol grounds.
- SCR 35** Wentworth Sponsor: Miller, Doug  
Designating western swing as the official State Music of Texas.
- SCR 51** Ellis Sponsor: Allen  
Expressing the legislature's support for the construction of a monument to African American Texans on the grounds of the State Capitol at the location approved by the State Preservation Board for a Juneteenth monument.

Respectfully,

/s/Robert Haney, Chief Clerk  
House of Representatives

**HOUSE JOINT RESOLUTION 63 ON SECOND READING**

Senator Wentworth moved to suspend the regular order of business to take up for consideration **HJR 63** at this time on its second reading:

**HJR 63**, Proposing a constitutional amendment authorizing the legislature to permit a county to issue bonds or notes to finance the development or redevelopment of an unproductive, underdeveloped, or blighted area and to pledge for repayment of the bonds or notes increases in ad valorem taxes imposed by the county on property in the area.

The motion prevailed.

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

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

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

Nays: Birdwell, Nelson, Patrick.

**HOUSE JOINT RESOLUTION 63 ON THIRD READING**

Senator Wentworth moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HJR 63** be placed on its third reading and final passage.

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

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

Nays: Birdwell, Nelson, Patrick.

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

**HOUSE BILL 1173 ON SECOND READING**

Senator Huffman moved to suspend the regular order of business to take up for consideration **HB 1173** at this time on its second reading:

**HB 1173**, Relating to the release on bond of certain persons arrested for a misdemeanor without a warrant in certain counties.

The motion prevailed.

Senators Davis, Ellis, Gallegos, Hinojosa, Lucio, Seliger, Uresti, Watson, and West asked to be recorded as voting "Nay" on suspension of the regular order of business.

The bill was read second time.



Senator Whitmire offered the following amendment to the bill:

### Floor Amendment No. 1

Amend **HB 1173** (senate committee printing) as follows:

(1) Strike SECTION 1 of the bill (page 1, lines 11-22) and substitute the following:

SECTION 1. Article 17.033, Code of Criminal Procedure, is amended by adding Subsections (a-1) and (e) and amending Subsections (c) and (d) to read as follows:

(a-1) Notwithstanding Subsection (a) and except as provided by Subsection (c), a person who, in a county with a population of three million or more, is arrested without a warrant and who is detained in jail must be released on bond, in an amount not to exceed \$5,000, not later than the 36th hour after the person's arrest if the person was arrested for a misdemeanor and a magistrate has not determined whether probable cause exists to believe that the person committed the offense.

(c) On the filing of an application by the attorney representing the state, a magistrate may postpone the release of a person under Subsection (a), (a-1), or (b) for not more than 72 hours after the person's arrest. An application filed under this subsection must state the reason a magistrate has not determined whether probable cause exists to believe that the person committed the offense for which the person was arrested.

(d) The time limits imposed by Subsections (a), (a-1), and (b) do not apply to a person arrested without a warrant who is taken to a hospital, clinic, or other medical facility before being taken before a magistrate under Article 15.17. For a person described by this subsection, the time limits imposed by Subsections (a), (a-1), and (b) begin to run at the time, as documented in the records of the hospital, clinic, or other medical facility, that a physician or other medical professional releases the person from the hospital, clinic, or other medical facility.

(e) Subsection (a-1) and this subsection expire on September 1, 2013.

(2) In SECTION 2 of the bill (page 1, line 23), between "by this Act" and "applies", insert "in amending Article 17.033, Code of Criminal Procedure,".

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

SECTION \_\_\_\_\_. Chapter 17, Code of Criminal Procedure, is amended by adding Article 17.0331 to read as follows:

Art. 17.0331. IMPACT STUDY. (a) This article applies only to a county with a population of three million or more.

(b) Each county to which this article applies shall conduct an impact study to determine the effect of Article 17.033(a-1) on the county's ability to control and process the county's misdemeanor caseload, including a specific assessment of the effect of that subsection on:

(1) the average number of hours a person who is arrested for a misdemeanor is detained in jail before being released on bond;

(2) bonding practices, including the number of persons released on personal bond;

(3) the inmate population in a county jail and in a each municipal jail located in the county;

(4) the number of arrests for misdemeanor offenses;

(5) public safety;

(6) costs to the criminal justice system; and

(7) the number of applications filed by the attorney representing the state under Article 17.033(c).

(c) The county shall also determine whether a more cost-effective method of controlling and processing misdemeanor caseloads exists than an extension of the period for which a person may be detained after a misdemeanor arrest.

(d) Not later than October 15, 2012, the county must file the impact study with:

- (1) the commissioners court of the county;
- (2) the Senate Committee on Criminal Justice;
- (3) the Senate Committee on Jurisprudence; and
- (4) the House Criminal Jurisprudence Committee.

(e) The county shall make the results of the impact study available to the public.

(f) This article expires on September 1, 2013.

The amendment to **HB 1173** was read and was adopted by the following vote: Yeas 31, Nays 0.

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

**HB 1173** as amended was passed to third reading by the following vote: Yeas 22, Nays 9.

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

Nays: Davis, Ellis, Gallegos, Hinojosa, Lucio, Seliger, Uresti, Watson, West.

### BILLS SIGNED

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

**HB 150, HB 265, HB 361, HB 596, HB 707, HB 960, HB 969, HB 976, HB 1110, HB 1120, HB 1215, HB 1379, HB 1383, HB 1395, HB 1426, HB 1481, HB 1514, HB 1525, HB 1614, HB 1666, HB 1678, HB 1682, HB 1771, HB 1830, HB 1866, HB 1906, HB 2286, HB 2289, HB 2295, HB 2366, HB 2370, HB 2385, HB 2418, HB 2482, HB 2519, HB 2538, HB 2582, HB 2624, HB 2633, HB 2690, HB 2742.**

### HOUSE BILL 1173 ON THIRD READING

Senator Huffman moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1173** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 25, Nays 6.

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

Nays: Davis, Ellis, Seliger, Uresti, Watson, West.

The bill was read third time and was passed by the following vote: Yeas 22, Nays 9.

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

Nays: Davis, Ellis, Gallegos, Hinojosa, Lucio, Seliger, Uresti, Watson, West.

### **HOUSE CONCURRENT RESOLUTION 42 ON SECOND READING**

On motion of Senator Williams and by unanimous consent, the regular order of business was suspended to take up for consideration **HCR 42** at this time on its second reading:

**HCR 42**, Expressing support for the current FBI effort to reevaluate existing policies, standards, and protocols for forensic DNA testing laboratories and expressing support for any new policies, standards, and protocols that would hold public and private labs to the same standards, audits, and review process, urging Congress to pass any necessary federal legislation that ensures continued quality in forensic science while holding public and private lab DNA analysis to the same standards, and encouraging Texas law enforcement agencies to use forensic science review methods that will eliminate DNA testing backlogs.

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

### **HOUSE BILL 2735 ON SECOND READING**

Senator Hinojosa moved to suspend the regular order of business to take up for consideration **HB 2735** at this time on its second reading:

**HB 2735**, Relating to procedures for certain persons charged with an administrative violation of a condition of release from the Texas Department of Criminal Justice on parole or to mandatory supervision.

The motion prevailed.

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

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

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

Nays: Huffman, Nelson, Nichols, Ogden, Patrick, Shapiro.

### **HOUSE BILL 2735 ON THIRD READING**

Senator Hinojosa moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2735** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 25, Nays 6.

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

Nays: Huffman, Nelson, Nichols, Ogden, Patrick, Shapiro.

The bill was read third time and was passed by the following vote: Yeas 25, Nays 6. (Same as previous roll call)

**(Senator Eltife in Chair)**

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1386 ON SECOND READING**

Senator Ellis moved to suspend the regular order of business to take up for consideration **CSHB 1386** at this time on its second reading:

**CSHB 1386**, Relating to the public health threat presented by youth suicide.

The motion prevailed.

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

The bill was read second time.

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

**Floor Amendment No. 1**

Amend **CSHB 1386** by adding to the bill the following appropriately numbered SECTIONS and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Subsection (b), Section 21.003, Education Code, is amended to read as follows:

(b) Except as otherwise provided by this subsection, a [A] person may not be employed by a school district as an audiologist, occupational therapist, physical therapist, physician, nurse, school psychologist, associate school psychologist, marriage and family therapist, social worker, or speech language pathologist unless the person is licensed by the state agency that licenses that profession and [A person] may perform specific services within those professions for a school district only if the person holds the appropriate credential from the appropriate state agency. As long as a person employed by a district before September 1, 2011, to perform marriage and family therapy, as defined by Section 502.002, Occupations Code, is employed by the same district, the person is not required to hold a license as a marriage and family therapist to perform marriage and family therapy with that district.

SECTION \_\_\_\_\_. Section 502.004, Occupations Code, is amended to read as follows:

Sec. 502.004. APPLICATION OF CHAPTER. This chapter does not apply to:

(1) the activities, within the scope of a person's employment, of a person employed to perform marriage and family therapy by a federal, state, county, or municipal agency or, except as provided by Section 21.003(b), Education Code, by a public or private educational institution, ~~if the activities are within the scope of the person's employment~~;

(2) the activities of a student, intern, or trainee in marriage and family therapy in a recognized course of study in marriage and family therapy at an accredited institution of higher education or other training institution, if:

(A) the activities constitute a part of the course of study; and  
(B) the person is called a "marriage and family therapist intern" or similar title;

(3) the activities and services of a person licensed to practice another profession, including a physician, attorney, registered nurse, occupational therapist, psychologist, social worker, or licensed professional counselor; or

(4) the activities and services of a recognized religious practitioner, including a pastoral counselor or Christian Science practitioner recognized by the Church of Christ Scientist as registered and published in the Christian Science Journal, if the practitioner practices marriage and family therapy in a manner consistent with the laws of this state.

SECTION \_\_\_\_\_. As soon as practicable after the effective date of this Act, the State Board for Educator Certification shall propose rules for the administration of Subsection (b), Section 21.003, Education Code, as amended by this Act.

The amendment to **CSHB 1386** was read and was adopted by a viva voce vote.

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

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

**CSHB 1386** as amended was passed to third reading by a viva voce vote.

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

Nays: Birdwell, Hegar, Nichols.

### COMMITTEE SUBSTITUTE HOUSE BILL 1386 ON THIRD READING

Senator Ellis moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 1386** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 2.

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

Nays: Birdwell, Nichols.

The bill was read third time and was passed by the following vote: Yeas 28, Nays 3.

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

Nays: Birdwell, Hegar, Nichols.

**HOUSE BILL 3199 ON SECOND READING**

On motion of Senator Estes and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 3199** at this time on its second reading:

**HB 3199**, Relating to the repeal of requirements and penalties related to the grading of roses.

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

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

**HOUSE BILL 3199 ON THIRD READING**

Senator Estes moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3199** be placed on its third reading and final passage.

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

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1334 ON SECOND READING**

Senator Davis moved to suspend the regular order of business to take up for consideration **CSHB 1334** at this time on its second reading:

**CSHB 1334**, Relating to the effect of a delay by the State Board for Educator Certification in renewing an educator's certification.

The motion prevailed.

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

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

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

Nays: Birdwell, Patrick.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1334 ON THIRD READING**

Senator Davis moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 1334** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 2.

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

Nays: Birdwell, Patrick.

The bill was read third time and was passed by the following vote: Yeas 29, Nays 2. (Same as previous roll call)

### HOUSE BILL 359 ON SECOND READING

Senator Lucio moved to suspend the regular order of business to take up for consideration **HB 359** at this time on its second reading:

**HB 359**, Relating to discipline in public schools, including the use of corporal punishment and the prosecution of certain children for school-related offenses.

The motion prevailed.

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

The bill was read second time.

Senator Lucio offered the following committee amendment to the bill:

#### Committee Amendment No. 1

Amend **HB 359** by striking Section 1, subsection (e), lines 13 and 14 of page 2.

The amendment to **HB 359** was read and was adopted by a viva voce vote.

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

Senator Lucio offered the following amendment to the bill:

#### Floor Amendment No. 1

Amend **HB 359** (Senate Committee Report), in SECTION 4 of the bill, by striking Section 42.01(f), Penal Code (page 2, lines 9 through 14), and substitute the following:

(f) Subsections (a)(1), (2), (3), (5), and (6) do not apply to a person who, at the time the person engaged in conduct prohibited under the applicable subdivision, was a student in the sixth grade or a lower grade level, and the prohibited conduct occurred at a public school campus during regular school hours.

The amendment to **HB 359** was read and was adopted by a viva voce vote.

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

Senator Davis offered the following amendment to the bill:

#### Floor Amendment No. 2

Amend **HB 359** (senate committee printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Subsection (b), Section 37.0021, Education Code, is amended by adding Subdivision (4) to read as follows:

(4) "Law enforcement duties" means activities of a peace officer relating to the investigation and enforcement of state criminal laws and other duties authorized by the Code of Criminal Procedure.

SECTION \_\_\_\_\_. Section 37.0021, Education Code, is amended by amending Subsection (g) and adding Subsections (h) and (i) to read as follows:

(g) This section and any rules or procedures adopted under this section do not apply to:

(1) a peace officer [~~while~~] performing law enforcement duties, except as provided by Subsection (i);

(2) juvenile probation, detention, or corrections personnel; or

(3) an educational services provider with whom a student is placed by a judicial authority, unless the services are provided in an educational program of a school district.

(h) This section and any rules or procedures adopted under this section apply to a peace officer only if the peace officer:

(1) is employed or commissioned by a school district; or

(2) provides, as a school resource officer, a regular police presence on a school district campus under a memorandum of understanding between the district and a local law enforcement agency.

(i) A school district shall report electronically to the agency, in accordance with standards provided by commissioner rule, information relating to the use of restraint by a peace officer performing law enforcement duties on school property or during a school-sponsored or school-related activity. A report submitted under this subsection must be consistent with the requirements adopted by commissioner rule for reporting the use of restraint involving students with disabilities.

SECTION \_\_\_\_\_. The commissioner of education shall adopt rules as provided by Subsection (i), Section 37.0021, Education Code, as added by this Act, as soon as practicable after the effective date of this Act.

The amendment to **HB 359** was read and was adopted by a viva voce vote.

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

Nays: Jackson, Ogden.

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

**HB 359** as amended was passed to third reading by a viva voce vote.

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

Nays: Birdwell, Patrick.

### HOUSE BILL 359 ON THIRD READING

Senator Lucio moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 359** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 2.

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

Nays: Birdwell, Patrick.

The bill was read third time and was passed by the following vote: Yeas 29, Nays 2. (Same as previous roll call)



**HOUSE BILL 2734 ON SECOND READING**

Senator Williams moved to suspend the regular order of business to take up for consideration **HB 2734** at this time on its second reading:

**HB 2734**, Relating to certain mandatory conditions of parole or mandatory supervision for illegal criminal aliens and the revocation of parole or mandatory supervision as a result of violating those conditions.

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

Nays: Rodriguez.

The bill was read second time.

Senator Williams offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 2734** by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_ Chapter 2, Code of Criminal Procedure, is amended by adding Article 2.252 to read as follows:

Art. 2.252. VERIFICATION OF IMMIGRATION STATUS OF PERSON CHARGED WITH COMMITTING OFFENSE. (a) A local law enforcement agency that has custody of a person who has been arrested and transported to a place of detention shall verify the immigration status of the person by use of the federal Secure Communities program operated by United States Immigration and Customs Enforcement or a successor program.

(b) A local law enforcement agency is not required to conduct an immigration status verification under Subsection (a) of a person who is transferred to the custody of the agency by another law enforcement agency if the transferring agency, before transferring custody of the person, conducted an immigration status verification under Subsection (a).

The amendment to **HB 2734** was read and was adopted by a viva voce vote.

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

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

**HB 2734** as amended was passed to third reading by a viva voce vote.

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

Nays: Rodriguez.

**HOUSE BILL 2734 ON THIRD READING**

Senator Williams moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2734** be placed on its third reading and final passage.

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

Nays: Rodriguez.

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

### HOUSE BILL 1797 ON SECOND READING

On motion of Senator Rodriguez and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 1797** at this time on its second reading:

**HB 1797**, Relating to a person's eligibility to obtain a license in social work.

The bill was read second time.

Senator Huffman offered the following amendment to the bill:

#### Floor Amendment No. 1

Amend **HB 1797** (senate committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering the subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 505.003, Occupations Code, is amended by adding Subsection (c) to read as follows:

(c) A person who teaches social work at an institution of higher education or a private or independent institution of higher education as those terms are defined by Section 61.003, Education Code, is not required to hold a license under this chapter to the extent the person confines the person's activities to teaching and does not otherwise engage in the practice of social work.

The amendment to **HB 1797** was read and was adopted by a viva voce vote.

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

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

**HB 1797** as amended was passed to third reading by a viva voce vote.

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

### HOUSE BILL 1797 ON THIRD READING

Senator Rodriguez moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1797** be placed on its third reading and final passage.

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

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

### MESSAGE FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

Monday, May 23, 2011 - 3

(Revised Message)

The Honorable President of the Senate  
Senate Chamber  
Austin, Texas

Mr. President:

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

THE HOUSE HAS PASSED THE FOLLOWING MEASURES:

- SB 20** Williams Sponsor: Strama  
Relating to a grant program for certain natural gas motor vehicles.  
(Amended)
- SB 181** Shapiro Sponsor: Laubenberg  
Relating to the calculation and reporting of water usage by municipalities and water utilities for state water planning and other purposes.  
(Amended)
- SB 304** Nichols Sponsor: Creighton  
Relating to employment services programs for certain residents receiving services from public hospitals or hospital districts.
- SB 385** Williams Sponsor: Otto  
Relating to the creation of an alternative fuel program to be funded by the Texas emissions reduction plan fund.  
(Amended)
- SB 438** Nelson Sponsor: Geren  
Relating to the number of days a winery may sell wine under a winery festival permit.  
(Committee Substitute)
- SB 1000** Eltife Sponsor: Geren  
Relating to self-directed and semi-independent status of the Texas Real Estate Commission; making an appropriation.  
(Committee Substitute)
- SB 1035** Williams Sponsor: Harless  
Relating to motor vehicle title services; providing penalties.  
(Committee Substitute/Amended)
- SB 1124** Carona Sponsor: Truitt  
Relating to licensing and regulation of certain persons involved in residential mortgage lending pursuant to the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009; providing penalties.  
(Amended)
- SB 1534** Shapiro Sponsor: Davis, John  
Relating to the operation and certification of career schools or colleges.  
(Committee Substitute/Amended)
- SB 1732** Van de Putte Sponsor: Guillen  
Relating to authorizing the adjutant general to operate post exchanges on state military property.  
(Committee Substitute)

Respectfully,

/s/Robert Haney, Chief Clerk  
House of Representatives

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1451 ON SECOND READING**

Senator Whitmire moved to suspend the regular order of business to take up for consideration **CSHB 1451** at this time on its second reading:

**CSHB 1451**, Relating to the licensing and regulation of certain dog and cat breeders; providing penalties.

The motion prevailed by the following vote: Yeas 22, Nays 9.

Yeas: Davis, Duncan, Ellis, Estes, Gallegos, Harris, Hegar, Hinojosa, Jackson, Lucio, Nelson, Ogden, Rodriguez, Seliger, Shapiro, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Zaffirini.

Nays: Birdwell, Carona, Deuell, Eltife, Fraser, Huffman, Nichols, Patrick, Williams.

The bill was read second time.

**(President Pro Tempore Ogden in Chair)**

Senator Whitmire offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 1451** (senate committee report) as follows:

(1) In SECTION 2 of the bill, in proposed Section 802.002(8), Occupations Code (page 1, line 44), between "consideration" and the period, insert "and who sells or exchanges, or offers to sell or exchange, not fewer than 20 animals in a calendar year"

(2) In SECTION 2 of the bill, strike proposed Section 802.005, Occupations Code (page 2, lines 26 through 42), and substitute the following:

Sec. 802.005. EXEMPTION FOR CERTAIN PERSONS WHO BREED SPECIAL PURPOSE DOGS. (a) This section applies only to a dog bred with the intent that it be used primarily for:

(1) herding livestock, as defined by Section 1.003, Agriculture Code, or other agricultural uses;

(2) hunting, including tracking, chasing, pointing, flushing, or retrieving game; or

(3) competing in field trials, hunting tests, or similar organized performance events.

(b) This chapter does not apply to a person to the extent the person breeds dogs described by Subsection (a) for personal use. A person described by this subsection may conduct direct or indirect sales or exchanges in return for consideration of dogs described by Subsection (a).

(c) Notwithstanding Subsection (b), a person described by Subsection (b) may be subject to the requirements of this chapter based on the person's activities with respect to animals other than dogs that are bred and used as described by this section.

(d) Dogs described by Subsection (a) may not be counted for purposes of determining the number of adult intact female animals possessed by a person as described by Section 802.002(8).

(3) In SECTION 2 of the bill, in proposed Section 802.059(b)(2), Occupations Code (page 3, line 32), strike "projects" and substitute "actions".

(4) In SECTION 2 of the bill, in proposed Section 802.059(b)(2), Occupations Code (page 3, line 33), strike "this chapter;" and substitute "and enforce this chapter; and".

(5) In SECTION 2 of the bill, in proposed Section 802.059(b)(3), Occupations Code (page 3, lines 36 and 37), strike "; and" and substitute an underlined period.

(6) In SECTION 2 of the bill, strike proposed Section 802.059(b)(4), Occupations Code (page 3, lines 38 through 40).

(7) In SECTION 2 of the bill, following proposed Section 802.059(e), Occupations Code (page 3, between lines 48 and 49), insert the following:

(f) The executive director of the department must approve any expenditure from the account.

(g) The department shall report its use of the account in its quarterly financial report to the commission.

(8) In SECTION 2 of the bill, strike proposed Section 802.061, Occupations Code (page 3, lines 57 through 61), and renumber subsequent proposed sections of Subchapter B, Chapter 802, Occupations Code, accordingly.

(9) In SECTION 2 of the bill, in proposed Section 802.063(b), Occupations Code (page 4, line 4), strike "may" and substitute "must be given a reasonable opportunity to".

(10) In SECTION 2 of the bill, in proposed Section 802.063(c), Occupations Code (page 4, line 5), strike "The department or third-party inspector may not" and substitute "If necessary to adequately perform the inspection, the department or third-party inspector may determine it is appropriate to not".

(11) In SECTION 2 of the bill, strike proposed Section 802.063(d), Occupations Code (page 4, lines 10 through 13), and substitute the following:

(d) In conducting an inspection under this section, an inspector may not enter or access any portion of a private residence of a licensed breeder except as necessary to access animals or other property relevant to the care of the animals. The inspector may request that relevant documents or records be provided for inspection.

(12) In SECTION 2 of the bill, in proposed Section 802.066(b)(3), Occupations Code (page 4, line 39), between "organizations" and the underlined semicolon, insert "each of which has an office based in this state".

(13) In SECTION 2 of the bill, in proposed Section 802.154(a), Occupations Code (page 7, line 16), between "(a)" and "A", insert "The commission shall adopt rules establishing the minimum information that a licensed breeder must maintain for each animal in the breeder's facility.".

(14) In SECTION 2 of the bill, strike proposed Section 802.154(b), Occupations Code (page 7, lines 19 through 47), and renumber subsequent proposed subsections of Section 802.154, Occupations Code, accordingly.

(15) In SECTION 2 of the bill, in proposed Section 802.201(b)(4), Occupations Code (page 8, lines 8 through 10), strike "as needed to prevent any condition that adversely affects the animal's health and cleanliness" and substitute "to the extent required to maintain the animal in a state of good health".

(16) In SECTION 2 of the bill, in proposed Section 802.201(b)(10), Occupations Code (page 8, lines 36 through 37), strike "that affects the animal's health or well-being" and substitute ", to the extent required to maintain the animal in a state of good health".

The amendment to **CSHB 1451** was read.

Senator Fraser offered the following amendment to Floor Amendment No. 1:

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

Amend Floor Amendment No. 1 by Whitmire to **CSHB 1451** (senate committee report), in item (1) of the amendment (page 1, line 6), by striking "20" and substituting "60".

The amendment to Floor Amendment No. 1 to **CSHB 1451** was read.

On motion of Senator Whitmire, Floor Amendment No. 2 was tabled by the following vote: Yeas 25, Nays 6.

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

Nays: Birdwell, Carona, Fraser, Nichols, Patrick, Williams.

Question recurring on the adoption of Floor Amendment No. 1 to **CSHB 1451**, the amendment was adopted by a viva voce vote.

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

Senator Hegar offered the following amendment to the bill:

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

Amend **CSHB 1451** (Senate committee printing) in SECTION 2 of the bill, in Section 802.021(b)(8), Occupations Code (page 8, lines 29-30), strike "at least one regular veterinary examination a year for a breeding animal;" and substitute "veterinary care as necessary to maintain each breeding animal in a state of good health;".

The amendment to **CSHB 1451** was read.

On motion of Senator Whitmire, Floor Amendment No. 3 was tabled by the following vote: Yeas 17, Nays 14.

Yeas: Davis, Duncan, Ellis, Estes, Gallegos, Hinojosa, Lucio, Ogden, Rodriguez, Shapiro, Uresti, Van de Putte, Watson, West, Whitmire, Williams, Zaffirini.

Nays: Birdwell, Carona, Deuell, Eltife, Fraser, Harris, Hegar, Huffman, Jackson, Nelson, Nichols, Patrick, Seliger, Wentworth.

Senator Hegar offered the following amendment to the bill:

**Floor Amendment No. 4**

Amend **CSHB 1451** (Senate committee printing) in SECTION 2 of the bill, in Section 802.021(b)(11), Occupations Code (page 8, line 38), between "an" and "animal", insert "adult".

The amendment to **CSHB 1451** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 4.

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

**CSHB 1451** as amended was passed to third reading by the following vote: Yeas 22, Nays 9.

Yeas: Davis, Duncan, Ellis, Estes, Gallegos, Harris, Hegar, Hinojosa, Jackson, Lucio, Nelson, Ogden, Rodriguez, Seliger, Shapiro, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Zaffirini.

Nays: Birdwell, Carona, Deuell, Eltife, Fraser, Huffman, Nichols, Patrick, Williams.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1451 ON THIRD READING**

Senator Whitmire moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 1451** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 25, Nays 6.

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

Nays: Birdwell, Carona, Deuell, Nichols, Patrick, Williams.

The bill was read third time and was passed by the following vote: Yeas 22, Nays 9.

Yeas: Davis, Duncan, Ellis, Estes, Gallegos, Harris, Hegar, Hinojosa, Jackson, Lucio, Nelson, Ogden, Rodriguez, Seliger, Shapiro, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Zaffirini.

Nays: Birdwell, Carona, Deuell, Eltife, Fraser, Huffman, Nichols, Patrick, Williams.

**HOUSE BILL 1090 ON SECOND READING**

On motion of Senator Seliger and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 1090** at this time on its second reading:

**HB 1090**, Relating to the calculation of interest on certain ad valorem tax refunds.

The bill was read second time.

Senator Seliger offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 1090** (senate committee printing) by striking SECTION 2 of the bill and substituting the following:

SECTION 2. The change in law made by this Act applies only to the rate of interest on a tax refund that is made following an appeal that is filed on or after the effective date of this Act. The rate of interest on a tax refund that is made following an appeal that is filed before the effective date of this Act is determined by the law in effect when the appeal is filed, and that law is continued in effect for that purpose.

The amendment to **HB 1090** was read and was adopted by a viva voce vote.

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

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

**HB 1090** as amended was passed to third reading by a viva voce vote.

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

**HOUSE BILL 1090 ON THIRD READING**

Senator Seliger moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1090** be placed on its third reading and final passage.

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

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

**RECESS**

On motion of Senator Whitmire, the Senate at 8:44 p.m. recessed until 9:00 p.m. today.

**AFTER RECESS**

The Senate met at 9:17 p.m. and was called to order by President Pro Tempore Ogden.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 272 ON SECOND READING**

Senator Carona moved to suspend the regular order of business to take up for consideration **CSHB 272** at this time on its second reading:

**CSHB 272**, Relating to the operation of the Texas Windstorm Insurance Association and to the resolution of certain disputes concerning claims made to that association; providing penalties.



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

The bill was read second time.

Senator Carona offered the following amendment to the bill:

### Floor Amendment No. 1

Amend **CSHB 272** (senate committee printing) as follows:

(1) In SECTION 8 of the bill, in added Section 2210.071(c), Insurance Code (page 3, line 47), between "Subchapter M" and the underlined period, insert "and, notwithstanding Subsection (a), may be paid from the proceeds of public securities issued under Section 2210.072(a) before an occurrence or series of occurrences that results in insured losses".

(2) In SECTION 50 of the bill, in added Section 2210.6136(b), Insurance Code (page 19, line 16), between "period from" and "the date", insert: "the earlier of, as applicable:

(1) the date on which public securities are issued under Section 2210.072(a) before an occurrence or series of occurrences that results in insured losses; or

(2)".

The amendment to **CSHB 272** was read and was adopted by a viva voce vote.

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

Senator Jackson offered the following amendment to the bill:

### Floor Amendment No. 2

Amend **CSHB 272** (senate committee printing) as follows:

(1) In SECTION 7 of the bill, in added Section 2210.059(a), Insurance Code (page 3, line 11), strike "100" and substitute "1,000".

(2) In SECTION 7 of the bill, in added Section 2210.059(b), Insurance Code (page 3, line 21), strike "100th" and substitute "1,000th".

(3) In SECTION 9 of the bill, in amended Section 2210.072(a), Insurance Code (page 3, line 54), strike "Class 1" and substitute "On request of the association and approval by the commissioner, and subject to Subsection (a-2), Class 1".

(4) In SECTION 9 of the bill, in amended Section 2210.072(a), Insurance Code (page 3, lines 55-56), strike "on request of the association and approval by the commissioner" and substitute "including before, on, or after an occurrence or series of occurrences that results in insured losses".

(5) In SECTION 9 of the bill, in added Section 2210.072(a-1), Insurance Code (page 3, line 60), between "shall" and "establish", insert ", subject to Subsection (a-2),".

(6) In SECTION 9 of the bill, in added Section 2210.072(a-2), Insurance Code (page 4, line 1), at the end of the subsection, insert "The amount of outstanding public securities issued under this section before an occurrence or series of occurrences that results in insured losses may not, in the aggregate, exceed \$1 billion at any one time, regardless of the calendar year or years in which the outstanding public securities were issued."

(7) In SECTION 9 of the bill, in amended Section 2210.072(b)(2), Insurance Code (page 4, line 11), strike "a subsequent" and substitute "the following".

(8) In SECTION 10 of the bill, in amended Section 2210.073(b)(2), Insurance Code (page 4, line 25), strike "a subsequent" and substitute "the following".

(9) In SECTION 11 of the bill, in amended Section 2210.074(b)(2), Insurance Code (page 4, line 42), strike "a subsequent" and substitute "the following".

(10) In SECTION 56 of the bill (page 21, between lines 6 and 7), insert:

(h) This section expires June 1, 2013.

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

SECTION \_\_\_\_ . Section 2210.259, Insurance Code, is amended by adding Subsection (c) to read as follows:

(c) The commissioner by rule may provide for a discount of, or a credit against, a surcharge assessed under Subsection (a) in instances in which a policyholder demonstrates that the noncompliant structure was constructed with at least one structural building component that complies with the building code standards set forth in the plan of operation.

The amendment to **CSHB 272** was read and was adopted by a viva voce vote.

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

Senator Watson offered the following amendment to the bill:

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

Amend **CSHB 272** (Senate Committee Report) in SECTION 2 of the bill, amending Section 541.152(b) and (c), Insurance Code by striking the subsection (c) on page 1, lines 29-31.

And amend C.S.H.B. 272 (senate committee report) in SECTION 37 of the bill, amending Section 2210.552(f), page 12, lines 42-44, by substituting the following:

"(2) may recover damages under Section 541.152(b) or under Section 17.50, Business & Commerce Code, not to exceed two times the amount of actual damages, only if the claimant proves by clear and convincing evidence that the association knowingly or intentionally committed an act prohibited by Chapter 541 as an unfair method of competition or an unfair or deceptive act or practice in the business of insurance."

The amendment to **CSHB 272** was read.

Senator Watson offered the following amendment to Floor Amendment No. 3:

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

Amend Floor Amendment No. 3 to **CSHB 272** by striking the first paragraph and inserting the following:

Amend C.S.H.B. 272 (senate committee report) in SECTION 2 of the bill, amending Section 541.152(b) and (c), Insurance Code as follows:

(1) In Subsection (b), on page 1, line 25, strike "Except as provided by Subsection (c), on [On]" and insert "On"; and

(2) Strike Subsection (c), on page 1, lines 29-31.

The amendment to Floor Amendment No. 3 to **CSHB 272** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 4.

Question recurring on the adoption of Floor Amendment No. 3 to **CSHB 272**, the amendment as amended was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 3 as amended.

Senator Watson offered the following amendment to the bill:

**Floor Amendment No. 5**

Amend **CSHB 272** (Senate Committee Report) in SECTION 39 of the bill, adding Section 2210.578, Insurance Code, by striking subsection (b) on page 15, lines 12-17, and substituting the following:

"(b) If six or more claimants file civil actions against the association as a result of a weather-related event, an action brought against the association under this section must be presided over by a judge appointed by the judicial panel on multidistrict litigation designated under Section 74.161, Government Code. A judge appointed under this section must be an active judge in Travis County, for suits filed in Travis County, or an active judge in the county in which suit is filed, for a suit filed in a county other than Travis County. 'Active judge' shall be defined as in Section 74.041, Government Code."

The amendment to **CSHB 272** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 5.

Senator Jackson offered the following amendment to the bill:

**Floor Amendment No. 6**

Amend **CSHB 272** (senate committee printing), in SECTION 50 of the bill, in added Section 2210.6136, Insurance Code (page 19, lines 4-13), as follows:

(1) Strike added Subsection (a) and substitute:

(a) In lieu of issuing distinct Class 1, Class 2, or Class 3 public securities, on request of the association and approval by the commissioner, the board may issue public securities payable from all of the sources described in Sections 2210.612, 2210.613, and 2210.6135 with:

(1) the first source of payment being as described in Section 2210.612, to the extent public securities described by that section are marketable;

(2) the second source of payment being as described in Section 2210.613, in an amount not to exceed the amount of Class 2 public securities that could be issued under Section 2210.073 in the calendar year in which securities are issued under this section;

(3) the third source of payment being as described in Section 2210.6135, in an amount not to exceed the amount of Class 3 public securities that could be issued under Section 2210.074 in the calendar year in which securities are issued under this section; and

(4) the fourth source of payment, if necessary, being a distribution among member assessment and premium surcharges described in Sections 2210.613 and 2210.6135 that complies with the commissioner's order issued under Subsection (b).

(b) The commissioner by order shall specify the distribution of the fourth source of payment under Subsection (a)(4) based on the amount of public securities issued under this section, the total amount of outstanding public securities issued under this chapter, the sources of payment for the outstanding public securities, and any other factors the commissioner determines to be relevant.

(2) Reletter subsections of the section accordingly.

The amendment to **CSHB 272** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 6.

Senator Lucio offered the following amendment to the bill:

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

Amend **CSHB 272** (senate committee printing), in SECTION 56 of the bill, by striking Subsections (b) and (c) of that SECTION (page 20, lines 27-42), and substituting the following:

(b) The committee is composed of 12 members appointed as follows:

(1) four members of the senate appointed by the lieutenant governor, two of whom represent one or more first tier coastal counties and two of whom do not represent a first tier coastal county;

(2) four members of the house of representatives appointed by the speaker of the house of representatives, two of whom represent one or more first tier coastal counties and two of whom do not represent a first tier coastal county; and

(3) four public members with a background in actuarial science, law, business, or insurance, as follows:

(A) two members who do not reside in a first tier coastal county, appointed by the governor;

(B) one member who resides in a first tier coastal county, appointed by the lieutenant governor; and

(C) one member who resides in a first tier coastal county, appointed by the speaker of the house of representatives.

(c) The speaker of the house of representatives and the lieutenant governor shall jointly designate a chair or, alternatively, designate two co-chairs, from among the committee membership, one of whom represents or resides in a first tier coastal county.

The amendment to **CSHB 272** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 7.

Senator Birdwell offered the following amendment to the bill:

**Floor Amendment No. 8**

Amend **CSHB 272** (house committee printing) by adding the following appropriately numbered ARTICLE to the bill and renumbering subsequent ARTICLES of the bill accordingly:

ARTICLE \_\_\_\_ . ADJUSTER ADVISORY BOARD

SECTION \_\_.001. (a) The adjuster advisory board established under this section is composed of the following nine members appointed by the commissioner:

- (1) two public insurance adjusters;
- (2) two members who represent the general public;
- (3) two independent adjusters;
- (4) one adjuster who represents a domestic insurer authorized to engage in business in this state;
- (5) one adjuster who represents a foreign insurer authorized to engage in business in this state; and

(6) one representative of the Independent Insurance Agents of Texas.

(b) A member who represents the general public may not be:

- (1) an officer, director, or employee of:
  - (A) an adjuster or adjusting company;
  - (B) an insurance agent or agency;
  - (C) an insurance broker;
  - (D) an insurer; or
  - (E) any other business entity regulated by the department;
- (2) a person required to register as a lobbyist under Chapter 305, Government Code; or
- (3) a person related within the second degree of affinity or consanguinity to a person described by Subdivision (1) or (2).

(c) The advisory board shall make recommendations to the commissioner regarding:

- (1) matters related to the licensing, testing, and continuing education of licensed adjusters;
- (2) matters related to claims handling, catastrophic loss preparedness, ethical guidelines, and other professionally relevant issues; and
- (3) any other matter the commissioner submits to the advisory board for a recommendation.

(d) A member of the advisory board serves without compensation. If authorized by the commissioner, a member is entitled to reimbursement for reasonable expenses incurred in attending meetings of the advisory board.

(e) The advisory board is subject to Chapter 2110, Government Code.

The amendment to **CSHB 272** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 8.

Senator Corona postponed further consideration of **CSHB 272**.

Question — Shall **CSHB 272** as amended be passed to third reading?

**HOUSE BILL 1720 ON SECOND READING**

On motion of Senator Patrick and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 1720** at this time on its second reading:

**HB 1720**, Relating to improving health care provider accountability and efficiency under the child health plan and Medicaid programs.

The bill was read second time.

Senator Patrick offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 1720** (Senate committee printing) as follows:

(1) In SECTION 2 of the bill, in added Section 531.1131(a)(1), Government Code (page 1, line 40), between "immediately" and "notify", insert "and contemporaneously".

(2) In SECTION 2 of the bill, in added Section 531.1131(a)(1), Government Code (page 1, line 41), between "general" and the semicolon, insert "and the office of the attorney general".

(3) In SECTION 2 of the bill, in added Section 531.1131(b), Government Code (page 1, line 52), between "general" and "under", insert "and the office of the attorney general".

(4) In SECTION 2 of the bill, in added Section 531.1131(b), Government Code (page 1, line 53), strike "the office" and substitute "either office".

The amendment to **HB 1720** was read and was adopted by a viva voce vote.

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

Senator Patrick offered the following amendment to the bill:

**Floor Amendment No. 2**

Amend **HB 1720** (Senate committee printing) as follows:

(1) In SECTION 5 of the bill, in added Section 32.068(a), Human Resources Code (page 2, line 59), strike "six-month period" and substitute "12-month period".

(2) In SECTION 5 of the bill, in added Section 32.068(b), Human Resources Code (page 2, line 67), strike "six-month period" and substitute "12-month period".

(3) In SECTION 5 of the bill, in added Section 32.068(c), Human Resources Code (page 3, line 2), immediately following the period, insert "The executive commissioner may by rule adopt limited exceptions to the requirements of this section."

The amendment to **HB 1720** was read and was adopted by a viva voce vote.

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

Senator Nelson offered the following amendment to the bill:

**Floor Amendment No. 3**

Amend **HB 1720** (senate committee printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

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

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

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

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

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

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

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

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

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

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

(A) the specific nature of the survey;

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The executive commissioner by rule shall:

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

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

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

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

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

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

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

(2) engages in conduct that violates Section 102.001, Occupations Code [141.094].

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

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



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

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

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

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

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

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

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

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

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

(5) clinical and business records;

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

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

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

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

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

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

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

may also require the applicant or license holder to file information relating to the history of the financial condition of the applicant or license holder and any other person described by Subsection (d) with respect to an institution operated in another state or jurisdiction at any time before ~~[during the five-year period preceding]~~ the date on which the application is made.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 250.004. CRIMINAL HISTORY RECORD OF EMPLOYEES.

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

(1) the complete name, race, and sex of the employee;

(2) any known identifying number of the employee, including social security number, driver's license number, or state identification number; and

(3) the employee's date of birth.

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

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

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

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

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

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

- (1) an offense under Chapter 19, Penal Code (criminal homicide);
- (2) an offense under Chapter 20, Penal Code (kidnapping and unlawful restraint);
- (3) an offense under Section 21.02, Penal Code (continuous sexual abuse of young child or children), or Section 21.11, Penal Code (indecenty with a child);
- (4) an offense under Section 22.011, Penal Code (sexual assault);
- (5) an offense under Section 22.02, Penal Code (aggravated assault);
- (6) an offense under Section 22.04, Penal Code (injury to a child, elderly individual, or disabled individual);
- (7) an offense under Section 22.041, Penal Code (abandoning or endangering child);
- (8) an offense under Section 22.08, Penal Code (aiding suicide);
- (9) an offense under Section 25.031, Penal Code (agreement to abduct from custody);
- (10) an offense under Section 25.08, Penal Code (sale or purchase of a child);
- (11) an offense under Section 28.02, Penal Code (arson);
- (12) an offense under Section 29.02, Penal Code (robbery);
- (13) an offense under Section 29.03, Penal Code (aggravated robbery);
- (14) an offense under Section 21.08, Penal Code (indecent exposure);
- (15) an offense under Section 21.12, Penal Code (improper relationship between educator and student);
- (16) an offense under Section 21.15, Penal Code (improper photography or visual recording);
- (17) an offense under Section 22.05, Penal Code (deadly conduct);
- (18) an offense under Section 22.021, Penal Code (aggravated sexual assault);
- (19) an offense under Section 22.07, Penal Code (terroristic threat);

(20) an offense under Section 33.021, Penal Code (online solicitation of a minor);

(21) an offense under Section 34.02, Penal Code (money laundering);

(22) an offense under Section 35A.02, Penal Code (Medicaid fraud);

(23) an offense under Section 42.09, Penal Code (cruelty to animals); or

(24) a conviction under the laws of another state, federal law, or the Uniform Code of Military Justice for an offense containing elements that are substantially similar to the elements of an offense listed by this subsection.

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

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

(2) an offense under Section 30.02, Penal Code (burglary);

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

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

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

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

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

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

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

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

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

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

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

(a) The Health and Human Services Commission, ~~[or]~~ an agency operating part of the medical assistance program under Chapter 32, Human Resources Code, or the office of inspector general established under Chapter 531, Government Code, is

entitled to obtain from the department the criminal history record information maintained by the department that relates to a provider under the medical assistance program or a person applying to enroll as a provider under the medical assistance program.

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

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

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

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

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

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

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

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

(2) "Participating agency" means:

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

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

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

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

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

(c) A participating agency may submit to another participating agency a written request for information described by Subsection (b) regarding a health care professional or managed care organization [that is the subject of an investigation by

~~the participating agency to any other participating agency].~~ The participating agency that receives the request shall provide the requesting agency with the information regarding the health care professional or managed care organization unless:

- (1) the release of the information would jeopardize an ongoing investigation or prosecution by the participating agency with possession of the information; or
- (2) the release of the information is prohibited by other law.

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

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

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

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

- (1) a person with a direct or indirect ownership or control interest, as defined by 42 C.F.R. Section 455.101, in a provider of five percent or more; and
- (2) a person whose information is required to be disclosed in accordance with 42 C.F.R. Part 1001.

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

- (1) the results of a criminal history check;
- (2) any exclusion or debarment of the provider from participation in a state or federally funded health care program;
- (3) the provider's failure to bill for medical assistance or refer clients for medical assistance within a 12-month period; or
- (4) any of the provider screening or enrollment provisions contained in 42 C.F.R. Part 455, Subpart E.

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

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

- (A) all persons described by Subsection (a-1)(1);
- (B) any managing employees of the provider; and
- (C) an agent or subcontractor of the provider if:

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

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

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

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

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

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

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

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

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

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

(1-d) offers or pays, directly or indirectly, overtly or covertly any remuneration, including any kickback, bribe, or rebate, in cash or in kind to induce a person to refer an individual to another person for the furnishing of, or for arranging the furnishing of, any item or service for which payment may be made, in whole or in part, under the medical assistance program, provided that this subdivision does not



prohibit the referral of a patient to another practitioner within a multispecialty group or university medical services research and development plan (practice plan) for medically necessary services;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) the history of previous violations;

(4) the deterrence of future violations; and

(5) the efforts to correct the violation.

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

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

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

(1) a violation that the department determines:

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

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

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

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

(3) a violation of Section 103.011.

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

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

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

(2) concluded that a violation has occurred.

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

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

(1) a brief summary of the charges;

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

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

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

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

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

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

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

(2) make a written request for a hearing.

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

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

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

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

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

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

(2) make a written request for a hearing.

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

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

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

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

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

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

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

(2) a violation has not occurred.

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

Sec. 103.016. NOTICE AND PAYMENT OF ADMINISTRATIVE PENALTY; INTEREST; REFUND. (a) The department's commissioner or the commissioner's designee shall give notice of the findings made under Section 103.015(d) to the

person charged with a violation. If the commissioner or the commissioner's designee finds that a violation has occurred, the commissioner or the commissioner's designee shall give to the person charged written notice of:

(1) the findings;

(2) the amount of the administrative penalty;

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

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

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

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

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

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

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

(1) the penalty is subject to interest; and

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION \_\_\_\_\_. 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.

The amendment to **HB 1720** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 3.

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

**HB 1720** as amended was passed to third reading by a viva voce vote.

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

#### **HOUSE BILL 1720 ON THIRD READING**

Senator Patrick moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1720** be placed on its third reading and final passage.

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

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

**(Senator Eltife in Chair)**

#### **CONFERENCE COMMITTEE ON HOUSE BILL 275**

Senator Ogden called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 275** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 275** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Ogden, Chair; Patrick, Fraser, Duncan, and Eltife.

#### **HOUSE BILL 2889 ON SECOND READING**

Senator Hinojosa moved to suspend the regular order of business to take up for consideration **HB 2889** at this time on its second reading:

**HB 2889**, Relating to the expunction of records and files relating to a person's arrest.

The motion prevailed.

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

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

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

Nays: Huffman, Nelson, Nichols, Patrick, Shapiro.

### **HOUSE BILL 2889 ON THIRD READING**

Senator Hinojosa moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2889** be passed on its third reading and final passage.

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

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

Nays: Huffman, Nelson, Nichols, Patrick, Shapiro.

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

### **HOUSE CONCURRENT RESOLUTION 163**

The Presiding Officer laid before the Senate the following resolution:

**HCR 163**, Convening a joint memorial session to honor Texans killed while serving in the Global War on Terrorism, commemorating Memorial Day 2011, and paying tribute to all those who have died in the service of the United States.

VAN DE PUTTE

The resolution was read.

On motion of Senator Van de Putte and by unanimous consent, the resolution was considered immediately and was adopted by a viva voce vote.

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

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

Senator Huffman called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2694** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 2694** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Huffman, Chair; Hegar, Hinojosa, Fraser, and Nichols.

### HOUSE BILL 2093 ON THIRD READING

Senator Van de Putte moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2093** be placed on its third reading and final passage:

**HB 2093**, Relating to the operation and regulation of certain consolidated insurance programs.

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

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

Nays: Birdwell, Nelson, Nichols, Patrick, Uresti.

The bill was read third time and was passed by the following vote: Yeas 23, Nays 8.

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

Nays: Birdwell, Fraser, Huffman, Nelson, Nichols, Patrick, Shapiro, Uresti.

**(President in Chair)**

### MESSAGE FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

Monday, May 23, 2011 - 4

The Honorable President of the Senate

Senate Chamber

Austin, Texas

Mr. President:

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

THE HOUSE HAS PASSED THE FOLLOWING MEASURES:

**SB 19** Nichols Sponsor: Smith, Wayne  
Relating to the development, financing, construction, and operation of certain toll projects.

**SB 89** Lucio Sponsor: Rodriguez, Eddie  
Relating to summer nutrition programs provided for by school districts.  
(Amended)



**SB 144** West Sponsor: Thompson  
Relating to allowing a person who successfully completes a term of deferred adjudication community supervision to be eligible for a pardon.  
(Amended)

**SB 167** West Sponsor: Veasey  
Relating to the automatic expunction of arrest records and files after an individual receives a pardon or a grant of certain other relief with respect to the offense for which the individual was arrested.  
(Amended)

**SB 218** Nelson Sponsor: Dukes  
Relating to procedures in certain suits affecting the parent-child relationship and the operation of the child protective services and foster care systems.  
(Committee Substitute/Amended)

**SB 220** Nelson Sponsor: Naishtat  
Relating to guardianships, including the assessment of prospective wards for, and the provision of, guardianship services by the Department of Aging and Disability Services.  
(Committee Substitute)

**SB 229** Nelson Sponsor: King, Susan  
Relating to newborn hearing screenings and hearing services for certain children.  
(Committee Substitute)

**SB 449** Watson Sponsor: Ritter  
Relating to the appraisal for ad valorem tax purposes of open-space land devoted to water stewardship purposes on the basis of its productive capacity.

**SB 469** Nelson Sponsor: Patrick, Diane  
Relating to the collection of unpaid tolls by a regional tollway authority.  
(Committee Substitute)

**SB 480** Hegar Sponsor: Gallego  
Relating to certain appeals from judgments of municipal courts of record and to the recusal or disqualification of municipal judges.  
(Amended)

**SB 548** Nichols Sponsor: Darby  
Relating to the environmental review process for transportation projects.  
(Amended)

**SB 554** Carona Sponsor: Lozano  
Relating to contracts between dentists and health maintenance organizations or insurers.

**SB 563** Jackson Sponsor: Torres  
Relating to the efficiency of the operations of, and certain information regarding services provided by, the Texas Workforce Commission; providing a criminal penalty.  
(Amended)

**SB 577** Duncan Sponsor: Frullo  
Relating to the use of facsimile signatures for certain documents involving certain municipalities.

- SB 701** Watson Sponsor: Strama  
Relating to high-value data sets of state agencies posted on the Internet.  
(Committee Substitute)
- SB 760** West Sponsor: Turner  
Relating to the term and renewal of interlocal contracts.  
(Committee Substitute)
- SB 767** Ellis Sponsor: Alvarado  
Relating to the regulation of certain residential mortgage foreclosure consulting services; providing a criminal penalty.  
(Amended)
- SB 789** Harris Sponsor: Thompson  
Relating to the duration of a protective order against family violence.  
(Amended)
- SB 802** Hegar Sponsor: Hunter  
Relating to allowing the Aransas County Commissioners Court to charge interest on assessments for certain county road improvements.  
(Amended)
- SB 804** Hegar Sponsor: Hunter  
Relating to the use of revenue from the hotel occupancy tax by certain counties.  
(Committee Substitute)
- SB 812** Zaffirini Sponsor: Raymond  
Relating to the resumption of employment by certain retirees within the Texas Municipal Retirement System.  
(Committee Substitute)
- SB 819** Harris Sponsor: Thompson  
Relating to family violence and protective orders.  
(Amended)
- SB 898** Carona Sponsor: Cook  
Relating to energy efficiency programs in institutions of higher education and certain governmental entities.
- SB 901** Hegar Sponsor: Kolkhorst  
Relating to approval from the Department of State Health Services for disposal of ambulances purchased with certain grant funds.
- SB 917** Wentworth Sponsor: Miller, Doug  
Relating to emergency service districts.  
(Committee Substitute)
- SB 993** Uresti Sponsor: Rodriguez, Eddie  
Relating to the removal of a child by the Department of Family and Protective Services, including certain arrangements to provide care for a child during an investigation of abuse or neglect.  
(Amended)
- SB 1020** Rodriguez Sponsor: Marquez  
Relating to a feasibility study regarding the establishment of a dental school at the Texas Tech University Health Sciences Center at El Paso.

- SB 1133** Hegar Sponsor: Harless  
Relating to a report by the Public Utility Commission of Texas on the ability of electric generators to respond to abnormal weather conditions.
- SB 1198** Rodriguez Sponsor: Hartnett  
Relating to decedents' estates.  
(Amended)
- SB 1342** Seliger Sponsor: Geren  
Relating to the use of bingo proceeds by licensed authorized organizations, including the use of proceeds to provide health insurance or health insurance benefits to certain employees.
- SB 1368** West Sponsor: Deshotel  
Relating to the authority of a co-owner of residential property to encumber the property.
- SB 1484** Shapiro Sponsor: Strama  
Relating to authorizing open-enrollment charter schools to be awarded academic distinction designations.
- SB 1596** Wentworth Sponsor: Isaac  
Relating to changes in participation in public utility agencies.
- SB 1681** Ellis Sponsor: Thompson  
Relating to the appointment of counsel and the rights of an accused and other requirements for the purposes of appellate proceedings or community supervision revocation proceedings.

THE HOUSE HAS TAKEN THE FOLLOWING OTHER ACTION:

**HB 1665**, Pursuant to Rule 13, Section 5A of the Rules of the Texas House, 82nd Legislature, the House returns HB 1665 to the Senate for further consideration.

Respectfully,

/s/Robert Haney, Chief Clerk  
House of Representatives

#### CONFERENCE COMMITTEE ON HOUSE BILL 1286

Senator Davis called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 1286** and moved that the request be granted.

The motion prevailed without objection.

The President asked if there were any motions to instruct the conference committee on **HB 1286** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate: Senators Davis, Chair; Deuell, Ogden, Patrick, and Nichols.

**CONFERENCE COMMITTEE ON HOUSE BILL 2457**

Senator Jackson called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2457** and moved that the request be granted.

The motion prevailed without objection.

The President asked if there were any motions to instruct the conference committee on **HB 2457** before appointment.

There were no motions offered.

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

**CONFERENCE COMMITTEE ON HOUSE BILL 2154**

Senator Ellis called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2154** and moved that the request be granted.

The motion prevailed without objection.

The President asked if there were any motions to instruct the conference committee on **HB 2154** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate: Senators Ellis, Chair; Duncan, Deuell, Lucio, and Van de Putte.

**CONFERENCE COMMITTEE ON HOUSE BILL 3302**

Senator Hegar called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 3302** and moved that the request be granted.

The motion prevailed without objection.

The President asked if there were any motions to instruct the conference committee on **HB 3302** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate: Senators Hegar, Chair; Jackson, Eltife, Hinojosa, and Patrick.

**CONFERENCE COMMITTEE ON HOUSE BILL 3726**

Senator Van de Putte called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 3726** and moved that the request be granted.

The motion prevailed without objection.

The President asked if there were any motions to instruct the conference committee on **HB 3726** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate: Senators Van de Putte, Chair; Wentworth, Eltife, Zaffirini, and Uresti.

### SENATE BILL 23 WITH HOUSE AMENDMENTS

Senator Nelson called **SB 23** from the President's table for consideration of the House amendments to the bill.

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

#### Amendment

Amend **SB 23** by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to the administration of and efficiency, cost-saving, fraud prevention, and funding measures for certain health and human services and health benefits programs, including the medical assistance and child health plan programs.

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

SECTION 1. SEXUAL ASSAULT PROGRAM FUND; FEE IMPOSED ON CERTAIN SEXUALLY ORIENTED BUSINESSES. (a) Section 102.054, Business & Commerce Code, is amended to read as follows:

Sec. 102.054. ALLOCATION OF ~~[CERTAIN]~~ REVENUE FOR SEXUAL ASSAULT PROGRAMS. The comptroller shall deposit the amount ~~[first \$25 million]~~ received from the fee imposed under this subchapter ~~[in a state fiscal biennium]~~ to the credit of the sexual assault program fund.

(b) Section 420.008, Government Code, is amended by amending Subsection (c) and adding Subsection (d) to read as follows:

(c) The legislature may appropriate money deposited to the credit of the fund only to:

(1) the attorney general, for:

(A) sexual violence awareness and prevention campaigns;

(B) grants to faith-based groups, independent school districts, and community action organizations for programs for the prevention of sexual assault and programs for victims of human trafficking;

(C) grants for equipment for sexual assault nurse examiner programs, to support the preceptorship of future sexual assault nurse examiners, and for the continuing education of sexual assault nurse examiners;

(D) grants to increase the level of sexual assault services in this state;

(E) grants to support victim assistance coordinators;

(F) grants to support technology in rape crisis centers;

(G) grants to and contracts with a statewide nonprofit organization exempt from federal income taxation under Section 501(c)(3), Internal Revenue Code of 1986, having as a primary purpose ending sexual violence in this state, for

programs for the prevention of sexual violence, outreach programs, and technical assistance to and support of youth and rape crisis centers working to prevent sexual violence; ~~and~~

(H) grants to regional nonprofit providers of civil legal services to provide legal assistance for sexual assault victims; and

(I) grants to health science centers and related nonprofit entities exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed as an exempt organization under Section 501(c)(3) of that code, for research relating to the prevention and mitigation of sexual assault;

(2) the Department of State Health Services, to measure the prevalence of sexual assault in this state and for grants to support programs assisting victims of human trafficking;

(3) the Institute on Domestic Violence and Sexual Assault at The University of Texas at Austin, to conduct research on all aspects of sexual assault and domestic violence;

(4) Texas State University, for training and technical assistance to independent school districts for campus safety;

(5) the office of the governor, for grants to support sexual assault and human trafficking prosecution projects;

(6) the Department of Public Safety, to support sexual assault training for commissioned officers;

(7) the comptroller's judiciary section, for increasing the capacity of the sex offender civil commitment program;

(8) the Texas Department of Criminal Justice:

(A) for pilot projects for monitoring sex offenders on parole; and

(B) for increasing the number of adult incarcerated sex offenders receiving treatment;

(9) the Texas Youth Commission, for increasing the number of incarcerated juvenile sex offenders receiving treatment;

(10) the comptroller, for the administration of the fee imposed on sexually oriented businesses under Section 102.052, Business & Commerce Code; ~~and~~

(11) the supreme court, to be transferred to the Texas Equal Access to Justice Foundation, or a similar entity, to provide victim-related legal services to sexual assault victims, including legal assistance with protective orders, relocation-related matters, victim compensation, and actions to secure privacy protections available to victims under law; and

(12) the Department of Family and Protective Services for:

(A) programs related to sexual assault prevention and intervention; and

(B) research relating to how the department can effectively address the prevention of sexual assault.

(d) A board, commission, department, office, or other agency in the executive or judicial branch of state government to which money is appropriated from the sexual assault program fund under this section shall, not later than December 1 of each even-numbered year, provide to the Legislative Budget Board a report stating, for the preceding fiscal biennium:

(1) the amount appropriated to the entity under this section;

(2) the purposes for which the money was used; and

(3) any results of a program or research funded under this section.

(c) The comptroller of public accounts shall collect the fee imposed under Section 102.052, Business & Commerce Code, until a court, in a final judgment upheld on appeal or no longer subject to appeal, finds Section 102.052, Business & Commerce Code, or its predecessor statute, to be unconstitutional.

(d) Section 102.055, Business & Commerce Code, is repealed.

(e) This section prevails over any other Act of the 82nd Legislature, Regular Session, 2011, regardless of the relative dates of enactment, that purports to amend or repeal Subchapter B, Chapter 102, Business & Commerce Code, or any provision of Chapter 1206 (H.B. 175), Acts of the 80th Legislature, Regular Session, 2007.

SECTION 2. OBJECTIVE ASSESSMENT PROCESSES FOR CERTAIN MEDICAID SERVICES. Subchapter B, Chapter 531, Government Code, is amended by adding Sections 531.02417 and 531.024171 to read as follows:

Sec. 531.02417. MEDICAID NURSING SERVICES ASSESSMENTS. (a) In this section, "acute nursing services" means home health skilled nursing services, home health aide services, and private duty nursing services.

(b) The commission may develop an objective assessment process for use in assessing a Medicaid recipient's needs for acute nursing services. The commission may require that:

(1) the assessment be conducted:

(A) if cost-effective and in the best interests of the recipient, by a state employee or contractor who is not the person who will deliver any necessary services to the recipient and is not affiliated with the person who will deliver those services; and

(B) in a timely manner so as to protect the health and safety of the recipient by avoiding unnecessary delays in service delivery; and

(2) the process include:

(A) an assessment of specified criteria and documentation of the assessment results on a standard form;

(B) an assessment of whether the recipient should be referred for additional assessments regarding the recipient's needs for therapy services, as defined by Section 531.024171, attendant care services, and durable medical equipment; and

(C) completion by the person conducting the assessment of any documents related to obtaining prior authorization for necessary nursing services.

(c) If the commission develops the objective assessment process under Subsection (b), the commission shall:

(1) implement the process within the Medicaid fee-for-service model and the primary care case management Medicaid managed care model; and

(2) take necessary actions, including modifying contracts with managed care organizations under Chapter 533 to the extent allowed by law, to implement the process within the STAR and STAR + PLUS Medicaid managed care programs.

Sec. 531.024171. THERAPY SERVICES ASSESSMENTS. (a) In this section, "therapy services" includes occupational, physical, and speech therapy services.

(b) If the commission implements the objective assessment process for acute nursing services as authorized by Section 531.02417, the commission shall consider whether implementing an objective assessment process for assessing the needs of a Medicaid recipient for therapy services that is comparable to the process required under Section 531.02417 for acute nursing services would be feasible and beneficial.

(c) If the commission determines that implementing a comparable process with respect to one or more types of therapy services is feasible and would be beneficial, the commission may implement the process within:

(1) the Medicaid fee-for-service model;

(2) the primary care case management Medicaid managed care model; and

(3) the STAR and STAR + PLUS Medicaid managed care programs.

SECTION 3. MEDICAID MANAGED CARE PROGRAM. (a) Section 533.0025(e), Government Code, is amended to read as follows:

(e) Each managed care organization that operates within the South Texas service delivery area must maintain a medical director within the service delivery area whose duties include overseeing and managing the managed care organization medical necessity determination process. The medical director:

(1) may be a managed care organization employee or be under contract with the managed care organization;

(2) must be available for peer-to-peer discussions about managed care organization medical necessity determinations and other managed care organization clinical policies; and

(3) may not be affiliated with any hospital, clinic, or other health care related institution or business that operates within the service delivery area [Notwithstanding Subsection (b)(1), the commission may not provide medical assistance using a health maintenance organization in Cameron County, Hidalgo County, or Maverick County].

(b) Subchapter A, Chapter 533, Government Code, is amended by adding Sections 533.0027, 533.0028, and 533.0029 to read as follows:

Sec. 533.0027. PROCEDURES TO ENSURE CERTAIN RECIPIENTS ARE ENROLLED IN SAME MANAGED CARE PLAN. The commission shall ensure that all recipients who are children and who reside in the same household may, at the family's election, be enrolled in the same managed care plan.

Sec. 533.0028. EVALUATION OF CERTAIN STAR + PLUS MEDICAID MANAGED CARE PROGRAM SERVICES. The external quality review organization shall periodically conduct studies and surveys to assess the quality of care and satisfaction with health care services provided to enrollees in the STAR + PLUS Medicaid managed care program who are eligible to receive health care benefits under both the Medicaid and Medicare programs.

Sec. 533.0029. PROMOTION AND PRINCIPLES OF PATIENT-CENTERED MEDICAL HOMES FOR RECIPIENTS. (a) For purposes of this section, a "patient-centered medical home" means a medical relationship:

(1) between a primary care physician and a child or adult patient in which the physician:

(A) provides comprehensive primary care to the patient; and



(B) facilitates partnerships between the physician, the patient, acute care and other care providers, and, when appropriate, the patient's family; and

(2) that encompasses the following primary principles:

(A) the patient has an ongoing relationship with the physician, who is trained to be the first contact for the patient and to provide continuous and comprehensive care to the patient;

(B) the physician leads a team of individuals at the practice level who are collectively responsible for the ongoing care of the patient;

(C) the physician is responsible for providing all of the care the patient needs or for coordinating with other qualified providers to provide care to the patient throughout the patient's life, including preventive care, acute care, chronic care, and end-of-life care;

(D) the patient's care is coordinated across health care facilities and the patient's community and is facilitated by registries, information technology, and health information exchange systems to ensure that the patient receives care when and where the patient wants and needs the care and in a culturally and linguistically appropriate manner; and

(E) quality and safe care is provided.

(b) The commission shall, to the extent possible, work to ensure that managed care organizations:

(1) promote the development of patient-centered medical homes for recipients; and

(2) provide payment incentives for providers that meet the requirements of a patient-centered medical home.

(c) Section 533.003, Government Code, is amended to read as follows:

Sec. 533.003. CONSIDERATIONS IN AWARDING CONTRACTS. In awarding contracts to managed care organizations, the commission shall:

(1) give preference to organizations that have significant participation in the organization's provider network from each health care provider in the region who has traditionally provided care to Medicaid and charity care patients;

(2) give extra consideration to organizations that agree to assure continuity of care for at least three months beyond the period of Medicaid eligibility for recipients;

(3) consider the need to use different managed care plans to meet the needs of different populations; ~~and~~

(4) consider the ability of organizations to process Medicaid claims electronically; and

(5) give extra consideration in each health care service region to an organization that:

(A) is locally owned, managed, and operated, if one exists; or

(B) notwithstanding Section 533.004 or any other law, is not owned or operated by and does not have a contract, agreement, or other arrangement with a hospital district in the region.

(d) Section 533.005(a), Government Code, is amended to read as follows:

(a) A contract between a managed care organization and the commission for the organization to provide health care services to recipients must contain:

(1) procedures to ensure accountability to the state for the provision of health care services, including procedures for financial reporting, quality assurance, utilization review, and assurance of contract and subcontract compliance;

(2) capitation rates that ensure the cost-effective provision of quality health care;

(3) a requirement that the managed care organization provide ready access to a person who assists recipients in resolving issues relating to enrollment, plan administration, education and training, access to services, and grievance procedures;

(4) a requirement that the managed care organization provide ready access to a person who assists providers in resolving issues relating to payment, plan administration, education and training, and grievance procedures;

(5) a requirement that the managed care organization provide information and referral about the availability of educational, social, and other community services that could benefit a recipient;

(6) procedures for recipient outreach and education;

(7) a requirement that the managed care organization make payment to a physician or provider for health care services rendered to a recipient under a managed care plan not later than the 45th day after the date a claim for payment is received with documentation reasonably necessary for the managed care organization to process the claim, or within a period, not to exceed 60 days, specified by a written agreement between the physician or provider and the managed care organization;

(8) a requirement that the commission, on the date of a recipient's enrollment in a managed care plan issued by the managed care organization, inform the organization of the recipient's Medicaid certification date;

(9) a requirement that the managed care organization comply with Section 533.006 as a condition of contract retention and renewal;

(10) a requirement that the managed care organization provide the information required by Section 533.012 and otherwise comply and cooperate with the commission's office of inspector general and the office of the attorney general;

(11) a requirement that the managed care organization's usages of out-of-network providers or groups of out-of-network providers may not exceed limits for those usages relating to total inpatient admissions, total outpatient services, and emergency room admissions determined by the commission;

(12) if the commission finds that a managed care organization has violated Subdivision (11), a requirement that the managed care organization reimburse an out-of-network provider for health care services at a rate that is equal to the allowable rate for those services, as determined under Sections 32.028 and 32.0281, Human Resources Code;

(13) a requirement that the organization use advanced practice nurses in addition to physicians as primary care providers to increase the availability of primary care providers in the organization's provider network;

(14) a requirement that the managed care organization reimburse a federally qualified health center or rural health clinic for health care services provided to a recipient outside of regular business hours, including on a weekend day or holiday, at

a rate that is equal to the allowable rate for those services as determined under Section 32.028, Human Resources Code, if the recipient does not have a referral from the recipient's primary care physician; ~~and~~

(15) a requirement that the managed care organization develop, implement, and maintain a system for tracking and resolving all provider appeals related to claims payment, including a process that will require:

(A) a tracking mechanism to document the status and final disposition of each provider's claims payment appeal;

(B) the contracting with physicians who are not network providers and who are of the same or related specialty as the appealing physician to resolve claims disputes related to denial on the basis of medical necessity that remain unresolved subsequent to a provider appeal; and

(C) the determination of the physician resolving the dispute to be binding on the managed care organization and provider;

(16) a requirement that a medical director who is authorized to make medical necessity determinations is available in the region where the managed care organization provides health care services;

(17) a requirement that the managed care organization provide special programs and materials for recipients with limited English proficiency or low literacy skills;

(18) a requirement that the managed care organization develop and submit to the commission, before the organization begins to provide health care services to recipients, a comprehensive plan that describes how the organization's provider network will provide recipients sufficient access to:

(A) preventive care;

(B) primary care;

(C) specialty care;

(D) after-hours urgent care; and

(E) chronic care;

(19) a requirement that the managed care organization demonstrate to the commission, before the organization begins to provide health care services to recipients, that:

(A) the organization's provider network has the capacity to serve the number of recipients expected to enroll in a managed care plan offered by the organization;

(B) the organization's provider network includes:

(i) a sufficient number of primary care providers;

(ii) a sufficient variety of provider types; and

(iii) providers located throughout the region where the organization

will provide health care services; and

(C) health care services will be accessible to recipients through the organization's provider network to the same extent that health care services would be available to recipients under a fee-for-service or primary care case management model of Medicaid managed care;

(20) a requirement that the managed care organization develop a monitoring program for measuring the quality of the health care services provided by the organization's provider network that:

(A) incorporates the National Committee for Quality Assurance's Healthcare Effectiveness Data and Information Set (HEDIS) measures;

(B) focuses on measuring outcomes; and

(C) includes the collection and analysis of clinical data relating to prenatal care, preventive care, mental health care, and the treatment of acute and chronic health conditions and substance abuse;

(21) a requirement that the managed care organization develop, implement, and maintain an outpatient pharmacy benefit plan for its enrolled recipients:

(A) that reimburses only enrolled pharmacy providers for pharmacy products on the vendor drug program formulary, also known as the Texas drug code index;

(B) that adheres to the applicable preferred drug list adopted by the commission under Section 531.072;

(C) that includes the prior authorization procedures and requirements prescribed by or implemented under Sections 531.073(b), (c), and (g) for the vendor drug program;

(D) for purposes of which the managed care organization:

(i) may not negotiate or collect rebates associated with pharmacy products on the vendor drug program formulary; and

(ii) may not receive drug rebate or pricing information that is confidential under Section 531.071;

(E) that complies with the prohibition under Section 531.089;

(F) under which the managed care organization may not prohibit, limit, or interfere with a recipient's selection of a pharmacy or pharmacist of the recipient's choice for the provision of pharmaceutical services under the plan through the imposition of different copayments or other conditions;

(G) that establishes uniform administrative, financial, and professional terms for all pharmacies and pharmacists that participate in the plan; and

(H) under which the managed care organization may not prevent a pharmacy or pharmacist from participating as a provider if the pharmacy or pharmacist agrees to comply with the terms established under Paragraph (G); and

(22) a requirement that the managed care organization and any entity with which the managed care organization contracts for the performance of services under a managed care plan disclose, at no cost, to the commission and, on request, the office of the attorney general all discounts, incentives, rebates, fees, free goods, bundling arrangements, and other agreements affecting the net cost of goods or services provided under the plan.

(e) Subchapter A, Chapter 533, Government Code, is amended by adding Section 533.0066 to read as follows:

Sec. 533.0066. PROVIDER INCENTIVES. The commission shall, to the extent possible, work to ensure that managed care organizations provide payment incentives to health care providers in the organizations' networks whose performance in promoting recipients' use of preventive services exceeds minimum established standards.

(f) Section 533.0071, Government Code, is amended to read as follows:

Sec. 533.0071. ADMINISTRATION OF CONTRACTS. The commission shall make every effort to improve the administration of contracts with managed care organizations. To improve the administration of these contracts, the commission shall:

(1) ensure that the commission has appropriate expertise and qualified staff to effectively manage contracts with managed care organizations under the Medicaid managed care program;

(2) evaluate options for Medicaid payment recovery from managed care organizations if the enrollee dies or is incarcerated or if an enrollee is enrolled in more than one state program or is covered by another liable third party insurer;

(3) maximize Medicaid payment recovery options by contracting with private vendors to assist in the recovery of capitation payments, payments from other liable third parties, and other payments made to managed care organizations with respect to enrollees who leave the managed care program;

(4) decrease the administrative burdens of managed care for the state, the managed care organizations, and the providers under managed care networks to the extent that those changes are compatible with state law and existing Medicaid managed care contracts, including decreasing those burdens by:

(A) where possible, decreasing the duplication of administrative reporting requirements for the managed care organizations, such as requirements for the submission of encounter data, quality reports, historically underutilized business reports, and claims payment summary reports;

(B) allowing managed care organizations to provide updated address information directly to the commission for correction in the state system;

(C) promoting consistency and uniformity among managed care organization policies, including policies relating to the preauthorization process, lengths of hospital stays, filing deadlines, levels of care, and case management services; ~~and~~

(D) reviewing the appropriateness of primary care case management requirements in the admission and clinical criteria process, such as requirements relating to including a separate cover sheet for all communications, submitting handwritten communications instead of electronic or typed review processes, and admitting patients listed on separate notifications; and

(E) providing a single portal through which providers in any managed care organization's provider network may submit claims; and

(5) reserve the right to amend the managed care organization's process for resolving provider appeals of denials based on medical necessity to include an independent review process established by the commission for final determination of these disputes.

(g) Sections 533.0076(a) and (c), Government Code, are amended to read as follows:

(a) Except as provided by Subsections (b) and (c), and to the extent permitted by federal law, ~~[the commission may prohibit]~~ a recipient enrolled ~~[from disenrolling]~~ in a managed care plan under this chapter may not disenroll from that plan and enroll ~~[enrolling]~~ in another managed care plan [during the 12-month period after the date the recipient initially enrolls in a plan].

(c) The commission shall allow a recipient who is enrolled in a managed care plan under this chapter to disenroll from ~~[in]~~ that plan:

- (1) at any time for cause in accordance with federal law; and
- (2) once for any reason after the period described by Subsection (b).

(h) Sections 533.012(a), (b), (c), and (e), Government Code, are amended to read as follows:

(a) Each managed care organization contracting with the commission under this chapter shall submit the following, at no cost, to the commission and, on request, the office of the attorney general:

(1) a description of any financial or other business relationship between the organization and any subcontractor providing health care services under the contract;

(2) a copy of each type of contract between the organization and a subcontractor relating to the delivery of or payment for health care services;

(3) a description of the fraud control program used by any subcontractor that delivers health care services; and

(4) a description and breakdown of all funds paid to or by the managed care organization, including a health maintenance organization, primary care case management provider, pharmacy benefit manager, and ~~[an]~~ exclusive provider organization, necessary for the commission to determine the actual cost of administering the managed care plan.

(b) The information submitted under this section must be submitted in the form required by the commission or the office of the attorney general, as applicable, and be updated as required by the commission or the office of the attorney general, as applicable.

(c) The commission's office of investigations and enforcement or the office of the attorney general, as applicable, shall review the information submitted under this section as appropriate in the investigation of fraud in the Medicaid managed care program.

(e) Information submitted to the commission or the office of the attorney general, as applicable, under Subsection (a)(1) is confidential and not subject to disclosure under Chapter 552, Government Code.

(i) The heading to Section 32.046, Human Resources Code, is amended to read as follows:

Sec. 32.046. [VENDOR DRUG PROGRAM;] SANCTIONS AND PENALTIES RELATED TO THE PROVISION OF PHARMACY PRODUCTS.

(j) Section 32.046(a), Human Resources Code, is amended to read as follows:

(a) The executive commissioner of the Health and Human Services Commission ~~[department]~~ shall adopt rules governing sanctions and penalties that apply to a provider who participates in the vendor drug program or is enrolled as a network

pharmacy provider of a managed care organization contracting with the commission under Chapter 533, Government Code, or its subcontractor and who submits an improper claim for reimbursement under the program.

(k) Not later than December 1, 2013, the Health and Human Services Commission shall submit a report to the legislature regarding the commission's work to ensure that Medicaid managed care organizations promote the development of patient-centered medical homes for recipients of medical assistance as required under Section 533.0029, Government Code, as added by this section.

(l) The Health and Human Services Commission shall, in a contract between the commission and a managed care organization under Chapter 533, Government Code, that is entered into or renewed on or after the effective date of this Act, include the provisions required by Section 533.005(a), Government Code, as amended by this section.

(m) Sections 533.0076(a) and (c), Government Code, as amended by this section, apply only to a request for disenrollment from a Medicaid managed care plan under Chapter 533, Government Code, made by a recipient on or after the effective date of this Act. A request made by a recipient before that date is governed by the law in effect on the date the request was made, and the former law is continued in effect for that purpose.

#### SECTION 4. ABOLISHING STATE KIDS INSURANCE PROGRAM.

(a) Section 62.101, Health and Safety Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) A child who is the dependent of an employee of an agency of this state and who meets the requirements of Subsection (a) may be eligible for health benefits coverage in accordance with 42 U.S.C. Section 1397jj(b)(6) and any other applicable law or regulations.

(b) Sections 1551.159 and 1551.312, Insurance Code, are repealed.

(c) The State Kids Insurance Program operated by the Employees Retirement System of Texas is abolished on the effective date of this Act. The Health and Human Services Commission shall:

(1) establish a process in cooperation with the Employees Retirement System of Texas to facilitate the enrollment of eligible children in the child health plan program established under Chapter 62, Health and Safety Code, on or before the date those children are scheduled to stop receiving dependent child coverage under the State Kids Insurance Program; and

(2) modify any applicable administrative procedures to ensure that children described by this subsection maintain continuous health benefits coverage while transitioning from enrollment in the State Kids Insurance Program to enrollment in the child health plan program.

SECTION 5. PREVENTION OF CRIMINAL OR FRAUDULENT CONDUCT BY CERTAIN FACILITIES, PROVIDERS, AND RECIPIENTS. (a) Subchapter B, Chapter 31, Human Resources Code, is amended by adding Section 31.0326 to read as follows:

Sec. 31.0326. VERIFICATION OF IDENTITY AND PREVENTION OF DUPLICATE PARTICIPATION. The Health and Human Services Commission shall use appropriate technology to:

(1) confirm the identity of applicants for benefits under the financial assistance program; and

(2) prevent duplicate participation in the program by a person.

(b) Chapter 33, Human Resources Code, is amended by adding Section 33.0231 to read as follows:

Sec. 33.0231. VERIFICATION OF IDENTITY AND PREVENTION OF DUPLICATE PARTICIPATION IN SNAP. The department shall use appropriate technology to:

(1) confirm the identity of applicants for benefits under the supplemental nutrition assistance program; and

(2) prevent duplicate participation in the program by a person.

(c) Section 531.109, Government Code, is amended by adding Subsection (d) to read as follows:

(d) Absent an allegation of fraud, waste, or abuse, the commission may conduct an annual review of claims under this section only after the commission has completed the prior year's annual review of claims.

(d) Section 31.0325, Human Resources Code, is repealed.

SECTION 6. PROVISIONS RELATING TO CONVALESCENT AND NURSING HOMES. (a) Section 242.033, Health and Safety Code, is amended by amending Subsection (d) and adding Subsection (g) to read as follows:

(d) Except as provided by Subsection (f), a license is renewable every three [~~two~~] years after:

(1) an inspection, unless an inspection is not required as provided by Section 242.047;

(2) payment of the license fee; and

(3) department approval of the report filed every three [~~two~~] years by the licensee.

(g) The executive commissioner by rule shall adopt a system under which an appropriate number of licenses issued by the department under this chapter expire on staggered dates occurring in each three-year period. If the expiration date of a license changes as a result of this subsection, the department shall prorate the licensing fee relating to that license as appropriate.

(b) Section 242.159(e-1), Health and Safety Code, is amended to read as follows:

(e-1) An institution is not required to comply with Subsections (a) and (e) until September 1, 2014 [~~2012~~]. This subsection expires January 1, 2015 [~~2013~~].

(c) The executive commissioner of the Health and Human Services Commission shall adopt the rules required under Section 242.033(g), Health and Safety Code, as added by this section, as soon as practicable after the effective date of this Act, but not later than December 1, 2012.

SECTION 7. STREAMLINING OF AND UTILIZATION MANAGEMENT IN MEDICAID LONG-TERM CARE WAIVER PROGRAMS. (a) Section 161.077, Human Resources Code, as added by Chapter 759 (S.B. 705), Acts of the 81st Legislature, Regular Session, 2009, is redesignated as Section 161.081, Human Resources Code, and amended to read as follows:



Sec. 161.081 [~~161.077~~]. LONG-TERM CARE MEDICAID WAIVER PROGRAMS: STREAMLINING AND UNIFORMITY. (a) In this section, "Section 1915(c) waiver program" has the meaning assigned by Section 531.001, Government Code.

(b) The department, in consultation with the commission, shall streamline the administration of and delivery of services through Section 1915(c) waiver programs. In implementing this subsection, the department, subject to Subsection (c), may consider implementing the following streamlining initiatives:

- (1) reducing the number of forms used in administering the programs;
- (2) revising program provider manuals and training curricula;
- (3) consolidating service authorization systems;
- (4) eliminating any physician signature requirements the department considers unnecessary;
- (5) standardizing individual service plan processes across the programs;

[and]

(6) if feasible:

(A) concurrently conducting program certification and billing audit and review processes and other related audit and review processes;

(B) streamlining other billing and auditing requirements;

(C) eliminating duplicative responsibilities with respect to the coordination and oversight of individual care plans for persons receiving waiver services; and

(D) streamlining cost reports and other cost reporting processes; and

(7) any other initiatives that will increase efficiencies in the programs.

(c) The department shall ensure that actions taken under Subsection (b) [~~this section~~] do not conflict with any requirements of the commission under Section 531.0218, Government Code.

(d) The department and the commission shall jointly explore the development of uniform licensing and contracting standards that would:

(1) apply to all contracts for the delivery of Section 1915(c) waiver program services;

(2) promote competition among providers of those program services; and

(3) integrate with other department and commission efforts to streamline and unify the administration and delivery of the program services, including those required by this section or Section 531.0218, Government Code.

(b) Subchapter D, Chapter 161, Human Resources Code, is amended by adding Section 161.082 to read as follows:

Sec. 161.082. LONG-TERM CARE MEDICAID WAIVER PROGRAMS: UTILIZATION REVIEW. (a) In this section, "Section 1915(c) waiver program" has the meaning assigned by Section 531.001, Government Code.

(b) The department shall perform a utilization review of services in all Section 1915(c) waiver programs. The utilization review must include reviewing program recipients' levels of care and any plans of care for those recipients that exceed service level thresholds established in the applicable waiver program guidelines.

SECTION 8. PROVISIONS RELATING TO ASSISTED LIVING FACILITIES. (a) Section 247.004, Health and Safety Code, is amended to read as follows:

Sec. 247.004. EXEMPTIONS. This chapter does not apply to:

(1) a boarding home facility as defined by Section 254.001, as added by Chapter 1106 (H.B. 216), Acts of the 81st Legislature, Regular Session, 2009;

(2) an establishment conducted by or for the adherents of the Church of Christ, Scientist, for the purpose of providing facilities for the care or treatment of the sick who depend exclusively on prayer or spiritual means for healing without the use of any drug or material remedy if the establishment complies with local safety, sanitary, and quarantine ordinances and regulations;

(3) a facility conducted by or for the adherents of a qualified religious society classified as a tax-exempt organization under an Internal Revenue Service group exemption ruling for the purpose of providing personal care services without charge solely for the society's professed members or ministers in retirement, if the facility complies with local safety, sanitation, and quarantine ordinances and regulations; or

(4) a facility that provides personal care services only to persons enrolled in a program that:

(A) is funded in whole or in part by the department and that is monitored by the department or its designated local mental retardation authority in accordance with standards set by the department; or

(B) is funded in whole or in part by the Department of State Health Services and that is monitored by that department, or by its designated local mental health authority in accordance with standards set by the department.

(b) Section 247.027(a), Health and Safety Code, is amended to read as follows:

(a) In addition to the inspection required under Section 247.023(a), the department may inspect an assisted living facility once during an 18-month period [~~annually~~] and may inspect a facility at other reasonable times as necessary to assure compliance with this chapter.

(c) Section 247.032(b), Health and Safety Code, is amended to read as follows:

(b) The department shall accept an accreditation survey from an accreditation commission for an assisted living facility instead of an inspection under Section 247.023 or an [~~annual~~] inspection or survey conducted once during each 18-month period under the authority of Section 247.027, but only if:

(1) the accreditation commission's standards meet or exceed the requirements for licensing of the executive commissioner of the Health and Human Services Commission for an assisted living facility;

(2) the accreditation commission maintains an inspection or survey program that, for each assisted living facility, meets the department's applicable minimum standards as confirmed by the executive commissioner of the Health and Human Services Commission;

(3) the accreditation commission conducts an on-site inspection or survey of the facility at least as often as required by Section 247.023 or 247.027 and in accordance with the department's minimum standards;

(4) the assisted living facility submits to the department a copy of its required accreditation reports to the accreditation commission in addition to the application, the fee, and any report required for renewal of a license;

(5) the inspection or survey results are available for public inspection to the same extent that the results of an investigation or survey conducted under Section 247.023 or 247.027 are available for public inspection; and

(6) the department ensures that the accreditation commission has taken reasonable precautions to protect the confidentiality of personally identifiable information concerning the residents of the assisted living facility.

SECTION 9. TELEMONITORING. (a) Section 531.001, Government Code, is amended by adding Subdivision (7) to read as follows:

(7) "Telemonitoring" means the use of telecommunications and information technology to provide access to health assessment, intervention, consultation, supervision, and information across distance. Telemonitoring includes the use of technologies such as telephones, facsimile machines, e-mail systems, text messaging systems, and remote patient monitoring devices to collect and transmit patient data for monitoring and interpretation.

(b) Subchapter B, Chapter 531, Government Code, is amended by adding Sections 531.02176, 531.02177, and 531.02178 to read as follows:

Sec. 531.02176. MEDICAID TELEMONITORING PILOT PROGRAMS FOR DIABETES. (a) The commission shall determine whether the Medicaid Enhanced Care program's diabetes self-management training telemonitoring pilot program was cost neutral.

(b) In determining whether the pilot program described by Subsection (a) was cost neutral, the commission shall, at a minimum, compare:

(1) the health care costs of program participants who received telemonitoring services with the health care costs of a group of Medicaid recipients who did not receive telemonitoring services;

(2) the health care services used by program participants who received telemonitoring services with the health care services used by a group of Medicaid recipients who did not receive telemonitoring services;

(3) for program participants who received telemonitoring services, the amount spent on health care services before, during, and after the receipt of telemonitoring services; and

(4) for program participants who received telemonitoring services, the health care services used before, during, and after the receipt of telemonitoring services.

(c) If the commission determines that the pilot program described by Subsection (a) was cost neutral, the executive commissioner shall adopt rules for providing telemonitoring services through the Medicaid Texas Health Management Program for select diabetes patients in a manner comparable to that program.

(d) If the commission determines that the pilot program described by Subsection (a) was not cost neutral, the commission shall develop and implement within the Medicaid Texas Health Management Program for select diabetes patients a new

diabetes telemonitoring pilot program based on evidence-based best practices, provided that the commission determines implementing the new diabetes telemonitoring pilot program would be cost neutral.

(e) In determining whether implementing a new diabetes telemonitoring pilot program under Subsection (d) would be cost neutral, the commission shall consider appropriate factors, including the following:

(1) the target population, participant eligibility criteria, and the number of participants to whom telemonitoring services would be provided;

(2) the type of telemonitoring technology to be used;

(3) the estimated cost of the telemonitoring services to be provided;

(4) the estimated cost differential to the state based on changes in participants' use of emergency department services, outpatient services, pharmaceutical and ancillary services, and inpatient services other than inpatient labor and delivery services; and

(5) other indirect costs that may result from the provision of telemonitoring services.

Sec. 531.02177. MEDICAID TELEMONITORING PILOT PROGRAM FOR CERTAIN CONDITIONS. (a) The commission shall develop and implement a pilot program within the Medicaid Texas Health Management Program to evaluate the cost neutrality of providing telemonitoring services to persons who are diagnosed with health conditions other than diabetes, if the commission determines implementing the pilot program would be cost neutral.

(b) In determining whether implementing a pilot program under Subsection (a) would be cost neutral, the commission shall consider appropriate factors, including the following:

(1) the types of health conditions that could be assessed through the program by reviewing existing research and other evidence on the effectiveness of providing telemonitoring services to persons with those conditions;

(2) the target population, participant eligibility criteria, and the number of participants to whom telemonitoring services would be provided;

(3) the type of telemonitoring technology to be used;

(4) the estimated cost of the telemonitoring services to be provided;

(5) the estimated cost differential to the state based on changes in participants' use of emergency department services, outpatient services, pharmaceutical and ancillary services, and inpatient services other than inpatient labor and delivery services; and

(6) other indirect costs that may result from the provision of telemonitoring services.

Sec. 531.02178. DISSEMINATION OF INFORMATION ABOUT EFFECTIVE TELEMONITORING STRATEGIES. The commission shall annually:

(1) identify telemonitoring strategies implemented within the Medicaid program that have demonstrated cost neutrality or resulted in improved performance on key health measures; and

(2) disseminate information about the identified strategies to encourage the adoption of effective telemonitoring strategies.

(c) Not later than January 1, 2012, the executive commissioner of the Health and Human Services Commission shall adopt the rules required by Section 531.02176(c), Government Code, as added by this section, if the commission determines that the Medicaid Enhanced Care program's diabetes self-management training telemonitoring pilot program was cost neutral.

(d) Not later than September 1, 2012, the Health and Human Services Commission shall determine whether implementing a new diabetes telemonitoring pilot program would be cost neutral if required by Section 531.02176(d), Government Code, as added by this section, and report that determination to the governor and the Legislative Budget Board.

(e) Not later than September 1, 2012, the Health and Human Services Commission shall determine whether implementing a telemonitoring pilot program for health conditions other than diabetes would be cost neutral as required by Section 531.02177(a), Government Code, as added by this section, and report that determination to the governor and the Legislative Budget Board.

SECTION 10. PHYSICIAN INCENTIVE PROGRAMS. Subchapter B, Chapter 531, Government Code, is amended by adding Sections 531.086 and 531.0861 to read as follows:

Sec. 531.086. STUDY REGARDING PHYSICIAN INCENTIVE PROGRAMS TO REDUCE HOSPITAL EMERGENCY ROOM USE FOR NON-EMERGENT CONDITIONS. (a) The commission shall conduct a study to evaluate physician incentive programs that attempt to reduce hospital emergency room use for non-emergent conditions by recipients under the medical assistance program. Each physician incentive program evaluated in the study must:

(1) be administered by a health maintenance organization participating in the STAR or STAR + PLUS Medicaid managed care program; and

(2) provide incentives to primary care providers who attempt to reduce emergency room use for non-emergent conditions by recipients.

(b) The study conducted under Subsection (a) must evaluate:

(1) the cost-effectiveness of each component included in a physician incentive program; and

(2) any change in statute required to implement each component within the Medicaid fee-for-service or primary care case management model.

(c) Not later than August 31, 2012, the executive commissioner shall submit to the governor and the Legislative Budget Board a report summarizing the findings of the study required by this section.

(d) This section expires September 1, 2013.

Sec. 531.0861. PHYSICIAN INCENTIVE PROGRAM TO REDUCE HOSPITAL EMERGENCY ROOM USE FOR NON-EMERGENT CONDITIONS.

(a) The executive commissioner by rule shall establish a physician incentive program designed to reduce the use of hospital emergency room services for non-emergent conditions by recipients under the medical assistance program.

(b) In establishing the physician incentive program under Subsection (a), the executive commissioner may include only the program components identified as cost-effective in the study conducted under Section 531.086.

(c) If the physician incentive program includes the payment of an enhanced reimbursement rate for routine after-hours appointments, the executive commissioner shall implement controls to ensure that the after-hours services billed are actually being provided outside of normal business hours.

SECTION 11. BILLING COORDINATION AND INFORMATION COLLECTION. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.024131 to read as follows:

Sec. 531.024131. EXPANSION OF BILLING COORDINATION AND INFORMATION COLLECTION ACTIVITIES. (a) If cost-effective, the commission may:

(1) contract to expand all or part of the billing coordination system established under Section 531.02413 to process claims for services provided through other benefits programs administered by the commission or a health and human services agency;

(2) expand any other billing coordination tools and resources used to process claims for health care services provided through the Medicaid program to process claims for services provided through other benefits programs administered by the commission or a health and human services agency; and

(3) expand the scope of persons about whom information is collected under Section 32.042, Human Resources Code, to include recipients of services provided through other benefits programs administered by the commission or a health and human services agency.

(b) Notwithstanding any other state law, each health and human services agency shall provide the commission with any information necessary to allow the commission or the commission's designee to perform the billing coordination and information collection activities authorized by this section.

SECTION 12. TEXAS HEALTH OPPORTUNITY POOL TRUST FUND. (a) Sections 531.502(b) and (d), Government Code, are amended to read as follows:

(b) The executive commissioner may include the following federal money in the waiver:

(1) ~~all~~ money provided under the disproportionate share hospitals or ~~and~~ upper payment limit supplemental payment program, or both ~~programs~~;

(2) money provided by the federal government in lieu of some or all of the payments under one or both of those programs;

(3) any combination of funds authorized to be pooled by Subdivisions (1) and (2); and

(4) any other money available for that purpose, including:

(A) federal money and money identified under Subsection (c);

(B) gifts, grants, or donations for that purpose;

(C) local funds received by this state through intergovernmental transfers; and

(D) if approved in the waiver, federal money obtained through the use of certified public expenditures.

(d) The terms of a waiver approved under this section must:

(1) include safeguards to ensure that the total amount of federal money provided under the disproportionate share hospitals or ~~and~~ upper payment limit supplemental payment program ~~programs~~ that is deposited as provided by Section 531.504 is, for a particular state fiscal year, at least equal to the greater of the annualized amount provided to this state under those supplemental payment programs during state fiscal year 2007, excluding amounts provided during that state fiscal year that are retroactive payments, or the state fiscal years during which the waiver is in effect; and

(2) allow for the development by this state of a methodology for allocating money in the fund to:

(A) offset, in part, the uncompensated health care costs incurred by hospitals;

(B) reduce the number of persons in this state who do not have health benefits coverage; and

(C) maintain and enhance the community public health infrastructure provided by hospitals.

(b) Section 531.504, Government Code, is amended to read as follows:

Sec. 531.504. DEPOSITS TO FUND. (a) The comptroller shall deposit in the fund:

(1) ~~all~~ federal money provided to this state under the disproportionate share hospitals supplemental payment program or ~~and~~ the hospital upper payment limit supplemental payment program, or both, other than money provided under those programs to state-owned and operated hospitals, and all other non-supplemental payment program federal money provided to this state that is included in the waiver authorized by Section 531.502; and

(2) state money appropriated to the fund.

(b) The commission and comptroller may accept gifts, grants, and donations from any source, and receive intergovernmental transfers, for purposes consistent with this subchapter and the terms of the waiver. The comptroller shall deposit a gift, grant, or donation made for those purposes in the fund.

(c) Section 531.508, Government Code, is amended by adding Subsection (d) to read as follows:

(d) Money from the fund may not be used to finance the construction, improvement, or renovation of a building or land unless the construction, improvement, or renovation is approved by the commission, according to rules adopted by the executive commissioner for that purpose.

(d) Section 531.502(g), Government Code, is repealed.

### SECTION 13. REPORT ON MEDICAID LONG-TERM CARE SERVICES.

(a) In this section:

(1) "Long-term care services" has the meaning assigned by Section 22.0011, Human Resources Code.

(2) "Medical assistance program" means the medical assistance program administered under Chapter 32, Human Resources Code.

(3) "Nursing facility" means a convalescent or nursing home or related institution licensed under Chapter 242, Health and Safety Code.

(b) The Health and Human Services Commission, in cooperation with the Department of Aging and Disability Services, shall prepare a written report regarding individuals who receive long-term care services in nursing facilities under the medical assistance program. The report must be based on existing data and information, and must use that data and information to identify:

(1) the reasons medical assistance recipients of long-term care services are placed in nursing facilities as opposed to being provided long-term care services in home or community-based settings;

(2) the types of medical assistance services recipients residing in nursing facilities typically receive and where and from whom those services are typically provided;

(3) the community-based services and supports available under a Medicaid state plan program, including the primary home care and community attendant services programs, or under a medical assistance waiver granted in accordance with Section 1915(c) of the federal Social Security Act (42 U.S.C. Section 1396n(c)) for which recipients residing in nursing facilities may be eligible; and

(4) ways to expedite recipients' access to community-based services and supports identified under Subdivision (3) of this subsection for which interest lists or other waiting lists exist.

(c) Not later than September 1, 2012, the Health and Human Services Commission shall submit the report described by Subsection (b) of this section, together with the commission's recommendations, to the governor, the Legislative Budget Board, the Senate Committee on Finance, the Senate Committee on Health and Human Services, the House Appropriations Committee, and the House Human Services Committee. The recommendations must address options for expediting access to community-based services and supports by recipients described by Subsection (b)(3) of this section.

SECTION 14. FEDERAL AUTHORIZATION. If before implementing any provision of this Act a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

SECTION 15. EFFECTIVE DATE. This Act takes effect September 1, 2011.

### Floor Amendment No. 1

Amend **CSSB 23** on page 16, lines 14 through 25 by striking existing subsections (F), (G), and (H) and inserting the following and renumbering the remaining sections appropriately:

"(F) under which the managed care organization may not prohibit, limit, or interfere with a recipient's selection of a pharmacy or pharmacist of the recipient's choice for the provision of pharmaceutical services under the plan through the imposition of different copayments;

(G) may allow the managed care organization or any sub-contracted pharmacy benefit manager to contract with a pharmacist or pharmacy providers separately for specialty pharmacy services, except that:



(i) the managed care organization and pharmacy benefit manager is prohibited from allowing exclusive contracts with a specialty pharmacy owned wholly or in part by the pharmacy benefit manager responsible for the administration of the pharmacy benefit program; and

(ii) the managed care organization and pharmacy benefit manager adopts policies and procedures for reclassifying prescription drugs from retail to specialty that are consistent with rules adopted by the executive commissioner and include notice to network pharmacy providers from the managed care organization;

(H) under which the managed care organization may not prevent a pharmacy or pharmacist from participating as a provider if the pharmacy or pharmacist agrees to comply with the financial terms and conditions of the contract as well as other reasonable administrative and professional terms and conditions of the contract;

(I) under which the managed care organization may include mail-order pharmacies in their networks, but must not require enrolled recipients to use them and enrolled recipients who opt to use this service may not be charged fees, including postage and handling fees; and

(J) under which the managed care organization or pharmacy benefit manager must pay claims in accordance with Section 843.339, Insurance Code. "

Amend **CSSB 23** on page 10 line 19 by inserting "either" after the word "that" and before the ":".

Amend **CSSB 23** on page 10 lines 22 to 25 by striking existing subsection (B) and inserting the following new subsection (B) as follows:

"(B) is in compliance with the requirements of Section 533.004."

Amend **CSSB 23** on page 13 line 27 by striking the word "in" and replacing it with the word "to".

Amend **CSSB 23** on page 15 line 5 strike "the same" and substitute "a comparable" after the word "to".

Amend **CSSB 23** on page 26 insert the appropriately numbered new subsection to Section 533.005 Government Code as amended.

"(\_\_\_\_) Section (21)(A)(B) and (C) are repealed on August 31, 2013."

Amend **CSSB 23** by adding the following appropriately numbered new sections:

"SECTION \_\_\_\_ . Section 247.002(1), Health and Safety Code, is amended to read as follows:

(1) "Assisted living facility" means an establishment that:

(A) furnishes, in one or more facilities, food and shelter to four or more persons who are unrelated to the proprietor of the establishment;

(B) provides:

(i) personal care services; or

(ii) administration of medication by a person licensed or otherwise authorized in this state to administer the medication; [and]

(C) may provide assistance with or supervision of the administration of medication; [and]

(D) may provide skilled nursing services for a limited duration or to facilitate the provision of hospice services.

SECTION \_\_\_\_\_. Section 247.067(b), Health and Safety Code, is amended to read as follows:

(b) Unless otherwise prohibited by law, a [A] health care professional may be employed by an assisted living facility to provide at the facility to the facility's residents services that are authorized by this chapter and within the professional's scope of practice [to a resident of an assisted living facility at the facility]. This subsection does not authorize a facility to provide ongoing services comparable to the services available in an institution licensed under Chapter 242. A health care professional providing services under this subsection shall maintain medical records of those services in accordance with the licensing, certification, or other regulatory standards applicable to the health care professional under law."

Amend **CSSB 23** on page 6 line 4 through 7 by striking (B) and replacing it with the following new (B):

"(B) an assessment of whether the recipient should be referred for additional assessments regarding the recipient's needs for attendant care services and durable medical equipment; and"

Amend **CSSB 23** by striking on page 6 lines 20 through page 7 line 11.

## Floor Amendment No. 2

Amend **CSSB 23** (house committee printing) as follows:

(1) In SECTION 10 of the bill, immediately following the heading to the section (page 34, line 18), between "PROGRAMS." and "Subchapter", insert "(a)".

(2) In SECTION 10 of the bill, in added Section 531.086(b)(2), Government Code (page 35, lines 11 and 12), strike "or primary care case management" and substitute "payment".

(3) In SECTION 10 of the bill, in added Section 531.086(c), Government Code (page 35, line 13), strike "August 31, 2012" and substitute "August 31, 2013".

(4) In SECTION 10 of the bill, in added Section 531.086(d), Government Code (page 35, line 17), strike "September 1, 2013" and substitute "September 1, 2014".

(5) In SECTION 10 of the bill, in added Section 531.0861(a), Government Code (page 35, line 19), strike "The" and substitute "If cost-effective, the".

(6) At the end of SECTION 10 of the bill (page 36, between lines 5 and 6), insert the following:

(b) Section 32.0641, Human Resources Code, is amended to read as follows:

Sec. 32.0641. RECIPIENT ACCOUNTABILITY PROVISIONS; COST-SHARING REQUIREMENT TO IMPROVE APPROPRIATE UTILIZATION OF [COST-SHARING FOR CERTAIN HIGH-COST MEDICAL] SERVICES.

(a) To [If the department determines that it is feasible and cost-effective, and to] the extent permitted under and in a manner that is consistent with Title XIX, Social Security Act (42 U.S.C. Section 1396 et seq.) and any other applicable law or regulation, including Sections 1916 and 1916A, Social Security Act (42 U.S.C. Sections 1396o and 1396o-1), or under a federal waiver or other authorization, the executive commissioner of the Health and Human Services Commission shall adopt, after consulting with the Medicaid and CHIP Quality-Based Payment Advisory Committee established under Section 536.002, Government Code, cost-sharing provisions that encourage personal accountability and appropriate utilization of health care services, including a cost-sharing provision applicable to [require] a recipient

who chooses to receive a nonemergency ~~[a high-cost]~~ medical service ~~[provided]~~ through a hospital emergency room ~~[to pay a copayment, premium payment, or other cost-sharing payment for the high-cost medical service]~~ if:

(1) the hospital from which the recipient seeks service:

(A) performs an appropriate medical screening and determines that the recipient does not have a condition requiring emergency medical services;

(B) informs the recipient:

(i) that the recipient does not have a condition requiring emergency medical services;

(ii) that, if the hospital provides the nonemergency service, the hospital may require payment of a copayment, premium payment, or other cost-sharing payment by the recipient in advance; and

(iii) of the name and address of a nonemergency Medicaid provider who can provide the appropriate medical service without imposing a cost-sharing payment; and

(C) offers to provide the recipient with a referral to the nonemergency provider to facilitate scheduling of the service; and

(2) after receiving the information and assistance described by Subdivision (1) from the hospital, the recipient chooses to obtain ~~[emergency]~~ medical services through the hospital emergency room despite having access to medically acceptable, appropriate [lower-cost] medical services.

(b) The department may not seek a federal waiver or other authorization under this section ~~[Subsection (a)]~~ that would:

(1) prevent a Medicaid recipient who has a condition requiring emergency medical services from receiving care through a hospital emergency room; or

(2) waive any provision under Section 1867, Social Security Act (42 U.S.C. Section 1395dd).

(c) The [If the] executive commissioner of the Health and Human Services Commission shall adopt [adopts a copayment or other] cost-sharing provisions [payment] under Subsection (a), other than provisions applicable to recipients who choose to receive nonemergency medical services through a hospital emergency room, in a manner that is consistent with Section 1916 or 1916A, Social Security Act (42 U.S.C. Section 1396o or 1396o-1) [the commission may not reduce hospital payments to reflect the potential receipt of a copayment or other payment from a recipient receiving medical services provided through a hospital emergency room].

(7) Add the following appropriately numbered SECTIONS to the bill and renumber subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_ . QUALITY-BASED OUTCOME AND PAYMENT INITIATIVES. (a) Subtitle I, Title 4, Government Code, is amended by adding Chapter 536, and Section 531.913, Government Code, is transferred to Subchapter D, Chapter 536, Government Code, redesignated as Section 536.151, Government Code, and amended to read as follows:

CHAPTER 536. MEDICAID AND CHILD HEALTH PLAN PROGRAMS:

QUALITY-BASED OUTCOMES AND PAYMENTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 536.001. DEFINITIONS. In this chapter:

(1) "Advisory committee" means the Medicaid and CHIP Quality-Based Payment Advisory Committee established under Section 536.002.

(2) "Alternative payment system" includes:

(A) a global payment system;

(B) an episode-based bundled payment system; and

(C) a blended payment system.

(3) "Blended payment system" means a system for compensating a physician or other health care provider that includes at least one or more features of a global payment system and an episode-based bundled payment system, but that may also include a system under which a portion of the compensation paid to a physician or other health care provider is based on a fee-for-service payment arrangement.

(4) "Child health plan program," "commission," "executive commissioner," and "health and human services agencies" have the meanings assigned by Section 531.001.

(5) "Episode-based bundled payment system" means a system for compensating a physician or other health care provider for arranging for or providing health care services to child health plan program enrollees or Medicaid recipients that is based on a flat payment for all services provided in connection with a single episode of medical care.

(6) "Exclusive provider benefit plan" means a managed care plan subject to 28 T.A.C. Part 1, Chapter 3, Subchapter KK.

(7) "Freestanding emergency medical care facility" means a facility licensed under Chapter 254, Health and Safety Code.

(8) "Global payment system" means a system for compensating a physician or other health care provider for arranging for or providing a defined set of covered health care services to child health plan program enrollees or Medicaid recipients for a specified period that is based on a predetermined payment per enrollee or recipient, as applicable, for the specified period, without regard to the quantity of services actually provided.

(9) "Health care provider" means any person, partnership, professional association, corporation, facility, or institution licensed, certified, registered, or chartered by this state to provide health care. The term includes an employee, independent contractor, or agent of a health care provider acting in the course and scope of the employment or contractual relationship.

(10) "Hospital" means a public or private institution licensed under Chapter 241 or 577, Health and Safety Code, including a general or special hospital as defined by Section 241.003, Health and Safety Code.

(11) "Managed care organization" means a person that is authorized or otherwise permitted by law to arrange for or provide a managed care plan. The term includes health maintenance organizations and exclusive provider organizations.

(12) "Managed care plan" means a plan, including an exclusive provider benefit plan, under which a person undertakes to provide, arrange for, pay for, or reimburse any part of the cost of any health care services. A part of the plan must consist of arranging for or providing health care services as distinguished from

indemnification against the cost of those services on a prepaid basis through insurance or otherwise. The term does not include a plan that indemnifies a person for the cost of health care services through insurance.

(13) "Medicaid program" means the medical assistance program established under Chapter 32, Human Resources Code.

(14) "Physician" means a person licensed to practice medicine in this state under Subtitle B, Title 3, Occupations Code.

(15) "Potentially preventable admission" means an admission of a person to a hospital or long-term care facility that may have reasonably been prevented with adequate access to ambulatory care or health care coordination.

(16) "Potentially preventable ancillary service" means a health care service provided or ordered by a physician or other health care provider to supplement or support the evaluation or treatment of a patient, including a diagnostic test, laboratory test, therapy service, or radiology service, that may not be reasonably necessary for the provision of quality health care or treatment.

(17) "Potentially preventable complication" means a harmful event or negative outcome with respect to a person, including an infection or surgical complication, that:

(A) occurs after the person's admission to a hospital or long-term care facility; and

(B) may have resulted from the care, lack of care, or treatment provided during the hospital or long-term care facility stay rather than from a natural progression of an underlying disease.

(18) "Potentially preventable event" means a potentially preventable admission, a potentially preventable ancillary service, a potentially preventable complication, a potentially preventable emergency room visit, a potentially preventable readmission, or a combination of those events.

(19) "Potentially preventable emergency room visit" means treatment of a person in a hospital emergency room or freestanding emergency medical care facility for a condition that may not require emergency medical attention because the condition could be, or could have been, treated or prevented by a physician or other health care provider in a nonemergency setting.

(20) "Potentially preventable readmission" means a return hospitalization of a person within a period specified by the commission that may have resulted from deficiencies in the care or treatment provided to the person during a previous hospital stay or from deficiencies in post-hospital discharge follow-up. The term does not include a hospital readmission necessitated by the occurrence of unrelated events after the discharge. The term includes the readmission of a person to a hospital for:

(A) the same condition or procedure for which the person was previously admitted;

(B) an infection or other complication resulting from care previously provided;

(C) a condition or procedure that indicates that a surgical intervention performed during a previous admission was unsuccessful in achieving the anticipated outcome; or

(D) another condition or procedure of a similar nature, as determined by the executive commissioner after consulting with the advisory committee.

(21) "Quality-based payment system" means a system for compensating a physician or other health care provider, including an alternative payment system, that provides incentives to the physician or other health care provider for providing high-quality, cost-effective care and bases some portion of the payment made to the physician or other health care provider on quality of care outcomes, which may include the extent to which the physician or other health care provider reduces potentially preventable events.

Sec. 536.002. MEDICAID AND CHIP QUALITY-BASED PAYMENT ADVISORY COMMITTEE. (a) The Medicaid and CHIP Quality-Based Payment Advisory Committee is established to advise the commission on establishing, for purposes of the child health plan and Medicaid programs administered by the commission or a health and human services agency:

(1) reimbursement systems used to compensate physicians or other health care providers under those programs that reward the provision of high-quality, cost-effective health care and quality performance and quality of care outcomes with respect to health care services;

(2) standards and benchmarks for quality performance, quality of care outcomes, efficiency, and accountability by managed care organizations and physicians and other health care providers;

(3) programs and reimbursement policies that encourage high-quality, cost-effective health care delivery models that increase appropriate provider collaboration, promote wellness and prevention, and improve health outcomes; and

(4) outcome and process measures under Section 536.003.

(b) The executive commissioner shall appoint the members of the advisory committee. The committee must consist of physicians and other health care providers, representatives of health care facilities, representatives of managed care organizations, and other stakeholders interested in health care services provided in this state, including:

(1) at least one member who is a physician with clinical practice experience in obstetrics and gynecology;

(2) at least one member who is a physician with clinical practice experience in pediatrics;

(3) at least one member who is a physician with clinical practice experience in internal medicine or family medicine;

(4) at least one member who is a physician with clinical practice experience in geriatric medicine;

(5) at least one member who is or who represents a health care provider that primarily provides long-term care services;

(6) at least one member who is a consumer representative; and

(7) at least one member who is a member of the Advisory Panel on Health Care-Associated Infections and Preventable Adverse Events who meets the qualifications prescribed by Section 98.052(a)(4), Health and Safety Code.

(c) The executive commissioner shall appoint the presiding officer of the advisory committee.

Sec. 536.003. DEVELOPMENT OF QUALITY-BASED OUTCOME AND PROCESS MEASURES. (a) The commission, in consultation with the advisory committee, shall develop quality-based outcome and process measures that promote the provision of efficient, quality health care and that can be used in the child health plan and Medicaid programs to implement quality-based payments for acute and long-term care services across all delivery models and payment systems, including fee-for-service and managed care payment systems. The commission, in developing outcome measures under this section, must consider measures addressing potentially preventable events.

(b) To the extent feasible, the commission shall develop outcome and process measures:

(1) consistently across all child health plan and Medicaid program delivery models and payment systems;

(2) in a manner that takes into account appropriate patient risk factors, including the burden of chronic illness on a patient and the severity of a patient's illness;

(3) that will have the greatest effect on improving quality of care and the efficient use of services; and

(4) that are similar to outcome and process measures used in the private sector, as appropriate.

(c) The commission shall, to the extent feasible, align outcome and process measures developed under this section with measures required or recommended under reporting guidelines established by the federal Centers for Medicare and Medicaid Services, the Agency for Healthcare Research and Quality, or another federal agency.

(d) The executive commissioner by rule may require managed care organizations and physicians and other health care providers participating in the child health plan and Medicaid programs to report to the commission in a format specified by the executive commissioner information necessary to develop outcome and process measures under this section.

(e) If the commission increases physician and other health care provider reimbursement rates under the child health plan or Medicaid program as a result of an increase in the amounts appropriated for the programs for a state fiscal biennium as compared to the preceding state fiscal biennium, the commission shall, to the extent permitted under federal law and to the extent otherwise possible considering other relevant factors, correlate the increased reimbursement rates with the quality-based outcome and process measures developed under this section.

Sec. 536.004. DEVELOPMENT OF QUALITY-BASED PAYMENT SYSTEMS. (a) Using quality-based outcome and process measures developed under Section 536.003 and subject to this section, the commission, after consulting with the advisory committee, shall develop quality-based payment systems for compensating a physician or other health care provider participating in the child health plan or Medicaid program that:

(1) align payment incentives with high-quality, cost-effective health care;

(2) reward the use of evidence-based best practices;

(3) promote the coordination of health care;

(4) encourage appropriate physician and other health care provider collaboration;

(5) promote effective health care delivery models; and

(6) take into account the specific needs of the child health plan program enrollee and Medicaid recipient populations.

(b) The commission shall develop quality-based payment systems in the manner specified by this chapter. To the extent necessary, the commission shall coordinate the timeline for the development and implementation of a payment system with the implementation of other initiatives such as the Medicaid Information Technology Architecture (MITA) initiative of the Center for Medicaid and State Operations, the ICD-10 code sets initiative, or the ongoing Enterprise Data Warehouse (EDW) planning process in order to maximize the receipt of federal funds or reduce any administrative burden.

(c) In developing quality-based payment systems under this chapter, the commission shall examine and consider implementing:

(1) an alternative payment system;

(2) any existing performance-based payment system used under the Medicare program that meets the requirements of this chapter, modified as necessary to account for programmatic differences, if implementing the system would:

(A) reduce unnecessary administrative burdens; and

(B) align quality-based payment incentives for physicians and other health care providers with the Medicare program; and

(3) alternative payment methodologies within the system that are used in the Medicare program, modified as necessary to account for programmatic differences, and that will achieve cost savings and improve quality of care in the child health plan and Medicaid programs.

(d) In developing quality-based payment systems under this chapter, the commission shall ensure that a managed care organization or physician or other health care provider will not be rewarded by the system for withholding or delaying the provision of medically necessary care.

(e) The commission may modify a quality-based payment system developed under this chapter to account for programmatic differences between the child health plan and Medicaid programs and delivery systems under those programs.

Sec. 536.005. CONVERSION OF PAYMENT METHODOLOGY. (a) To the extent possible, the commission shall convert hospital reimbursement systems under the child health plan and Medicaid programs to a diagnosis-related groups (DRG) methodology that will allow the commission to more accurately classify specific patient populations and account for severity of patient illness and mortality risk.

(b) Subsection (a) does not authorize the commission to direct a managed care organization to compensate physicians and other health care providers providing services under the organization's managed care plan based on a diagnosis-related groups (DRG) methodology.

Sec. 536.006. TRANSPARENCY. The commission and the advisory committee shall:

(1) ensure transparency in the development and establishment of:



(A) quality-based payment and reimbursement systems under Section 536.004 and Subchapters B, C, and D, including the development of outcome and process measures under Section 536.003; and

(B) quality-based payment initiatives under Subchapter E, including the development of quality of care and cost-efficiency benchmarks under Section 536.204(a) and efficiency performance standards under Section 536.204(b);

(2) develop guidelines establishing procedures for providing notice and information to, and receiving input from, managed care organizations, health care providers, including physicians and experts in the various medical specialty fields, and other stakeholders, as appropriate, for purposes of developing and establishing the quality-based payment and reimbursement systems and initiatives described under Subdivision (1); and

(3) in developing and establishing the quality-based payment and reimbursement systems and initiatives described under Subdivision (1), consider that as the performance of a managed care organization or physician or other health care provider improves with respect to an outcome or process measure, quality of care and cost-efficiency benchmark, or efficiency performance standard, as applicable, there will be a diminishing rate of improved performance over time.

Sec. 536.007. PERIODIC EVALUATION. (a) At least once each two-year period, the commission shall evaluate the outcomes and cost-effectiveness of any quality-based payment system or other payment initiative implemented under this chapter.

(b) The commission shall:

(1) present the results of its evaluation under Subsection (a) to the advisory committee for the committee's input and recommendations; and

(2) provide a process by which managed care organizations and physicians and other health care providers may comment and provide input into the committee's recommendations under Subdivision (1).

Sec. 536.008. ANNUAL REPORT. (a) The commission shall submit an annual report to the legislature regarding:

(1) the quality-based outcome and process measures developed under Section 536.003; and

(2) the progress of the implementation of quality-based payment systems and other payment initiatives implemented under this chapter.

(b) The commission shall report outcome and process measures under Subsection (a)(1) by health care service region and service delivery model.

[Sections 536.009-536.050 reserved for expansion]

#### SUBCHAPTER B. QUALITY-BASED PAYMENTS RELATING TO MANAGED CARE ORGANIZATIONS

Sec. 536.051. DEVELOPMENT OF QUALITY-BASED PREMIUM PAYMENTS; PERFORMANCE REPORTING. (a) Subject to Section 1903(m)(2)(A), Social Security Act (42 U.S.C. Section 1396b(m)(2)(A)), and other applicable federal law, the commission shall base a percentage of the premiums paid to a managed care organization participating in the child health plan or Medicaid

program on the organization's performance with respect to outcome and process measures developed under Section 536.003, including outcome measures addressing potentially preventable events.

(b) The commission shall make available information relating to the performance of a managed care organization with respect to outcome and process measures under this subchapter to child health plan program enrollees and Medicaid recipients before those enrollees and recipients choose their managed care plans.

Sec. 536.052. PAYMENT AND CONTRACT AWARD INCENTIVES FOR MANAGED CARE ORGANIZATIONS. (a) The commission may allow a managed care organization participating in the child health plan or Medicaid program increased flexibility to implement quality initiatives in a managed care plan offered by the organization, including flexibility with respect to financial arrangements, in order to:

- (1) achieve high-quality, cost-effective health care;
- (2) increase the use of high-quality, cost-effective delivery models; and
- (3) reduce potentially preventable events.

(b) The commission, after consulting with the advisory committee, shall develop quality of care and cost-efficiency benchmarks, including benchmarks based on a managed care organization's performance with respect to reducing potentially preventable events and containing the growth rate of health care costs.

(c) The commission may include in a contract between a managed care organization and the commission financial incentives that are based on the organization's successful implementation of quality initiatives under Subsection (a) or success in achieving quality of care and cost-efficiency benchmarks under Subsection (b).

(d) In awarding contracts to managed care organizations under the child health plan and Medicaid programs, the commission shall, in addition to considerations under Section 533.003 of this code and Section 62.155, Health and Safety Code, give preference to an organization that offers a managed care plan that successfully implements quality initiatives under Subsection (a) as determined by the commission based on data or other evidence provided by the organization or meets quality of care and cost-efficiency benchmarks under Subsection (b).

(e) The commission may implement financial incentives under this section only if implementing the incentives would be cost-effective.

[Sections 536.053-536.100 reserved for expansion]

### SUBCHAPTER C. QUALITY-BASED HEALTH HOME PAYMENT SYSTEMS

Sec. 536.101. DEFINITIONS. In this subchapter:

(1) "Health home" means a primary care provider practice or, if appropriate, a specialty care provider practice, incorporating several features, including comprehensive care coordination, family-centered care, and data management, that are focused on improving outcome-based quality of care and increasing patient and provider satisfaction under the child health plan and Medicaid programs.

(2) "Participating enrollee" means a child health plan program enrollee or Medicaid recipient who has a health home.

Sec. 536.102. QUALITY-BASED HEALTH HOME PAYMENTS. (a) Subject to this subchapter, the commission, after consulting with the advisory committee, may develop and implement quality-based payment systems for health homes designed to improve quality of care and reduce the provision of unnecessary medical services. A quality-based payment system developed under this section must:

(1) base payments made to a participating enrollee's health home on quality and efficiency measures that may include measurable wellness and prevention criteria and use of evidence-based best practices, sharing a portion of any realized cost savings achieved by the health home, and ensuring quality of care outcomes, including a reduction in potentially preventable events; and

(2) allow for the examination of measurable wellness and prevention criteria, use of evidence-based best practices, and quality of care outcomes based on the type of primary or specialty care provider practice.

(b) The commission may develop a quality-based payment system for health homes under this subchapter only if implementing the system would be feasible and cost-effective.

Sec. 536.103. PROVIDER ELIGIBILITY. To be eligible to receive reimbursement under a quality-based payment system under this subchapter, a health home provider must:

(1) provide participating enrollees, directly or indirectly, with access to health care services outside of regular business hours;

(2) educate participating enrollees about the availability of health care services outside of regular business hours; and

(3) provide evidence satisfactory to the commission that the provider meets the requirement of Subdivision (1).

[Sections 536.104-536.150 reserved for expansion]

#### SUBCHAPTER D. QUALITY-BASED HOSPITAL REIMBURSEMENT SYSTEM

Sec. 536.151 [534.943]. COLLECTION AND REPORTING OF CERTAIN [HOSPITAL HEALTH] INFORMATION [EXCHANGE]. (a) [In this section, "potentially preventable readmission" means a return hospitalization of a person within a period specified by the commission that results from deficiencies in the care or treatment provided to the person during a previous hospital stay or from deficiencies in post-hospital discharge follow up. The term does not include a hospital readmission necessitated by the occurrence of unrelated events after the discharge. The term includes the readmission of a person to a hospital for:

(1) the same condition or procedure for which the person was previously admitted;

(2) an infection or other complication resulting from care previously provided;

(3) a condition or procedure that indicates that a surgical intervention performed during a previous admission was unsuccessful in achieving the anticipated outcome; or

(4) another condition or procedure of a similar nature, as determined by the executive commissioner.

~~(b)~~ The executive commissioner shall adopt rules for identifying potentially preventable readmissions of child health plan program enrollees and Medicaid recipients and potentially preventable complications experienced by child health plan program enrollees and Medicaid recipients. ~~The [and the] commission shall collect [exchange] data from [with] hospitals on present-on-admission indicators for purposes of this section.~~

~~(b) [(e)] The commission shall establish a [health information exchange] program to provide a [exchange] confidential report to [information with] each hospital in this state that participates in the child health plan or Medicaid program regarding the hospital's performance with respect to potentially preventable readmissions and potentially preventable complications. To the extent possible, a report provided under this section should include potentially preventable readmissions and potentially preventable complications information across all child health plan and Medicaid program payment systems. A hospital shall distribute the information contained in the report [received from the commission] to physicians and other health care providers providing services at the hospital.~~

~~(c) A report provided to a hospital under this section is confidential and is not subject to Chapter 552.~~

Sec. 536.152. REIMBURSEMENT ADJUSTMENTS. (a) Subject to Subsection (b), using the data collected under Section 536.151 and the diagnosis-related groups (DRG) methodology implemented under Section 536.005, the commission, after consulting with the advisory committee, shall to the extent feasible adjust child health plan and Medicaid reimbursements to hospitals, including payments made under the disproportionate share hospitals and upper payment limit supplemental payment programs, in a manner that may reward or penalize a hospital based on the hospital's performance with respect to exceeding, or failing to achieve, outcome and process measures developed under Section 536.003 that address the rates of potentially preventable readmissions and potentially preventable complications.

(b) The commission must provide the report required under Section 536.151(b) to a hospital at least one year before the commission adjusts child health plan and Medicaid reimbursements to the hospital under this section.

[Sections 536.153-536.200 reserved for expansion]

#### SUBCHAPTER E. QUALITY-BASED PAYMENT INITIATIVES

Sec. 536.201. DEFINITION. In this subchapter, "payment initiative" means a quality-based payment initiative established under this subchapter.

Sec. 536.202. PAYMENT INITIATIVES; DETERMINATION OF BENEFIT TO STATE. (a) The commission shall, after consulting with the advisory committee, establish payment initiatives to test the effectiveness of quality-based payment systems, alternative payment methodologies, and high-quality, cost-effective health care delivery models that provide incentives to physicians and other health care providers to develop health care interventions for child health plan program enrollees or Medicaid recipients, or both, that will:

- (1) improve the quality of health care provided to the enrollees or recipients;
- (2) reduce potentially preventable events;
- (3) promote prevention and wellness;
- (4) increase the use of evidence-based best practices;

(5) increase appropriate physician and other health care provider collaboration; and

(6) contain costs.

(b) The commission shall:

(1) establish a process by which managed care organizations and physicians and other health care providers may submit proposals for payment initiatives described by Subsection (a); and

(2) determine whether it is feasible and cost-effective to implement one or more of the proposed payment initiatives.

Sec. 536.203. PURPOSE AND IMPLEMENTATION OF PAYMENT INITIATIVES. (a) If the commission determines under Section 536.202 that implementation of one or more payment initiatives is feasible and cost-effective for this state, the commission shall establish one or more payment initiatives as provided by this subchapter.

(b) The commission shall administer any payment initiative established under this subchapter. The executive commissioner may adopt rules, plans, and procedures and enter into contracts and other agreements as the executive commissioner considers appropriate and necessary to administer this subchapter.

(c) The commission may limit a payment initiative to:

(1) one or more regions in this state;

(2) one or more organized networks of physicians and other health care providers; or

(3) specified types of services provided under the child health plan or Medicaid program, or specified types of enrollees or recipients under those programs.

(d) A payment initiative implemented under this subchapter must be operated for at least one calendar year.

Sec. 536.204. STANDARDS; PROTOCOLS. (a) The executive commissioner shall:

(1) consult with the advisory committee to develop quality of care and cost-efficiency benchmarks and measurable goals that a payment initiative must meet to ensure high-quality and cost-effective health care services and healthy outcomes; and

(2) approve benchmarks and goals developed as provided by Subdivision (1).

(b) In addition to the benchmarks and goals under Subsection (a), the executive commissioner may approve efficiency performance standards that may include the sharing of realized cost savings with physicians and other health care providers who provide health care services that exceed the efficiency performance standards. The efficiency performance standards may not create any financial incentive for or involve making a payment to a physician or other health care provider that directly or indirectly induces the limitation of medically necessary services.

Sec. 536.205. PAYMENT RATES UNDER PAYMENT INITIATIVES. The executive commissioner may contract with appropriate entities, including qualified actuaries, to assist in determining appropriate payment rates for a payment initiative implemented under this subchapter.

(b) The Health and Human Services Commission shall convert the hospital reimbursement systems used under the child health plan program under Chapter 62, Health and Safety Code, and medical assistance program under Chapter 32, Human Resources Code, to the diagnosis-related groups (DRG) methodology to the extent possible as required by Section 536.005, Government Code, as added by this section, as soon as practicable after the effective date of this Act, but not later than:

- (1) September 1, 2013, for reimbursements paid to children's hospitals; and
- (2) September 1, 2012, for reimbursements paid to other hospitals under those programs.

(c) Not later than September 1, 2012, the Health and Human Services Commission shall begin providing performance reports to hospitals regarding the hospitals' performances with respect to potentially preventable complications as required by Section 536.151, Government Code, as designated and amended by this section.

(d) Subject to Section 536.004(b), Government Code, as added by this section, the Health and Human Services Commission shall begin making adjustments to child health plan and Medicaid reimbursements to hospitals as required by Section 536.152, Government Code, as added by this section:

- (1) not later than September 1, 2012, based on the hospitals' performances with respect to reducing potentially preventable readmissions; and
- (2) not later than September 1, 2013, based on the hospitals' performances with respect to reducing potentially preventable complications.

SECTION \_\_\_\_\_. LONG-TERM CARE PAYMENT INCENTIVE INITIATIVES. (a) The heading to Section 531.912, Government Code, is amended to read as follows:

Sec. 531.912. COMMON PERFORMANCE MEASUREMENTS AND PAY-FOR-PERFORMANCE INCENTIVES FOR [QUALITY OF CARE HEALTH INFORMATION EXCHANGE WITH] CERTAIN NURSING FACILITIES.

(b) Sections 531.912(b), (c), and (f), Government Code, are amended to read as follows:

(b) If feasible, the executive commissioner by rule may ~~shall~~ establish an incentive payment program for [a quality of care health information exchange with] nursing facilities that choose to participate. The [in a] program must be designed to improve the quality of care and services provided to medical assistance recipients. Subject to Subsection (f), the program may provide incentive payments in accordance with this section to encourage facilities to participate in the program.

(c) In establishing an incentive payment [a quality of care health information exchange] program under this section, the executive commissioner shall, subject to Subsection (d), adopt common [exchange information with participating nursing facilities regarding] performance measures to be used in evaluating nursing facilities that are related to structure, process, and outcomes that positively correlate to nursing facility quality and improvement. The common performance measures:

- (1) must be:

(A) recognized by the executive commissioner as valid indicators of the overall quality of care received by medical assistance recipients; and

(B) designed to encourage and reward evidence-based practices among nursing facilities; and

(2) may include measures of:

(A) quality of care, as determined by clinical performance ratings published by the federal Centers for Medicare and Medicaid Services, the Agency for Healthcare Research and Quality, or another federal agency [life];

(B) direct-care staff retention and turnover;

(C) recipient satisfaction, including the satisfaction of recipients who are short-term and long-term residents of facilities, and family satisfaction, as determined by the Nursing Home Consumer Assessment of Health Providers and Systems survey relied upon by the federal Centers for Medicare and Medicaid Services;

(D) employee satisfaction and engagement;

(E) the incidence of preventable acute care emergency room services use;

(F) regulatory compliance;

(G) level of person-centered care; and

(H) direct-care staff training, including a facility's [level of occupancy or of facility] utilization of independent distance learning programs for the continuous training of direct-care staff.

(f) The commission may make incentive payments under the program only if money is ~~specifically~~ appropriated for that purpose.

(c) The Department of Aging and Disability Services shall conduct a study to evaluate the feasibility of expanding any incentive payment program established for nursing facilities under Section 531.912, Government Code, as amended by this section, by providing incentive payments for the following types of providers of long-term care services, as defined by Section 22.0011, Human Resources Code, under the medical assistance program:

(1) intermediate care facilities for persons with mental retardation licensed under Chapter 252, Health and Safety Code; and

(2) providers of home and community-based services, as described by 42 U.S.C. Section 1396n(c), who are licensed or otherwise authorized to provide those services in this state.

(d) Not later than September 1, 2012, the Department of Aging and Disability Services shall submit to the legislature a written report containing the findings of the study conducted under Subsection (c) of this section and the department's recommendations.

### Floor Amendment No. 3

Amend **CSSB 23** on page 37, line 26 by amending Subsection 531.502(c)(1) as follows:

"(1) identifying health care related state and local funds and program expenditures that; before September 1, 2011 [~~2007~~] are not being matched with federal money; and"

Amend **CSSB 23** on page 37 lines 26 and 27 and page 38 lines 1 through line 9 by striking Section (1) and inserting the following new Subsection (1):

"(1) include safeguards to ensure that the total amount of federal money provided under the disproportionate share hospitals or [and] upper payment limit supplemental payment program [programs] that is deposited as provided by Section 531.504 is, for a particular state fiscal year, at least equal to the greater of the annualized amount provided to this state under those supplemental payment programs during state fiscal year 2011 [2007], excluding amounts provided during that state fiscal year that are retroactive payments, or the state fiscal years during which the waiver is in effect; and"

Amend **CSSB 23** on page 38 lines 12 and 13 by striking (A) and inserting the following new (A):

"(A) be used to supplement hospital reimbursement under a waiver that includes terms that are consistent with, or that produce revenues consistent with, disproportionate share hospital and upper payment limit principles;"

Amend **CSSB 23** on page 39 lines 3 through 8 by striking (b) and inserting the following new Subsection (b):

"(b) The commission and comptroller may accept gifts, grants, and donations from any source, and receive intergovernmental transfers, for purposes consistent with this subchapter and the terms of the waiver. The comptroller shall deposit a gift, grant, or donation made for those purposes in the fund. Any intergovernmental transfers received, including the associated federal matching funds, shall be used only for the purposes originally intended by the transferring entity and in accordance with the terms of the waiver."

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

Amend **CSSB 23** (house committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. USE OF TRAUMA AND EMERGENCY MEDICAL SERVICES ACCOUNT TO FUND MEDICAID. Section 780.004, Health and Safety Code, is amended by amending Subsection (a) and adding Subsection (j) to read as follows:

(a) The commissioner:

(1) [5] with advice and counsel from the chairpersons of the trauma service area regional advisory councils, shall use money appropriated from the account established under this chapter to fund designated trauma facilities, county and regional emergency medical services, and trauma care systems in accordance with this section; and

(2) after consulting with the executive commissioner of the Health and Human Services Commission, shall transfer to an account in the general revenue fund money appropriated from the account established under this chapter to maximize the receipt of federal funds under the medical assistance program established under Chapter 32, Human Resources Code, and to fund provider reimbursement payments as provided by Subsection (j).



(j) Money in the account described by Subsection (a)(2) may be appropriated only to the Health and Human Services Commission to fund provider reimbursement payments under the medical assistance program established under Chapter 32, Human Resources Code, including reimbursement enhancements to the statewide dollar amount (SDA) rate used to reimburse hospitals under the program.

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

Amend Floor Amendment No. 4 to **CSSB 23** (page 90, prefiled amendments packet), on page 1 of the amendment as follows:

- (1) On line 16, strike "shall transfer" and substitute "may transfer".
- (2) On line 27, strike "hospitals" and substitute "designated trauma hospitals".

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

Amend **CSSB 23** (house committee printing) as follows:

(1) In Section 1 of the bill, in amended Section 102.054(c)(1)(H), Business & Commerce Code (page 2, line 22), strike "and".

(2) In Section 1 of the bill, in amended Section 102.054(c)(1)(I), Business & Commerce Code (page 3, line 1), after the semicolon add the following:  
and

(J) Internet Crimes Against Children Task Force locations in this state recognized by the United States Department of Justice;

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

Amend Amendment No. 6 to **CSSB 23** by Frullo (prefiled amendment packet, page 1) as follows:

(1) In Item (1) of the amendment, on page 1, line 3, strike "102.054(c)(1)(H), Business & Commerce Code" and substitute "420.008(c)(1)(H), Government Code".

(2) In Item (2) of the amendment, on page 1, line 6, strike "102.054(c)(1)(I), Business & Commerce Code" and substitute "420.008(c)(1)(I), Government Code".

#### **Floor Amendment No. 8**

Amend **CSSB 23** (house committee printing) as follows:

In SECTION 1 of the bill, strike Subsection (c) on page 4, lines 23-27 and reletter subsequent subsections accordingly.

SECTION 1. SEXUAL ASSAULT PROGRAM FUND; FEE IMPOSED ON CERTAIN SEXUALLY ORIENTED BUSINESSES. (a) Section 102.054, Business & Commerce Code, is amended to read as follows:

Sec. 102.054. ALLOCATION OF [CERTAIN] REVENUE FOR SEXUAL ASSAULT PROGRAMS. The comptroller shall deposit the amount [first \$25 million] received from the fee imposed under this subchapter [in a state fiscal biennium] to the credit of the sexual assault program fund.

(b) The comptroller of public accounts shall collect the fee imposed under Section 102.052, Business & Commerce Code, until a court, in a final judgement upheld on appeal or no longer subject to appeal, finds Section 102.052, Business & Commerce Code, or its predecessor statute, to be unconstitutional.

(c) Section 102.055, Business & Commerce Code, is repealed.

(d) This section prevails over any other Act of the 82nd Legislature, Regular Session, 2011, regardless of the relative dates of enactment, that purports to amend or repeal Subchapter B, Chapter 102, Business & Commerce Code, or any provision of Chapter 1206 (**HB 1751**), Acts of the 80th Legislature, Regular Session, 2007.

#### **Floor Amendment No. 10**

Amend **CSSB 23** (senate committee printing) on page 5 in SECTION 2 of the bill and beginning at line 21, strike through the wording indicated on line 21 and insert the following additional wording in subparagraph (b)(1)(A) of the amendment in the bill regarding new Sec. 531.02417 proposed to be added to Subchapter B, Chapter 531, Government Code:

(A) if cost-effective and in the best interests of the recipient, by a ~~state employee or contractor~~ physician licensed to practice in Texas or by a physician's assistant, registered nurse or nurse practitioner who is licensed to practice in Texas who is not the person who will deliver any necessary services to the recipient and is not affiliated with the person who will deliver those services, or by an assessment conducted by or under the direction of the patient's personal physician; and

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

Amend Amendment No. 10 to **CSSB 23** by D. Howard (prefiled amendment packet, page 5) by striking the text of the amendment and substituting the following:

Amend **CSSB 23** (house committee printing) in SECTION 2 of the bill, in added Section 531.02417(b)(1)(A), Government Code (page 5, line 21), by striking "state employee or contractor" and substituting "physician, physician assistant, or registered nurse who is licensed in this state and".

#### **Floor Amendment No. 14**

Amend **CSSB 23** (house committee printing) as follows:

(1) In SECTION 3(b) of the bill, adding Section 533.0029, Government Code (page 8, line 19), between "MEDICAL" and "HOMES", insert "AND HEALTH".

(2) In SECTION 3(b) of the bill, adding Section 533.0029, Government Code (page 8, line 20), between "medical" and "home", insert "or health".

(3) In SECTION 3(b) of the bill, adding Section 533.0029, Government Code (page 9, line 26), between "medical" and "homes", insert "or health".

(4) In SECTION 3(b) of the bill, adding Section 533.0029, Government Code (page 10, line 1), between "medical" and "home", insert "or health".

#### **Floor Amendment No. 15**

Amend Amendment No. 14 to **CSSB 23** by Orr (prefiled amendment packet, page 8) by striking the text of the amendment and substituting the following:

Amend **CSSB 23** (house committee printing) as follows:

(1) In SECTION 3(b) of the bill, adding Section 533.0029, Government Code (page 8, line 19), between "MEDICAL" and "HOMES", insert "AND HEALTH".

(2) In SECTION 3(b) of the bill, strike Section 533.0029(a), Government Code (page 8, line 19 through page 9, line 22), and substitute the following:

(a) For purposes of this section:

(1) "Patient-centered health home" means a health care relationship:

(A) between a primary health care provider, other than a physician, and a child or adult patient in which the provider:

(i) provides comprehensive primary care to the patient; and

(ii) facilitates partnerships between the provider, the patient, physicians and other health care providers, including acute care providers, and, when appropriate, the patient's family; and

(B) that encompasses the following primary principles:

(i) the patient has an ongoing relationship with the provider, and the provider is the first contact for the patient and provides continuous and comprehensive care to the patient;

(ii) the provider coordinates a team of individuals at the practice level who are collectively responsible for the ongoing care of the patient;

(iii) the provider is responsible for providing all of the care the patient needs or for coordinating with physicians or other qualified providers to provide care to the patient throughout the patient's life, including preventive care, acute care, chronic care, and end-of-life care;

(iv) the patient's care is coordinated across health care facilities and the patient's community and is facilitated by registries, information technology, and health information exchange systems to ensure that the patient receives care when and where the patient wants and needs the care and in a culturally and linguistically appropriate manner; and

(v) quality and safe care is provided.

(2) "Patient-centered medical home" means a medical relationship:

(A) between a primary care physician and a child or adult patient in which the physician:

(i) provides comprehensive primary care to the patient; and

(ii) facilitates partnerships between the physician, the patient, acute care and other care providers, and, when appropriate, the patient's family; and

(B) that encompasses the following primary principles:

(i) the patient has an ongoing relationship with the physician, who is trained to be the first contact for the patient and to provide continuous and comprehensive care to the patient;

(ii) the physician leads a team of individuals at the practice level who are collectively responsible for the ongoing care of the patient;

(iii) the physician is responsible for providing all of the care the patient needs or for coordinating with other qualified providers to provide care to the patient throughout the patient's life, including preventive care, acute care, chronic care, and end-of-life care;

(iv) the patient's care is coordinated across health care facilities and the patient's community and is facilitated by registries, information technology, and health information exchange systems to ensure that the patient receives care when and where the patient wants and needs the care and in a culturally and linguistically appropriate manner; and

(v) quality and safe care is provided.

(3) In SECTION 3(b) of the bill, adding Section 533.0029(b)(1), Government Code (page 9, line 26), between "medical" and "homes", insert "or health".

(4) In SECTION 3(b) of the bill, adding Section 533.0029(b)(2), Government Code (page 10, line 1), between "medical" and "home", insert "or health".

(5) In SECTION 3(k) of the bill (page 21, line 23), between "medical" and "homes", insert "or health".

### **Floor Amendment No. 18**

Amend **CSSB 23** (house committee printing) by striking SECTION 9 of the bill (page 30, line 6, through page 34, line 17) and substituting the following appropriately numbered SECTION:

SECTION \_\_\_\_ HOME TELEMONITORING SERVICES, TELEHEALTH SERVICES, AND TELEMEDICINE MEDICAL SERVICES. (a) Section 531.001, Government Code, is amended by adding Subdivisions (4-a), (7), and (8) to read as follows:

(4-a) "Home telemonitoring service" means a health service that requires scheduled remote monitoring of data related to a patient's health and transmission of the data to a licensed home health agency or a hospital, as those terms are defined by Section 531.02164(a).

(7) "Telehealth service" means a health service, other than a telemedicine medical service, that is delivered by a licensed or certified health professional acting within the scope of the health professional's license or certification who does not perform a telemedicine medical service and that requires the use of advanced telecommunications technology, other than telephone or facsimile technology, including:

(A) compressed digital interactive video, audio, or data transmission;

(B) clinical data transmission using computer imaging by way of still-image capture and store and forward; and

(C) other technology that facilitates access to health care services or medical specialty expertise.

(8) "Telemedicine medical service" means a health care service that is initiated by a physician or provided by a health professional acting under physician delegation and supervision, that is provided for purposes of patient assessment by a health professional, diagnosis or consultation by a physician, or treatment, or for the transfer of medical data, and that requires the use of advanced telecommunications technology, other than telephone or facsimile technology, including:

(A) compressed digital interactive video, audio, or data transmission;

(B) clinical data transmission using computer imaging by way of still-image capture and store and forward; and

(C) other technology that facilitates access to health care services or medical specialty expertise.

(b) Section 531.0216, Government Code, is amended to read as follows:

Sec. 531.0216. PARTICIPATION AND REIMBURSEMENT OF TELEMEDICINE MEDICAL SERVICE PROVIDERS AND TELEHEALTH SERVICE PROVIDERS UNDER MEDICAID. (a) The commission by rule shall develop and implement a system to reimburse providers of services under the state Medicaid program for services performed using telemedicine medical services or telehealth services.

(b) In developing the system, the executive commissioner by rule shall:

(1) review programs and pilot projects in other states to determine the most effective method for reimbursement;

(2) establish billing codes and a fee schedule for services;

(3) provide for an approval process before a provider can receive reimbursement for services;

(4) consult with the Department of State Health Services and the telemedicine and telehealth advisory committee to establish procedures to:

(A) identify clinical evidence supporting delivery of health care services using a telecommunications system; and

(B) ~~establish pilot studies for telemedicine medical service delivery;~~  
and

~~[(C)]~~ annually review health care services, considering new clinical findings, to determine whether reimbursement for particular services should be denied or authorized;

~~(5) [establish pilot programs in designated areas of this state under which the commission, in administering government funded health programs, may reimburse a health professional participating in the pilot program for telehealth services authorized under the licensing law applicable to the health professional;~~

~~[(6)]~~ establish a separate provider identifier for telemedicine medical services providers, telehealth services providers, and home telemonitoring services providers; and

~~(6) [(7)]~~ establish a separate modifier for telemedicine medical services, telehealth services, and home telemonitoring services eligible for reimbursement.

(c) The commission shall encourage health care providers and health care facilities to participate as telemedicine medical service providers or telehealth service providers in the health care delivery system. The commission may not require that a service be provided to a patient through telemedicine medical services or telehealth services when the service can reasonably be provided by a physician through a face-to-face consultation with the patient in the community in which the patient resides or works. This subsection does not prohibit the authorization of the provision of any service to a patient through telemedicine medical services or telehealth services at the patient's request.

(d) Subject to Section 153.004, Occupations Code, the commission may adopt rules as necessary to implement this section. In the rules adopted under this section, the commission shall:

(1) refer to the site where the patient is physically located as the patient site; and

(2) refer to the site where the physician or health professional providing the telemedicine medical service or telehealth service is physically located as the distant site.

(e) The commission may not reimburse a health care facility for telemedicine medical services or telehealth services provided to a Medicaid recipient unless the facility complies with the minimum standards adopted under Section 531.02161.

(f) Not later than December 1 of each even-numbered year, the commission shall report to the speaker of the house of representatives and the lieutenant governor on the effects of telemedicine medical services, telehealth services, and home telemonitoring services on the Medicaid program in the state, including the number of physicians, ~~and~~ health professionals, and licensed health care facilities using telemedicine medical services, telehealth services, or home telemonitoring services, the geographic and demographic disposition of the physicians and health professionals, the number of patients receiving telemedicine medical services, telehealth services, and home telemonitoring services, the types of services being provided, and the cost of utilization of telemedicine medical services, telehealth services, and home telemonitoring services to the program.

~~[(g) In this section:~~

~~(1) "Telehealth service" has the meaning assigned by Section 57.042, Utilities Code.~~

~~(2) "Telemedicine medical service" has the meaning assigned by Section 57.042, Utilities Code.]~~

(c) The heading to Section 531.02161, Government Code, is amended to read as follows:

Sec. 531.02161. TELEMEDICINE, TELEHEALTH, AND HOME TELEMONITORING TECHNOLOGY STANDARDS.

(d) Section 531.02161(b), Government Code, is amended to read as follows:

(b) The commission and the Telecommunications Infrastructure Fund Board by joint rule shall establish and adopt minimum standards for an operating system used in the provision of telemedicine medical services, telehealth services, or home telemonitoring services by a health care facility participating in the state Medicaid program, including standards for electronic transmission, software, and hardware.

(e) Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.02164 to read as follows:

Sec. 531.02164. MEDICAID SERVICES PROVIDED THROUGH HOME TELEMONITORING SERVICES. (a) In this section:

(1) "Home health agency" means a facility licensed under Chapter 142, Health and Safety Code, to provide home health services as defined by Section 142.001, Health and Safety Code.

(2) "Hospital" means a hospital licensed under Chapter 241, Health and Safety Code, that provides home health services as defined by Section 142.001, Health and Safety Code.

(b) If the commission determines that establishing a statewide program that permits reimbursement under the state Medicaid program for home telemonitoring services would be cost-effective and feasible, the executive commissioner by rule shall establish the program as provided under this section.

(c) 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; or
- (viii) mental illness or serious emotional disturbance; and

(B) exhibit two or more of the following risk factors:

- (i) two or more hospitalizations in the prior 12-month period;
- (ii) frequent or recurrent emergency room admissions;
- (iii) a documented history of poor adherence to ordered medication

regimens;

- (iv) a documented history of falls in the prior six-month period;
- (v) limited or absent informal support systems;
- (vi) living alone or being home alone for extended periods of time;

and

(vii) a documented history of care access challenges;

(2) ensure that clinical information gathered by a home health agency or hospital while providing home telemonitoring services is shared with the patient's physician; and

(3) ensure that the program does not duplicate disease management program services provided under Section 32.057, Human Resources Code.

(d) If, after implementation, the commission determines that the program established under this section is not cost-effective, the commission may discontinue the program and stop providing reimbursement under the state Medicaid program for home telemonitoring services, notwithstanding Section 531.0216 or any other law.

(e) The commission shall determine whether the provision of home telemonitoring services to persons who are eligible to receive benefits under both the Medicaid and Medicare programs achieves cost savings for the Medicare program. 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.

(f) The heading to Section 531.02172, Government Code, is amended to read as follows:

Sec. 531.02172. TELEMEDICINE AND TELEHEALTH ADVISORY COMMITTEE.

(g) Sections 531.02172(a) and (b), Government Code, are amended to read as follows:

(a) The executive commissioner shall establish an advisory committee to assist the commission in:

(1) evaluating policies for telemedical consultations under Sections 531.02163 and 531.0217;

(2) ~~[evaluating policies for telemedicine medical services or telehealth services pilot programs established under Section 531.02171;~~

~~[(3)]~~ ensuring the efficient and consistent development and use of telecommunication technology for telemedical consultations and telemedicine medical services or telehealth services reimbursed under government-funded health programs;

(3) ~~[(4)]~~ monitoring the type of consultations and other services ~~[programs]~~ receiving reimbursement under Section ~~[Sections]~~ 531.0217 ~~[and 531.02171]~~; and

(4) ~~[(5)]~~ coordinating the activities of state agencies concerned with the use of telemedical consultations and telemedicine medical services or telehealth services.

(b) The advisory committee must include:

(1) representatives of health and human services agencies and other state agencies concerned with the use of telemedical and telehealth consultations and home telemonitoring services in the Medicaid program and the state child health plan program, including representatives of:

- (A) the commission;
- (B) the Department of State Health Services;
- (C) the Texas Department of Rural Affairs;
- (D) the Texas Department of Insurance;
- (E) the Texas Medical Board;
- (F) the Texas Board of Nursing; and
- (G) the Texas State Board of Pharmacy;

(2) representatives of health science centers in this state;

(3) experts on telemedicine, telemedical consultation, and telemedicine medical services or telehealth services; ~~and~~

(4) representatives of consumers of health services provided through telemedical consultations and telemedicine medical services or telehealth services; and

(5) representatives of providers of telemedicine medical services, telehealth services, and home telemonitoring services.

(h) Section 531.02173(c), Government Code, is amended to read as follows:

(c) The commission shall perform its duties under this section with assistance from the telemedicine and telehealth advisory committee established under Section 531.02172.

(i) The following provisions of the Government Code are repealed:

(1) Section 531.02161(a);

(2) Sections 531.0217(a)(3) and (4);

(3) Section 531.02171, as added by Chapter 661 (**HB 2700**), Acts of the 77th Legislature, Regular Session, 2001; and

(4) Section 531.02171, as added by Chapter 959 (**SB 1536**), Acts of the 77th Legislature, Regular Session, 2001.

(j) Not later than December 31, 2012, the Health and Human Services Commission shall submit a report to the governor, the lieutenant governor, and the speaker of the house of representatives regarding the establishment and



implementation of the program to permit reimbursement under the state Medicaid program for home telemonitoring services under Section 531.02164, Government Code, as added by this section. The report must include:

(1) the methods used by the commission to determine whether the program was cost-effective and feasible; and

(2) if the program has been established, information regarding:

(A) the utilization of home telemonitoring services by Medicaid recipients under the program;

(B) the health outcomes of Medicaid recipients who receive home telemonitoring services under the program;

(C) the hospital admission rate of Medicaid recipients who receive home telemonitoring services under the program;

(D) the cost of the home telemonitoring services provided under the program; and

(E) the estimated cost savings to the state as a result of the program.

#### **Floor Amendment No. 19**

Amend Amendment No. 18 to **CSSB 23** by J. Davis in the following ways:

(1) On page 7 strike line 13 beginning at the word "If" through line 18.

(2) On page 7 line 25 strike "shall" and substitute "may".

#### **Floor Amendment No. 20**

Amend Amendment No. 18 to **CSSB 23** by J. Davis (prefiled amendment packet, pages 18-27) as follows:

(1) In added Section 531.02164(a)(2), Government Code (page 5, lines 23 through 24, of the amendment), strike "that provides home health services as defined by Section 142.001, Health and Safety Code".

(2) In added Section 531.02164(c)(1)(A)(vii), Government Code (page 6, line 10, of the amendment), strike "or".

(3) In added Section 531.02164(c)(1)(A)(viii), Government Code (page 6, line 12, of the amendment), strike "and" and substitute "or".

(4) In added Section 531.02164(c)(1)(A), Government Code (page 6, between lines 12 and 13, of the amendment), insert the following:

"(ix) asthma; and".

#### **Floor Amendment No. 21**

Amend Amendment No. 18 to **CSSB 23** by J. Davis of Harris (prefiled amendment packet, pages 18-27) by adding the following appropriately lettered subsection to the SECTION added by the amendment and relettering subsequent subsections accordingly:

( ) 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.

### **Floor Amendment No. 22**

Amend the J. Davis amendment No. 18 to **CSSB 23** on page 6, Subsection (A) by adding the following:

- (x) myocardial infarction;
- (xi) stroke.

### **Floor Amendment No. 23**

Amend **CSSB 23** (house committee printing) as follows:

(1) Immediately following the heading to SECTION 11 of the bill (page 36, line 7), between "COLLECTION." and "Subchapter B", insert "(a)".

(2) In SECTION 11 of the bill (page 37, between lines 4 and 5), insert the following appropriately lettered subsection:

( ) Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.04242 to read as follows:

Sec. 32.04242. PAYOR OF LAST RESORT. The executive commissioner of the Health and Human Services Commission shall adopt rules to ensure, to the extent allowed by federal law, that the Medicaid program:

- (1) is the payor of last resort; and
- (2) provides reimbursement for services, including long-term care services, only if, and to the extent, other adequate public or private sources of payment are not available.

### **Floor Amendment No. 24**

Amend **CSSB 23** (house committee report) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Subtitle B, Title 4, Government Code, is amended by adding Chapter 422 to read as follows:

#### CHAPTER 422. OFFICE OF INSPECTOR GENERAL

Sec. 422.001. DEFINITION. In this chapter, "office" means the office of inspector general established under this chapter.

Sec. 422.002. OFFICE OF INSPECTOR GENERAL. The office of inspector general is a division within the office of the governor.

Sec. 422.003. GENERAL RESPONSIBILITIES. (a) The office is responsible for the investigation of fraudulent insurance acts, including Medicaid fraud and fraud under the workers' compensation system, in this state.

(b) The office shall:

- (1) report to and perform duties as directed by the governor; and
- (2) provide assistance to:
  - (A) inspectors general of state agencies who have jurisdiction over insurance;
  - (B) the Health and Human Services Commission's office of inspector general; and

(C) the insurance fraud unit of the Texas Department of Insurance.

Sec. 422.004. CONTRACTS FOR INVESTIGATIVE SERVICES. The inspector general may contract with certified public accountants, qualified management consultants, or other professional experts as necessary to independently perform investigative services.

Sec. 422.005. GENERAL POWERS. The office has all the powers necessary or appropriate to carry out its responsibilities and functions under this chapter.

Sec. 422.006. COOPERATION WITH LAW ENFORCEMENT OFFICIALS AND OTHER ENTITIES. (a) The office shall provide information and evidence relating to criminal acts to the state auditor's office and appropriate law enforcement officials.

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

Sec. MEMORANDUM OF UNDERSTANDING. The office shall enter into a memorandum of understanding with the attorney general to increase security and avoid duplication of duties.

Sec. 422.007. FUNDING. The office shall be funded using existing appropriations to the office of the governor and the Health and Human Services Commission. This section expires September 1, 2013.

#### **Floor Amendment No. 26**

Amend **CSSB 23** (second reading) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_. INCLUSION OF CERTAIN EYE HEALTH CARE SERVICE PROVIDERS IN MEDICAID MANAGED CARE PROVIDER NETWORKS. (a) Subchapter A, Chapter 533, Government Code, is amended by adding Section 533.0065 to read as follows:

Sec. 533.0065. EYE HEALTH CARE SERVICE PROVIDERS. (a) In this section, "Texas-Mexico border region" has the meaning assigned by Section 2056.002.

(b) Subject to Section 32.047, Human Resources Code, but notwithstanding any other law, the commission shall require that each managed care organization that contracts with the commission under any Medicaid managed care model or arrangement to provide health care services to recipients in a region, including a region consisting of all or part of the Texas-Mexico border region, include in the organization's provider network each optometrist, therapeutic optometrist, and ophthalmologist in the region who:

- (1) agrees to comply with the terms and conditions of the organization;
- (2) agrees to accept the prevailing provider contract rate of the organization;
- (3) agrees to abide by the standards of care required by the organization;

and

- (4) has the credentials required by the organization.

(b) The Health and Human Services Commission shall conduct a study of the fiscal impact on this state of requiring each Medicaid managed care organization that contracts with the commission under any Medicaid managed care model or

arrangement implemented under Chapter 533, Government Code, to include in the organization's health care provider network providing services in all or part of the Texas-Mexico border region, as defined by Section 2056.002, Government Code, and other regions of the state, each optometrist, therapeutic optometrist, and ophthalmologist who meets the requirements under Section 533.0065, Government Code, as added by this section. The study must include an analysis of cost savings to the state as a result of a reduction in the number of emergency room visits by Medicaid recipients for nonemergency eye health care services that are realized after implementation of Section 533.0065, Government Code, as added by this section.

(c) Not later than September 1, 2016, the Health and Human Services Commission shall submit to the legislature a written report containing the findings of the study conducted under Subsection (b) of this section and the commission's recommendations regarding the requirement addressed in the study.

(d) The Health and Human Services Commission shall, in a contract between the commission and a Medicaid managed care organization under Chapter 533, Government Code, that is entered into or renewed on or after the effective date of this Act, require that the managed care organization comply with Section 533.0065, Government Code, as added by this section.

(e) The Health and Human Services Commission shall seek to amend each contract entered into with a Medicaid managed care organization under Chapter 533, Government Code, before the effective date of this Act to require those managed care organizations to comply with Section 533.0065, Government Code, as added by this section. To the extent of a conflict between Section 533.0065, Government Code, as added by this section, and a provision of a contract with a managed care organization entered into before the effective date of this Act, the contract provision prevails.

#### **Floor Amendment No. 27**

Amend Amendment No. 26 to **CSSB 23** by Alonzo (prefiled amendment packet, pages 61-63) in Section 533.0065(b), Government Code, as added by the amendment, by striking "the commission shall require that" and substituting "the commission may require that".

#### **Floor Amendment No. 30**

Amend **CSSB 23** (house committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. PILOT PROJECT TO ESTABLISH COMPREHENSIVE ACCESS POINT FOR LONG-TERM SERVICES AND SUPPORTS. (a) Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.0525 to read as follows:

Sec. 531.0525. PILOT PROJECT TO ESTABLISH COMPREHENSIVE ACCESS POINT FOR LONG-TERM SERVICES AND SUPPORTS. (a) In this section:

(1) "Aging and disability resource center" means a center established under the Aging and Disability Resource Center initiative funded in part by the federal Administration on Aging and the Centers for Medicare and Medicaid Services.

(2) "Colocated long-term services and supports staff members" means:

(A) long-term services and supports staff members who are located in the same physical office; or

(B) long-term services and supports staff members who are not located in the same physical office but who work collaboratively through the use of the telephone or other technologies.

(3) "Department of Aging and Disability Services staff members" includes community services staff members of the Department of Aging and Disability Services.

(4) "Long-term services and supports" means long-term assistance or care provided to older persons and persons with physical disabilities through the Medicaid program or other programs. The term includes assistance or care provided through the following programs:

(A) the primary home care program;

(B) the community attendant services program;

(C) the community-based alternatives program;

(D) the day activity and health services program;

(E) the promoting independence program;

(F) a program funded through the Older Americans Act of 1965 (42 U.S.C. Section 3001 et seq.);

(G) a community care program funded through Title XX of the federal Social Security Act (42 U.S.C. Section 301 et seq.);

(H) the in-home and family support program; and

(I) a nursing facility program.

(5) "Long-term services and supports staff" means:

(A) one or more of the commission's Medicaid eligibility determination staff members;

(B) one or more Department of Aging and Disability Services staff members; and

(C) one or more area agency on aging staff members.

(6) "Pilot project site" means a location in an area served by the pilot project established under this section where colocated long-term services and supports staff members work collaboratively to provide information and tentatively assess functional and financial eligibility to initiate long-term services and supports.

(7) "Tentative assessment of functional and financial eligibility" means an expedited preliminary screening of an applicant to determine Medicaid eligibility with the goal of initiating services within seven business days. The tentative assessment does not guarantee state payment for services.

(b) Subject to availability of funds appropriated by the legislature for this purpose, the commission shall develop and implement a pilot project to establish a comprehensive access point system for long-term services and supports in which colocated long-term services and supports staff members work in collaboration to provide all necessary services in connection with long-term services and supports from the intake process to the start of service delivery. The pilot project must require that, at a minimum, the staff members work collaboratively to:

(1) inform and educate older persons, persons with physical disabilities, and their family members and other caregivers about long-term services and supports for which they may qualify;

(2) screen older persons and persons with physical disabilities requesting long-term services and supports;

(3) provide a tentative assessment of functional and financial eligibility for older persons and persons with physical disabilities requesting long-term services and supports for which there are no interest lists; and

(4) make final determinations of eligibility for long-term services and supports.

(c) In developing and implementing the pilot project, the commission shall ensure that:

(1) the pilot project site has colocated long-term services and supports staff members who are located in the same physical office;

(2) the pilot project site serves as a comprehensive access point for older persons and persons with physical disabilities to obtain information about long-term services and supports for which they may qualify and access long-term services and supports in the site's service area;

(3) the pilot project site is designed and operated in accordance with best practices adopted by the executive commissioner after the commission reviews best practices for similar initiatives in other states and professional policy-based research describing best practices for successful initiatives;

(4) the colocated long-term services and supports staff members supporting the pilot project site include:

(A) one full-time commission staff member who determines eligibility for the Medicaid program and who:

(i) has full access to the Texas Integrated Eligibility Redesign System (TIERS);

(ii) has previously made Medicaid long-term care eligibility determinations; and

(iii) is dedicated primarily to making eligibility determinations for incoming clients at the site;

(B) sufficient Department of Aging and Disability Services staff members to carry out the tentative functional and financial eligibility and screening functions at the site;

(C) sufficient area agency on aging staff members to:

(i) assist with the performance of screening functions and service coordination for services funded under the Older Americans Act of 1965 (42 U.S.C. Section 3001 et seq.), such as meals programs; and

(ii) identify other locally funded and supported services that will enable older persons and persons with physical disabilities to continue to reside in the community to the extent reasonable; and

(D) any available staff members from local service agencies; and

(5) the colocated long-term services and supports staff members of the pilot project site:

(A) process intakes for long-term services and supports in person or by telephone or through the Internet;

(B) use a standardized screening tool to tentatively assess both functional and financial eligibility with the goal of initiating services within seven business days;

(C) closely coordinate with local hospital discharge planners and staff members of extended rehabilitation units of local hospitals and nursing homes; and

(D) inform persons about community-based services available in the area served by the pilot project.

(d) The pilot project must be implemented in a single county or a multicounty area, as determined by the commission. The pilot project site must be located within an aging and disability resource center service area. If the commission finds that there is no aging and disability resource center that is willing or able to accommodate a pilot project site on the date the pilot project is to be implemented, the pilot project site may be located at another appropriate location.

(e) Not later than January 31, 2013, the commission shall submit a report concerning the pilot project to the presiding officers of the standing committees of the senate and house of representatives having primary jurisdiction over health and human services. The report must:

(1) contain an evaluation of the operation of the pilot project;

(2) contain an evaluation of the pilot project's benefits for persons who received services;

(3) contain a calculation of the costs and cost savings that can be attributed to implementation of the pilot project;

(4) include a recommendation regarding adopting improved policies and procedures concerning long-term services and supports with statewide applicability, as determined from information obtained in operating the pilot project;

(5) include a recommendation regarding the feasibility of expanding the pilot project to other areas of this state or statewide; and

(6) contain the perspectives of service providers participating in the pilot project.

(f) This section expires September 1, 2015.

(b) Not later than December 31, 2011, the Health and Human Services Commission shall ensure that the pilot project site is in operation under the pilot project required by Section 531.0525, Government Code, as added by this section.

### **Floor Amendment No. 32**

Amend **CSSB 23** (house committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_ . **CONTRACTS FOR PRESCRIPTION DRUG BENEFITS.** Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.0696 to read as follows:

Sec. 531.0696. **CONSIDERATIONS IN AWARDING CERTAIN PRESCRIPTION DRUG BENEFITS CONTRACTS.** (a) This section applies to:

(1) the vendor drug program for the Medicaid and child health plan programs;

(2) the kidney health care program;  
(3) the children with special health care needs program; and  
(4) any other state program administered by the commission that provides prescription drug benefits.

(b) The commission may not contract with a managed care organization, including a health maintenance organization, or a pharmacy benefit manager to provide prescription drug benefits under a program to which this section applies if the organization or pharmacy benefit manager, in connection with a bid, proposal, or contract with a governmental entity:

(1) in the preceding five years:

(A) made a material misrepresentation or committed fraud;

(B) committed a breach of contract;

(C) was convicted of violating a state or federal law; or

(D) was assessed a penalty or fine in the amount of \$100,000 or more in a state or federal administrative proceeding; or

(2) is the defendant in a pending state or federal criminal case or subject to a pending state or federal enforcement action.

### **Floor Amendment No. 33**

Amend Amendment No. 32 by Brown to **CSSB 23** (page 79, prefiled amend packet) as follows:

(1) In Section 531.0696(b)(1), Government Code, as added by the amendment, strike "in the preceding five years" and substitute "in the preceding three years".

(2) In Section 531.0696(b)(1)(D), Government Code, as added by the amendment, strike "\$100,000" and substitute "\$500,000".

### **Floor Amendment No. 34**

Amend **CSSB 23** (house committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_ . COMMUNICATIONS REGARDING PRESCRIPTION DRUG BENEFITS. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.0697 to read as follows:

Sec. 531.0697. PRIOR APPROVAL AND PROVIDER ACCESS TO CERTAIN COMMUNICATIONS WITH CERTAIN RECIPIENTS. (a) This section applies to:

(1) the vendor drug program for the Medicaid and child health plan programs;

(2) the kidney health care program;

(3) the children with special health care needs program; and

(4) any other state program administered by the commission that provides prescription drug benefits.

(b) A managed care organization, including a health maintenance organization, or a pharmacy benefit manager, that administers claims for prescription drug benefits under a program to which this section applies shall, at least 10 days before the date the organization or pharmacy benefit manager intends to deliver a communication to recipients collectively under a program:



- (1) submit a copy of the communication to the commission for approval;  
and  
(2) if applicable, allow the pharmacy providers of recipients who are to receive the communication access to the communication.

**Floor Amendment No. 35**

Amend **CSSB 23** (house committee printing) by adding the following appropriately lettered subsections to SECTION 3 of the bill and relettering subsequent subsections of SECTION 3 accordingly:

( ) Subchapter A, Chapter 533, Government Code, is amended by adding Section 533.0073 to read as follows:

Sec. 533.0073. MEDICAL DIRECTOR QUALIFICATIONS. A person who serves as a medical director for a managed care plan must be a physician licensed to practice medicine in this state under Subtitle B, Title 3, Occupations Code.

( ) Section 533.0073, Government Code, as added by this section, applies only to a person hired or otherwise retained as the medical director of a Medicaid managed care plan on or after the effective date of this Act. A person hired or otherwise retained before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

**Floor Amendment No. 36**

Amend **CSSB 23** (house committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_ . REIMBURSEMENT FOR INDIGENT HEALTH CARE SERVICES. (a) Subchapter A, Chapter 61, Health and Safety Code, is amended by adding Section 61.012 to read as follows:

Sec. 61.012. REIMBURSEMENT FOR SERVICES. (a) In this section, "sponsored alien" means a person who has been lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act (8 U.S.C. Section 1101 et seq.) and who, as a condition of admission, was sponsored by a person who executed an affidavit of support on behalf of the person.

(b) A public hospital or hospital district that provides health care services to a sponsored alien under this chapter may recover from a person who executed an affidavit of support on behalf of the alien the costs of the health care services provided to the alien.

(c) A public hospital or hospital district described by Subsection (b) must notify a sponsored alien and a person who executed an affidavit of support on behalf of the alien, at the time the alien applies for health care services, that a person who executed an affidavit of support on behalf of a sponsored alien is liable for the cost of health care services provided to the alien.

(b) Section 61.012, Health and Safety Code, as added by this section, applies only to health care services provided by a public hospital or hospital district on or after the effective date of this Act.

**Floor Amendment No. 37**

Amend Floor Amendment No. 36 to **CSSB 23** (page 83, prefiled amendments packet), on page 1 of the amendment, as follows:

(1) On line 2, strike "SECTION" and substitute "SECTIONS".

(2) Immediately following line 28, add the following:

SECTION \_\_\_\_\_. Subchapter B, Chapter 531, Government Code, is amended by adding Sections 531.024181 and 531.024182 to read as follows:

Sec. 531.024181. VERIFICATION OF IMMIGRATION STATUS OF APPLICANTS FOR CERTAIN BENEFITS WHO ARE QUALIFIED ALIENS. (a) This section applies only with respect to the following benefits programs:

(1) the child health plan program under Chapter 62, Health and Safety Code;

(2) the financial assistance program under Chapter 31, Human Resources Code;

(3) the medical assistance program under Chapter 32, Human Resources Code; or

(4) the nutritional assistance program under Chapter 33, Human Resources Code.

(b) If, at the time of application for benefits under a program to which this section applies, a person states that the person is a qualified alien, as that term is defined by 8 U.S.C. Section 1641(b), the commission shall, to the extent allowed by federal law, verify information regarding the immigration status of the person using an automated system or systems where available.

(c) The executive commissioner shall adopt rules necessary to implement this section.

(d) Nothing in this section adds to or changes the eligibility requirements for any of the benefits programs to which this section applies.

Sec. 531.024182. VERIFICATION OF SPONSORSHIP INFORMATION FOR CERTAIN BENEFITS RECIPIENTS; REIMBURSEMENT. (a) In this section, "sponsored alien" means a person who has been lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act (8 U.S.C. Section 1101 et seq.) and who, as a condition of admission, was sponsored by a person who executed an affidavit of support on behalf of the person.

(b) If, at the time of application for benefits, a person stated that the person is a sponsored alien, the commission may, to the extent allowed by federal law, verify information relating to the sponsorship, using an automated system or systems where available, after the person is determined eligible for and begins receiving benefits under any of the following benefits programs:

(1) the child health plan program under Chapter 62, Health and Safety Code;

(2) the financial assistance program under Chapter 31, Human Resources Code;

(3) the medical assistance program under Chapter 32, Human Resources Code; or

(4) the nutritional assistance program under Chapter 33, Human Resources Code.

(c) If the commission verifies that a person who receives benefits under a program listed in Subsection (b) is a sponsored alien, the commission may seek reimbursement from the person's sponsor for benefits provided to the person under those programs to the extent allowed by federal law, provided the commission determines that seeking reimbursement is cost-effective.

(d) If, at the time a person applies for benefits under a program listed in Subsection (b), the person states that the person is a sponsored alien, the commission shall make a reasonable effort to notify the person that the commission may seek reimbursement from the person's sponsor for any benefits the person receives under those programs.

(e) The executive commissioner shall adopt rules necessary to implement this section, including rules that specify the most cost-effective procedures by which the commission may seek reimbursement under Subsection (c).

(f) Nothing in this section adds to or changes the eligibility requirements for any of the benefits programs listed in Subsection (b).

SECTION \_\_\_\_\_. If before implementing any provision of this Act a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

#### **Floor Amendment No. 38**

Amend Amendment No. 36 by V. Taylor to **CSSB 23** (page 83, prefiled amendment packet) in the added SECTION entitled "REIMBURSEMENT FOR INDIGENT HEALTH CARE SERVICES" by adding the following appropriately lettered subsection to that SECTION and relettering subsequent subsections accordingly:

( ) Section 61.033, Health and Safety Code, is amended by adding Subsection (c) to read as follows:

(c) In accordance with Subsection (a), if an eligible resident receives health care services from a county other than the county in which the resident resides, the county in which the resident resides is liable for those costs.

#### **Floor Amendment No. 39**

Amend **CSSB 23** (house committee printing) by adding the following appropriately numbered SECTION and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. COUNTY ELIGIBILITY TO RECEIVE STATE ASSISTANCE FOR HEALTH CARE EXPENDITURES. (a) Sections 61.037(a) and (b), Health and Safety Code, are amended to read as follows:

(a) The department may distribute funds as provided by this subchapter to eligible counties to assist the counties in providing:

(1) health care services under Sections 61.028 and 61.0285 to their eligible county residents; or

(2) health care services provided by Medicaid as described by Subsection

(b)(1).

(b) Except as provided by Subsection (c), (d), (e), or (g), to be eligible for state assistance, a county must:

(1) spend in a state fiscal year at least eight percent of the county general revenue levy for that year to provide health care services described by Subsection (a) to its eligible county residents who qualify for assistance under Section 61.023 and may include as part of the county's eight percent expenditure level any payment made by the county for health care services provided through Medicaid, including the county's direct reimbursement to health care providers and indirect reimbursement through transfers of funds to the state for health care services provided through Medicaid; and

(2) notify the department, not later than the seventh day after the date on which the county reaches the expenditure level, that the county has spent at least six percent of the applicable county general revenue levy for that year to provide health care services described by Subsection (a)(1) [~~(a)~~] to its eligible county residents who qualify for assistance under Section 61.023 or health care services provided by Medicaid as described by Subdivision (1).

(b) Section 61.038, Health and Safety Code, is amended to read as follows:

Sec. 61.038. DISTRIBUTION OF ASSISTANCE FUNDS. (a) If the department determines that a county is eligible for assistance, the department shall distribute funds appropriated to the department from the indigent health care assistance fund or any other available fund to the county to assist the county in providing:

(1) health care services under Sections 61.028 and 61.0285 to its eligible county residents who qualify for assistance as described by Section 61.037; or

(2) health care services provided through Medicaid as described by Section 61.037(b)(1).

(b) State funds provided under this section to a county must be equal to at least 90 percent of the actual payment for the health care services for the county's eligible residents, including any payments made by the county for health care services provided through Medicaid as described by Section 61.037(b)(1), during the remainder of the state fiscal year after the eight percent expenditure level is reached.

#### **Floor Amendment No. 40**

Amend **CSSB 23** by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 262.023(b), Health and Safety Code, is amended to read as follows:

(b) The board may delegate to the manager or executive director the authority to manage the hospital and to employ and discharge employees other than physicians hired in accordance with Section 262.0235.

SECTION \_\_\_\_\_. Subchapter C, Chapter 262, Health and Safety Code, is amended by adding Section 262.0235 to read as follows:

Sec. 262.0235. EMPLOYMENT OF PHYSICIANS. (a) This section applies only to an authority that is created by the governing body of a municipality with a population of less than 10,000 and that owns or operates a hospital with more than 50 licensed beds.

(b) The board of an authority may employ a physician and retain all or part of the professional income generated by the physician for medical services provided at a hospital or other health care facility owned or operated by the authority if the board satisfies the requirements of this section.

(c) The board of an authority shall:

(1) appoint a chief medical officer for the authority who has been recommended by the medical staff of the authority; and

(2) adopt, maintain, and enforce policies to ensure that a physician employed by the authority exercises the physician's independent medical judgment in providing care to patients.

(d) The policies adopted under this section must include:

(1) policies relating to:

(A) credentialing and privileges;

(B) quality assurance;

(C) utilization review;

(D) peer review and due process; and

(E) medical decision-making; and

(2) the implementation of a complaint mechanism to process and resolve complaints regarding interference or attempted interference with a physician's independent medical judgment.

(e) The policies adopted under this section must be approved by the medical staff of the authority. The medical staff of the authority and the board shall jointly develop and implement a conflict management policy to resolve any conflict between a medical staff policy and a board policy.

(f) For all matters relating to the practice of medicine, each physician employed by an authority shall ultimately report to the chief medical officer of the authority.

(g) The chief medical officer shall notify the Texas Medical Board that the board is employing physicians under this section and that the chief medical officer is the board's designated contact with the Texas Medical Board. The chief medical officer shall immediately report to the Texas Medical Board any action or event that the chief medical officer reasonably and in good faith believes constitutes a compromise of the independent medical judgment of a physician in caring for a patient.

(h) The board of an authority shall give equal consideration regarding the issuance of medical staff membership and privileges to physicians employed by the authority and physicians not employed by the authority.

(i) A physician employed by an authority shall retain independent medical judgment in providing care to patients and may not be disciplined for reasonably advocating for patient care.

(j) If an authority provides professional liability coverage for physicians employed by the authority, a physician employed by the authority may participate in the selection of the professional liability coverage, has the right to an independent defense at the physician's own cost, and retains the right to consent to the settlement of any action or proceeding brought against the physician.

(k) If a physician employed by an authority enters into an employment agreement that includes a covenant not to compete, the agreement is subject to Section 15.50, Business & Commerce Code.

(l) The board of an authority may not delegate to the manager or executive director of a hospital owned or operated by the hospital authority the authority to hire a physician.

(m) This section may not be construed as authorizing the board to supervise or control the practice of medicine as prohibited under Subtitle B, Title 3, Occupations Code.

#### **Floor Amendment No. 41**

Amend Amendment No. 40 to **CSSB 23** by P. King on page 87 by striking lines 12-15 and substitution the following:

Sec. 262.0235. EMPLOYMENT OF PHYSICIANS. (a) this section applies only to an authority that is:

(1) created by the governing body of a municipality with a population of less than 10,00 and that owns or operates a hospital with more than 50 licensed beds; or

(2) classified as a rural referral center under Section 1886 (d)(1)(C)(i), Social Security Act (42 U.S.C. Section 1395ww(d)(1)(C)(i)) that is not located in a metropolitan statistical area as defined by the United States Office of Management and Budget.

#### **Floor Amendment No. 42**

Amend **CSSB 23** (house committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_ . TESTIMONY OF MEMBERS AND FORMER MEMBERS OF STATE BOARD OF DENTAL EXAMINERS. Section 254.018, Occupations Code, is amended to read as follows:

Sec. 254.018. ~~[EXPERT]~~ TESTIMONY. (a) A member or former member of the board may not express an oral or written opinion or serve as an expert witness in a suit involving a health care liability claim against a person licensed or registered under this subtitle [dentist] for injury to or death of a patient or for a violation of the standard of care or the commission of professional malpractice [unless the member receives approval from the board or an executive committee of the board to serve as an expert witness].

(b) This section applies to a former member of the board until the second anniversary of the date the member's term expires or the member resigns from the board.

#### **Floor Amendment No. 43**

Amend **CSSB 23** (house committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_ . ELECTRONIC SUBMISSION OF CLAIMS FOR MEDICAL ASSISTANCE REIMBURSEMENT FOR DURABLE MEDICAL EQUIPMENT AND SUPPLIES. Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.0314 to read as follows:

Sec. 32.0314. REIMBURSEMENT FOR DURABLE MEDICAL EQUIPMENT AND SUPPLIES. The executive commissioner of the Health and Human Services Commission shall adopt rules requiring the electronic submission of any claim for reimbursement for durable medical equipment and supplies under the medical assistance program.

**Floor Amendment No. 45**

Amend **CSSB 23** (house committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_ . ADMINISTRATION OF MEDICATION. (a) Chapter 161, Human Resources Code, is amended by adding Subchapter D-1 to read as follows:  
SUBCHAPTER D-1. ADMINISTRATION OF MEDICATION FOR CLIENTS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES

Sec. 161.091. DEFINITIONS. In this subchapter:

(1) "Administration of medication" means:

(A) removing a unit or dose of medication from a previously dispensed, properly labeled container;

(B) verifying the medication with the medication order;

(C) giving the proper medication in the proper dosage to the proper client at the proper time by the proper administration route; and

(D) recording the time of administration and dosage administered.

(2) "Client" means a person with an intellectual and developmental disability who is receiving services from a facility or program listed in Section 161.092.

(3) "Unlicensed person" means an individual not licensed as a health care provider who provides services at or for a facility or program listed in Section 161.092, including:

(A) a nurse aide, orderly, assistant, attendant, technician, home health aide, medication aide with a permit issued by a state agency, or other individual who provides personal health care-related services;

(B) a person who is monetarily compensated to perform certain health-related tasks and functions in a complementary or assistive role to a licensed nurse who provides direct client care or performs common nursing functions;

(C) a person who performs those tasks and functions as a volunteer but does not qualify as a friend providing gratuitous nursing care of the sick under Section 301.004, Occupations Code; or

(D) a person who is a professional nursing student who provides care for monetary compensation and not as part of a formal educational program.

Sec. 161.092. APPLICABILITY. This subchapter applies only to administration of medication provided to certain persons with intellectual and developmental disabilities who are served:

(1) in a small facility with not less than one and not more than eight beds that is licensed or certified under Chapter 252, Health and Safety Code;

(2) in a medium facility with not less than nine and not more than 13 beds that is licensed or certified under Chapter 252, Health and Safety Code; or

(3) by one of the following Section 1915(c) waiver programs administered by the Department of Aging and Disability Services to serve persons with intellectual and developmental disabilities:

- (A) the Home and Community-Based Services waiver program; or
- (B) the Texas Home Living waiver program.

Sec. 161.093. ADMINISTRATION OF MEDICATION. (a) Notwithstanding other law, an unlicensed person may provide administration of medication to a client without the requirement that a registered nurse delegate or oversee each administration if:

(1) the medication is:

- (A) an oral medication;
- (B) a topical medication; or
- (C) a metered dose inhaler;

(2) the medication is administered to the client for a stable or predictable condition;

(3) the client has been personally assessed by a registered nurse initially and in response to significant changes in the client's health status, and the registered nurse has determined that the client's health status permits the administration of medication by an unlicensed person; and

(4) the unlicensed person has been:

(A) trained by a registered nurse or licensed vocational nurse under the direction of a registered nurse regarding proper administration of medication; or

(B) determined to be competent by a registered nurse or licensed vocational nurse under the direction of a registered nurse regarding proper administration of medication, including through a demonstration of proper technique by the unlicensed person.

(b) The administration of medication other than the medications described by Subsection (a)(1) is subject to the rules of the Texas Board of Nursing regarding the delegation of nursing tasks to unlicensed persons in independent living environments such as the facilities and programs listed in Section 161.092.

Sec. 161.094. DEPARTMENT DUTIES. (a) The department shall ensure that:

(1) administration of medication by an unlicensed person under this subchapter is reviewed at least annually and after any significant change in a client's condition by a registered nurse or a licensed vocational nurse under the supervision of a registered nurse; and

(2) a facility or program listed in Section 161.092 has policies to ensure that the determination of whether an unlicensed person may provide administration of medication to a client under Section 161.093 may be made only by a registered nurse.

(b) The department shall verify that:

(1) each client is assessed to identify the client's needs and abilities regarding the client's medications;

(2) the administration of medication by an unlicensed person to a client is performed only by an unlicensed person who is authorized to perform that administration under Section 161.093; and



(3) the administration of medication to each client is performed in such a manner as to ensure the greatest degree of independence, including the use of an adaptive or assistive aid, device, or strategy as allowed under program rules.

(c) The department shall enforce this subchapter.

Sec. 161.095. LIABILITY. (a) A registered nurse performing a client assessment required under Section 161.093, or a registered nurse or licensed vocational nurse training an unlicensed person or determining whether an unlicensed person is competent to perform administration of medication under Section 161.093, may be held accountable or civilly liable only in relation to whether the nurse properly:

(1) performed the assessment;

(2) conducted the training; and

(3) determined whether the unlicensed person is competent to provide administration of medication to clients.

(b) The Texas Board of Nursing may take disciplinary action against a registered nurse or licensed vocational nurse under this subchapter only in relation to whether:

(1) the registered nurse properly performed the client assessment required by Section 161.093;

(2) the registered nurse or licensed vocational nurse properly trained the unlicensed person in the administration of medication; and

(3) the registered nurse or licensed vocational nurse properly determined whether an unlicensed person is competent to provide administration of medication to clients.

(c) A registered nurse or licensed vocational nurse may not be held accountable or civilly liable for the acts or omissions of an unlicensed person performing administration of medication.

Sec. 161.096. CONFLICT WITH OTHER LAW. This subchapter controls to the extent of a conflict with other law.

(b) The Texas Board of Nursing and the Texas Department of Aging and Disability Services shall conduct a pilot program to evaluate licensed vocational nurses providing on-call services by telephone to clients, as defined by Section 161.091, Human Resources Code, as added by this section, who are under the care of the licensed vocational nurses. The licensed vocational nurses shall use standardized and validated protocols or decision trees in performing telephone on-call services in the pilot program. The department shall collect data to evaluate the efficacy of licensed vocational nurses performing telephone on-call services in the pilot program. The pilot program must begin not later than September 1, 2011.

(c) The Texas Board of Nursing and the Department of Aging and Disability Services, in consultation with affected stakeholders, including public and private providers, registered and licensed vocational nurses employed by the facilities or providers of services listed in Section 161.092, Human Resources Code, as added by this section, and other persons or entities the executive director of the board and the commissioner of the department consider appropriate, shall:

(1) develop the goals and measurable outcomes of the pilot program;

(2) review the outcomes of the pilot program and make recommendations regarding potential regulatory or statutory changes; and

(3) on notice of unsafe or ineffective nursing care discovered in the pilot program, review the data or the outcomes and make recommendations for corrective action.

(d) Not later than December 1, 2012, the Texas Board of Nursing and the Department of Aging and Disability Services shall submit a report detailing the findings of the pilot program and any jointly developed recommendations to the Senate Committee on Health and Human Services and the House Committee on Public Health.

(e) Subsections (b)-(d) of this section and this subsection expire September 1, 2015.

(f) In developing any policies, processes, or training curriculum required by Subchapter D-1, Chapter 161, Human Resources Code, as added by this section, the Texas Department of Aging and Disability Services shall convene an advisory committee of affected stakeholders, including public and private providers and registered and licensed vocational nurses employed by the facilities or providers of services listed in Section 161.092, Human Resources Code, as added by this section, and other persons or entities the department considers appropriate.

#### **Floor Amendment No. 46**

Amend Amendment No. 2 to **CSSB 23** by Zerwas (prefiled amendment packet, pages 28-52), in item (7), in added Section 536.005, Government Code (page 12, between lines 21 and 22), by inserting the following:

(a-1) In converting reimbursement systems under Subsection (a), the commission may examine and consider incorporating elements of reimbursement methodologies that address historical disparities in the provision of health care services to women, children, and persons with mental illnesses.

#### **Floor Amendment No. 47**

Amend **CSSB 23** by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Subchapter A, Chapter 531, Government Code, is amended by adding Section 531.0025 to read as follows:

Sec. 531.0025. RESTRICTION ON CERTAIN FUNDS RECEIVED. Notwithstanding any other law, any money received by health and human services agencies for family planning services, including grant money, may only be awarded or otherwise provided to a person or facility that does not perform abortions or provide abortion-related services.

SECTION \_\_\_\_\_. Section 32.024, Human Resources Code, is amended by adding Subsection (c-1) to read as follows:

(c-1) The department shall ensure that money spent under the medical assistance program is not used to perform abortions or provide abortion-related services.

SECTION \_\_\_\_\_. If before implementing any provision of this Act a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

SECTION \_\_\_\_\_. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2011.

#### **Floor Amendment No. 48**

Amend Amendment No. 47 by Landtroop to **CSSB 23** (page 65, prefiled amendment packet) as follows:

(1) In added Section 531.0025, Government Code (page 1, line 6 of the amendment), following "RECEIVED." insert "(a)".

(2) In added Section 531.0025, Government Code (page 1, line 11 of the amendment), between "services" and the underlined period, insert "except an abortion or an abortion related service in a medical emergency".

(3) In added Section 531.0025, Government Code (page 1, between lines 11 and 12 of the amendment), insert the following:

(b) In this section, "medical emergency" means a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that, as certified by a physician, places the woman in danger of death or a serious risk of substantial impairment of a major bodily function unless an abortion is performed.

#### **Floor Amendment No. 49**

Amend **CSSB 23** by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 161.073, Human Resources Code, is amended to read as follows:

Sec. 161.073. RULES. (a) The executive commissioner may adopt rules reasonably necessary for the department to administer this chapter, consistent with the memorandum of understanding under Section 531.0055(k), Government Code, between the commissioner and the executive commissioner, as adopted by rule.

(b) To the extent allowed by federal law, the executive commissioner shall adopt rules:

(1) requiring that the on-site survey process through which the department certifies ICF-MR facilities and Home and Community-based Services (HCS) providers includes a requirement that the department assign each provider, as a result of an on-site survey, a rating of "excellent," "good," or "average or below average"; and

(2) prescribing a schedule for follow-up on-site surveys under which:

(A) a provider who receives a rating of "excellent" on the most recent survey conducted is subject to another survey not earlier than three years after the date the provider receives the rating;

(B) a provider who receives a rating of "good" on the most recent survey conducted is subject to another survey not earlier than two years after the date the provider receives the rating; and

(C) a provider who receives a rating of "average or below average" on the most recent survey conducted is subject to another survey not earlier than one year after the date the provider receives the rating.

SECTION \_\_\_\_\_. Section 161.076, Human Resources Code, as added by Chapter 284 (**SB 643**), Acts of the 81st Legislature, Regular Session, 2009, is amended to read as follows:

Sec. 161.076. ON-SITE SURVEYS OF CERTAIN PROVIDERS. Subject to rules adopted under Section 161.073(b), at [At] least every three years [12 months], the department shall conduct an unannounced on-site survey in each group home, other than a foster home, at which a Home and Community-based Services (HCS) provider provides services.

The amendments were read.

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

The motion prevailed without objection.

The President asked if there were any motions to instruct the conference committee on **SB 23** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate: Senators Nelson, Chair; Deuell, Hinojosa, Shapiro, and Williams.

#### SENATE BILL 655 WITH HOUSE AMENDMENTS

Senator Hegar called **SB 655** from the President's table for consideration of the House amendments to the bill.

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

#### Amendment

Amend **SB 655** by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to the continuation, functions, and name of the Railroad Commission of Texas.

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

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

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

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

Sec. 81.001. DEFINITIONS. In this chapter:

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

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

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

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

(b) A reference in law to:

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

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

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

Sec. 81.01001. SUNSET PROVISION. The Texas Oil and Gas ~~Railroad~~ Commission ~~[of Texas]~~ is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished September 1, 2023 ~~[2011]~~.

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

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

(b) Commissioners serve staggered terms of six years, with the term of one commissioner expiring December 31 of each even-numbered year.

(c) The commissioner elected at the general election in 2012 and every sixth year after that year serves as the chairman of the commission.

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

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

Sec. 81.01002. DUTIES OF CHAIRMAN. The ~~[commissioners shall elect one commissioner as the]~~ chairman of the commission shall ensure that the commission executes and implements the commission's administrative duties and responsibilities.

Sec. 81.01004. PERSONAL FINANCIAL DISCLOSURE, STANDARDS OF CONDUCT, ~~[AND]~~ CONFLICT OF INTEREST, AND DISCLOSURE OF REASON FOR RECUSAL. (a) A commissioner is subject to the provisions of Chapter 572, Government Code, that apply to elected officers, including the requirements governing personal financial statements, standards of conduct, and conflicts of interest.

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

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

Sec. 81.010045. CERTAIN POLITICAL CONTRIBUTIONS RESTRICTED. (a) In this section, "political contribution" has the meaning assigned by Section 251.001, Election Code.

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

(c) A commissioner may not knowingly accept a political contribution given or offered with the intention that it be used in connection with a campaign for the office of commissioner, except:

(1) beginning one year before the date of the next general election at which any commissioner's office is filled; and

(2) ending on the 30th day before the date the first regular legislative session after that general election convenes.

(d) A person other than a commissioner may not knowingly accept a political contribution given or offered with the intention that it be used in connection with a campaign for the office of commissioner, except:

(1) during the period:

(A) beginning one year before the date of the next general election at which any commissioner's office is filled; and

(B) ending on the 30th day before the date the first regular legislative session after that general election convenes; or

(2) during the period beginning on the date a vacancy in the office of commissioner occurs and ending on the date that vacancy is filled.

Sec. 81.010046. AUTOMATIC RESIGNATION. If a person who is a member of the commission announces the person's candidacy, or in fact becomes a candidate, in any general, special, or primary election for any office of profit or trust under the laws of this state or the United States other than the office of commissioner at any time when the unexpired term of the office then held by the person exceeds one year, that announcement or that candidacy constitutes an automatic resignation of the office of commissioner.

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

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

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

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

Sec. 81.017. ADDITIONAL EMPLOYEES. The commission may employ personnel necessary to perform its duties [~~gaugers, inspectors, investigators, supervisors, and clerical employees. These employees shall include a chief engineer, chief petroleum engineer, and an administrative chief, and their salaries shall be paid in the amounts provided in the General Appropriations Act~~].

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

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

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

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

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

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

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

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

(4) the degree of culpability;

(5) the demonstrated good faith of the person charged; and

(6) any other factor the commission considers relevant.

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

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

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

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

Sec. 81.065. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION POLICY. (a) The commission shall develop and implement a policy to encourage the use of:

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

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

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

(c) The commission shall:

- (1) coordinate the implementation of the policy adopted under Subsection (a);
- (2) provide training as needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and
- (3) collect data concerning the effectiveness of those procedures.
- (d) The commission's alternative dispute resolution procedures do not apply to the resolution of an informal complaint described by Section 81.058 or filed under Section 85.065.

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

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

- (1) a specific process for classifying violations based on:
  - (A) the seriousness of any pollution resulting from the violation; and
  - (B) any hazard to the health or safety of the public; and
- (2) standards to provide guidance to commission employees on which violations may be dismissed once the permittee comes into compliance and which violations must be forwarded for enforcement.

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

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

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

(c) The fund consists of:

- (1) proceeds from bonds and other financial security required by this chapter and benefits under well-specific plugging insurance policies described by Section 91.104(c) that are paid to the state as contingent beneficiary of the policies, subject to the refund provisions of Section 91.1091, if applicable;
- (2) private contributions, including contributions made under Section 89.084;
- (3) expenses collected under Section 89.083;
- (4) fees imposed under Section 85.2021;
- (5) costs recovered under Section 91.457 or 91.459;
- (6) proceeds collected under Sections 89.085 and 91.115;



- (7) interest earned on the funds deposited in the fund;  
(8) oil and gas waste hauler permit application fees collected under Section 29.015, Water Code;  
(9) costs recovered under Section 91.113(f);  
(10) hazardous oil and gas waste generation fees collected under Section 91.605;  
(11) oil-field cleanup regulatory fees on oil collected under Section 81.116;  
(12) oil-field cleanup regulatory fees on gas collected under Section 81.117;  
(13) fees for a reissued certificate collected under Section 91.707;  
(14) fees collected under Section 91.1013;  
(15) fees collected under Section 89.088;  
(16) fees collected under Section 91.142;  
(17) fees collected under Section 91.654;  
(18) costs recovered under Sections 91.656 and 91.657;  
(19) fees collected under Section 81.0521;  
(20) fees collected under Sections 89.024 and 89.026;  
(21) legislative appropriations; and  
(22) any surcharges collected under Section 81.071.

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

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

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

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

- (1) orphaned wells to be plugged with state-managed funds;  
(2) abandoned sites to be investigated, assessed, or cleaned up with state funds; and  
(3) surface locations to be remediated.

(b) The commission shall provide quarterly reports to the Legislative Budget Board and the Oil and Gas Regulation and Cleanup Fund Advisory Committee that include:

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

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

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

(C) the balance of the fund;

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

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

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

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

(2) any additional information requested in writing by the Legislative Budget Board or the Oil and Gas Regulation and Cleanup Fund Advisory Committee.

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

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

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

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

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

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

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

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

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

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

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

Sec. 81.070. OIL AND GAS REGULATION AND CLEANUP FUND ADVISORY COMMITTEE. (a) In this section, "committee" means the Oil and Gas Regulation and Cleanup Fund Advisory Committee.

(b) The committee is composed of 10 members as follows:

(1) one member of the senate appointed by the lieutenant governor;

(2) the presiding officer of the house committee with primary jurisdiction over matters affecting energy resources;

(3) one public member appointed by the governor;

(4) one member appointed by the lieutenant governor from the academic field of geology or economics;

(5) one member appointed by the speaker of the house of representatives from the academic field of geology or economics; and

(6) the executive officer, or a person designated by the executive officer, of each of the following organizations:

(A) the Texas Oil & Gas Association;

(B) the Texas Independent Producers and Royalty Owners Association;

(C) the Panhandle Producers & Royalty Owners Association;

(D) the Permian Basin Petroleum Association; and

(E) the Texas Alliance of Energy Producers.

(c) An appointed member of the committee serves at the will of the authority that appointed the member.

(d) The committee shall:

(1) meet with the commission at the call of the chairman of the commission; and

(2) monitor the effectiveness of the oil and gas regulation and cleanup fund, including by reviewing the reports submitted to the committee under Sections 81.069(b) and (c).

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

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

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

(B) the amount of money spent from the fund;

(C) the balance of the fund;

(D) the number of wells plugged with money from the fund;

(E) the number of sites remediated with money from the fund; and

(F) the number of wells abandoned; and

(2) any additional information or data requested in writing by the committee.

(f) The committee may:

(1) submit to the commission comments of the committee regarding proposed rules relating to the oil and gas regulation and cleanup fund; and

(2) request reports and other information from the commission as necessary to implement this section.

(g) Not later than November 15 of each even-numbered year, the committee shall report to the governor, lieutenant governor, and speaker of the house of representatives on the committee's activities. The report must include:

(1) an analysis of any problems with the administration of the oil and gas regulation and cleanup fund; and

(2) recommendations for any legislation needed to address any problems identified with the administration of the fund or otherwise needed to further the purposes of the fund.

Sec. 81.071. IMPOSITION OF SURCHARGES ON FEES. (a) Except as provided by Subsection (b), the commission by rule shall provide for the imposition of reasonable surcharges as necessary on fees imposed by the commission that are required to be deposited to the credit of the oil and gas regulation and cleanup fund in amounts sufficient to enable the commission to recover the costs of performing the functions specified by Section 81.068 from those fees and surcharges.

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

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

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

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

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

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

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

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

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

SECTION 13. Section 81.115, Natural Resources Code, is amended to read as follows:

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

SECTION 14. Sections 81.116(d) and (e), Natural Resources Code, are amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) the documented well-plugging costs; or

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

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

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

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

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

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

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

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

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

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

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

(j) If the commission finds that a claim is valid in whole or in part, the commission shall pay the valid portion of the claim from the suspended amount in the oil and gas regulation and [oil-field] cleanup fund not later than the 30th day after the date of the commission's decision. If the commission finds that a claim is invalid in whole or in part, the commission shall continue to suspend in the oil and gas regulation and [oil-field] cleanup fund an amount equal to the invalid portion of the claim until the period during which the commission's decision may be appealed has

expired or, if appealed, during the period the case is under judicial review. If on appeal the district court finds the claim valid in whole or in part, the commission shall pay the valid portion of the claim from the suspended amount in the oil and gas regulation and [oil-field] cleanup fund not later than 30 days after the date the court's judgment becomes unappealable. On the date the commission's decision is not subject to judicial review, the commission shall release from the suspended amount in the oil and gas regulation and [oil-field] cleanup fund the amount of the claim held to be invalid.

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

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

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

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

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

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

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

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

(a) A person applying for or acting under a commission permit to store, handle, treat, reclaim, or dispose of oil and gas waste may be required by the commission to maintain a performance bond or other form of financial security conditioned that the permittee will operate and close the storage, handling, treatment, reclamation, or disposal site in accordance with state law, commission rules, and the permit to operate the site. However, this section does not authorize the commission to require a bond or other form of financial security for saltwater disposal pits, emergency saltwater storage pits (including blow-down pits), collecting pits, or skimming pits provided that such pits are used in conjunction with the operation of an individual oil or gas

lease. Subject to the refund provisions of Section 91.1091 [~~of this code~~], proceeds from any bond or other form of financial security required by this section shall be placed in the oil and gas regulation and [oil field] cleanup fund. Each bond or other form of financial security shall be renewed and continued in effect until the conditions have been met or release is authorized by the commission.

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

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

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

(2) the responsible person is unknown, cannot be found, or has no assets with which to control or clean up the oil and gas wastes or other substances or materials; or

(3) the oil and gas wastes or other substances or materials are causing the pollution of surface or subsurface water.

(f) If the commission conducts a site investigation or environmental assessment or controls or cleans up oil and gas wastes or other substances or materials under this section, the commission may recover all costs incurred by the commission from any person who was required by law, rules adopted by the commission, or a valid order of the commission to control or clean up the oil and gas wastes or other substances or materials. The commission by order may require the person to reimburse the commission for those costs or may request the attorney general to file suit against the person to recover those costs. At the request of the commission, the attorney general may file suit to enforce an order issued by the commission under this subsection. A suit under this subsection may be filed in any court of competent jurisdiction in Travis County. Costs recovered under this subsection shall be deposited to the credit of the oil and gas regulation and [oil field] cleanup fund.

SECTION 29. Section 91.264(c), Natural Resources Code, is amended to read as follows:

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

SECTION 30. Section 91.457(b), Natural Resources Code, is amended to read as follows:

(b) If a person ordered to close a saltwater disposal pit under Subsection (a) [~~of this section~~] fails or refuses to close the pit in compliance with the commission's order and rules, the commission may close the pit using money from the oil and gas regulation and [oil field] cleanup fund and may direct the attorney general to file suits in any courts of competent jurisdiction in Travis County to recover applicable penalties and the costs incurred by the commission in closing the saltwater disposal pit.



SECTION 31. Section 91.459(c), Natural Resources Code, is amended to read as follows:

(c) Any ~~penalties or~~ costs recovered by the attorney general under this subchapter shall be deposited in the oil and gas regulation and [oil field] cleanup fund.

SECTION 32. Section 91.605(e), Natural Resources Code, is amended to read as follows:

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

SECTION 33. Section 91.654(e), Natural Resources Code, is amended to read as follows:

(e) Fees collected under this section shall be deposited to the credit of the oil and gas regulation and [oil field] cleanup fund [under Section 91.111].

SECTION 34. Section 91.707(b), Natural Resources Code, is amended to read as follows:

(b) Fees collected under this section shall be deposited to the credit of the oil and gas regulation and [oil field] cleanup fund.

SECTION 35. Subchapter B, Chapter 102, Natural Resources Code, is amended by adding Sections 102.0125 and 102.0165 to read as follows:

Sec. 102.0125. WITHDRAWAL AND REFILEING OF APPLICATION. (a) The commission by rule shall:

(1) provide procedures requiring an interested owner who applies to the commission for the pooling of mineral interests to give notice to the commission before withdrawing the application if a hearing on the application has been scheduled; and

(2) require an applicant who refiles an application that was withdrawn without proper notice as required by rules adopted under Subdivision (1) to pay a filing fee that exceeds the amount of any fee required for filing the initial application.

(b) Rules adopted under Subsection (a)(1) must specify the deadline for giving notice of withdrawal of the application before the hearing is held.

Sec. 102.0165. LOCATION OF HEARING. (a) At the request of an interested party, the commission may hold the hearing on the application in person or by telephone at a location in the vicinity of the proposed unit.

(b) The commission may contract with another state agency to hold hearings on applications for pooling of interests into a unit under the provisions of this chapter in person or by telephone at field offices of that agency.

SECTION 36. Section 117.012(a), Natural Resources Code, is amended to read as follows:

(a) The commission shall adopt rules that include:

(1) safety standards for and practices applicable to the intrastate transportation of hazardous liquids or carbon dioxide by pipeline and intrastate hazardous liquid or carbon dioxide pipeline facilities; and

(2) [~~including~~] safety standards related to the prevention of damage to interstate and intrastate hazardous liquid or carbon dioxide pipeline facilities [~~such a facility~~] resulting from the movement of earth by a person in the vicinity of such a [~~the~~] facility, other than movement by tillage that does not exceed a depth of 16 inches.

SECTION 37. Section 211.033(q), Natural Resources Code, is amended to read as follows:

(q) A penalty collected under this section shall be remitted to the comptroller for [~~the~~] deposit to the credit of the general revenue [~~oil field cleanup~~] fund.

SECTION 38. Section 52.092(c), Election Code, is amended to read as follows:

(c) Statewide offices of the state government shall be listed in the following order:

- (1) governor;
- (2) lieutenant governor;
- (3) attorney general;
- (4) comptroller of public accounts;
- (5) commissioner of the General Land Office;
- (6) commissioner of agriculture;
- (7) chairman of the Texas Oil and Gas Commission;
- (8) [~~railroad~~] commissioner of the Texas Oil and Gas Commission;
- (9) [~~8~~] chief justice, supreme court;
- (10) [~~9~~] justice, supreme court;
- (11) [~~10~~] presiding judge, court of criminal appeals;
- (12) [~~11~~] judge, court of criminal appeals.

SECTION 39. Section 756.126, Health and Safety Code, is amended to read as follows:

Sec. 756.126. SAFETY STANDARDS AND BEST PRACTICES. The Texas Oil and Gas [Railroad] Commission [~~of Texas~~] shall adopt and enforce safety standards and best practices, including those described by 49 U.S.C. Section 6105 et seq., relating to the prevention of damage by a person to a facility, including an interstate or intrastate pipeline facility, under the jurisdiction of the commission.

SECTION 40. Section 121.201(a), Utilities Code, is amended to read as follows:

(a) The railroad commission may:

(1) by rule prescribe or adopt safety standards for the transportation of gas and for gas pipeline facilities, including safety standards related to the prevention of damage to an interstate or intrastate gas pipeline [~~such a~~] facility resulting from the movement of earth by a person in the vicinity of the facility, other than movement by tillage that does not exceed a depth of 16 inches;

(2) by rule require an operator that does not file operator organization information under Section 91.142, Natural Resources Code, to provide the information to the commission in the form of an application;

(3) by rule require record maintenance and reports;

(4) inspect records and facilities to determine compliance with safety standards prescribed or adopted under Subdivision (1);

(5) make certifications and reports from time to time;

(6) seek designation by the United States secretary of transportation as an agent to conduct safety inspections of interstate gas pipeline facilities located in this state; and

(7) by rule take any other requisite action in accordance with 49 U.S.C. Section 60101 et seq., or a succeeding law.

SECTION 41. Section 29.015, Water Code, is amended to read as follows:

Sec. 29.015. APPLICATION FEE. With each application for issuance, renewal, or material amendment of a permit, the applicant shall submit to the railroad commission a nonrefundable fee of \$100. Fees collected under this section shall be deposited in the oil and gas regulation and [oil field] cleanup fund.

SECTION 42. The following provisions of the Natural Resources Code are repealed:

- (1) Section 91.111;
- (2) Section 91.112;
- (3) Section 91.1135; and
- (4) Subchapter I, Chapter 113.

SECTION 43. On the effective date of this Act:

(1) the oil-field cleanup fund and the alternative fuels research and education fund are abolished;

(2) any money remaining in the oil-field cleanup fund is transferred to the oil and gas regulation and cleanup fund;

(3) any money remaining in the alternative fuels research and education fund is transferred to the undedicated portion of the general revenue fund;

(4) any claim against the oil-field cleanup fund is transferred to the oil and gas regulation and cleanup fund;

(5) any claim against the alternative fuels research and education fund is transferred to the undedicated portion of the general revenue fund;

(6) any amount required to be deposited to the credit of the oil-field cleanup fund shall be deposited to the credit of the oil and gas regulation and cleanup fund; and

(7) any amount required to be deposited to the credit of the alternative fuels research and education fund shall be deposited to the credit of the undedicated portion of the general revenue fund.

SECTION 44. (a) Effective January 1, 2012:

(1) the name of the Railroad Commission of Texas is changed to the Texas Oil and Gas Commission, and all powers, duties, rights, and obligations of the Railroad Commission of Texas are the powers, duties, rights, and obligations of the Texas Oil and Gas Commission;

(2) a member of the Railroad Commission of Texas is a member of the Texas Oil and Gas Commission;

(3) the chairman of the Railroad Commission of Texas is the chairman of the Texas Oil and Gas Commission; and

(4) any appropriation to the Railroad Commission of Texas is an appropriation to the Texas Oil and Gas Commission.

(b) Effective January 1, 2012:

(1) a reference in law to the Railroad Commission of Texas is a reference to the Texas Oil and Gas Commission; and

(2) a reference in law to a railroad commissioner or a member of the Railroad Commission of Texas is a reference to a member of the Texas Oil and Gas Commission.

(c) The Texas Oil and Gas Commission is the successor to the Railroad Commission of Texas in all respects. All personnel, equipment, data, documents, facilities, contracts, items, other property, rules, decisions, and proceedings of or involving the Railroad Commission of Texas are unaffected by the change in the name of the agency.

(d) The Railroad Commission of Texas shall adopt a timetable for phasing in the change of the agency's name so as to minimize the fiscal impact of the name change. Until January 1, 2012, to allow for phasing in the change of the agency's name and in accordance with the timetable established as required by this section, the agency may perform any act authorized by law for the Railroad Commission of Texas as the Railroad Commission of Texas or as the Texas Oil and Gas Commission. Any act of the Railroad Commission of Texas acting as the Texas Oil and Gas Commission on or after the effective date of this Act and before January 1, 2012, is an act of the Railroad Commission of Texas.

(e) The change in law made by this Act does not affect the election of the chairman of the Texas Oil and Gas Commission before the general election in 2012.

(f) The office of chairman of the Texas Oil and Gas Commission exists for purposes of the primary and general election in 2012.

SECTION 45. This Act takes effect September 1, 2011.

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

Amend **CSSB 655** (house committee printing) in SECTION 7 of the bill, in added Section 81.010046, Natural Resources Code, as follows:

(1) Between "office of commissioner" and "at" (page 4, line 20), insert "or chairman of the commission".

(2) Strike "of commissioner." (page 4, line 23) and substitute "then held by the person.".

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

Amend **CSSB 655** (house committee printing) in SECTION 12 of the bill, in added Section 81.065(d), Natural Resources Code (page 8, line 8), by striking "described by Section 81.058 or filed under Section" and substituting "under Section 81.059 or".

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

Amend **CSSB 655** (house committee printing) as follows:

(1) In SECTION 7 of the bill, in added Section 81.010045(a), Natural Resources Code (page 3, lines 16 and 17), strike "political contribution" has the meaning" and substitute "political committee" and "political contribution" have the meanings".

(2) In SECTION 7 of the bill, in added Section 81.010045, Natural Resources Code (page 4, between lines 15 and 16), insert the following:

(e) A commissioner may not knowingly accept a political contribution given or offered with the intention that it be used in connection with a campaign for the office of commissioner from:

(1) a person who in the 45-day period preceding the date the contribution was offered or given had business before the commissioners; or

(2) a political committee affiliated with a person described by Subdivision (1).

### **Floor Amendment No. 8**

Amend Floor Amendment No. 7 by Gallego to **CSSB 655** on page 1 by striking lines 10-17 and substituting the following:

In SECTION 7 of the bill, at the end of added Section 81.010045, Natural Resources Code (page 4, between lines 15 and 16), insert the following:

(e) A commissioner may not knowingly accept a political contribution from a party, or a political committee affiliated with the party, in a contested case before the commission during the period from the date notice of the hearing in the contested case is given until the thirtieth day after the date the decision in the contested case is rendered.

### **Floor Amendment No. 9**

Amend **CSSB 655** (house committee printing), as follows:

(1) On page 3, line 26, strike "general" and insert "primary".

(2) On page 4, line 8, strike "general" and insert "primary".

### **Floor Amendment No. 10**

Amend **CSSB 655** (house committee printing) in SECTION 10 of the bill, in amended Section 81.0531(d), Natural Resources Code, by striking Subdivisions (5) and (6) of the subsection (page 6, lines 19-22) and substituting the following:

(5) the demonstrated good faith of the person charged; [~~and~~

(6) the economic benefit gained through the violation; and

(7) any other factor the commission considers relevant.

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

Amend Floor Amendment No. 10 (p. 88 of house prefiled amendments to **CSSB 655**) as follows:

On line 7, strike "the" and substitute "a willful".

### **Floor Amendment No. 17**

Amend **CSSB 655** by adding the following appropriately numbered section to read as follows:

(1) SECTION \_\_\_\_: Section 81.0593. ELECTRONIC POSTING OF TAX EXEMPTION, TAX RATE REDUCTION OR TAX CREDIT. The commission shall post in a prominent place on the agency's website each certification letter issued by the commission that may be used for the purpose of qualifying or applying for a tax exemption, tax rate reduction, or tax credit with the Comptroller of Public Accounts. The commission shall post the certification letters issued prior to the effective date of this Act on the commission's website not later than August 31, 2012.

**Floor Amendment No. 18**

Amend Amendment No. 17 by Gallego to **CSSB 655** (house committee printing) by striking the text of the amendment and substituting the following:

Amend **CSSB 655** (house committee printing) as follows:

(1) In the recital to SECTION 12 of the bill (page 7, line 10), strike "and 81.071" and substitute "81.071, and 81.072".

(2) In SECTION 12 of the bill, following added Section 81.071, Natural Resources Code (page 17, between lines 18 and 19), insert the following:

Sec. 81.072. ELECTRONIC POSTING OF CERTIFICATES REGARDING SEVERANCE TAX EXEMPTIONS, RATE REDUCTIONS, OR CREDITS. The commission shall post in a prominent place on any publicly accessible Internet website maintained by the commission each certificate issued by the commission that may be used for the purpose of qualifying, or applying to the comptroller, for a severance tax exemption, rate reduction, or credit.

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

SECTION \_\_\_\_\_. Not later than August 31, 2012, the Railroad Commission of Texas or the Texas Oil and Gas Commission shall post in the manner required by Section 81.072, Natural Resources Code, as added by this Act, the certificates described by that section that were issued by the Railroad Commission of Texas before the effective date of this Act.

**Floor Amendment No. 20**

Amend **CSSB 655** by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

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

Sec. 91.118. PERMITS REQUIRED FOR LAND APPLICATION OF CERTAIN WASTE. (a) The commission by rule shall regulate through the issuance of permits the use of land application for the treatment and disposal of oil field fluids or oil and gas wastes.

(b) Rules adopted under this section:

(1) must consider the amount of land available to the applicant for the land application of fluids or wastes and any applicable federal or state law if the rules limit the number of permits that may be issued to an applicant;

(2) may not prohibit the issuance of a permit to an applicant for the land application of fluids or wastes on a tract based on its proximity to another tract for which a permit authorizing the land application of fluids or wastes has been issued if the surface ownership of the tracts is different; and

(3) must permit the land application of fluids or wastes at the same location annually if:

(A) the fluids or wastes are generated by only one operator and are derived from:

(i) the same lease, if the fluids or wastes are derived from one or more oil wells; or

(ii) the same general area or field, if the fluids or wastes are derived from one or more gas wells; and

(B) the water base drilling fluid and cuttings are:

(i) from not more than five wells, if the volume of the water base drilling fluid and cuttings does not exceed 30,000 barrels; or

(ii) from one well, if the volume of the water base drilling fluid and cuttings exceeds 30,000 barrels.

(b) Not later than December 1, 2011, the Railroad Commission of Texas shall adopt rules as required by Section 91.118, Natural Resources Code, as added by this section.

(c) This section takes effect September 1, 2011.

### **Floor Amendment No. 21**

Amend **CSSB 655** by adding the following appropriately numbered section and renumbering subsequent sections accordingly:

SECTION \_\_\_\_ Subchapter E, Chapter 91, Natural Resources Code, is amended by adding Section 91.1421 to read as follows:

Sec. 91.1421. ANNUAL REPORT OF GROUNDWATER USE.

(a) In this section, "groundwater" has the meaning assigned by Section 36.001, Water Code.

(b) The Commission shall collect information on the annual use of groundwater used in the exploration and development of oil and gas resources on a regional and statewide basis.

(c) In collecting the information, the Commission shall allow for estimates or ranges of use to ease the collection of information where actual water use information is not available.

(d) The Commission may collect information from any source to aid in its collection including actual industries or groundwater conservation districts.

(e) The Commission shall share this information with the Texas Water Development Board for use in the statewide water planning process.

### **Floor Amendment No. 22**

Amend Floor Amendment No. 21 by Farrar (page 104 of the prefilled amendment packet) to **CSSB 655**, on page 1 of the amendment by striking lines 10-21, and substituting the following:

(b) The commission shall require an applicant for a permit for a well for oil or gas exploration or development to include an estimated total amount of groundwater to be used to operate the well annually.

(c) Upon the approval of a permit for a well for oil or gas exploration or development, the commission shall notify the Texas Water Development Board and the groundwater conservation district in which the well is located, if the well is located in a groundwater conservation district. The notice must include:

(1) the location of the well; and

(2) the estimated amount of water to be used by the well.

(d) The commission shall adopt rules to implement this section.

**Floor Amendment No. 23**

Amend **CSSB 655** (house committee report) by adding the following appropriately numbered SECTION and renumbering the subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Subchapter C, Chapter 85, Natural Resources Code, is amended by adding Section 85.066 to read as follows:

Sec. 85.066. PROCEDURE FOR OBTAINING EXCEPTION FOR CERTAIN GAS WELLS FROM COMMISSION WELL SPACING REQUIREMENTS. (a) This section applies only to a gas well located in a county that is located wholly or partly above a hydrocarbon-producing geological formation that underlies all or part of two counties:

(1) that are adjacent to one another; and

(2) each of which has a population of more than 1.8 million.

(b) This section shall be construed broadly to accomplish its purposes.

(c) An applicant for an exception to a well spacing requirement adopted by the commission by rule must provide a notice in plain language to each person who would be affected by the exception to the rule that:

(1) identifies by means of a drawing prepared by a surveyor the path of the proposed well bore and explains the method that will be used to produce gas from the area surrounding the well bore, including the area adjacent to the property on which the well is located, if applicable;

(2) explains that the person receiving the notice has the right to object to the application and request a hearing on the application and outlines the procedure for the hearing, including the burden of proof and the standard for granting the exception; and

(3) explains that not objecting to the applicant's request may result in:

(A) the depletion of gas from the property of the person receiving the notice;

(B) a loss of compensation for the person's gas; and

(C) the transfer of the person's gas to the operator of the well or other mineral owners.

(d) The commission must hold a hearing on the application before granting the exception. The hearing must be held in a county described by Subsection (a).

(e) The applicant must present in the hearing evidence:

(1) that the exception is necessary to most efficiently produce the gas and is not merely for the convenience of the operator of the well;

(2) of the absence of feasible alternatives to the exception;

(3) that every effort was made to notify each person affected by the exception; and

(4) of the amount of gas that would be depleted from property owned by persons affected by the exception if the exception were granted, the amount of compensation those persons would likely receive if their interests in the gas were pooled, and the persons to whom the gas would be transferred if the exception were granted.

(f) the applicant has the burden of proof on each issue in the hearing.



SECTION \_\_\_\_\_. The change in law made by this Act applies only to the application for an exception to a well spacing requirement adopted by the Railroad Commission of Texas by rule that is filed with the commission on or after the effective date of this Act. An application filed with the commission before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

#### **Floor Amendment No. 24**

Amend Amendment No. 23 by Anchia to **CSSB 655** (page 96, prefiled amendment packet) by striking added Sections 85.066(d), (e), and (f), Natural Resources Code, and substituting the following:

(d) Any hearing on the application held by the commission before granting the exemption must be held in a county described by Subsection (a).

#### **Floor Amendment No. 25**

Amend **CSSB 655** (house committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 81.051(a), Natural Resources Code, is amended to read as follows:

(a) The commission has jurisdiction over all:

(1) common carrier pipelines defined in Section 111.002 of this code in Texas;

(2) saltwater pipelines in Texas;

(3) oil and gas wells in Texas;

(4) ~~(3)~~ persons owning or operating pipelines in Texas, including saltwater pipelines; and

(5) ~~(4)~~ persons owning or engaged in drilling or operating oil or gas wells in Texas.

#### **Floor Amendment No. 26**

Amend Floor Amendment No. 25 by Anchia to **CSSB 655** (page 94 of the prefiled amendments packet) by striking lines 6-14 and substituting:

(a) The commission has jurisdiction over all:

(1) common carrier pipelines defined in Section 111.002 of this code in Texas;

(2) pipelines used to transport saltwater oil and gas waste, as defined by Section 91.1011, in Texas;

(3) oil and gas wells in Texas;

(4) ~~(3)~~ persons owning or operating pipelines in Texas, including pipelines used to transport saltwater oil and gas waste, as defined by Section 91.1011; and

(5) ~~(4)~~ persons owning or engaged in drilling or operating oil or gas wells in Texas.

#### **Floor Amendment No. 27**

Amend Floor Amendment No. 25 by Anchia to **CSSB 655** (page 94 of the prefiled amendments packet) by striking lines 6-14 and substituting:

(a) The commission has jurisdiction over all:

(1) common carrier pipelines defined in Section 111.002 of this code in Texas;

(2) pipelines used to transport saltwater oil and gas waste, as defined by Section 91.1011, in Texas;

(3) oil and gas wells in Texas;

(4) ~~(3)~~ persons owning or operating pipelines in Texas, including pipelines used to transport saltwater oil and gas waste, as defined by Section 91.1011; and

(5) ~~(4)~~ persons owning or engaged in drilling or operating oil or gas wells in Texas.

### Floor Amendment No. 28

Amend **CSSB 655** (house committee report) by adding the following appropriately numbered SECTIONS and renumbering the subsequent SECTIONS of the bill accordingly:

Section \_\_\_\_ Chapter 91, Natural Resources Code, is amended by adding Subchapter S to read as follows:

#### SUBCHAPTER S. SALTWATER PIPELINES

Sec. 91.901. DEFINITIONS. In this subchapter:

(1) "Saltwater pipeline facility" means a pipeline facility that conducts water containing salt and other substances produced during drilling or operating natural gas and other types of wells to a disposal or recycling facility.

(2) "Saltwater pipeline operator" means a person who owns, installs, manages, operates, leases, or controls a saltwater pipeline facility.

Sec. 91.902 AUTHORITY TO LAY AND MAINTAIN SALTWATER PIPELINES ON PUBLIC ROAD. A saltwater pipeline operator may install, maintain, and operate a saltwater pipeline facility through, under, along, across, or over a public road only if:

(1) the saltwater pipeline facility complies with applicable:

(A) saltwater safety regulations adopted by the commission relating to saltwater pipeline facilities;

(B) federal regulations relating to saltwater pipeline facilities; and

(C) rules adopted by the commission and the Texas Transportation Commission relating to the horizontal or vertical placement of the pipeline facility; and

(2) the saltwater pipeline operator ensures that the public road and associated facilities are promptly restored to their former condition of usefulness after the installation or maintenance of the pipeline facility is complete.

Sec. 91.903. RELOCATION OF SALTWATER PIPELINE FACILITY FOR CERTAIN PURPOSES. (a) The Texas Transportation Commission may require a saltwater pipeline operator to relocate a saltwater pipeline facility at a cost of the saltwater pipeline operator to accommodate construction or expansion of a public road unless the saltwater pipeline operator has a property interest in the land occupied by the saltwater pipeline facility to be relocated.

(b) Upon entering into any construction contract requiring the relocation of a saltwater pipeline facility, the Texas Transportation Commission shall give to the saltwater pipeline operator 30 days' written notice of the requirement. The saltwater

pipeline operator shall not be required to move the saltwater pipeline facility prior to the expiration of the 30 day period. The notice must identify the saltwater pipeline facility to be relocated and indicate the approximate location on the new right-of-way where the saltwater pipeline operator may place the saltwater pipeline facility.

Sec. 91.904. CONSTRUCTION OF SUBCHAPTER. This subchapter shall not be construed to:

(1) limit the authority of a saltwater pipeline facility to use a public right-of-way under any other law; or

(2) require a saltwater pipeline operator to utilize a public right-of-way in lieu of an alternative route selected by the operator; or

(3) affect the authority of a municipality to:

(A) regulate the use of a public right-of-way by a saltwater pipeline operator under any other law;

(B) require payment of any applicable charge under Subsection 182.025 and 182.036, Tax Code.

Sec. 91.906. RULES. The commission shall adopt rules to implement this subchapter.

### **Floor Amendment No. 29**

Amend **CSSB 655** (house committee printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering the subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Subtitle B, Title 3, Natural Resources Code, is amended by adding Chapter 93 to read as follows:

#### CHAPTER 93. REGULATION OF HYDRAULIC FRACTURING

##### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 93.001. DEFINITIONS. In this chapter, unless the context otherwise requires:

(1) "Additive" means any substance or combination of substances found in a hydraulic fracturing fluid, including a proppant, that is added to a base fluid in the context of a hydraulic fracturing treatment.

(2) "Base fluid" means the base fluid type, such as water or nitrogen foam, used in a particular hydraulic fracturing treatment.

(3) "Chemical Abstracts Service" or "CAS" means the chemical registry that is the authoritative collection of disclosed chemical substance information.

(4) "Chemical constituent" means a discrete chemical with its own specific name or identity, such as a CAS number, that is contained in an additive.

(5) "Commission" means the Texas Oil and Gas Commission.

(6) "Hydraulic fracturing fluid" means the fluid used to perform a particular hydraulic fracturing treatment and includes the applicable base fluid and all additives.

(7) "Hydraulic fracturing treatment" means the stimulation of a well by the forceful application of hydraulic fracturing fluid into the relevant geological formation for the purpose of creating fractures in the formation in order to facilitate production of hydrocarbons.

(8) "Operator" means the person authorized to conduct operations on a well.

(9) "Proppant" means sand or another natural or man-made inert material that is used in a hydraulic fracturing treatment to prevent artificially created or enhanced fractures from closing once the treatment is completed.

(10) "Trade secret" means any confidential formula, pattern, process, device, information, or compilation of information that is used in a person's business and that gives the person an opportunity to obtain an advantage over competitors that do not know or use it.

(11) "Well" means a hydrocarbon production well.

(12) "Well completion report" means the report an operator is required to file with the commission following the completion or recompletion of a well, if applicable.

Sec. 93.002. RULES. The commission shall adopt any rules necessary to carry out its powers and duties under this chapter.

Sec. 93.003. REPORT. Not later than January 1 of each year, the commission shall submit to the legislature a report concerning the effects of hydraulic fracturing treatments on environmental quality, including water quality. The report must address:

(1) the effects of hydraulic fracturing treatments on the quality of the water in aquifers;

(2) the total amount and types of chemicals used in hydraulic fracturing treatments;

(3) the geographic location of the wells on which hydraulic fracturing treatments are performed;

(4) the rates of asthma, including childhood asthma, in areas in which wells on which hydraulic fracturing treatments are performed and wastewater disposal sites associated with those wells are located;

(5) the routes used to transport to an injection site wastewater associated with wells on which hydraulic fracturing treatments are performed and the amount of any wastewater spilled along those routes; and

(6) the presence of any radioactivity or radioactive elements in wastewater associated with wells on which hydraulic fracturing treatments are performed.

[Sections 93.004-93.050 reserved for expansion]

#### SUBCHAPTER B. DISCLOSURE OF COMPOSITION OF HYDRAULIC FRACTURING FLUIDS

Sec. 93.051. INFORMATION SUBMITTED CONSIDERED PUBLIC INFORMATION; POSTING ON INTERNET WEBSITE. Notwithstanding any other law, unless the information is entitled to be withheld as a trade secret under Section 93.052(b) or (c)(4) or 93.053(c), information submitted to the commission under Section 93.052 or 93.053 is public information, and the commission shall post the information on a publicly accessible Internet website.

Sec. 93.052. SERVICE COMPANY DISCLOSURES. (a) A person performing hydraulic fracturing treatments in this state shall disclose to the commission and maintain an updated master list of:

(1) all base fluids to be used by the person during any hydraulic fracturing treatment in this state;

(2) all additives to be used by the person during any hydraulic fracturing treatment in this state; and

(3) all chemical constituents to be used by the person in any hydraulic fracturing treatment in this state and their associated CAS numbers.

(b) Notwithstanding Subsection (a)(3), if the specific identity of any chemical constituent to be used in any hydraulic fracturing treatment in this state is entitled to be withheld as a trade secret pursuant to the criteria provided by 42 U.S.C. Section 11042(a)(2) and Section 93.055 of this chapter, the commission shall protect and hold confidential the identity of the chemical constituent and its associated CAS number. To qualify for trade secret protection, the person performing the hydraulic fracturing treatment must submit to the commission on an approved form a formal claim of entitlement to that protection in the manner required by Section 93.055.

(c) A person performing hydraulic fracturing treatments in this state shall provide to the operator of each well for which the person performs a hydraulic fracturing treatment:

(1) the maximum pump pressure measured at the surface and the type and volume of base fluid used in each stage of the hydraulic fracturing treatment;

(2) a list of all additives used in the hydraulic fracturing fluid, specified by general type, such as acid, biocide, breaker, corrosion inhibitor, crosslinker, demulsifier, friction reducer, gel, iron control, oxygen scavenger, pH adjusting agent, proppant, scale inhibitor, and surfactant;

(3) for each additive type listed under Subdivision (2), the specific name of the additive used and the actual rate or concentration of each additive, expressed as pounds per thousand gallons or gallons per thousand gallons and expressed as a percentage by volume of the total hydraulic fracturing fluid used;

(4) a list of all the chemical constituents used in the hydraulic fracturing fluid and their associated CAS numbers, except to the extent that the specific identity of any chemical constituent is entitled to be withheld as a trade secret as provided by Subsection (b); and

(5) for each chemical constituent identified under Subdivision (4), the actual rate or concentration of each chemical, expressed as pounds per thousand gallons or gallons per thousand gallons and expressed as a percentage by volume of the total hydraulic fracturing fluid used.

(d) Subsections (b) and (c)(4) do not authorize a person to withhold information that federal or state law, including this section, requires to be provided to any health care professional who needs the information for diagnostic or treatment purposes. A person performing a hydraulic fracturing treatment shall provide directly to a health care professional, immediately on request, all information required by the health care professional, including the percent by volume of the chemical constituents of the hydraulic fracturing fluid and their associated CAS numbers. In a case that is not a medical emergency, the health care professional must provide the person performing the hydraulic fracturing treatment a written statement of need for the information before the person is entitled to receive the information. In a medical emergency, the health care professional must provide the person performing the hydraulic fracturing treatment a written statement of need for the information as soon as circumstances permit.

(e) A health care professional to whom information is disclosed under Subsection (d) shall hold the information confidential, except that the health care professional may, for diagnostic or treatment purposes, disclose information provided under that subsection to another health care professional, a laboratory, or a third-party testing firm. A health care professional, laboratory, or third-party testing firm to which information is disclosed by another health care professional under this subsection shall hold the information confidential.

Sec. 93.053. OPERATOR DISCLOSURES. (a) Following the completion of a hydraulic fracturing treatment on a well, the operator shall include in the well completion report, on a form approved by the commission:

(1) the maximum pump pressure measured at the surface and the type and volume of base fluid used in each stage of the hydraulic fracturing treatment;

(2) a list of all additives used in the hydraulic fracturing treatment, specified by general type, such as acid, biocide, breaker, corrosion inhibitor, crosslinker, demulsifier, friction reducer, gel, iron control, oxygen scavenger, pH adjusting agent, proppant, scale inhibitor, and surfactant;

(3) for each additive type listed under Subdivision (2), the specific name of the additive used and the actual rate or concentration of each additive, expressed as pounds per thousand gallons or gallons per thousand gallons and expressed as a percentage by volume of the total hydraulic fracturing fluid used;

(4) the information provided under Sections 93.052(c)(4) and (5) to the operator by the person who performed the hydraulic fracturing treatment; and

(5) if the operator caused any additives to be used during the hydraulic fracturing treatment that are not required to be disclosed under Section 93.052(c) to the operator by the person who performed the hydraulic fracturing treatment:

(A) a list of the additives used; and

(B) for each additive listed, the chemical constituents of the additive and their associated CAS numbers and the actual rate or concentration of each additive or chemical, expressed in the manner provided by Section 93.052(c).

(b) The operator may supply field service company tickets, excluding pricing information, and reports regarding the hydraulic fracturing treatment, as used in the normal course of business, to satisfy some or all of the requirements of Subsection (a).

(c) Notwithstanding Subsection (a)(5), if the specific identity of a chemical constituent contained in an additive is entitled to be withheld as a trade secret pursuant to the criteria provided by 42 U.S.C. Section 11042(a)(2) and Section 93.055 of this chapter, the commission shall protect and hold confidential the identity of the chemical constituent and its associated CAS number. To qualify for trade secret protection, the operator must submit to the commission on an approved form a formal claim of entitlement to that protection in the manner required by Section 93.055.

(d) Subsection (c) does not authorize an operator to withhold information that federal or state law, including this section, requires to be provided to any health care professional who needs the information for diagnostic or treatment purposes. An operator shall provide directly to a health care professional, immediately on request, all information required by the health care professional, including the percent by volume of the chemical constituents of the hydraulic fracturing fluid and their associated CAS numbers. In a case that is not a medical emergency, the health care

professional must provide the operator a written statement of need for the information before the person is entitled to receive the information. In a medical emergency, the health care professional must provide the operator a written statement of need for the information as soon as circumstances permit.

(e) A health care professional to whom information is disclosed under Subsection (d) shall hold the information confidential, except that the health care professional may, for diagnostic or treatment purposes, disclose information provided under that subsection to another health care professional, a laboratory, or a third-party testing firm. A health care professional, laboratory, or third-party testing firm to which information is disclosed by another health care professional under this subsection shall hold the information confidential.

Sec. 93.054. USE OF SERVICES OF NONCOMPLYING SERVICE COMPANY PROHIBITED. An operator may not use the services of another person in performing a hydraulic fracturing treatment in this state unless the other person is in compliance with the requirements of Section 93.052.

Sec. 93.055. TRADE SECRET PROTECTION. (a) A claim of entitlement to trade secret protection made under Section 93.052(b) or (c)(4) or 93.053(c) must include substantiating facts in the form of the information required by 40 C.F.R. Section 350.7(a). If requested by the trade secret claimant, the commission shall treat any such substantiating facts as confidential and may not disclose them to any third party or the public for any purpose. Until a final determination that the information is not entitled to trade secret protection is made under this section, the commission shall treat the information implicated by the claim of trade secret entitlement as a confidential trade secret, and the information is not subject to disclosure under Chapter 552, Government Code.

(b) The commission shall determine a claim of entitlement to trade secret protection made under Section 93.052(b) or (c)(4) or 93.053(c) to be sufficient if the information set forth in the claim supports all the conclusions set forth in 40 C.F.R. Section 350.13(a) and the supporting information is true. In making a determination as to a claim, the commission may require the trade secret claimant to submit additional supplemental information if the information is necessary for the commission to make its determination under this section. If requested by the trade secret claimant, the commission shall treat any supplemental information provided as confidential and may not disclose the information to any third party or the public for any purpose.

(c) If the commission determines a claim of entitlement to trade secret protection to be insufficient, the commission shall notify the trade secret claimant in writing of the determination by certified mail. Not later than the 15th day after the date the trade secret claimant receives notice of the determination, the claimant may request another review of the claim. The trade secret claimant must show good cause for the additional review. What constitutes good cause for purposes of this subsection is solely within the reasonable discretion of the commission and may include the availability of new supporting information or a good faith error or omission on the part of the trade secret claimant in the original claim. Not later than the 30th day after the date the commission receives the request, the commission shall provide written notice to the trade secret claimant of the commission's acceptance or rejection of the

request. If a trade secret claimant makes a request for review under this subsection, the commission shall treat the information implicated by the claim of trade secret entitlement as a confidential trade secret until the commission makes a determination with regard to the review request. If the commission rejects the review request, the commission shall continue to treat the information as a confidential trade secret until the earlier of the 30th day after the date the trade secret claimant receives notice that the commission has rejected the review request or the date the claimant withdraws the disclosure under Subsection (e).

(d) Not later than the 30th day after the date the trade secret claimant receives notice from the commission that the commission has rejected the claim of entitlement to trade secret protection, the claimant may appeal the determination by filing a petition in a district court of Travis County. If a trade secret claimant files an appeal under this subsection, the commission shall treat the information implicated by the claim of trade secret entitlement as a confidential trade secret until the appeal is resolved. If the resolution of the appeal affirms the commission's determination of the insufficiency of the claim, the commission shall continue to treat the information as a confidential trade secret until the earlier of the 30th day after the date the trade secret claimant receives notice that the appeal has been resolved or the date the claimant withdraws the disclosure under Subsection (e).

(e) Not later than the 30th day after the date the trade secret claimant receives notification under Subsection (c) that the commission has rejected the claim of entitlement to trade secret protection or the date a final judgment affirming the commission's determination of the insufficiency of the claim is entered under Subsection (d), as applicable, and only to the extent that the relevant chemical constituent has not been used by or for the trade secret claimant in any hydraulic fracturing treatment in this state, the trade secret claimant may formally withdraw the disclosure of a chemical constituent by notifying the commission of its intent to withdraw the disclosure. If the trade secret claimant withdraws the disclosure of a chemical constituent, the commission shall protect and hold confidential the identity of the chemical constituent and any corresponding CAS number, and the information is not subject to disclosure under Chapter 552, Government Code. After the withdrawal, the chemical constituent may not be used by or for the trade secret claimant in any hydraulic fracturing treatment in this state unless the trade secret claimant satisfies the requirements of this chapter relating to the disclosure of information regarding the chemical constituent.

(f) Notwithstanding any other provision of this section, the commission may:

(1) disclose information otherwise subject to trade secret protection under this section to a third-party testing firm in connection with the investigation of a claim of contamination of surface water or groundwater if the firm agrees in writing to keep the information confidential; and

(2) use the results of a test conducted by a third-party testing firm in connection with an investigation described by Subdivision (1) in any manner the commission considers necessary to protect public health and the environment.



[Sections 93.056-93.100 reserved for expansion]

SUBCHAPTER C. USE OF TRACER SUBSTANCES IN HYDRAULIC FRACTURING TREATMENTS

Sec. 93.101. HYDRAULIC FRACTURING FLUID TRACER. (a) The commission shall adopt rules requiring a person who performs a hydraulic fracturing treatment on a well to include a tracer substance in the base stimulation fluid used to perform the treatment.

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

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

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

[Sections 93.102-93.150 reserved for expansion]

SUBCHAPTER D. PROTECTION OF GROUNDWATER AND SURFACE WATER

Sec. 93.151. RULES. The commission shall adopt rules concerning hydraulic fracturing treatments that ensure the protection of groundwater and surface water.

SECTION \_\_\_\_. Chapter 93, Natural Resources Code, as added by this Act, applies only to a hydraulic fracturing treatment performed on a well for which an initial drilling permit is issued on or after the effective date of this Act. A hydraulic fracturing treatment performed on a well for which an initial drilling permit is issued before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION \_\_\_\_. The Texas Oil and Gas Commission shall adopt rules under Chapter 93, Natural Resources Code, as added by this Act, not later than February 1, 2012.

**Floor Amendment No. 30**

Amend Amendment No. 29 by Martinez Fischer (page 108 of the prefiled amendments packet) to **CSSB 655** (house committee report) as follows:

(1) Strike added Section 93.001 and 93.002, Natural Resources Code (page 1, line 8, through page 2, line 20).

(2) In the heading to added Section 93.003, Natural Resources Code (page 2, line 21), strike "93.003" and substitute "93.001".

(3) Strike added Subchapter B, Chapter 93, Natural Resources Code (page 3, lines 12-31, pages 4-10, and page 11, lines 1-11).

(4) Strike the heading to added Subchapter C, Chapter 93, Natural Resources Code (page 11, lines 12-13) and substitute "SUBCHAPTER B. STUDIES ON HYDRAULIC FRACTURING REGULATION".

(5) In the heading to added Section 93.101, Natural Resources Code (page 11, line 14), strike "93.101" and substitute "93.051".

(6) In added Section 93.101(a), Natural Resources Code (page 11, line 15), strike "adopt rules" and substitute "conduct a study on the costs and benefits and feasibility of".

(7) In added Section 93.101(b), Natural Resources Code (page 11, lines 19-22), strike all before the colon and substitute the following:

(b) The study shall include a review of types of tracer substances a person could be required to use in performing a hydraulic fracturing treatment, such as isotope tracers or color tracers. The commission shall only include a tracer substance in the review if

(8) Strike the expansion clause on page 11, line 29.

(9) Strike added Subchapter D, Chapter 93, Natural Resources Code, (page 11, lines 30-31 and page 12, lines 1-2) and substitute the following:

Sec. 93.052. HYDRAULIC FRACTURING REGULATION FEASIBILITY STUDY. The commission shall conduct a study on the costs, benefits, and feasibility of regulating hydraulic fracturing treatment in this state. The study must include considerations of:

(1) the feasibility of requiring disclosure of information related to hydraulic fracturing treatment, such as the base fluids, additives, and chemical constituents used by a person in a hydraulic fracturing treatment; and

(2) the protection of groundwater and surface water in this state.

[Sections 93.052-93.100 reserved for expansion]

(10) Strike the remainder of the amendment (page 13, lines 3-13).

### **Floor Amendment No. 31**

Amend **CSSB 655** (house committee printing) by adding the following appropriately numbered SECTION and renumbering the subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Subtitle D, Title 3, Natural Resources Code, is amended by adding Chapter 122 to read as follows:

#### CHAPTER 122. ALTERNATIVE FUELS

Sec. 122.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Railroad Commission of Texas.

(2) "Fund" means the alternative fuels fund.

Sec. 122.002. ALTERNATIVE FUELS FUND. (a) The alternative fuels fund is created in the state treasury.

(b) The fund consists of money from:

(1) gifts, grants, or other assistance received by the commission from any source for the purposes of this chapter; and

(2) interest earned on amounts in the fund.

(c) Money in the fund may be appropriated only to the commission to be used to pay the costs of:

(1) researching, developing, and implementing marketing, advertising, and informational programs relating to alternative fuels;

(2) implementing consumer rebate programs established under Section 122.004;

(3) other functions the commission determines are necessary to add a program established by the commission for the purpose of promoting the use of environmentally beneficial alternative fuels; and

(4) the administrative costs incurred by the commission under this chapter.

(d) The fund is exempt from the application of Section 403.095, Government Code.

Sec. 122.003. GIFTS, GRANTS, AND OTHER ASSISTANCE. The commission may apply for, request, solicit, contract for, receive, and accept gifts, grants, and other assistance from any source for the purposes of this chapter.

Sec. 122.004. CONSUMER REBATE PROGRAMS. (a) The commission may establish consumer rebate programs for purchasers or lessees of vehicles, appliances, and equipment fueled by environmentally beneficial alternative fuels.

(b) The commission may adopt rules necessary to establish a consumer rebate program under this section.

### **Floor Amendment No. 32**

Amend **CSSB 655** (house committee printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. The heading to Section 121.211, Utilities Code, is amended to read as follows:

Sec. 121.211. PIPELINE SAFETY AND REGULATORY FEES.

SECTION \_\_\_\_\_. Sections 121.211(a), (b), (c), (d), (e), and (h), Utilities Code, are amended to read as follows:

(a) The railroad commission by rule may adopt a [~~an inspection~~] fee to be assessed annually against operators of natural gas distribution pipelines and their pipeline facilities and natural gas master metered pipelines and their pipeline facilities subject to this title [~~chapter~~].

(b) The railroad commission by rule shall establish the method by which the fee will be calculated and assessed. In adopting a fee structure, the railroad commission may consider any factors necessary to provide for the equitable allocation among operators of the costs of administering the railroad commission's pipeline safety and regulatory program under this title [~~chapter~~].

(c) The total amount of fees estimated to be collected under rules adopted by the railroad commission under this section may not exceed the amount estimated by the railroad commission to be necessary to recover the costs of administering the railroad commission's pipeline safety and regulatory program under this title [~~chapter~~], excluding costs that are fully funded by federal sources.

(d) The commission may assess each operator of a natural gas distribution system subject to this title [~~chapter~~] an annual [~~inspection~~] fee not to exceed one dollar for each service line reported by the system on the Distribution Annual Report, Form RSPA F7100.1-1, due on March 15 of each year. The fee is due March 15 of each year.

(e) The railroad commission may assess each operator of a natural gas master metered system subject to this title [~~chapter~~] an annual [~~inspection~~] fee not to exceed \$100 for each master metered system. The fee is due June 30 of each year.

(h) A fee collected under this section shall be deposited to the credit of the general revenue fund to be used for the pipeline safety and regulatory program.

**Floor Amendment No. 37**

Amend **CSSB 655** (house committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering the remaining SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Subchapter D, Chapter 551, Government Code, is amended by adding Section 551.091 to read as follows:

Sec. 551.091. TEXAS OIL AND GAS COMMISSION: DELIBERATION REGARDING FINAL DECISION IN A CONTESTED CASE; CLOSED MEETING. The Texas Oil and Gas Commission may conduct a closed meeting to deliberate a final decision in a contested case.

**Floor Amendment No. 40**

Amend **CSSB 655** by adding the following section, numbered appropriately, and by renumbering any subsequent sections accordingly:

SECTION \_\_\_\_\_. (a) The Texas Oil and Gas Commission shall conduct a study of the treatment of tax expenses for the purposes of computing gas utility rates under Subchapter B, Chapter 104, Utilities Code, so the commission can develop methods to avoid the inclusion of hypothetical or non-actual tax expenses in a gas utility's allowable costs of service.

(b) The Texas Oil and Gas Commission in conducting the study shall examine the extent to which federal tax law allows for the commission and other regulatory authorities to consider, in computing gas utility rates under Subchapter B, Chapter 104, Utilities Code, the utility's actual federal income tax liability for a federal tax year, including any deductions, credits, or other benefits that may reduce the federal income taxes owed by the utility.

(c) The Texas Oil and Gas Commission in conducting the study shall undertake to develop methods to allow a reasonable fair share of any savings a gas utility accrues from filing for federal income tax purposes a consolidated or joint return to be considered by the commission or another regulatory authority in computing gas utility rates under Subchapter B, Chapter 104, Utilities Code.

(d) The Texas Oil and Gas Commission shall report the results of the study conducted under this section to the governor, the lieutenant governor, the Public Utility Commission of Texas, and the speaker of the house of representatives not later than December 1, 2012. The report must include any methods developed as a result of the study and recommendations for any legislative authorization necessary or helpful to implement the methods.

(e) This section expires September 1, 2013.

**Floor Amendment No. 41**

Amend **CSSB 655** (house committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. (a) In this section, "commission" means the Texas Oil and Gas Commission.

(b) The commission shall conduct a study regarding the odorization of natural gas transported in gathering and transmission lines located in populated areas. At a minimum, the study must include an examination of:

(1) the costs and benefits associated with odorizing natural gas under those circumstances, including any specific circumstances under which the benefits exceed the costs;

(2) the chemical malodorants and odorization techniques that are available;

(3) any specific circumstances under which odorization is an effective method for leak detection;

(4) any product markets that are incompatible with the use of malodorants;

(5) state and federal odorization requirements, including exemptions from those requirements; and

(6) alternative leak detection methods.

(c) At the commission's request, a state agency or local government shall provide information and assistance in conducting the study under this section.

(d) Not later than December 1, 2012, the commission shall report the results of the study conducted under this section to the lieutenant governor, the speaker of the house of representatives, the presiding officer of the standing committee of the senate with primary jurisdiction over matters affecting natural resources, and the presiding officer of the standing committee of the house of representatives with primary jurisdiction over matters affecting energy resources.

(e) This section expires January 1, 2013.

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

Amend **CSSB 655** on third reading by striking the SECTION of the bill adding Section 551.091, Government Code, as added on second reading by Amendment No. 37 by P. King.

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

Amend, on 3rd reading, the Turner Amendment No. \_\_\_\_ to **CSSB 655**, and adopted on 2nd reading, as follows:

(1) Strike added Subsections (a) to (e) of Section \_\_\_\_, and substitute:

(a) The Texas Oil and Gas Commission shall conduct a study of the treatment of tax expenses for the purpose of computing gas utility rates under Subchapter B, Chapter 104, Utilities Code, so the commission can ensure that ratepayers receive the full benefit of all federal income tax deductions and credits included in the gas utility or its affiliated group in the filing of a consolidated federal income tax return.

(b) The Texas Oil and Gas Commission in conducting the study shall examine the extent to which federal income tax law limits the consideration of federal income tax issues in computing gas utility rates under Subchapter B, Chapter 104, Utilities Code.

(c) The Texas Oil and Gas Commission shall report the results of the study conducted under this section to the governor, the lieutenant governor, and the speaker of the house of representatives not later than December 1, 2012.

(d) This section expires December 1, 2012.

### Floor Amendment No. 3 on Third Reading

Amend **CSSB 655** on third reading in the SECTION of the bill adding Subchapter S, Chapter 91, Natural Resources Code, as follows:

(1) Strike added Section 91.902(1)(C), Natural Resources Code, and substitute the following:

(C) rules adopted by the commission and the Texas Transportation Commission, including rules relating to the horizontal or vertical placement of the pipeline facility; and

(2) Strike added Section 91.903, Natural Resources Code, and substitute the following:

Sec. 91.903. RELOCATION OF SALTWATER PIPELINE FACILITY FOR CERTAIN PURPOSES. (a) The Texas Transportation Commission may require a saltwater pipeline operator to relocate a saltwater pipeline facility at the cost of the saltwater pipeline operator to accommodate construction or expansion of a public road if the saltwater pipeline operator does not have a property interest in the land occupied by the saltwater pipeline facility to be relocated.

(b) The Texas Transportation Commission shall notify the saltwater pipeline operator of the relocation requirement and may not require the operator to relocate the saltwater pipeline facility before the 180th day after the date the operator receives the notice. The notice must identify the saltwater pipeline facility to be relocated and indicate the location on the new right-of-way where the saltwater pipeline operator may place the saltwater pipeline facility.

The amendments were read.

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

The motion prevailed without objection.

The President asked if there were any motions to instruct the conference committee on **SB 655** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate: Senators Hegar, Chair; Nichols, Nelson, Huffman, and Hinojosa.

### **SENATE BILL 652 WITH HOUSE AMENDMENTS**

Senator Hegar called **SB 652** from the President's table for consideration of the House amendments to the bill.

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

### **Amendment**

Amend **SB 652** by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to governmental entities subject to the sunset review process.

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

ARTICLE 1. ENTITIES GIVEN 2013 SUNSET DATE

SECTION 1.01. UNIVERSITY INTERSCHOLASTIC LEAGUE. Section 33.083, Education Code, is amended by adding Subsection (e) to read as follows:

(e) The University Interscholastic League is subject to review under Chapter 325, Government Code (Texas Sunset Act), but is not abolished under that chapter. The University Interscholastic League shall be reviewed during the period in which state agencies abolished in 2013 are reviewed. The University Interscholastic League shall pay the costs incurred by the Sunset Advisory Commission in performing the review under this subsection. The Sunset Advisory Commission shall determine the costs of the review performed under this subsection, and the University Interscholastic League shall pay the amount of those costs promptly on receipt of a statement from the Sunset Advisory Commission regarding those costs. This subsection expires September 1, 2013.

SECTION 1.02. TEXAS HIGHER EDUCATION COORDINATING BOARD.

Section 61.0211, Education Code, is amended to read as follows:

Sec. 61.0211. SUNSET PROVISION. The Texas Higher Education Coordinating Board is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2013 ~~[2015]~~.

SECTION 1.03. TEXAS ETHICS COMMISSION. Section 571.022,

Government Code, is amended to read as follows:

Sec. 571.022. SUNSET PROVISION. The commission is subject to review under Chapter 325 (Texas Sunset Act), but is not abolished under that chapter. The commission shall be reviewed during the periods in which state agencies abolished in 2013 ~~[2015]~~ and every 12th year after that year are reviewed.

SECTION 1.04. TEXAS WINDSTORM INSURANCE ASSOCIATION.

Section 2210.002(b), Insurance Code, is amended to read as follows:

(b) The association is subject to review under Chapter 325, Government Code (Texas Sunset Act), but is not abolished under that chapter. The association shall be reviewed during the period in which state agencies abolished in 2013 ~~[2015]~~ are reviewed. The association shall pay the costs incurred by the Sunset Advisory Commission in performing the review of the association under this subsection. The Sunset Advisory Commission shall determine the costs of the review performed under this subsection, and the association shall pay the amount of those costs promptly on receipt of a statement from the Sunset Advisory Commission regarding those costs. This subsection expires September 1, 2013 ~~[2015]~~.

SECTION 1.05. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY.

Section 901.006, Occupations Code, is amended to read as follows:

Sec. 901.006. APPLICATION OF SUNSET ACT. The Texas State Board of Public Accountancy is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2013 ~~[2015]~~.

SECTION 1.06. TEXAS BOARD OF PROFESSIONAL ENGINEERS. Section

1001.005, Occupations Code, is amended to read as follows:

Sec. 1001.005. APPLICATION OF SUNSET ACT. The Texas Board of Professional Engineers is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2013 [~~2015~~].

SECTION 1.07. TEXAS BOARD OF ARCHITECTURAL EXAMINERS. Section 1051.003, Occupations Code, is amended to read as follows:

Sec. 1051.003. APPLICATION OF SUNSET ACT. The Texas Board of Architectural Examiners is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this subtitle expires September 1, 2013 [~~2015~~].

SECTION 1.08. REGIONAL TOLLWAY AUTHORITIES. Subchapter B, Chapter 366, Transportation Code, is amended by adding Section 366.039 to read as follows:

Sec. 366.039. SUNSET REVIEW. (a) An authority is subject to review under Chapter 325, Government Code (Texas Sunset Act), as if it were a state agency but may not be abolished under that chapter. The review shall be conducted as if the authority were scheduled to be abolished September 1, 2013.

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

SECTION 1.09. GULF COAST WATER AUTHORITY. Chapter 712, Acts of the 59th Legislature, Regular Session, 1965, is amended by adding Section 1A to read as follows:

Sec. 1A. The District is subject to review under Chapter 325, Government Code (Texas Sunset Act), but is not abolished under that chapter. The District shall be reviewed during the period in which state agencies abolished in 2013 are reviewed. The District shall pay the costs incurred by the Sunset Advisory Commission in performing the review of the District under this section. The Sunset Advisory Commission shall determine the costs, and the District shall pay the amount promptly on receipt of a statement from the commission detailing the costs.

## ARTICLE 2. ENTITIES GIVEN 2015 SUNSET DATE

SECTION 2.01. FINANCE COMMISSION OF TEXAS. Section 11.108, Finance Code, is amended to read as follows:

Sec. 11.108. SUNSET PROVISION. The finance commission is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished September 1, 2015 [~~2013~~].

SECTION 2.02. OFFICE OF BANKING COMMISSIONER. Section 12.109, Finance Code, is amended to read as follows:

Sec. 12.109. SUNSET PROVISION. The office of banking commissioner is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the office is abolished September 1, 2015 [~~2013~~].



SECTION 2.03. OFFICE OF SAVINGS AND MORTGAGE LENDING COMMISSIONER AND THE DEPARTMENT OF SAVINGS AND MORTGAGE LENDING. Section 13.012, Finance Code, is amended to read as follows:

Sec. 13.012. SUNSET PROVISION. The office of savings and mortgage lending commissioner and the Department of Savings and Mortgage Lending are subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the office and department are abolished September 1, 2015 [2013].

SECTION 2.04. OFFICE OF CONSUMER CREDIT COMMISSIONER. Section 14.066, Finance Code, is amended to read as follows:

Sec. 14.066. SUNSET PROVISION. The office is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the office is abolished September 1, 2015 [2013].

SECTION 2.05. HEALTH AND HUMAN SERVICES COMMISSION. Section 531.004, Government Code, is amended to read as follows:

Sec. 531.004. SUNSET PROVISION. The Health and Human Services Commission is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished and this chapter expires September 1, 2015 [2013].

SECTION 2.06. TAX DIVISION OF THE STATE OFFICE OF ADMINISTRATIVE HEARINGS. Section 2003.102(b), Government Code, is amended to read as follows:

(b) The Sunset Advisory Commission shall evaluate the tax division and present to the 84th [83rd] Legislature a report on that evaluation and the commission's recommendations in relation to the tax division.

SECTION 2.07. CONFORMING AMENDMENT RELATING TO FORMER TEXAS BOARD OF HEALTH AND TEXAS DEPARTMENT OF HEALTH. Section 11.003, Health and Safety Code, is amended to read as follows:

Sec. 11.003. SUNSET PROVISION. The Texas Board of Health and the Texas Department of Health were abolished by Section 1.26, Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session, 2003, and the powers and duties of those entities under this chapter were transferred to other agencies, which are subject to Chapter 325, Government Code (Texas Sunset Act). Unless the agencies to which those powers and duties are transferred are continued in existence as provided by that chapter, [the board and the department are abolished and] this chapter expires September 1, 2015 [2011].

SECTION 2.08. TEXAS HEALTH SERVICES AUTHORITY. Section 182.052, Health and Safety Code, is amended to read as follows:

Sec. 182.052. APPLICATION OF SUNSET ACT. The corporation is subject to Chapter 325, Government Code. Unless continued in existence as provided by that chapter, the corporation is abolished and this chapter expires September 1, 2015 [2013]. The governor may order the dissolution of the corporation at any time the governor declares that the purposes of the corporation have been fulfilled or that the corporation is inoperative or abandoned.

SECTION 2.09. CONFORMING AMENDMENT RELATING TO FORMER TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION. Section 532.002, Health and Safety Code, is amended to read as follows:

Sec. 532.002. SUNSET PROVISION. The Texas Department of Mental Health and Mental Retardation was abolished by Section 1.26, Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session, 2003, and the powers and duties of that agency under this chapter were transferred to other agencies, which are [is] subject to Chapter 325, Government Code (Texas Sunset Act). Unless the agencies to which those powers and duties are transferred are continued in existence as provided by that Act, [the department is abolished and] this chapter expires September 1, 2015 [2014].

SECTION 2.10. DEPARTMENT OF STATE HEALTH SERVICES. Section 1001.003, Health and Safety Code, is amended to read as follows:

Sec. 1001.003. SUNSET PROVISION. The Department of State Health Services is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the department is abolished and this chapter expires September 1, 2015 [2013].

SECTION 2.11. CONFORMING AMENDMENT RELATING TO FORMER TEXAS DEPARTMENT OF HUMAN SERVICES. Section 21.002, Human Resources Code, is amended to read as follows:

Sec. 21.002. SUNSET PROVISION. The Texas Department of Human Services was abolished by Section 1.26, Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session, 2003, and the powers and duties of that agency under this chapter were transferred to other agencies, which are [is] subject to Chapter 325, Government Code (Texas Sunset Act). Unless the agencies to which those powers and duties are transferred are continued in existence as provided by that chapter, [the department is abolished and] this title expires September 1, 2015 [2014], except that Chapter 40 expires as provided by Section 40.003.

SECTION 2.12. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES. Section 40.003, Human Resources Code, is amended to read as follows:

Sec. 40.003. SUNSET PROVISION. The Department of Family and Protective Services is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the department is abolished and this chapter expires September 1, 2015 [2013].

SECTION 2.13. CONFORMING AMENDMENT RELATING TO FORMER TEXAS COMMISSION FOR THE DEAF AND HARD OF HEARING. Section 81.004, Human Resources Code, is amended to read as follows:

Sec. 81.004. SUNSET PROVISION. The Texas Commission for the Deaf and Hard of Hearing was abolished by Section 1.26, Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session, 2003, and the powers and duties of that agency under this chapter were transferred to other agencies, which are [is] subject to Chapter 325, Government Code (Texas Sunset Act). Unless the agencies to which those powers and duties are transferred are [commission is] continued in existence as provided by that chapter, [the commission is abolished and] this chapter expires September 1, 2015 [2014].

SECTION 2.14. CONFORMING AMENDMENT RELATING TO FORMER TEXAS COMMISSION FOR THE BLIND. Section 91.001, Human Resources Code, is amended to read as follows:

Sec. 91.001. SUNSET PROVISION. The Texas Commission for the Blind was abolished by Section 1.26, Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session, 2003, and the powers and duties of that agency under this chapter were transferred to other agencies, which are [is] subject to Chapter 325, Government Code (Texas Sunset Act). Unless the agencies to which those powers and duties are transferred are continued in existence as provided by that chapter, [the commission is abolished and] this chapter expires effective September 1, 2015 [2011].

SECTION 2.15. CONFORMING AMENDMENT RELATING TO FORMER TEXAS REHABILITATION COMMISSION. Section 111.012, Human Resources Code, is amended to read as follows:

Sec. 111.012. SUNSET PROVISION. The Texas Rehabilitation Commission was abolished by Section 1.26, Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session, 2003, and the powers and duties of that agency under this chapter were transferred to other agencies, which are [is] subject to Chapter 325, Government Code (Texas Sunset Act). Unless the agencies to which those powers and duties are transferred are continued in existence as provided by that chapter, [the commission is abolished and] this chapter expires September 1, 2015 [2011].

SECTION 2.16. TEXAS COUNCIL FOR DEVELOPMENTAL DISABILITIES. Section 112.023, Human Resources Code, is amended to read as follows:

Sec. 112.023. SUNSET PROVISION. The Texas Council for Developmental Disabilities is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the council is abolished and this chapter expires September 1, 2015 [2013].

SECTION 2.17. GOVERNOR'S COMMITTEE ON PEOPLE WITH DISABILITIES. Section 115.005, Human Resources Code, is amended to read as follows:

Sec. 115.005. SUNSET PROVISION. The Governor's Committee on People with Disabilities is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the committee is abolished and this chapter expires September 1, 2015 [2013].

SECTION 2.18. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES. Section 117.003, Human Resources Code, is amended to read as follows:

Sec. 117.003. SUNSET PROVISION. The Department of Assistive and Rehabilitative Services is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the department is abolished and this chapter expires September 1, 2015 [2013].

SECTION 2.19. TEXAS COUNCIL ON PURCHASING FROM PEOPLE WITH DISABILITIES. Section 122.006, Human Resources Code, is amended to read as follows:

Sec. 122.006. SUNSET PROVISION. The Texas Council on Purchasing from People with Disabilities is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the council is abolished and this chapter expires September 1, 2015 [2013].

SECTION 2.20. DEPARTMENT OF AGING AND DISABILITY SERVICES. Section 161.003, Human Resources Code, is amended to read as follows:

Sec. 161.003. SUNSET PROVISION. The Department of Aging and Disability Services is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the department is abolished and this chapter expires September 1, 2015 [2013].

SECTION 2.21. TEXAS WORKFORCE COMMISSION. Section 301.008, Labor Code, is amended to read as follows:

Sec. 301.008. APPLICATION OF SUNSET ACT. The Texas Workforce Commission is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished September 1, 2015 [2013].

SECTION 2.22. STATE SECURITIES BOARD. Subsection O, Section 2, The Securities Act (Article 581-2, Vernon's Texas Civil Statutes), is amended to read as follows:

O. The State Securities Board is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this Act expires September 1, 2015 [2013].

#### ARTICLE 3. ENTITIES GIVEN 2017 SUNSET DATE

SECTION 3.01. COURT REPORTERS CERTIFICATION BOARD. Section 52.014, Government Code, is amended to read as follows:

Sec. 52.014. SUNSET PROVISION. The Court Reporters Certification Board is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished September 1, 2017 [2015].

SECTION 3.02. LICENSED COURT INTERPRETER ADVISORY BOARD. Section 57.051, Government Code, is amended to read as follows:

Sec. 57.051. SUNSET. The licensed court interpreter advisory board is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this subchapter expires September 1, 2017 [2013].

SECTION 3.03. STATE BAR OF TEXAS. Section 81.003, Government Code, is amended to read as follows:

Sec. 81.003. SUNSET PROVISION. The state bar is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, this chapter expires September 1, 2017 [2015].

SECTION 3.04. BOARD OF LAW EXAMINERS. Section 82.006, Government Code, is amended to read as follows:

Sec. 82.006. SUNSET PROVISION. The Board of Law Examiners is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished September 1, 2017 [2015].

SECTION 3.05. STATE BOARD OF DENTAL EXAMINERS. Section 251.005, Occupations Code, is amended to read as follows:

Sec. 251.005. APPLICATION OF SUNSET ACT. The State Board of Dental Examiners is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished September 1, 2017 [2015].

SECTION 3.06. EXECUTIVE COUNCIL OF PHYSICAL THERAPY AND OCCUPATIONAL THERAPY EXAMINERS. Section 452.002, Occupations Code, is amended to read as follows:

Sec. 452.002. APPLICATION OF SUNSET ACT. The Executive Council of Physical Therapy and Occupational Therapy Examiners is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the executive council is abolished and the following laws expire September 1, 2017 [2013]:

- (1) this chapter;
- (2) Chapter 453; and
- (3) Chapter 454.

SECTION 3.07. TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS. Section 453.002, Occupations Code, is amended to read as follows:

Sec. 453.002. APPLICATION OF SUNSET ACT. The Texas Board of Physical Therapy Examiners is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2017 [2013].

SECTION 3.08. TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS. Section 454.003, Occupations Code, is amended to read as follows:

Sec. 454.003. APPLICATION OF SUNSET ACT. The Texas Board of Occupational Therapy Examiners is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2017 [2013].

SECTION 3.09. TEXAS BOARD OF ORTHOTICS AND PROSTHETICS. Section 605.003, Occupations Code, is amended to read as follows:

Sec. 605.003. APPLICATION OF SUNSET ACT. The Texas Board of Orthotics and Prosthetics is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2017 [2013].

#### ARTICLE 4. ENTITIES GIVEN 2019 SUNSET DATE

SECTION 4.01. DEPARTMENT OF PUBLIC SAFETY OF THE STATE OF TEXAS. Section 411.002(c), Government Code, is amended to read as follows:

(c) The Department of Public Safety of the State of Texas is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the department is abolished and Subsections (a) and (b) expire September 1, 2019 [2015].

SECTION 4.02. ADJUTANT GENERAL'S DEPARTMENT. Section 431.023, Government Code, is amended to read as follows:

Sec. 431.023. SUNSET PROVISION. The adjutant general's department is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the department is abolished and this subchapter expires September 1, 2019 [2015].

SECTION 4.03. TEXAS VETERANS COMMISSION. Section 434.002(a), Government Code, is amended to read as follows:

(a) The Texas Veterans Commission is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished September 1, 2019 [~~2013~~].

SECTION 4.04. SCHOOL LAND BOARD. Section 32.003, Natural Resources Code, is amended to read as follows:

Sec. 32.003. APPLICATION OF SUNSET ACT. The School Land Board is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished September 1, 2019 [~~2017~~].

SECTION 4.05. TEXAS COMMISSION OF LICENSING AND REGULATION AND THE TEXAS DEPARTMENT OF LICENSING AND REGULATION. Section 51.002, Occupations Code, is amended to read as follows:

Sec. 51.002. APPLICATION OF SUNSET ACT. The Texas Commission of Licensing and Regulation and the Texas Department of Licensing and Regulation are subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission and the department are abolished September 1, 2019 [~~2015~~].

SECTION 4.06. TEXAS FUNERAL SERVICE COMMISSION. Section 651.002, Occupations Code, is amended to read as follows:

Sec. 651.002. APPLICATION OF SUNSET ACT. The Texas Funeral Service Commission is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished and this chapter expires September 1, 2019 [~~2015~~].

SECTION 4.07. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS. Section 1002.003, Occupations Code, is amended to read as follows:

Sec. 1002.003. APPLICATION OF SUNSET ACT. The Texas Board of Professional Geoscientists is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2019 [~~2015~~].

SECTION 4.08. TEXAS BOARD OF PROFESSIONAL LAND SURVEYING. Section 1071.003, Occupations Code, is amended to read as follows:

Sec. 1071.003. APPLICATION OF SUNSET ACT. The Texas Board of Professional Land Surveying is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2019 [~~2015~~].

SECTION 4.09. TEXAS STATE BOARD OF PLUMBING EXAMINERS. Section 1301.003, Occupations Code, is amended to read as follows:

Sec. 1301.003. APPLICATION OF SUNSET ACT. The Texas State Board of Plumbing Examiners is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2019 [~~2015~~].

SECTION 4.10. TEXAS DEPARTMENT OF MOTOR VEHICLES. Section 1001.005, Transportation Code, is amended to read as follows:

Sec. 1001.005. SUNSET PROVISION. The department is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the department is abolished September 1, 2019 [2015].

ARTICLE 5. ENTITIES GIVEN 2021 SUNSET DATE

SECTION 5.01. TEXAS ANIMAL HEALTH COMMISSION. Section 161.027, Agriculture Code, is amended to read as follows:

Sec. 161.027. SUNSET PROVISION. The Texas Animal Health Commission is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished September 1, 2021 [2019].

SECTION 5.02. PREPAID HIGHER EDUCATION TUITION BOARD. Section 54.603, Education Code, is amended to read as follows:

Sec. 54.603. SUNSET PROVISION. The Prepaid Higher Education Tuition Board is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and the programs established under this subchapter and under Subchapters G and H terminate September 1, 2021 [2019].

SECTION 5.03. TEXAS GUARANTEED STUDENT LOAN CORPORATION. Section 57.12(a), Education Code, is amended to read as follows:

(a) The Texas Guaranteed Student Loan Corporation is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the corporation is abolished and this chapter expires September 1, 2021 [2017].

SECTION 5.04. TEXAS ECONOMIC DEVELOPMENT AND TOURISM OFFICE. Section 481.003, Government Code, is amended to read as follows:

Sec. 481.003. SUNSET PROVISION. The Texas Economic Development and Tourism Office is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the office is abolished and this chapter expires September 1, 2021 [2015].

SECTION 5.05. OFFICE OF STATE-FEDERAL RELATIONS. Section 751.003, Government Code, is amended to read as follows:

Sec. 751.003. SUNSET PROVISION. The Office of State-Federal Relations is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the office is abolished and this chapter expires September 1, 2021 [2015].

ARTICLE 6. ENTITIES REMOVED FROM SPECIFIC SUNSET REVIEW

SECTION 6.01. BOARD OF DIRECTORS OF THE OFFICIAL CITRUS PRODUCERS' PEST AND DISEASE MANAGEMENT CORPORATION. Section 80.028, Agriculture Code, is amended to read as follows:

Sec. 80.028. DISSOLUTION [SUNSET] PROVISION. (a) [~~The board of directors of the official citrus producers' pest and disease management corporation is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2021.~~]

~~(b)~~ The commissioner may order the dissolution of the corporation at any time the commissioner determines that the purposes of this chapter have been fulfilled or that the corporation is inoperative and abandoned. Dissolution shall be conducted in accordance with Section 80.014.

(b) ~~(e)~~ If the corporation [~~is abolished~~] or the suppression program is discontinued [abolishment] remain valid as necessary to pay the financial obligations of the corporation.

#### ARTICLE 7. EFFECTIVE DATE

SECTION 7.01. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2011.

#### Floor Amendment No. 1

Amend **CSSB 652** (house committee printing) by adding the following ARTICLE to the bill and renumbering subsequent ARTICLES of the bill as appropriate:

#### ARTICLE \_\_\_\_ . ENTITIES GIVEN 2023 SUNSET DATE

SECTION \_\_\_\_ . TEXAS INVASIVE SPECIES COORDINATING COMMITTEE. Section 776.007, Government Code, is amended to read as follows:

Sec. 776.007. SUNSET PROVISION. The committee is subject to Chapter 325 (Texas Sunset Act). The committee shall be reviewed during the periods in which the State Soil and Water Conservation Board is reviewed. Unless continued in existence as provided by that chapter, the committee is abolished and this chapter expires on the date on which that agency is subject to abolishment [September 1, 2013].

#### Floor Amendment No. 2

Amend **CSSB 652** (house committee printing) by striking SECTION 1.09 of the bill (page 4, lines 5-16) and renumbering subsequent SECTIONS of the bill as appropriate.

#### Floor Amendment No. 4

Amend **CSSB 652** (house committee printing) by adding the following appropriately numbered SECTION to ARTICLE 1 of the bill and renumbering subsequent SECTIONS of the bill as appropriate:

SECTION 1. \_\_\_\_ . Chapter 72, Government Code, is amended by adding Subchapter F to read as follows:

#### SUBCHAPTER F. PROCESS SERVER REVIEW BOARD

Sec. 72.091. SUNSET REVIEW. The process server review board established by supreme court order is subject to review under Chapter 325, Government Code (Texas Sunset Act), as if it were a state agency but may not be abolished under that chapter. The review shall be conducted as if the process server review board were scheduled to be abolished September 1, 2017.

The amendments were read.



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

The motion prevailed without objection.

The President asked if there were any motions to instruct the conference committee on **SB 652** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate: Senators Hegar, Chair; Whitmire, Hinojosa, Nichols, and Huffman.

### SENATE BILL 263 WITH HOUSE AMENDMENT

Senator Carona called **SB 263** from the President's table for consideration of the House amendment to the bill.

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

#### Amendment

Amend **SB 263** by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to the revocation or suspension of the license of a physician placed on deferred adjudication community supervision or arrested for certain offenses.

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

SECTION 1. Section 164.057, Occupations Code, is amended by adding Subsection (c) to read as follows:

(c) The board shall revoke the license of a physician placed on deferred adjudication community supervision for an offense under:

(1) Section 22.011(a)(2), Penal Code (sexual assault of a child);

(2) Section 22.021(a)(1)(B), Penal Code (aggravated sexual assault of a child); or

(3) Section 21.11, Penal Code (indecent with a child).

SECTION 2. Subchapter B, Chapter 164, Occupations Code, is amended by adding Section 164.0595 to read as follows:

Sec. 164.0595. TEMPORARY SUSPENSION OF LICENSE FOR CERTAIN ARRESTS. (a) A disciplinary panel appointed under Section 164.059 may suspend the license of a person arrested for an offense under:

(1) Section 22.011(a)(2), Penal Code (sexual assault of a child);

(2) Section 22.021(a)(1)(B), Penal Code (aggravated sexual assault of a child);

(3) Section 21.02, Penal Code (continuous sexual abuse of a young child or children); or

(4) Section 21.11, Penal Code (indecent with a child).

(b) Before suspending a license under this section, the disciplinary panel must determine that the person arrested for an offense listed in Subsection (a) is the same person who holds a license issued by the board.

(c) A suspension under this section remains in effect until the final disposition of the case.

(d) Sections 164.059(c), (d), (e), (f), and (g) apply to a suspension under this section.

(e) The board shall adopt rules to implement this section, including rules regarding evidence that serves as proof of final disposition of a case.

SECTION 3. Section 164.102(b), Occupations Code, is amended to read as follows:

(b) Except on an express determination, based on substantial evidence, that granting probation is in the best interests of the public and of the person whose license has been suspended, revoked, or canceled, the board may not grant probation to a person whose license has been canceled, revoked, or suspended because of a felony conviction under:

(1) Chapter 481 or 483, Health and Safety Code;

(2) Section 485.033, Health and Safety Code; [~~or~~]

(3) the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.); or

(4) any of the following sections of the Penal Code:

(A) Section 22.011(a)(2) (sexual assault of a child);

(B) Section 22.021(a)(1)(B) (aggravated sexual assault of a child);

(C) Section 21.02 (continuous sexual abuse of a young child or children); or

(D) Section 21.11 (indecenty with a child).

SECTION 4. (a) Sections 164.057(c) and 164.0595, Occupations Code, as added by this Act, and Section 164.102, Occupations Code, as amended by this Act, apply 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.

SECTION 5. This Act takes effect September 1, 2011.

The amendment was read.

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

The motion prevailed without objection.

The President asked if there were any motions to instruct the conference committee on **SB 263** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate: Senators Carona, Chair; Rodriguez, Zaffirini, Seliger, and Eltife.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 1555 ADOPTED**

Senator Ellis called from the President's table the Conference Committee Report on **HB 1555**. The Conference Committee Report was filed with the Senate on Tuesday, May 17, 2011.

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

**SENATE BILL 900 WITH HOUSE AMENDMENT**

Senator Gallegos called **SB 900** from the President's table for consideration of the House amendment to the bill.

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

**Floor Amendment No. 1**

Amend **SB 900** (house committee report) by striking SECTION 6 of the bill (page 3, line 18, through page 6, line 1) and substituting the following:

SECTION 6. (a) The following territory is added to the territory of the East Aldine Management District, formerly known as the Aldine Improvement District:

Tract 1-BEGINNING at the northwestern corner of the boundary of the East Aldine Management District at the north right of way of Aldine Bender Road and the east boundary of Greater Greenspoint Management District;

THENCE, northerly along the east boundary of Greater Greenspoint Management District to the southern boundary of Greens Parkway Municipal Utility District ("GPMUD");

THENCE, east along the southern boundary of GPMUD to the point at which the GPMUD boundary turns north at the right of way of Greens Road;

THENCE, continuing east along the north right of way of Greens Road to the intersection of Greens Road and the City of Houston full-purpose boundary line;

THENCE, south along the City of Houston full-purpose boundary line, across Beltway 8 to the point at which the City of Houston full-purpose boundary line intersects the northern boundary of East Aldine Management District at Aldine Bender Road;

THENCE, west along the northern boundary line of East Aldine Management District, TO THE POINT OF BEGINNING..

Tract 2-BEGINNING at the point at which the northern boundary line of the East Aldine Management District intersects the City of Houston full-purpose boundary line on the east side of the right of way of Aldine Bender Road;

THENCE, north along the City of Houston full-purpose boundary line to the point at which the City of Houston full-purpose boundary line turns east;

THENCE, generally east along the City of Houston full-purpose boundary line to the point at which the City of Houston full-purpose boundary line reaches the right of way of John F. Kennedy Boulevard, then south along the same City of Houston full-purpose boundary line to the right of way of Aldine Bender Road where it meets the north boundary line of East Aldine Management District;

THENCE, west along the north boundary line of East Aldine Management District, to the POINT OF BEGINNING.

Tract 3-BEGINNING at the point at which the western boundary line of the East Aldine Management District intersects the north easement of Harris County Flood Control District (HCFCD) drainage ditch (#9 DD-7, P138-00-00 tributary 24.97 to Greens Bayou);

THENCE, westerly along the north easement of HCFCD drainage ditch (#9 DD-7, P138-00-00 tributary 24.97 to Greens Bayou) to east boundary of City of Houston full-purpose boundary line;

THENCE, south along east boundary of City of Houston full-purpose boundary line, across HCFCD easement of drainage ditch (#9 DD-7, P138-00-00 tributary 24.97 to Greens Bayou) to north boundary of Colonial Hills Subdivision

THENCE, west along the north boundary of Colonial Hills Subdivision to northwest corner of said subdivision;

THENCE, southerly along the west boundary of Colonial Hills Subdivision to southwest corner of said subdivision;

THENCE east along the south boundary of Colonial Hills Subdivision to southeast corner of said subdivision;

THENCE, north along the east boundary of Colonial Hills Subdivision to northeast corner of said subdivision and south easement of HCFCD drainage ditch (#9 DD-7, P138-00-00 tributary 24.97 to Greens Bayou);

THENCE easterly along the south easement of HCFCD drainage ditch (#9 DD-7, P138-00-00 tributary 24.97 to Greens Bayou) to west boundary of existing East Aldine Management District;

THENCE, north along west boundary of existing East Aldine Management District, across easement of HCFCD drainage ditch (#9 DD-7, P138-00-00 tributary 24.97 to Greens Bayou), to the POINT OF BEGINNING.

(b) The territory described by Subsection (a) of this section does not include any territory, as of the effective date of this Act, that:

(1) is in the City of Houston; or

(2) the City of Houston has annexed for limited purposes under Section 43.0751 or Subchapter F, Chapter 43, Local Government Code, except for the right-of-way of Greens Bayou.

(c) A change to a boundary described by Subsection (b) of this section after the effective date of this Act does not change the boundaries of the East Aldine Management District.

The amendment was read.

Senator Gallegos moved to concur in the House amendment to **SB 900**.

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

#### **SENATE BILL 166 WITH HOUSE AMENDMENT**

Senator Shapiro called **SB 166** from the President's table for consideration of the House amendment to the bill.

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

**Floor Amendment No. 1**

Amend **SB 166** (house committee printing), on page 5, between lines 2 and 3, by inserting the following:

Sec. 420A.011. ADMINISTRATIVE ATTACHMENT; SUPPORT. (a) The office is administratively attached to the Department of State Health Services.

(b) The Department of State Health Services shall provide administrative support services, including human resources, budgetary, accounting, purchasing, payroll, information technology, and legal support services, to the office as necessary to carry out the purposes of this chapter.

(c) The office, in accordance with the rules and procedures of the Legislative Budget Board, shall prepare, approve, and submit a legislative appropriations request that is separate from the legislative appropriations request for the Department of State Health Services and is used to develop the office's budget structure. The office shall maintain the office's legislative appropriations request and budget structure separately from those of the department.

The amendment was read.

Senator Shapiro moved to concur in the House amendment to **SB 166**.

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

**SENATE BILL 864 WITH HOUSE AMENDMENT**

Senator Rodriguez called **SB 864** from the President's table for consideration of the House amendment to the bill.

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

**Floor Amendment No. 1**

Amend **SB 864** (house committee report) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_ . Sections 651.303(b) and (c), Occupations Code, are amended to read as follows:

(b) The commission by rule shall define the terms of employment of a provisional license holder. The terms of employment[-

~~[(+) must include service by the provisional license holder[-~~

~~[(A) of at least 17 hours a week or 73 hours a month; and~~

~~[(B) under actual working conditions and under the personal supervision of a funeral director or embalmer[-; and~~

~~[(2) may not require more than 17 hours a week or 73 hours a month].~~

(c) The term of the provisional license program must be at least 12 consecutive months but not more than 24 consecutive months.

SECTION \_\_\_\_ . Subchapter K, Chapter 651, Occupations Code, is amended by adding Section 651.5011 to read as follows:

Sec. 651.5011. CHARGING FUNERAL DIRECTOR IN CHARGE WITH VIOLATION. In determining whether to charge a funeral director in charge with a violation based on conduct for which a licensed employee of the funeral establishment was directly responsible, the commission may consider:

- (1) the nature and seriousness of the violation;  
(2) the extent to which the licensed employee of the funeral establishment whose conduct is the basis of the violation was under the direct supervision of the funeral director in charge or another person at the time the licensed employee engaged in the conduct; and  
(3) the causal connection between the supervision of the licensed employee of the funeral establishment by the funeral director in charge and the conduct engaged in by the licensed employee that is the basis of the violation.

The amendment was read.

Senator Rodriguez moved to concur in the House amendment to **SB 864**.

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

### **SENATE BILL 1082 WITH HOUSE AMENDMENTS**

Senator Hegar called **SB 1082** from the President's table for consideration of the House amendments to the bill.

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

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

Amend **SB 1082** (house committee printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. (a) Section 43.0751, Local Government Code, is amended by adding Subsection (f-1) read as follows:

(f-1) A strategic partnership agreement may not provide for the regulation of fireworks within the boundaries of the district.

SECTION \_\_\_\_\_. Section 43.0751(f-1), Local Government Code, as added by this Act, apply only to a strategic partnership agreement entered into on or after the effective date of this Act.

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

Amend **SB 1082** (house committee printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 43.0751, Local Government Code, is amended by adding Subsection (k-1) to read as follows:

(k-1) A strategic partnership agreement may not provide for the imposition of a sales tax without voter approval within the boundaries of the district.

SECTION \_\_\_\_\_. Section 43.0751(k-1), Local Government Code, as added by this Act, applies only to a strategic partnership agreement entered into on or after the effective date of this Act.

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

Amend **SB 1082** on third reading by striking Amendment No. 2 by Elkins, adding Section 43.0751(k-1), Local Government Code, and a transition section related to that added subsection.

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

Amend **SB 1082** on third reading as follows:

(1) Strike Amendment No. 1 by Elkins, adding Section 43.0751(f-1), Local Government Code, and the transition section related to that added subsection.

(2) Add the following appropriately numbered SECTIONS to the bill as follows:

SECTION \_\_\_\_\_. Subchapter D, Chapter 43, Local Government Code, is amended by adding Section 43.07515 to read as follows:

Sec. 43.07515. REGULATION OF FIREWORKS UNDER STRATEGIC PARTNERSHIP AGREEMENT LAW. (a) A municipality may not regulate under Section 43.0751 or 43.0752 the sale, use, storage, or transportation of fireworks outside of the municipality's boundaries.

(b) To the extent of a conflict with any other law, this section controls.

SECTION \_\_\_\_\_. Section 43.07515, Local Government Code, as added by this Act, applies only to a regulation adopted on or after the effective date of this Act.

(3) Renumber the remaining SECTIONS of the bill appropriately.

The amendments were read.

Senator Hegar moved to concur in the House amendments to **SB 1082**.

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

**SENATE BILL 650 WITH HOUSE AMENDMENTS**

Senator Hegar called **SB 650** from the President's table for consideration of the House amendments to the bill.

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

**Floor Amendment No. 1**

Amend **SB 650** (house committee printing) by adding the following appropriately numbered SECTIONS and renumbering the remaining SECTIONS as appropriate:

SECTION \_\_\_\_\_. Section 451.610, Transportation Code, is amended to read as follows:

Sec. 451.610. CONTINUATION OF SERVICES TO PERSONS WITH DISABILITIES. (a) An authority shall continue to provide transportation services for persons with disabilities in a withdrawn unit of election. The authority may not charge a fare for transportation services to persons with disabilities in the withdrawn unit that is more than the fare for those services for persons in the authority.

(b) An authority shall provide the same level of transportation services under Subsection (a) to persons with disabilities in a unit of election that withdrew from the authority before January 1, 2011, as those persons received on January 1, 2011. This subsection applies only to an authority to which Subchapter C-1 applies.

SECTION \_\_\_\_\_. Subchapter M, Chapter 451, Transportation Code, is amended by adding Section 451.6101 to read as follows:

Sec. 451.6101. CONTINUATION OF SERVICES TO PERSONS WITH DISABILITIES; ALTERNATIVE PROGRAM. (a) This section applies only to an authority to which Subchapter C-1 applies.

(b) Notwithstanding Section 451.610, an authority shall establish an alternative program to provide transportation services to persons with disabilities in a withdrawn unit of election who are eligible to receive services under the program. An authority shall require interested persons with disabilities to apply to be program participants. The program must be available to a person with a disability who:

(1) resides, at the time of application to the program, in a withdrawn unit of election;

(2) can prove, at the time of application, residence in the corporate limits of the withdrawn unit of election as those limits existed at the time of the withdrawal and continuous residence in the corporate limits of the withdrawn unit of election since withdrawal;

(3) meets eligibility criteria established by the authority for demand-responsive transportation service for persons with disabilities and can prove, at the time of application, that the person has had the same disability since the unit of election withdrew; and

(4) applies to the program before January 1, 2012.

(c) The program must:

(1) include only transportation services that meet the requirements of all applicable federal laws, rules, or regulations; and

(2) include transportation services between the residence of a program participant and a destination within the authority's service area or a destination within the withdrawn unit of election where the person with a disability resides that is:

(A) the participant's place of work or a place where the participant is seeking employment;

(B) a physician's office;

(C) a pharmacy;

(D) the participant's place of voting;

(E) a grocery store within five miles of the participant's residence or within the withdrawn unit of election; or

(F) a government building.

(d) Subsection (c)(1) does not expand the service area or add to the destinations in Subsection (c)(2).

(e) The requirement for transportation services to a grocery store under Subsection (c)(2)(E) is for services once per week. The requirement for transportation services to a government building under Subsection (c)(2)(F) is for services twice per week.

(f) A withdrawn unit of election must reimburse the authority for the costs of all services in the manner provided by Section 451.616 unless otherwise agreed to in a memorandum of understanding between the authority and the withdrawn unit of election.

(g) A withdrawn unit of election that does not provide transportation services to a program participant in the withdrawn unit of election through a third-party service provider shall provide the participant with use of the authority's transportation services. If a withdrawn unit of election chooses to have a third-party service provider provide services under this subsection, the authority may, with the withdrawn unit's consent:



(1) provide necessary dispatch services; and  
(2) ensure the provider receives payment from the withdrawn unit of election.

(h) An individual may not receive transportation services under the program and subsequently receive transportation services under Section 451.610.

(i) A person who ceases to reside in the withdrawn unit of election may not continue as a program participant.

(j) This section and any program established under this section expire on January 1, 2020.

## **Floor Amendment No. 2**

Amend **SB 650** (house committee printing) as follows:

(1) In SECTION 1 of the bill, in added Section 451.132(a)(5)(D), Transportation Code (page 2, line 4), strike "and".

(2) In SECTION 1 of the bill, in added Section 451.132(a)(5)(E), Transportation Code (page 2, line 5), between "tracking" and the period, insert:

;

(F) participation of historically underutilized businesses; and

(G) cost-benefit analyses

(3) In SECTION 1 of the bill, following added Section 451.132(d), Transportation Code (page 2, between lines 14 and 15), insert:

(e) The board may not adopt a plan for participation of historically underutilized businesses in capital improvement projects that require a quota or any similar requirement. The board may not conduct a capital improvement project in a way that has the effect of creating a quota for the participation of historically underutilized businesses.

(4) In SECTION 1 of the bill, following added Section 451.133(c), Transportation Code (page 2, between lines 23 and 24), insert:

(d) The board shall maintain, update, and post on the authority's Internet website accounting records for each authority account, including:

(1) the account's balance at the end of the fiscal year;

(2) deposits to the account;

(3) account expenditures; and

(4) interest income to the account.

(5) In SECTION 1 of the bill, in added Section 451.134(a), Transportation Code (page 2, line 27), strike "budgeted operating expenses for two months" and substitute "actual operating expenses for 90 days".

(6) In SECTION 1 of the bill, strike added Section 451.134(b), Transportation Code (page 3, lines 1-3), and substitute:

(b) The board shall adjust the amount held in the reserve account at least once annually based on the authority's actual operating reserves for the 12 months immediately preceding the adjustment.

(7) In SECTION 1 of the bill, in Section 451.137(c), Transportation Code (page 5, line 22), strike "two" and substitute "eight".

(8) In SECTION 1 of the bill, in Section 451.137(c), Transportation Code (page 5, line 24), strike "15" and substitute "60".

(9) In SECTION 3 of the bill (page 7, line 12), strike "September 1, 2016," and substitute "January 1, 2012".

(10) In SECTION 3 of the bill (page 7, line 15), between "account" and the period, insert ". The metropolitan rapid transit authority shall fully fund the account by December 31, 2014".

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

Amend **SB 650** on third reading as follows:

(1) In Section 451.134(a), Transportation Code, as amended on second reading by the Workman amendment, strike "90 days" and substitute "two months".

(2) Strike SECTION 3 of the bill, as amended on second reading by the Workman amendment, and substitute the following appropriately numbered SECTION:

SECTION \_\_\_\_\_. Not later than September 1, 2016, a metropolitan rapid transit authority required to establish a reserve account under Section 451.134, Transportation Code, as added by this Act, shall establish the account. Not later than December 31, 2014, the authority shall file a report on the authority's progress in fulfilling this requirement with the lieutenant governor, speaker of the house of representatives, and each member of the legislature.

(3) In SECTION 1 of the bill, strike Section 451.139(a), Transportation Code, and substitute the following:

(a) An authority may issue bonds only in an amount necessary for managing or funding retiree pension benefit obligations for pension plans existing as of January 1, 2011, and that result from the competitive bidding of transit services required by Section 451.137.

The amendments were read.

Senator Hegar moved to concur in the House amendments to **SB 650**.

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

### **SENATE BILL 233 WITH HOUSE AMENDMENT**

Senator Deuell called **SB 233** from the President's table for consideration of the House amendment to the bill.

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

### **Amendment**

Amend **SB 233** by substituting in lieu thereof the following:

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

relating to the creation of the Rowlett Pecan Grove Management District; providing authority to impose a tax, levy an assessment, and issue bonds.

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

SECTION 1. Subtitle C, Title 4, Special District Local Laws Code, is amended by adding Chapter 3895 to read as follows:

CHAPTER 3895. ROWLETT PECAN GROVE MANAGEMENT DISTRICT  
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 3895.001. DEFINITIONS. In this chapter:

(1) "Board" means the district's board of directors.

(2) "City" means the City of Rowlett, Texas.

(3) "Director" means a board member.

(4) "District" means the Rowlett Pecan Grove Management District.

(5) "Improvement project" means any program or project authorized by

Section 3895.102, inside or outside the district.

Sec. 3895.002. 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. 3895.003. PURPOSE; DECLARATION OF INTENT. (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 Dallas County from providing the level of services provided to the area in the district as of the effective date 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. 3895.004. 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 creation of the district is in the public interest and is essential to further the public purposes of:

(1) developing and diversifying the economy of the state;

(2) eliminating unemployment and underemployment; and

(3) developing or expanding transportation and commerce.

(d) The district will:

(1) promote the health, safety, and general welfare of residents, employers, employees, potential 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 and aesthetic beauty.

(e) 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 an improvement project that includes a street or road improvement.

(f) 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. 3895.005. DISTRICT TERRITORY. (a) The district is composed of the territory described by Section 2 of the Act creating this chapter, as that territory may have been modified under Section 3895.109 or other law.

(b) The boundaries and field notes of the district contained in Section 2 of the Act creating this chapter form a closure. A mistake in the field notes of the district contained in Section 2 of the Act creating this chapter or in copying the field notes in the legislative process does not in any way affect the district's:

(1) organization, existence, or validity;

(2) right to contract, including the right to issue any type of bond or other obligation for a purpose for which the district is created;

(3) right to impose or collect an assessment, tax, or any other revenue; or

(4) legality or operation.

Sec. 3895.006. ELIGIBILITY FOR REINVESTMENT OR ENTERPRISE ZONES. (a) All or any part of the area of the district is eligible, regardless of other statutory criteria, to be included in:

(1) a tax increment reinvestment zone created by the city under Chapter 311, Tax Code; or

(2) a tax abatement reinvestment zone created by the city under Chapter 312, Tax Code.

(b) All or any part of the area of the district is eligible to be nominated for inclusion in an enterprise zone by the city under Chapter 2303, Government Code.

Sec. 3895.007. APPLICABILITY OF MUNICIPAL MANAGEMENT DISTRICTS LAW. Except as otherwise provided by this chapter, Chapter 375, Local Government Code, applies to the district.

Sec. 3895.008. LIBERAL CONSTRUCTION OF CHAPTER. This chapter shall be liberally construed in conformity with the findings and purposes stated in this chapter.

[Sections 3895.009-3895.050 reserved for expansion]

#### SUBCHAPTER B. BOARD OF DIRECTORS

Sec. 3895.051. BOARD OF DIRECTORS. The district is governed by a board of five directors appointed under Section 3895.052 and three directors serving ex officio under Section 3895.053.

Sec. 3895.052. APPOINTMENT OF DIRECTORS; TERMS. (a) The mayor and governing body of the city shall appoint voting directors. A person is appointed if a majority of the members of the governing body, including the mayor, vote to appoint that person. A member of the governing body of the city may not be appointed to the board.

(b) Section 375.063, Local Government Code, does not apply to the district.

(c) The appointed directors serve staggered terms of four years, with two or three directors' terms expiring June 1 of each odd-numbered year.

(d) A person may not be appointed to the board if the appointment of that person would result in fewer than three of the directors residing in the city.

(e) The governing body of the city shall appoint a director to fill a vacancy that occurs on the board.

(f) A director is a public official entitled to governmental immunity for the director's official actions.

Sec. 3895.053. NONVOTING DIRECTORS. (a) The following persons serve as nonvoting ex officio directors:

(1) the manager of the city;

(2) the financial director of the city; and

(3) the planning director of the city.

(b) If an office described by Subsection (a) is renamed, changed, or abolished, the governing body of the city may appoint another city officer or employee who performs duties comparable to those performed by the officer described by Subsection (a).

Sec. 3895.054. CONFLICTS OF INTEREST. (a) Except as provided by Section 3895.053 or this section:

(1) a director may participate in all board votes and decisions; and

(2) Chapter 171, Local Government Code, governs conflicts of interest of board members.

(b) A director who has a beneficial interest in a business entity that will receive a pecuniary benefit from an action of the board may participate in discussion and vote on that action if a majority of the board has a similar interest in the same action or if all other similar business entities in the district will receive a similar pecuniary benefit.

(c) A director who is also an officer or employee of a public entity may not participate in a discussion of or vote on a matter regarding a contract with that same public entity.

Sec. 3895.055. DIRECTOR'S OATH OR AFFIRMATION. A director's oath or affirmation of office shall be filed with the district and the district shall retain the oath or affirmation in the district records.

Sec. 3895.056. OFFICERS. The board shall elect from among the directors a chair, vice chair, and secretary.

Sec. 3895.057. COMPENSATION OF DIRECTORS; REIMBURSEMENT OF EXPENSES. A director is not entitled to compensation for service on the board but is entitled to be reimbursed for necessary expenses incurred in carrying out the duties and responsibilities of a director.

Sec. 3895.058. INITIAL DIRECTORS. (a) The initial board consists of the following directors:

- (1) \_\_\_\_\_;
- (2) \_\_\_\_\_;
- (3) \_\_\_\_\_;
- (4) \_\_\_\_\_; and
- (5) \_\_\_\_\_.

(b) Of the initial directors, the terms of directors appointed for positions 1 and 2 expire June 1, 2013, and the terms of directors appointed for positions 3 through 5 expire June 1, 2015.

(c) This section expires September 1, 2015.

Sec. 3895.059. QUORUM. For purposes of determining whether a quorum of the board is present, the following are not counted:

- (1) a board position vacant for any reason, including death, resignation, or disqualification;
- (2) a director who is abstaining from participation in a vote because of a conflict of interest; or
- (3) a nonvoting director.

[Sections 3895.060-3895.100 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

Sec. 3895.101. GENERAL POWERS AND DUTIES. The district has the powers and duties provided by:

- (1) the general laws relating to conservation and reclamation districts created under Section 59, Article XVI, Texas Constitution, including Chapters 49 and 54, Water Code;
- (2) 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; and
- (3) Chapter 375, Local Government Code.

Sec. 3895.102. IMPROVEMENT PROJECTS. (a) The district may provide, or it may enter into contracts with a governmental or private entity to provide, the following types of improvement projects or activities in support of or incidental to those projects:

- (1) a supply and distribution facility or system to provide potable and city-approved nonpotable water to the residents and businesses of the district, including a wastewater collection facility;
- (2) a paved road or street, inside and outside the district, to the extent authorized by Section 52, Article III, Texas Constitution;
- (3) the planning, design, construction, improvement, and maintenance of:
  - (A) landscaping;
  - (B) highway right-of-way or transit corridor beautification and improvement;
  - (C) lighting, banners, and signs;
  - (D) a street or sidewalk;
  - (E) a hiking and cycling path or trail;
  - (F) a pedestrian walkway, skywalk, crosswalk, or tunnel;

(G) a park, lake, garden, recreational facility, sports facility, open space, scenic area, or related exhibit or preserve;

(H) a fountain, plaza, or pedestrian mall; or

(I) a drainage or storm-water detention improvement;

(4) protection and improvement of the quality of storm water that flows through the district;

(5) the planning, design, construction, improvement, maintenance, and operation of:

(A) a water or sewer facility; or

(B) an off-street parking facility or heliport;

(6) the planning and acquisition of:

(A) public art and sculpture and related exhibits and facilities; or

(B) an educational and cultural exhibit or facility;

(7) the planning, design, construction, acquisition, lease, rental, improvement, maintenance, installation, and management of and provision of furnishings for a facility for:

(A) a conference, convention, or exhibition;

(B) a manufacturer, consumer, or trade show;

(C) a civic, community, or institutional event; or

(D) an exhibit, display, attraction, special event, or seasonal or cultural celebration or holiday;

(8) the removal, razing, demolition, or clearing of land or improvements in connection with an improvement project;

(9) the acquisition and improvement of land or other property for the mitigation of the environmental effects of an improvement project;

(10) the acquisition of property or an interest in property in connection with an authorized improvement project;

(11) a special or supplemental service for the improvement and promotion of the district or an area adjacent to the district or for the protection of public health and safety in or adjacent to the district, including:

(A) advertising;

(B) promotion;

(C) tourism;

(D) health and sanitation;

(E) public safety;

(F) security;

(G) fire protection or emergency medical services;

(H) business recruitment;

(I) development;

(J) elimination of traffic congestion; and

(K) recreational, educational, or cultural improvements, enhancements,

and services; or

(12) any similar public improvement, facility, or service.

(b) The district may not undertake an improvement project under this section unless the board determines the project to be necessary to accomplish a public purpose of the district.

(c) An improvement project must comply with any applicable city requirements, including codes and ordinances.

(d) The district may not provide, conduct, or authorize any improvement project on the city streets, highways, rights-of-way, or easements without the consent of the governing body of the city.

(e) The district shall immediately comply with any city ordinance, order, or resolution that:

(1) requires the district to transfer to the city the title to all or any portion of an improvement project; or

(2) authorizes the district to own, encumber, maintain, and operate an improvement project, subject to the right of the city to order a conveyance of the project to the city on a date determined by the city.

(f) For the purposes of this section, planning, design, construction, improvement, and maintenance of a lake include work done for drainage, reclamation, or recreation.

Sec. 3895.103. DEVELOPMENT CORPORATION POWERS. The district, using money available to the district, may exercise the powers given to a development corporation under Chapter 505, Local Government Code, including the power to own, operate, acquire, construct, lease, improve, or maintain a project under that chapter.

Sec. 3895.104. GENERAL POWERS REGARDING CONTRACTS. (a) The district may:

(1) contract with any person to accomplish any district purpose, including a contract for:

(A) the payment, repayment, or reimbursement of costs incurred by that person on behalf of the district, including all or part of the costs of an improvement project and interest on the reimbursed cost; or

(B) the use, occupancy, lease, rental, operation, maintenance, or management of all or part of a proposed or existing improvement project; and

(2) apply for and contract with any person to receive, administer, and perform a duty or obligation of the district under a federal, state, local, or private gift, grant, loan, conveyance, transfer, bequest, or other financial assistance arrangement relating to the investigation, planning, analysis, study, design, acquisition, construction, improvement, completion, implementation, or operation by the district or others of a proposed or existing improvement project.

(b) A contract the district enters into to carry out a purpose of this chapter may be on any terms and for any period the board determines, including a negotiable or nonnegotiable note or warrant payable to the city, Dallas County, and any other person.

(c) Any person may contract with the district to carry out the purposes of this chapter without further statutory or other authorization.

(d) A contract payable from ad valorem taxes for a period longer than one year must be approved by the governing body of the city.

Sec. 3895.105. COMPETITIVE BIDDING. Section 375.221, Local Government Code, applies only to a district contract that has a value of more than \$50,000.



Sec. 3895.106. 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. 3895.107. RULES; ENFORCEMENT. (a) The district may adopt rules:

- (1) to administer or operate the district;
- (2) for the use, enjoyment, availability, protection, security, and maintenance of the district's property and facilities; or
- (3) to provide for public safety and security in the district.

(b) The district may enforce its rules by injunctive relief.

(c) To the extent a district rule conflicts with a city rule or order, the city rule or order controls.

Sec. 3895.108. NAME CHANGE. The board by resolution may change the district's name. The board shall give written notice of the change to the city.

Sec. 3895.109. ADDING OR REMOVING TERRITORY. The board may add or remove territory under Subchapter J, Chapter 49, and Section 54.016, Water Code, except that:

- (1) the addition or removal of the territory must be approved by:
  - (A) the governing body of the city; and
  - (B) the owners of the territory being added or removed;
- (2) a reference to a tax in Subchapter J, Chapter 49, or Section 54.016, Water Code, means an ad valorem tax; and
- (3) territory may not be removed from the district if bonds or other obligations of the district payable wholly or partly from ad valorem taxes on the territory are outstanding.

Sec. 3895.110. NO EMINENT DOMAIN POWER. The district may not exercise the power of eminent domain.

Sec. 3895.111. NO TOLL ROADS. The district may not construct, acquire, maintain, or operate a toll road.

Sec. 3895.112. DISTRICT EMPLOYEES; TERMS OF EMPLOYMENT; COMPENSATION. The board may employ and establish the terms of employment and compensation of:

- (1) an executive director or general manager; or
- (2) any other district employee the board considers necessary.

[Sections 3895.113-3895.150 reserved for expansion]

#### SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

Sec. 3895.151. GENERAL POWERS REGARDING FINANCIAL MATTERS. Except as provided by Section 3895.161, the district may:

(1) impose an ad valorem tax on all taxable property in the district, including industrial, commercial, and residential property, to pay for an improvement project;

(2) impose an assessment on property in the district in the manner provided for:

(A) a district under Subchapter F, Chapter 375, Local Government Code; or

(B) a municipality or county under Subchapter A, Chapter 372, Local Government Code;

(3) provide or secure the payment or repayment of the costs and expenses of the establishment, administration, and operation of the district and the district's costs or share of the costs or revenue of an improvement project or district contractual obligation or indebtedness by or through:

(A) a lease, installment purchase contract, or other agreement with any person;

(B) the imposition of a tax, assessment, user fee, concession fee, or rental charge; or

(C) any other revenue or resource of the district;

(4) establish user charges related to the operation of storm-water facilities, including the regulation of storm water for the protection of water quality in the district;

(5) establish user charges for the use of nonpotable water for irrigation purposes, subject to the approval of the governing body of the city;

(6) undertake separately or jointly with other persons, including the city or Dallas County, all or part of the cost of an improvement project, including an improvement project:

(A) for improving, enhancing, and supporting public safety and security, fire protection and emergency medical services, and law enforcement in and adjacent to the district; or

(B) that confers a general benefit on the entire district or a special benefit on a definable part of the district; and

(7) enter into a tax abatement agreement in accordance with the general laws of this state authorizing and applicable to tax abatement agreements by municipalities.

Sec. 3895.152. BORROWING MONEY. The district may borrow money for a district purpose by issuing or executing bonds, notes, credit agreements, or other obligations of any kind found by the board to be necessary or appropriate for the district purpose. The bond, note, credit agreement, or other obligation must be secured by and payable from ad valorem taxes, assessments, or other district revenue.

Sec. 3895.153. IMPACT FEES AND ASSESSMENTS; EXEMPTION. (a) The district may impose an impact fee or assessment on property in the district, including an impact fee or assessment on residential or commercial property, only in the manner provided by Subchapter A, Chapter 372, or Subchapter F, Chapter 375, Local Government Code, for a municipality, county, or public improvement district, according to the benefit received by the property.

(b) An impact fee for residential property must be for the limited purpose of providing capital funding for:

- (1) public water and wastewater facilities;
- (2) drainage and storm-water facilities; and
- (3) streets and alleys.

(c) An assessment, a reassessment, or an assessment resulting from an addition to or correction of the assessment roll by the district, penalties and interest on an assessment or reassessment, or an expense of collection of an assessment, including reasonable attorney's fees, incurred by the district:

- (1) is a first and prior lien against the property assessed; and
- (2) is superior to any other lien or claim other than a lien or claim for county, school district, or municipal ad valorem taxes.

(d) The board may make a correction to or deletion from the assessment roll that does not increase the amount of assessment of any parcel of land without providing notice and holding a hearing in the manner required for additional assessments.

(e) The district may not impose an impact fee on the property, including equipment and facilities, of a public utility provider in the district.

Sec. 3895.154. CERTAIN RESIDENTIAL PROPERTY NOT EXEMPT. Section 375.161, Local Government Code, does not apply to the district.

Sec. 3895.155. MAINTENANCE AND OPERATION TAX; ELECTION.

(a) Except as provided by Section 3895.161, the district may impose a tax for maintenance and operation purposes, including for:

(1) planning, constructing, acquiring, maintaining, repairing, and operating all improvement projects, including land, plants, works, facilities, improvements, appliances, and equipment of the district; and

(2) paying costs of services, engineering and legal fees, and organization and administrative expenses.

(b) The district may not impose a maintenance and operation tax unless the maximum tax rate is approved by the governing body of the city and a majority of the district voters voting at an election held for that purpose. If the maximum tax rate is approved, the board may impose the tax at any rate that does not exceed the approved rate.

(c) A maintenance and operation tax election may be held at the same time and in conjunction with any other district election. The election may be called by a separate election order or as part of any other election order.

(d) The proposition in a maintenance and operation tax election may be for a specific maximum rate.

Sec. 3895.156. USE OF SURPLUS MAINTENANCE AND OPERATION MONEY. If the district has surplus maintenance and operation tax money that is not needed for the purposes for which it was collected, the money may be used for any authorized purpose.

Sec. 3895.157. BOND ISSUANCE PLAN REQUIRED BEFORE ISSUING BONDS. The district may not issue bonds until the governing body of the city approves a bond issuance plan authorizing and setting forth the limitations on the issuance of the bonds.

Sec. 3895.158. BONDS AND OTHER OBLIGATIONS; MUNICIPAL APPROVAL. (a) Except as provided by Sections 3895.157 and 3895.161, the district may issue, by competitive bid or negotiated sale, bonds, notes, or other obligations payable wholly or partly from ad valorem taxes or assessments in the manner provided by Subchapter A, Chapter 372, or Subchapter J, Chapter 375, Local Government Code.

(b) In exercising the district's borrowing power, the district may issue a bond or other obligation in the form of a bond, note, certificate of participation or other instrument evidencing a proportionate interest in payments to be made by the district, or other type of obligation.

(c) In addition to the sources of money described by Subchapter A, Chapter 372, and Subchapter J, Chapter 375, Local Government Code, district bonds may be secured and made payable wholly or partly by a pledge of any part of the net proceeds the district receives from any other district revenue.

Sec. 3895.159. BOND MATURITY. Bonds must mature not more than 40 years from their date of issue.

Sec. 3895.160. TAXES FOR BONDS AND OTHER OBLIGATIONS. (a) At the time bonds or other obligations payable wholly or partly from ad valorem taxes are issued:

(1) the board shall impose a continuing direct annual ad valorem tax, without limit as to rate or amount, for each year that all or part of the bonds are outstanding; and

(2) the district annually shall impose an ad valorem tax on all taxable property in the district in an amount sufficient to:

(A) pay the interest on the bonds or other obligations as the interest becomes due;

(B) create a sinking fund for the payment of the principal of the bonds or other obligations when due or the redemption price at any earlier required redemption date; and

(C) pay the expenses of imposing the taxes.

(b) Bonds or other obligations that are secured by and payable from ad valorem taxes may not be issued unless the bonds and the imposition of the taxes are approved by:

(1) a majority of the district voters voting at an election held for that purpose; and

(2) the governing body of the city.

(c) The district shall hold an election required by this section in the manner provided by Chapter 54, Water Code.

Sec. 3895.161. PROJECT DEVELOPMENT AGREEMENT REQUIRED TO IMPOSE TAXES OR BORROW MONEY, INCLUDING BONDS. Before the district may issue bonds, impose taxes, or borrow money, the district and the city must negotiate and execute a mutually approved and accepted interlocal project development agreement regarding the development plans and rules for:

(1) the development and operation of the district; and

(2) the financing of improvement projects.

Sec. 3895.162. CITY NOT REQUIRED TO PAY DISTRICT OBLIGATIONS. Except as provided by Section 375.263, Local Government Code, the city is not required to pay a bond, note, or other obligation of the district.

[Sections 3895.163-3895.200 reserved for expansion]

SUBCHAPTER E. DISSOLUTION

Sec. 3895.201. DISSOLUTION BY CITY ORDINANCE. (a) If the city adopts by a two-thirds vote of its governing body an ordinance to dissolve the district, the district is dissolved.

(b) The district may not be dissolved until the district's outstanding indebtedness or contractual obligations payable from ad valorem taxes have been repaid or discharged.

(c) The district may not be dissolved until any agreement under Section 3895.161 has been executed and the district's performance under the agreement has been fulfilled, including any right or obligation the district has to reimburse a developer or owner for the costs of improvement projects.

Sec. 3895.202. 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, other than ad valorem taxes, the city succeeds to the rights and obligations of the district regarding enforcement and collection of the assessments or other revenue.

(b) If the district is dissolved, the city has and may 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.

Sec. 3895.203. ASSUMPTION OF ASSETS AND LIABILITIES. (a) The district may not be dissolved by the city unless the city assumes the obligations of the district, including any bonds or other indebtedness 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 2. The Rowlett Pecan Grove Management District initially includes all territory contained in the following area:

TRACT 1: BEING Lots 1 and 2, in Block A of Pecan Grove Park Addition, an Addition to the City of Rowlett, Dallas County, Texas, according to the Map thereof recorded under cc#200600238026, Real Property Records of Dallas County, Texas; and

TRACT 2: BEING all that certain lot, tract or parcel of land situated in the Thomas Lumley Survey, Abstract No. 789, City of Rowlett, Dallas County, Texas, and being a part of a 87.934 acres tract of land as described in a Special Warranty deed from Garland Independent School District to City of Rowlett, dated August 27, 1997 and being recorded in Volume 97175, Page 1103 of the Deed Records of Dallas County, Texas, and being more particularly described as follows:

BEGINNING at a 3/8" iron rod found for corner in the east right-of-way line of Kirby Road (variable width right-of-way) and in the meanders of a creek, said point being at the west most northwest corner of said 87.934 acres tract and at the southwest corner of Lot 1, Block A, Rowlett High School, an Addition to the City of Rowlett, Texas, according to the Map thereof recorded in Volume 94179, Page 1344 of the Map Records of Dallas County, Texas;

THENCE in an easterly direction along the south line of said Addition and generally along the meanders of said creek as follows:

- S. 26 deg. 27 min. 49 sec. E. a distance of 111.48 feet;
- N. 70 deg. 10 min. 55 sec. E. a distance of 260.00 feet;
- S. 79 deg. 19 min. 59 sec. E. a distance of 195.00 feet;
- N. 81 deg. 03 min. 35 sec. E. a distance of 110.00 feet;
- S. 51 deg. 03 min. 57 sec. E. a distance of 60.00 feet;
- N. 79 deg. 18 min. 55 sec. E. a distance of 175.00 feet;
- S. 38 deg. 56 min. 57 sec. E. a distance of 142.00 feet;
- N. 57 deg. 52 min. 19 sec. E. a distance of 115.00 feet;
- S. 15 deg. 11 min. 06 sec. E. a distance of 108.00 feet;
- S. 19 deg. 47 min. 39 sec. W. a distance of 106.00 feet;
- S. 78 deg. 40 min. 34 sec. E. a distance of 335.00 feet;
- S. 13 deg. 24 min. 39 sec. E. a distance of 92.20 feet;

THENCE N. 59 deg. 02 min. 24 sec. E. leaving the meanders of said creek and continuing along the south line of said Addition, a distance of 219.48 feet to a 1/2" iron rod found for corner at the southeast corner of said Addition and being in the west line of a 100 foot T.P. & L. Co. easement as recorded in Volume 67115, Page 202 of the Deed Records of Dallas County, Texas;

THENCE N. 00 deg. 55 min. 24 sec. W. along the east line of said Addition, a distance of 500.14 feet to a 5/8" iron rod found for corner at the southwest corner of Lot 2, Block A, of Pecan Grove Park Addition, an Addition to the City of Rowlett, Dallas County, Texas, according to the Map thereof recorded under cc#200600238026, Real Property Records of Dallas County, Texas;

THENCE N. 89 deg. 04 min. 17 sec. E. along the south line of said Lot 2, a distance of 936.07 feet to a 5/8" iron rod found for corner at the southeast corner of Lot 2 and the south most southwest corner of said Lot 1;

THENCE N. 68 deg. 17 min. 12 sec. E. along the southeast line of said Lot 1, a distance of 800.60 feet to a 5/8" iron rod found for corner in the southwest right-of-way line of Dallas Area Rapid Transit (100' R.O.W.)

THENCE S. 45 deg. 29 min. 56 sec. E. along said right-of-way line, a distance of 97.69 feet to a 1/2" iron rod found for corner in the west take line of the City of Dallas for Lake Ray Hubbard as recorded in Volume 69061, Page 970 of the Deed Records of Dallas County, Texas;

THENCE S. 18 deg. 04 min. 52 sec. E. along said take line, a distance of 338.92 feet to a concrete monument with brass disk marked "City of Dallas Water Dept. U-10-2" found for corner;

THENCE S. 02 deg. 36 min. 36 sec. E. along said take line, a distance of 502.17 feet to a concrete monument with brass disk marked "City of Dallas Water Dept. U-6-2" found for corner;

THENCE S. 19 deg. 09 min. 28 sec. W. along said take line, a distance of 477.18 feet to a broken concrete monument with brass disk marked "City of Dallas Water Dept. U-6-1" found for corner;

THENCE S. 89 deg. 19 min. 30 sec. W. along the north line of a 2.29 acres tract as described in a Deed to Singh Lalsingh Sanker, as recorded in Volume 87085, Page 4639 of the Deed Records of Dallas County, Texas, a distance of 705.12 feet to a 1/2" iron rod found for corner in the east right-of-way line of Miller Heights Drive (60' R.O.W.);

THENCE N. 02 deg. 54 min. 52 sec. E., along said right-of-way line, a distance of 10.12 feet to a 1/2" iron rod found for corner;

THENCE S. 89 deg. 18 min. 25 sec. W. along said right-of-way line, a distance of 2546.89 feet to a 1/2" iron rod found for corner in the east right-of-way line of Kirby Road and being at the southwest corner of said 87.934 acres tract;

THENCE N. 00 deg. 54 min. 25 sec. W. along said right-of-way line, a distance of 569.41 feet to a 1/2" iron rod found for corner;

THENCE N. 05 deg. 30 min. 22 sec. E. along said right-of-way line, a distance of 200.25 feet to a 1/2" iron rod found for corner;

THENCE N. 00 deg. 57 min. 36 sec. W. along said right-of-way line, a distance of 123.69 feet to the POINT OF BEGINNING and containing 3,171.925 square feet or 72.82 acres of land.

SECTION 3. (a) The legal notice of the intention to introduce this Act, setting forth the general substance of this Act, has been published as provided by law, and the notice and a copy of this Act have been furnished to all persons, agencies, officials, or entities to which they are required to be furnished under Section 59, Article XVI, Texas Constitution, and Chapter 313, Government Code.

(b) The governor, one of the required recipients, has submitted the notice and Act to the Texas Commission on Environmental Quality.

(c) The Texas Commission on Environmental Quality has filed its recommendations relating to this Act with the governor, lieutenant governor, and speaker of the house of representatives within the required time.

(d) The general law relating to consent by political subdivisions to the creation of districts with conservation, reclamation, and road powers and the inclusion of land in those districts has been complied with.

(e) All requirements of the constitution and laws of this state and the rules and procedures of the legislature with respect to the notice, introduction, and passage of this Act have been fulfilled and accomplished.

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2011.

The amendment was read.

Senator Deuell moved to concur in the House amendment to **SB 233**.

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

**SENATE BILL 234 WITH HOUSE AMENDMENT**

Senator Deuell called **SB 234** from the President's table for consideration of the House amendment to the bill.

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

**Amendment**

Amend **SB 234** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to the creation of the Rowlett Downtown Management District; providing authority to impose a tax, levy an assessment, and issue bonds.

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

SECTION 1. Subtitle C, Title 4, Special District Local Laws Code, is amended by adding Chapter 3894 to read as follows:

CHAPTER 3894. ROWLETT DOWNTOWN MANAGEMENT DISTRICT  
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 3894.001. DEFINITIONS. In this chapter:

- (1) "Board" means the district's board of directors.
- (2) "City" means the City of Rowlett, Texas.
- (3) "Director" means a member of the board.
- (4) "District" means the Rowlett Downtown Management District.
- (5) "Improvement project" means any program or project authorized by

Section 3894.102, inside or outside the district.

Sec. 3894.002. 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. 3894.003. PURPOSE; DECLARATION OF INTENT. (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 Dallas County from providing the level of services provided to the area in the district as of the effective date 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. 3894.004. 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 creation of the district is in the public interest and is essential to further the public purposes of:

- (1) developing and diversifying the economy of the state;
- (2) eliminating unemployment and underemployment; and
- (3) developing or expanding transportation and commerce.

(d) The district will:

(1) promote the health, safety, and general welfare of residents, employers, employees, potential 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 and aesthetic beauty.

(e) 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 an improvement project that includes a street or road improvement.

(f) 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. 3894.005. DISTRICT TERRITORY. (a) The district is composed of the territory described by Section 2 of the Act creating this chapter, as that territory may have been modified under Section 3894.109 or other law.

(b) The boundaries and field notes of the district contained in Section 2 of the Act creating this chapter form a closure. A mistake in the field notes of the district contained in Section 2 of the Act creating this chapter or in copying the field notes in the legislative process does not in any way affect the district's:

- (1) organization, existence, or validity;
- (2) right to contract, including the right to issue any type of bond or other obligation for a purpose for which the district is created;
- (3) right to impose or collect an assessment, tax, or any other revenue; or
- (4) legality or operation.

Sec. 3894.006. ELIGIBILITY FOR REINVESTMENT OR ENTERPRISE ZONES. (a) All or any part of the area of the district is eligible, regardless of other statutory criteria, to be included in:

(1) a tax increment reinvestment zone created by the city under Chapter 311, Tax Code; or

(2) a tax abatement reinvestment zone created by the city under Chapter 312, Tax Code.

(b) All or any part of the area of the district is eligible to be nominated for inclusion in an enterprise zone by the city under Chapter 2303, Government Code.

Sec. 3894.007. APPLICABILITY OF MUNICIPAL MANAGEMENT DISTRICTS LAW. Except as otherwise provided by this chapter, Chapter 375, Local Government Code, applies to the district.

Sec. 3894.008. LIBERAL CONSTRUCTION OF CHAPTER. This chapter shall be liberally construed in conformity with the findings and purposes stated in this chapter.

[Sections 3894.009-3894.050 reserved for expansion]

SUBCHAPTER B. BOARD OF DIRECTORS

Sec. 3894.051. BOARD OF DIRECTORS. The district is governed by a board of five directors appointed under Section 3894.052 and three directors serving ex officio under Section 3894.053.

Sec. 3894.052. APPOINTMENT OF DIRECTORS; TERMS. (a) The mayor and governing body of the city shall appoint voting directors. A person is appointed if a majority of the members of the governing body, including the mayor, vote to appoint that person. A member of the governing body of the city may not be appointed to the board.

(b) Section 375.063, Local Government Code, does not apply to the district.

(c) The appointed directors serve staggered terms of four years, with two or three directors' terms expiring June 1 of each odd-numbered year.

(d) A person may not be appointed to the board if the appointment of that person would result in fewer than three of the directors residing in the city.

(e) The governing body of the city shall appoint a director to fill a vacancy that occurs on the board.

(f) District directors are public officials entitled to governmental immunity for their official actions.

Sec. 3894.053. NONVOTING DIRECTORS. (a) The following persons serve as nonvoting ex officio directors:

- (1) the manager of the city;
- (2) the financial director of the city; and
- (3) the planning director of the city.

(b) If an office described by Subsection (a) is renamed, changed, or abolished, the governing body of the city may appoint another city officer or employee who performs duties comparable to those performed by the officer described by Subsection (a).

Sec. 3894.054. CONFLICTS OF INTEREST. (a) Except as provided by Section 3894.053 or this section:

- (1) a director may participate in all board votes and decisions; and
- (2) Chapter 171, Local Government Code, governs conflicts of interest of board members.

(b) A director who has a beneficial interest in a business entity that will receive a pecuniary benefit from an action of the board may participate in discussion and vote on that action if a majority of the board has a similar interest in the same action or if all other similar business entities in the district will receive a similar pecuniary benefit.

(c) A director who is also an officer or employee of a public entity may not participate in a discussion of or vote on a matter regarding a contract with that same public entity.

Sec. 3894.055. DIRECTOR'S OATH OR AFFIRMATION. A director's oath or affirmation of office shall be filed with the district and the district shall retain the oath or affirmation in the district records.

Sec. 3894.056. OFFICERS. The board shall elect from among the directors a chair, vice chair, and secretary.

Sec. 3894.057. COMPENSATION OF DIRECTORS; REIMBURSEMENT OF EXPENSES. A director is not entitled to compensation for service on the board but is entitled to be reimbursed for necessary expenses incurred in carrying out the duties and responsibilities of a director.

Sec. 3894.058. INITIAL DIRECTORS. (a) The initial board consists of the following directors:

- (1) \_\_\_\_\_;
- (2) \_\_\_\_\_;
- (3) \_\_\_\_\_;
- (4) \_\_\_\_\_; and
- (5) \_\_\_\_\_.

(b) Of the initial directors, the terms of directors appointed for positions 1 and 2 expire June 1, 2013, and the terms of directors appointed for positions 3 through 5 expire June 1, 2015.

(c) This section expires September 1, 2015.

Sec. 3894.059. QUORUM. For purposes of determining whether a quorum of the board is present, the following are not counted:

- (1) a board position vacant for any reason, including death, resignation, or disqualification;
- (2) a director who is abstaining from participation in a vote because of a conflict of interest; or
- (3) a nonvoting director.

[Sections 3894.060-3894.100 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

Sec. 3894.101. GENERAL POWERS AND DUTIES. The district has the powers and duties provided by:

- (1) the general laws relating to conservation and reclamation districts created under Section 59, Article XVI, Texas Constitution, including Chapters 49 and 54, Water Code;
- (2) 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; and
- (3) Chapter 375, Local Government Code.

Sec. 3894.102. IMPROVEMENT PROJECTS. (a) The district may provide, or it may enter into contracts with a governmental or private entity to provide, the following types of improvement projects or activities in support of or incidental to those projects:

(1) a supply and distribution facility or system to provide potable and city-approved nonpotable water to the residents and businesses of the district, including a wastewater collection facility;

(2) a paved road or street, inside and outside the district, to the extent authorized by Section 52, Article III, Texas Constitution;

(3) the planning, design, construction, improvement, and maintenance of:

(A) landscaping;

(B) highway right-of-way or transit corridor beautification and improvement;

(C) lighting, banners, and signs;

(D) a street or sidewalk;

(E) a hiking and cycling path or trail;

(F) a pedestrian walkway, skywalk, crosswalk, or tunnel;

(G) a park, lake, garden, recreational facility, sports facility, open space, scenic area, or related exhibit or preserve;

(H) a fountain, plaza, or pedestrian mall; or

(I) a drainage or storm-water detention improvement;

(4) protection and improvement of the quality of storm water that flows through the district;

(5) the planning, design, construction, improvement, maintenance, and operation of:

(A) a water or sewer facility; or

(B) an off-street parking facility or heliport;

(6) the planning and acquisition of:

(A) public art and sculpture and related exhibits and facilities; or

(B) an educational and cultural exhibit or facility;

(7) the planning, design, construction, acquisition, lease, rental, improvement, maintenance, installation, and management of and provision of furnishings for a facility for:

(A) a conference, convention, or exhibition;

(B) a manufacturer, consumer, or trade show;

(C) a civic, community, or institutional event; or

(D) an exhibit, display, attraction, special event, or seasonal or cultural celebration or holiday;

(8) the removal, razing, demolition, or clearing of land or improvements in connection with an improvement project;

(9) the acquisition and improvement of land or other property for the mitigation of the environmental effects of an improvement project;

(10) the acquisition of property or an interest in property in connection with an authorized improvement project;

(11) a special or supplemental service for the improvement and promotion of the district or an area adjacent to the district or for the protection of public health and safety in or adjacent to the district, including:

(A) advertising;

(B) promotion;

(C) tourism;

(D) health and sanitation;

(E) public safety;

(F) security;

(G) fire protection or emergency medical services;

(H) business recruitment;

(I) development;

(J) elimination of traffic congestion; and

(K) recreational, educational, or cultural improvements, enhancements,

and services; or

(12) any similar public improvement, facility, or service.

(b) The district may not undertake an improvement project under this section unless the board determines the project to be necessary to accomplish a public purpose of the district.

(c) An improvement project must comply with any applicable city requirements, including codes and ordinances.

(d) The district may not provide, conduct, or authorize any improvement project on the city streets, highways, rights-of-way, or easements without the consent of the governing body of the city.

(e) The district shall immediately comply with any city ordinance, order, or resolution that:

(1) requires the district to transfer to the city the title to all or any portion of an improvement project; or

(2) authorizes the district to own, encumber, maintain, and operate an improvement project, subject to the right of the city to order a conveyance of the project to the city on a date determined by the city.

(f) For the purposes of this section, planning, design, construction, improvement, and maintenance of a lake include work done for drainage, reclamation, or recreation.

Sec. 3894.103. DEVELOPMENT CORPORATION POWERS. The district, using money available to the district, may exercise the powers given to a development corporation under Chapter 505, Local Government Code, including the power to own, operate, acquire, construct, lease, improve, or maintain a project under that chapter.

Sec. 3894.104. GENERAL POWERS REGARDING CONTRACTS. (a) The district may:

(1) contract with any person to accomplish any district purpose, including a contract for:

(A) the payment, repayment, or reimbursement of costs incurred by that person on behalf of the district, including all or part of the costs of an improvement project and interest on the reimbursed cost; or

(B) the use, occupancy, lease, rental, operation, maintenance, or management of all or part of a proposed or existing improvement project; and

(2) apply for and contract with any person to receive, administer, and perform a duty or obligation of the district under a federal, state, local, or private gift, grant, loan, conveyance, transfer, bequest, or other financial assistance arrangement

relating to the investigation, planning, analysis, study, design, acquisition, construction, improvement, completion, implementation, or operation by the district or others of a proposed or existing improvement project.

(b) A contract the district enters into to carry out a purpose of this chapter may be on any terms and for any period the board determines, including a negotiable or nonnegotiable note or warrant payable to the city, Dallas County, and any other person.

(c) Any person may contract with the district to carry out the purposes of this chapter without further statutory or other authorization.

(d) A contract payable from ad valorem taxes for a period longer than one year must be approved by the governing body of the city.

Sec. 3894.105. COMPETITIVE BIDDING. Section 375.221, Local Government Code, applies only to a district contract that has a value of more than \$50,000.

Sec. 3894.106. 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. 3894.107. RULES; ENFORCEMENT. (a) The district may adopt rules:

- (1) to administer or operate the district;
- (2) for the use, enjoyment, availability, protection, security, and maintenance of the district's property and facilities; or
- (3) to provide for public safety and security in the district.

(b) The district may enforce its rules by injunctive relief.

(c) To the extent a district rule conflicts with a city rule or order, the city rule or order controls.

Sec. 3894.108. NAME CHANGE. The board by resolution may change the district's name. The board shall give written notice of the change to the city.

Sec. 3894.109. ADDING OR REMOVING TERRITORY. The board may add or remove territory under Subchapter J, Chapter 49, and Section 54.016, Water Code, except that:

- (1) the addition or removal of the territory must be approved by:
  - (A) the governing body of the city; and
  - (B) the owners of the territory being added or removed;

(2) a reference to a tax in Subchapter J, Chapter 49, or Section 54.016, Water Code, means an ad valorem tax; and

(3) territory may not be removed from the district if bonds or other obligations of the district payable wholly or partly from ad valorem taxes on the territory are outstanding.

Sec. 3894.110. NO EMINENT DOMAIN POWER. The district may not exercise the power of eminent domain.

Sec. 3894.111. NO TOLL ROADS. The district may not construct, acquire, maintain, or operate a toll road.

Sec. 3894.112. DISTRICT EMPLOYEES; TERMS OF EMPLOYMENT; COMPENSATION. The board may employ and establish the terms of employment and compensation of:

- (1) an executive director or general manager; or
- (2) any other district employee the board considers necessary.

[Sections 3894.113-3894.150 reserved for expansion]

#### SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

Sec. 3894.151. GENERAL POWERS REGARDING FINANCIAL MATTERS.

Except as provided by Section 3894.161, the district may:

(1) impose an ad valorem tax on all taxable property in the district, including industrial, commercial, and residential property, to pay for an improvement project;

(2) impose an assessment on property in the district in the manner provided for:

(A) a district under Subchapter F, Chapter 375, Local Government Code; or

(B) a municipality or county under Subchapter A, Chapter 372, Local Government Code;

(3) provide or secure the payment or repayment of the costs and expenses of the establishment, administration, and operation of the district and the district's costs or share of the costs or revenue of an improvement project or district contractual obligation or indebtedness by or through:

(A) a lease, installment purchase contract, or other agreement with any person;

(B) the imposition of a tax, assessment, user fee, concession fee, or rental charge; or

(C) any other revenue or resource of the district;

(4) establish user charges related to the operation of storm-water facilities, including the regulation of storm water for the protection of water quality in the district;

(5) establish user charges for the use of nonpotable water for irrigation purposes, subject to the approval of the governing body of the city;

(6) undertake separately or jointly with other persons, including the city or Dallas County, all or part of the cost of an improvement project, including an improvement project:

(A) for improving, enhancing, and supporting public safety and security, fire protection and emergency medical services, and law enforcement in and adjacent to the district; or

(B) that confers a general benefit on the entire district or a special benefit on a definable part of the district; and

(7) enter into a tax abatement agreement in accordance with the general laws of this state authorizing and applicable to tax abatement agreements by municipalities.

Sec. 3894.152. BORROWING MONEY. The district may borrow money for a district purpose by issuing or executing bonds, notes, credit agreements, or other obligations of any kind found by the board to be necessary or appropriate for the district purpose. The bond, note, credit agreement, or other obligation must be secured by and payable from ad valorem taxes, assessments, or other district revenue.

Sec. 3894.153. IMPACT FEES AND ASSESSMENTS; EXEMPTION. (a) The district may impose an impact fee or assessment on property in the district, including an impact fee or assessment on residential or commercial property, only in the manner provided by Subchapter A, Chapter 372, or Subchapter F, Chapter 375, Local Government Code, for a municipality, county, or public improvement district, according to the benefit received by the property.

(b) An impact fee for residential property must be for the limited purpose of providing capital funding for:

- (1) public water and wastewater facilities;
- (2) drainage and storm-water facilities; and
- (3) streets and alleys.

(c) An assessment, a reassessment, or an assessment resulting from an addition to or correction of the assessment roll by the district, penalties and interest on an assessment or reassessment, or an expense of collection of an assessment, including reasonable attorney's fees, incurred by the district:

- (1) is a first and prior lien against the property assessed; and
- (2) is superior to any other lien or claim other than a lien or claim for county, school district, or municipal ad valorem taxes.

(d) The board may make a correction to or deletion from the assessment roll that does not increase the amount of assessment of any parcel of land without providing notice and holding a hearing in the manner required for additional assessments.

(e) The district may not impose an impact fee on the property, including equipment and facilities, of a public utility provider in the district.

Sec. 3894.154. CERTAIN RESIDENTIAL PROPERTY NOT EXEMPT. Section 375.161, Local Government Code, does not apply to the district.

Sec. 3894.155. MAINTENANCE AND OPERATION TAX; ELECTION. (a) Except as provided by Section 3894.161, the district may impose a tax for maintenance and operation purposes, including for:

- (1) planning, constructing, acquiring, maintaining, repairing, and operating all improvement projects, including land, plants, works, facilities, improvements, appliances, and equipment of the district; and
- (2) paying costs of services, engineering and legal fees, and organization and administrative expenses.



(b) The district may not impose a maintenance and operation tax unless the maximum tax rate is approved by the governing body of the city and a majority of the district voters voting at an election held for that purpose. If the maximum tax rate is approved, the board may impose the tax at any rate that does not exceed the approved rate.

(c) A maintenance and operation tax election may be held at the same time and in conjunction with any other district election. The election may be called by a separate election order or as part of any other election order.

(d) The proposition in a maintenance and operation tax election may be for a specific maximum rate.

Sec. 3894.156. USE OF SURPLUS MAINTENANCE AND OPERATION MONEY. If the district has surplus maintenance and operation tax money that is not needed for the purposes for which it was collected, the money may be used for any authorized purpose.

Sec. 3894.157. BOND ISSUANCE PLAN REQUIRED BEFORE ISSUING BONDS. The district may not issue bonds until the governing body of the city approves a bond issuance plan authorizing and setting forth the limitations on the issuance of the bonds.

Sec. 3894.158. BONDS AND OTHER OBLIGATIONS; MUNICIPAL APPROVAL. (a) Except as provided by Sections 3894.157 and 3894.161, the district may issue, by competitive bid or negotiated sale, bonds, notes, or other obligations payable wholly or partly from ad valorem taxes or assessments in the manner provided by Subchapter A, Chapter 372, or Subchapter J, Chapter 375, Local Government Code.

(b) In exercising the district's borrowing power, the district may issue a bond or other obligation in the form of a bond, note, certificate of participation or other instrument evidencing a proportionate interest in payments to be made by the district, or other type of obligation.

(c) In addition to the sources of money described by Subchapter A, Chapter 372, and Subchapter J, Chapter 375, Local Government Code, district bonds may be secured and made payable wholly or partly by a pledge of any part of the net proceeds the district receives from any other district revenue.

Sec. 3894.159. BOND MATURITY. Bonds may mature not more than 40 years from their date of issue.

Sec. 3894.160. TAXES FOR BONDS AND OTHER OBLIGATIONS. (a) At the time bonds or other obligations payable wholly or partly from ad valorem taxes are issued:

(1) the board shall impose a continuing direct annual ad valorem tax, without limit as to rate or amount, for each year that all or part of the bonds are outstanding; and

(2) the district annually shall impose an ad valorem tax on all taxable property in the district in an amount sufficient to:

(A) pay the interest on the bonds or other obligations as the interest becomes due;

(B) create a sinking fund for the payment of the principal of the bonds or other obligations when due or the redemption price at any earlier required redemption date; and

(C) pay the expenses of imposing the taxes.

(b) Bonds or other obligations that are secured by and payable from ad valorem taxes may not be issued unless the bonds and the imposition of the taxes are approved by:

(1) a majority of the district voters voting at an election held for that purpose; and

(2) the governing body of the city.

(c) The district shall hold an election required by this section in the manner provided by Chapter 54, Water Code.

Sec. 3894.161. PROJECT DEVELOPMENT AGREEMENT REQUIRED TO IMPOSE TAXES OR BORROW MONEY, INCLUDING BONDS. Before the district may issue bonds, impose taxes, or borrow money, the district and the city must negotiate and execute a mutually approved and accepted interlocal project development agreement regarding the development plans and rules for:

(1) the development and operation of the district; and

(2) the financing of improvement projects.

Sec. 3894.162. CITY NOT REQUIRED TO PAY DISTRICT OBLIGATIONS. Except as provided by Section 375.263, Local Government Code, the city is not required to pay a bond, note, or other obligation of the district.

[Sections 3894.163-3894.200 reserved for expansion]

#### SUBCHAPTER E. DISSOLUTION

Sec. 3894.201. DISSOLUTION BY CITY ORDINANCE. (a) If the city by ordinance adopts by a two-thirds vote of its governing body an ordinance to dissolve the district, the district is dissolved.

(b) The district may not be dissolved until the district's outstanding indebtedness or contractual obligations payable from ad valorem taxes have been repaid or discharged.

(c) The district may not be dissolved until the agreement under Section 3894.161 has been executed and the district's performance under the agreement has been fulfilled, including any right or obligation the district has to reimburse a developer or owner for the costs of improvement projects.

Sec. 3894.202. 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, other than ad valorem taxes, the city succeeds to the rights and obligations of the district regarding enforcement and collection of the assessments or other revenue.

(b) If the district is dissolved, the city has and may 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.

Sec. 3894.203. ASSUMPTION OF ASSETS AND LIABILITIES. (a) The district may not be dissolved by the city unless the city assumes the obligations of the district, including any bonds or other indebtedness 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 2. The Rowlett Downtown Management District initially includes all territory contained in the following area:

BEING approximately 19 acres of land located in the Thomas Payne Survey, Abstract No. 1165, and approximately 19 acres of land located in the William Crabtree Survey, Abstract No. 347, City of Rowlett, Dallas County, Texas. Said 38 combined acres of land being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2" iron pipe found in the South boundary line of said Payne Survey, and the North boundary line of said Crabtree Survey, at the point of intersection of said Survey line with the South right-of-way line of The Dallas Area Rapid Transit railroad, and said Point Of Beginning also being the West corner of the tract of land conveyed to the City of Rowlett by the deed recorded in Volume 2004067, page 04282 of the Deed Records of Dallas County, Texas;

THENCE Northeasterly, approximately 166 feet, along the South right-of-way line of said Dallas Area Rapid Transit railroad to a point at the intersection of the West right-of-way line of Commerce Street;

THENCE Northeasterly, approximately 114 feet, crossing said Dallas Area Rapid Transit railroad to a point in the North right-of-way line of said railroad, lying at the most Southerly Southeast corner of Lot 5, Block 5, Rowlett Business Park, No. 2, an addition to the City of Rowlett, Dallas County, Texas, according to the plat recorded in Volume 82015, page 1127 of the Deed Records of Dallas County, Texas;

THENCE Northerly, approximately 155 feet, along the most Southerly East boundary line of said Lot 5, and the West boundary line of the tract of land conveyed to the City of Rowlett by the deed recorded in Volume 99034, page 4307 of the Deed Records of Dallas County, Texas, to a point at the Northwest corner of said City of Rowlett tract, being the Southwest corner of the tract of land conveyed to the City of Rowlett by the deed recorded in Volume 99083, page 2213 of the Deed Records of Dallas County, Texas;

THENCE Northerly, approximately 285 feet, along the West boundary line of said City of Rowlett tract recorded in Volume 99083, page 2213 of the Deed Records of Dallas County, Texas, to a point in the North right-of-way line of Melcer Drive;

THENCE Easterly, approximately 837 feet, along the North right-of-way line of said Melcer Drive, to a point in the West right-of-way line of Martin Drive;

THENCE Northerly, approximately 820 feet, along the West right-of-way line of said Martin Drive, to a point in the South right-of-way line of Lakeview Parkway;

THENCE Easterly, approximately 195 feet, along the South right-of-way line of said Lakeview Parkway, to a point at the Northeast corner of Lot 1, Block 1, Carlisle Subdivision, an addition to the City of Rowlett, Dallas County, Texas, according to the plat recorded in Volume 85081, page 1854 of the Deed Records of Dallas County, Texas;

THENCE Southerly, approximately 201 feet along the East boundary line of said Lot 1, Block 1, Carlisle Subdivision, to a point at the Southeast corner of said Lot 1;

THENCE Westerly, approximately 145 feet along the South boundary line of said Lot 1, Block 1, Carlisle Subdivision, to a point in the East right-of-way line of aforesaid Martin Drive;

THENCE Southerly, approximately 217 feet, along the East right-of-way line of said Martin Drive, to a point in the North right-of-way line of Industrial Street;

THENCE Easterly, approximately 1,251 feet along the North right-of-way line of said Industrial Street, being the South boundary line of Block 3, of aforesaid Rowlett Business Park, No. 2, to a point at the most Easterly Southeast corner of Lot 11 of said Block 3, Rowlett Business Park No. 2;

THENCE Southerly, approximately 544 feet, crossing said Industrial Street, and running along the East boundary line of Lot 24, of Block 5 of said Rowlett Business Park No. 2, to a point at the Southeast corner of said Lot 24, lying in the North right-of-way line of aforesaid Dallas Area Rapid Transit railroad;

THENCE Southwesterly, approximately 453 feet, along the North right-of-way line of said Dallas Area Rapid Transit railroad, and the South boundary line of said Block 5, Rowlett Business Park No. 2, to a point at the Southwest corner of Lot 22 of said Block 5, Rowlett Business Park No. 2;

THENCE Northerly, approximately 522 feet, along the West boundary line of said Lot 22, Block 5, Rowlett Business Park No. 2, to a point at the Northwest corner of said Lot 22, lying in the South right-of-way line of aforesaid Industrial Street;

THENCE Westerly, approximately 420 feet, along the South right-of-way line of said Industrial Street, and the North boundary line of said Block 5, Rowlett Business Park No. 2, to a point at the Northeast corner of Lot 18 of said Block 5, Rowlett Business Park No. 2;

THENCE Southerly, approximately 625 feet, along the East boundary line of said Lot 18, Block 5, Rowlett Business Park No. 2, to a point at the Southeast corner of said Lot 18, lying in the North right-of-way line of aforesaid Dallas Area Rapid Transit railroad;

THENCE along the North right-of-way line of said Dallas Area Rapid Transit railroad as follows:

1. Southwesterly, approximately 377 feet, along the South boundary line of Lot 14, and 18, of said Block 5, Rowlett Business Park No. 2, to a point at the Southwest corner of said Lot 14, lying in the East boundary line of Lot 13, of said Block 5;

2. Southeasterly, approximately 25 feet, along the East boundary line of said Lot 13, Block 5, to a point at the Southeast corner of said Lot 13;

3. Southwesterly, approximately 343 feet, along the South boundary line of Lots 11, 12, and 13 of said Block 5, Rowlett Business Park No. 2, to a point at the Southwest corner of said Lot 11;

THENCE Northwesterly, approximately 155 feet, along the West boundary line of said Lot 11, Block 5, Rowlett Business Park No. 2, to a point in the most Northerly South boundary line of said Lot 11;

THENCE Southwesterly, approximately 11 feet, along the most Northerly South boundary line of said Lot 11, to a point at the most Westerly Southwest corner of said Lot 11;

THENCE Northerly, approximately 157 feet, along the West boundary line of said Lot 11, to a point at the Northwest corner of said Lot 11, lying in the South right-of-way line of aforesaid Melcer Drive;

THENCE Westerly, approximately 500 feet, along the South right-of-way line of said Melcer Drive, and the most Southerly, North boundary line of said Block 5, Rowlett Business Park No. 2, to a point at the Northwest corner of Lot 6 of said Block 5, being the Northeast corner of the aforesaid tract of land conveyed to the City of Rowlett by the deed recorded in Volume 99083, page 2213 of the Deed Records of Dallas County, Texas;

THENCE Southerly, approximately 226 feet, along the East boundary line of said City of Rowlett tract, and the West boundary line of said Lot 6, to a point at the Southwest corner of said Lot 6, and the Southeast corner of Lot 5, of said Block 5, Rowlett Business Park No. 2;

THENCE Southwesterly, approximately 11 feet, along the South boundary line of said Lot 5, to a point at the Northeast corner of the aforesaid tract of land conveyed to the City of Rowlett by the deed recorded in Volume 99034, page 4307 of the Deed Records of Dallas County, Texas;

THENCE Southerly, approximately 169 feet, along the East boundary line of said City of Rowlett tract recorded in Volume 99034, page 4307, and continuing to a point;

THENCE Southwesterly, approximately 97 feet, crossing the aforesaid Dallas Area Rapid Transit railroad, to a point in the South right-of-way line of said railroad, being the North boundary line of the aforesaid tract of land conveyed to the City of Rowlett by the deed recorded in Volume 2004067, page 04282 of the Deed Records of Dallas County, Texas;

THENCE Northeasterly, approximately 362 feet, along the South right-of-way line of said Dallas Area Rapid Transit railroad, and the North boundary line of said City of Rowlett tract recorded in Volume 2004067, page 04282, to a point at the Northeast corner of said City of Rowlett tract;

THENCE Southeasterly, approximately 99 feet, along the East boundary line of said City of Rowlett tract, to a point at the Southeast corner of said City of Rowlett tract, lying in the South boundary line of the tract of land conveyed to Jeffrey D. Mayhall, and wife Camille Mayhall by the deed recorded in Volume 96198, page 1273 of the Deed Records of Dallas County, Texas;

THENCE Easterly, approximately 190 feet along the South boundary line of said Mayhall tract to a point at the Southeast corner of said Mayhall tract;

THENCE Southerly, approximately 10 feet to a point in the North boundary line of Lot 1, Block B, Municipal Complex Addition, to the City of Rowlett, Dallas County, Texas according to the plat recorded in County Clerk's file No. 2006002238027 of the Deed Records of Dallas County, Texas;

THENCE Easterly, approximately 51 feet, along the North boundary line of said Lot 1, Block B, Municipal Complex Addition, to a point at the Northeast corner of said Lot 1, Block B;

THENCE Southerly, approximately 137 feet, along the East boundary line of said Lot 1, Block B, Municipal Complex Addition, to a point at the Southeast corner of said Lot 1, Block B, lying in the North right-of-way line of Main Street;

THENCE Northeasterly, approximately 482 feet, along the North right-of-way line of said Main Street, to a point in the West right-of-way line of Skyline Drive;

THENCE Southerly, approximately 87 feet, crossing said Main Street, to a point at the Northeast corner of Lot 1, Block A, Municipal Complex Addition, to the City of Rowlett, Dallas County, Texas, according to the plat recorded in Volume 95327, page 2810 of the Deed Records of Dallas County, Texas;

THENCE Southerly, approximately 425 feet, along the East boundary line of said Lot 1, Block B, Municipal Complex Addition, and the West right-of-way line of aforesaid Skyline Drive, to a point at the Southeast corner of said Lot 1, Block A, being the Northeast corner of Lot 1, Block 1, South Ridge Addition, No. 3, and addition to the City of Rowlett, Dallas County, Texas, according to the plat recorded in Volume 69117, page 2087 of the Deed Records of Dallas County, Texas;

THENCE Westerly, approximately 150 feet, along the North boundary line of said Lot 1, Block 1, South Ridge Addition, No. 3, to a point at the Northwest corner of said Lot 1, Block 1, South Ridge Addition, No. 3;

THENCE Southerly, approximately 498 feet, along the West boundary line of said Block 1, South Ridge Addition, No. 3, to a point;

THENCE Westerly, approximately 360 feet, along the North boundary line of Lot 7, Block 1, and Lot 1, Block 6 of said South Ridge Addition, No. 3, to a point;

THENCE Southerly, approximately 20 feet, to a point at the Northeast corner of Lot 2, Block 6, South Ridge Addition, No. 4, an addition to the City of Rowlett, Dallas County, Texas, according to the plat recorded in Volume 76104, page 1684 of the Deed Records of Dallas County, Texas;

THENCE Westerly, approximately 185 feet, along the North boundary line of said Lot 2, Block 6, South Ridge Addition, No. 4, to a point in the West right-of-way line of Aspen Drive;

THENCE Southerly, approximately 32 feet, along the West right-of-way line of said ASPEN DRIVE, to a point at the Northeast corner of Lot 12, Block 7 of said South Ridge Addition, No. 4;

THENCE Westerly, approximately 150 feet, along the North boundary line of said Lot 12, Block 7, South Ridge Addition, No. 4, to a point at the Northwest corner of said Lot 12, Block 7;

THENCE Northerly, approximately 740 feet, to a point at the Northwest of Lot 3, Block A, of aforesaid Municipal Complex Addition, to the City of Rowlett, Dallas County, Texas, according to the plat recorded in Volume 95237, page 2810 of the Deed Records of Dallas County, Texas;

THENCE Easterly, approximately 131 feet, along the most Southerly North boundary line of said Lot 3, Block A, Municipal Complex Addition, to a point;

THENCE Northerly, approximately 163 feet, along the most Easterly, West boundary line of said Lot 3, Block A, Municipal Complex Addition, to a point at the Northwest corner of said Lot 3, lying in the South right-of-way line of aforesaid Main Street;

THENCE Southwesterly, approximately 65 feet, along the South right-of-way line of said Main Street, to a point at the Northeast corner of Lot 43, Original Town Of Rowlett, an addition to the City of Rowlett, Dallas County, Texas, according to the plat recorded in Volume 2, page 217 of the Map Records of Dallas County, Texas;

THENCE Southerly, approximately 90 feet, along the East boundary line of said Lot 43, to a point at the Southeast corner of said Lot 43;

THENCE Westerly, approximately 50 feet, along the South boundary line of Lot 42, and 43 of said Original Town Of Rowlett, to a point at the Southwest corner of said Lot 42;

THENCE Northerly, approximately 90 feet, along the West boundary line of said Lot 42, to a point at the Northwest corner of said Lot 42, lying in the South right-of-way of aforesaid Main Street;

THENCE Westerly, approximately 300 feet, along the South right-of-way line of said Main Street, and the North boundary line of Lots 33, through 41, of said Original Town Of Rowlett, to a point in the West right-of-way line of aforesaid Commerce Street, and the East boundary line of Lot 28 of said Original Town Of Rowlett;

THENCE Northerly, approximately 262 feet, along the West right-of-way line of said Commerce Street, and the East boundary line of Lots 19, through 28, of said Original Town Of Rowlett, to a point in the North boundary line of aforesaid William Crabtree Survey, and the South boundary line of the aforesaid Thomas Payne Survey;

THENCE Westerly, approximately 164 feet, along said Survey line to the Point Of Beginning, containing approximately 38 acres of land.

The foregoing 38 acres description saves and excepts all portions thereof, and contained therein of Lots 7 through 18 of the Original Town of Rowlett, as indicated on the plat recorded in Volume 2, Page 217 of the Map Records of Dallas County, Texas.

SECTION 3. (a) The legal notice of the intention to introduce this Act, setting forth the general substance of this Act, has been published as provided by law, and the notice and a copy of this Act have been furnished to all persons, agencies, officials, or entities to which they are required to be furnished under Section 59, Article XVI, Texas Constitution, and Chapter 313, Government Code.

(b) The governor, one of the required recipients, has submitted the notice and Act to the Texas Commission on Environmental Quality.

(c) The Texas Commission on Environmental Quality has filed its recommendations relating to this Act with the governor, lieutenant governor, and speaker of the house of representatives within the required time.

(d) The general law relating to consent by political subdivisions to the creation of districts with conservation, reclamation, and road powers and the inclusion of land in those districts has been complied with.

(e) All requirements of the constitution and laws of this state and the rules and procedures of the legislature with respect to the notice, introduction, and passage of this Act have been fulfilled and accomplished.

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2011.

The amendment was read.

Senator Deuell moved to concur in the House amendment to **SB 234**.

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

**SENATE BILL 1106 WITH HOUSE AMENDMENTS**

Senator Harris called **SB 1106** from the President's table for consideration of the House amendments to the bill.

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

**Floor Amendment No. 1**

Amend **SB 1106** (house committee printing) as follows:

(1) Strike the recital to SECTION 3 of the bill (page 9, lines 3 and 4), and substitute the following:

SECTION 3. Section 264.408, Family Code, is amended by amending Subsection (a) and adding Subsection (d-1) as follows:

(2) In SECTION 3 of the bill, in amended Section 264.408, Family Code (page 9, between lines 16 and 17), insert the following:

(d-1) A videotaped interview described by Subsection (d) is subject to production under Article 39.14, Code of Criminal Procedure, and Rule 615, Texas Rules of Evidence. A court shall deny any request by a defendant to copy, photograph, duplicate, or otherwise reproduce a videotape of an interview described by Subsection (d), provided that the prosecuting attorney makes the videotape reasonably available to the defendant in the same manner as property or material may be made available to defendants, attorneys, and expert witnesses under Article 39.15(d), Code of Criminal Procedure.

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

SECTION \_\_\_\_\_. The changes in law made by Section 264.408, Family Code, as amended by this Act, apply to a criminal action for which the information or indictment was filed on or after the effective date of this Act. A criminal action for which the information or indictment was filed before the effective date of this Act is covered by the law in effect on the date the information or indictment was filed, and the former law is continued in effect for that purpose.

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

Amend **SB 1106** (house committee printing) on third reading by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 58.106(a), Family Code, is amended to read as follows:

(a) Except as otherwise provided by this section, information contained in the juvenile justice information system is confidential information for the use of the department and may not be disseminated by the department except:

(1) with the permission of the juvenile offender, to military personnel of this state or the United States;

(2) to a person or entity to which the department may grant access to adult criminal history records as provided by Section 411.083, Government Code;

(3) to a juvenile justice agency;



(4) to the Texas Youth Commission and the Texas Juvenile Probation Commission for analytical purposes; ~~and~~

(5) to the office of independent ombudsman of the Texas Youth Commission; and

(6) to a county, justice, or municipal court exercising jurisdiction over a juvenile.

The amendments were read.

Senator Harris moved to concur in the House amendments to **SB 1106**.

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

### HOUSE BILL 3275 ON SECOND READING

On motion of Senator Ellis and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 3275** at this time on its second reading:

**HB 3275**, Relating to the operation and governance of tax increment financing reinvestment zones.

The bill was read second time.

Senator Ellis offered the following amendment to the bill:

#### Floor Amendment No. 1

Amend **HB 3275** (senate committee report) as follows:

(1) In the recital to SECTION 1 of the bill (page 1, line 11), strike "311.009(a), Tax Code, is amended" and substitute "311.009, Tax Code, is amended by amending Subsection (a) and adding Subsection (h)".

(2) In SECTION 1 of the bill, following amended Section 311.009(a), Tax Code (page 1, between lines 27 and 28), add the following:

(h) Notwithstanding any other provision of this section and in addition to the individuals authorized to serve on the board of directors of a zone under this section, a member of the state senate in whose district a zone is wholly or partly located, or a member of the state house of representatives in whose district a zone is wholly or partly located, may serve as an ex officio nonvoting member of the board or may designate another individual to serve in the member's place at the pleasure of the member. This subsection does not apply to the member of the state senate and the member of the state house of representatives who are members of the board as provided by Subsection (b), if applicable.

(3) In the recital to SECTION 2 of the bill (page 1, line 29), strike "Subsection (i)" and substitute "Subsections (i) and (j)".

(4) In SECTION 2 of the bill, following added Section 311.0091(i), Tax Code (page 1, between lines 42 and 43), add the following:

(j) Notwithstanding any other provision of this section and in addition to the individuals authorized to serve on the board of directors of a zone under this section, a member of the state senate in whose district a zone is wholly or partly located, or a member of the state house of representatives in whose district a zone is wholly or partly located, may serve as an ex officio nonvoting member of the board or may designate another individual to serve in the member's place at the pleasure of the

member. This subsection does not apply to the member of the state senate and the member of the state house of representatives who are members of the board as provided by Subsection (c), if applicable.

The amendment to **HB 3275** was read and was adopted by a viva voce vote.

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

Senator Watson offered the following amendment to the bill:

**Floor Amendment No. 2**

Amend **HB 3275** (senate committee printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering the subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Subtitle B, Title 3, Tax Code, is amended by adding Chapter 314 to read as follows:

CHAPTER 314. RENEWABLE ENERGY REINVESTMENT ZONES

Sec. 314.001. SHORT TITLE. This chapter may be cited as the Renewable Energy Reinvestment Zone Act.

Sec. 314.002. APPLICABILITY. The provisions of this chapter applicable to a municipality apply only to a municipality that:

- (1) has a population of at least 45,000 but not more than 60,000;
- (2) is located in a county with a population of at least one million; and
- (3) does not contain within its corporate limits:

(A) more than two school districts that are categorized as category II school districts under Section 313.022; or

(B) any school districts to which Subchapter C, Chapter 313, applies.

Sec. 314.003. DEFINITION. In this chapter, "renewable energy company" means a business organization that manufactures, assembles, sells, maintains, or conducts research on renewable energy and renewable energy efficient products, including:

- (A) solar energy;
- (B) wind energy;
- (C) biomass energy;
- (D) geothermal energy;
- (E) battery technology;
- (F) electric vehicles;
- (G) lighting using light-emitting diodes;
- (H) fuel cells;
- (I) energy generated from agricultural sources;
- (J) nuclear energy;
- (K) clean coal technology; and
- (L) water-saving devices.

Sec. 314.004. ELIGIBILITY OF MUNICIPALITY TO PARTICIPATE IN TAX ABATEMENT. (a) A municipality may not enter into a tax abatement agreement under this chapter and the governing body of a municipality may not designate an area as a renewable energy reinvestment zone unless the governing body adopts a

resolution stating that the municipality elects to become eligible to participate in tax abatement and establishes guidelines and criteria governing tax abatement agreements by the municipality. The guidelines and criteria applicable to property must provide for the availability of tax abatement only for new facilities or structures.

(b) The governing body of a municipality may not enter into a tax abatement agreement under this chapter unless it finds that the terms of the agreement and the property subject to the agreement meet the applicable guidelines and criteria adopted by the governing body under this section.

(c) The guidelines and criteria adopted under this section are effective for two years from the date adopted. During that period, the guidelines and criteria may be amended or repealed only by a vote of three-fourths of the members of the governing body.

(d) The adoption of the guidelines and criteria by the governing body of a municipality does not:

(1) limit the discretion of the governing body to decide whether to enter into a specific tax abatement agreement;

(2) limit the discretion of the governing body to delegate to its employees the authority to determine whether or not the governing body should consider a particular application or request for tax abatement; or

(3) create any property, contract, or other legal right in any person to have the governing body consider or grant a specific application or request for tax abatement.

Sec. 314.005. DESIGNATION OF ZONE. (a) The governing body of a municipality by ordinance may designate as a renewable energy reinvestment zone an area in the taxing jurisdiction or extraterritorial jurisdiction of the municipality that the governing body finds satisfies the requirements of Section 314.006.

(b) The ordinance must describe the boundaries of the zone.

(c) The governing body may not adopt an ordinance designating an area as a renewable energy reinvestment zone until the governing body has held a public hearing on the designation and has found that the improvements sought are feasible and practical and would be a benefit to the land to be included in the zone and to the municipality after the expiration of an agreement entered into under Section 314.008. At the hearing, interested persons are entitled to speak and present evidence for or against the designation. Not later than the seventh day before the date of the hearing, notice of the hearing must be:

(1) published in a newspaper having general circulation in the municipality;  
and

(2) delivered in writing to the presiding officer of the governing body of each county and school district that includes in its boundaries real property that is to be included in the proposed renewable energy reinvestment zone.

(d) A notice made under Subsection (c)(2) is presumed delivered when placed in the mail postage prepaid and properly addressed to the appropriate presiding officer. A notice properly addressed and sent by registered or certified mail for which a return receipt is received by the sender is considered to have been delivered to the addressee.

Sec. 314.006. CRITERIA FOR RENEWABLE ENERGY REINVESTMENT ZONE. To be designated as a renewable energy reinvestment zone under this chapter, an area must meet the following requirements:

(1) the area must be at least 100 acres in size;

(2) at the time of the designation of the area as a zone, at least 75 percent of the land in the area must be owned by the municipality designating the area or by a municipal development corporation created under Chapter 379A, Local Government Code; and

(3) the area must be zoned for commercial purposes.

Sec. 314.007. EXPIRATION OF REINVESTMENT ZONE. The designation of a renewable energy reinvestment zone for tax abatement expires five years after the date of the designation and may be renewed for periods not to exceed five years. The expiration of the designation does not affect an existing tax abatement agreement made under this chapter.

Sec. 314.008. MUNICIPAL TAX ABATEMENT AGREEMENT. (a) The governing body of a municipality eligible to enter into tax abatement agreements under Section 314.004 may agree in writing with a renewable energy company that owns taxable real property that is located in a renewable energy reinvestment zone, but that is not located in an improvement project financed by tax increment bonds, to exempt from taxation 50 percent of the value of the real property and of tangible personal property located on the real property for a period of 15 years, on the condition that the company construct a facility on the property to be used in connection with the company's operations as specified by the agreement. The governing body of an eligible municipality may agree in writing with a renewable energy company that owns a leasehold interest in tax-exempt real property that is located in a renewable energy reinvestment zone, but that is not located in an improvement project financed by tax increment bonds, to exempt 50 percent of the value of property subject to ad valorem taxation, including the leasehold interest, improvements, and tangible personal property located on the real property, for a period of 15 years, on the condition that the company construct a facility on the property to be used in connection with the company's operations as specified by the agreement. A tax abatement agreement under this section is subject to the rights of holders of outstanding bonds of the municipality. In a municipality that has a comprehensive zoning ordinance, an improvement, development, or redevelopment taking place under an agreement under this section must conform to the comprehensive zoning ordinance.

(b) The property subject to an agreement made under this section may be located in the extraterritorial jurisdiction of the municipality. In that event, the agreement applies to taxes of the municipality if the municipality annexes the property during the period specified in the agreement.

(c) Except as otherwise provided by this subsection, property that is in a renewable energy reinvestment zone and that is owned or leased by a person who is a member of the governing body of the municipality or a member of a zoning or planning board or commission of the municipality is excluded from property tax abatement. Property owned or leased by a person that is subject to a tax abatement agreement in effect when the person becomes a member of the governing body or of

the zoning or planning board or commission does not cease to be eligible for property tax abatement under that agreement because of the person's membership on the governing body, board, or commission.

Sec. 314.009. NOTICE OF TAX ABATEMENT AGREEMENT TO COUNTIES AND SCHOOL DISTRICTS. (a) Not later than the seventh day before the date on which a municipality enters into an agreement under Section 314.008, the governing body of the municipality or a designated officer or employee of the municipality shall deliver to the presiding officer of the governing body of each county and school district in which the property to be subject to the agreement is located a written notice that the municipality intends to enter into the agreement. The notice must include a copy of the proposed agreement.

(b) A notice is presumed delivered when placed in the mail postage paid and properly addressed to the appropriate presiding officer. A notice properly addressed and sent by registered or certified mail for which a return receipt is received by the sender is considered to have been delivered to the addressee.

(c) Failure to deliver the notice does not affect the validity of the agreement.

Sec. 314.010. SPECIFIC TERMS OF TAX ABATEMENT AGREEMENT. An agreement made under Section 314.008 must:

(1) list the kind, number, and location of all proposed improvements of the property;

(2) provide access to and authorize inspection of the property by municipal employees and by employees of each county and school district that approves the agreement to ensure that the improvements are made according to the specifications and conditions of the agreement;

(3) limit the uses of the property consistent with the general purpose of encouraging development or redevelopment of the renewable energy reinvestment zone during the period that property tax exemptions are in effect;

(4) provide for recapturing property tax revenue lost as a result of the agreement if the owner of the property fails to make the improvements as provided by the agreement;

(5) contain each term agreed to by the owner of the property;

(6) require the owner of the property to certify annually to the governing body of the municipality and each county and school district that approves the agreement that the owner is in compliance with each applicable term of the agreement; and

(7) provide that the governing body of the municipality may cancel or modify the agreement if the property owner fails to comply with the agreement.

Sec. 314.011. APPROVAL OF AGREEMENT BY GOVERNING BODY OF MUNICIPALITY. (a) To be effective, an agreement made under this chapter by a municipality must be approved by the affirmative vote of a majority of the members of the governing body of the municipality at a regularly scheduled meeting of the governing body.

(b) On approval by the governing body, an agreement may be executed in the same manner as other contracts made by the municipality.

Sec. 314.012. MODIFICATION OR TERMINATION OF AGREEMENT. (a) At any time before the expiration of an agreement made under this chapter, the agreement may be modified by the parties to the agreement to include other provisions that could have been included in the original agreement or to delete provisions that were not necessary to the original agreement. The modification must be made by the same procedure by which the original agreement was approved and executed. The original agreement may not be modified to extend beyond 15 years from the date of the original agreement.

(b) An agreement made under this chapter may be terminated by the mutual consent of the parties in the same manner that the agreement was approved and executed.

Sec. 314.013. TAX ABATEMENT BY COUNTY AND SCHOOL DISTRICT.

(a) If municipal property taxes on property located in the taxing jurisdiction of a municipality are abated under an agreement under Section 314.008, the agreement also applies to the taxation of the property by a county or school district in which the property is located if the governing body of the county or school district approves the agreement by the affirmative vote of a majority of the members of the governing body at a regularly scheduled meeting of the governing body.

(b) A county or school district may not approve a municipal tax abatement agreement under this chapter unless the governing body of the county or school district adopts a resolution stating that the county or school district elects to become eligible to participate in tax abatement and establishes guidelines and criteria governing the approval by the county or school district of municipal tax abatement agreements. The provisions of Section 314.004 governing guidelines and criteria for the entry by a municipality into a tax abatement agreement apply to guidelines and criteria established by a county or school district for approval of a municipal tax abatement agreement to the extent those provisions can be made applicable.

SECTION \_\_\_\_ . Section 11.28, Tax Code, is amended to read as follows:

Sec. 11.28. PROPERTY EXEMPTED FROM ~~[CHTY]~~ TAXATION BY AGREEMENT. (a) The owner of property to which an agreement made under Chapter 312 ~~[the Property Redevelopment and Tax Abatement Act (Chapter 312 of this code)]~~ applies is entitled to exemption from taxation by an incorporated city or town or other taxing unit of all or part of the value of the property as provided by the agreement.

(b) The owner of property to which an agreement made by an incorporated city or town under Chapter 314 applies is entitled to exemption from taxation by the incorporated city or town and from taxation by a county or school district that has approved the agreement of part of the value of the property as provided by the agreement.

The amendment to **HB 3275** was read and was adopted by the following vote: Yeas 24, Nays 6.

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

Nays: Birdwell, Huffman, Jackson, Nelson, Nichols, Patrick.

Absent: Deuell.

Senator Watson offered the following amendment to the bill:

**Floor Amendment No. 3**

Amend **HB 3275** (senate committee printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering the subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_ . Section 311.008(b), Tax Code, is amended to read as follows:

(b) A municipality or county may exercise any power necessary and convenient to carry out this chapter, including the power to:

(1) cause project plans to be prepared, approve and implement the plans, and otherwise achieve the purposes of the plan;

(2) acquire real property by purchase, condemnation, or other means to implement project plans and sell that property on the terms and conditions and in the manner it considers advisable;

(3) enter into agreements, including agreements with bondholders, determined by the governing body of the municipality or county to be necessary or convenient to implement project plans and achieve their purposes, which agreements may include conditions, restrictions, or covenants that run with the land or that by other means regulate or restrict the use of land; and

(4) consistent with the project plan for the zone:

(A) acquire blighted, deteriorated, deteriorating, undeveloped, or inappropriately developed real property or other property in a blighted area or in a federally assisted new community in the zone for the preservation or restoration of historic sites, beautification or conservation, the provision of public works or public facilities, or other public purposes;

(B) acquire, construct, reconstruct, or install public works, facilities, or sites or other public improvements, including utilities, streets, street lights, water and sewer facilities, pedestrian malls and walkways, parks, flood and drainage facilities, or parking facilities, but not including educational facilities; ~~or~~

(C) in a reinvestment zone created on or before September 1, 1999, acquire, construct, or reconstruct educational facilities in the municipality; or

(D) in a reinvestment zone created in a county that has a population of less than 1.5 million but in which a municipality is primarily located that has a population of at least 775,000, acquire, construct, reconstruct, renovate, rehabilitate, install, or equip public improvements used or to be used for social services programs in the zone, including improvements determined by the municipality or county to be beneficial to:

(i) providing basic necessities such as food, clothing, shelter, health care, and mental health care;

(ii) helping provide individuals and families a transition out of poverty by ensuring the availability of educational, employment, and other services that promote self-reliance;

(iii) preventing social problems through education, preventive physical and mental health programs, crime prevention programs, and other preventive programs;

(iv) providing family and societal support services, including education, child care, counseling and assistance for the aging, youth, the homeless, and the unemployed, rehabilitation services, and other similar support services; and

(v) encouraging personal development and community enrichment through cultural and educational programs.

SECTION \_\_\_\_\_. Section 311.010, Tax Code, is amended by adding Subsections (b-1) and (b-2) to read as follows:

(b-1) An agreement under Subsection (b) relating to the project plan or the reinvestment zone financing plan for a reinvestment zone described by Section 311.008(b)(4)(D) may:

(1) during the term of the agreement dedicate, pledge, or otherwise provide for the use of revenue in the tax increment fund to pay project costs relating to the cost of public improvements described by Section 311.008(b)(4)(D); or

(2) dedicate revenue from the tax increment fund to pay the costs of operating or administering programs described by Section 311.008(b)(4)(D).

(b-2) A municipality or county may not use revenue from a tax increment fund dedicated, pledged, or otherwise provided for a purpose described by Subsection (b-1) to replace revenue the municipality or county would otherwise have spent from other sources for that purpose.

The amendment to **HB 3275** was read.

On motion of Senator Shapiro, Floor Amendment No. 3 was tabled by the following vote: Yeas 17, Nays 14.

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

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

Senator Seliger offered the following amendment to the bill:

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

Amend **HB 3275** by adding the following SECTION and renumbering subsequent SECTIONS accordingly:

SECTION \_\_\_\_\_. Subsection (b), Section 431.102, Transportation Code, is amended to read as follows:

(b) The property of a local government corporation and a transaction to acquire the property is exempt from taxation in the same manner as a corporation created under Chapter 394, Local Government Code, except that property of a local government corporation created by a municipal power agency that was created under Subchapter C, Chapter 163, Utilities Code, is not exempt from ad valorem taxation if the property is located outside of the boundaries of each of the municipalities that created the municipal power agency.

The amendment to **HB 3275** was read.

Senator Seliger withdrew Floor Amendment No. 4.

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

**HB 3275** as amended was passed to third reading by a viva voce vote.

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



### HOUSE BILL 3275 ON THIRD READING

Senator Ellis moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3275** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 25, Nays 6.

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

Nays: Birdwell, Huffman, Nelson, Nichols, Patrick, Shapiro.

The bill was read third time and was passed by the following vote: Yeas 25, Nays 6. (Same as previous roll call)

### COMMITTEE SUBSTITUTE HOUSE BILL 272 ON SECOND READING

The President laid before the Senate **CSHB 272** sponsored by Senator Carona on its second reading. The bill had been read second time, amended, and further consideration postponed:

**CSHB 272**, Relating to the operation of the Texas Windstorm Insurance Association and to the resolution of certain disputes concerning claims made to that association; providing penalties.

Question — Shall **CSHB 272** as amended be passed to third reading?

Senator Carona offered the following amendment to the bill:

#### Floor Amendment No. 9

Amend **CSHB 272** (senate committee printing) as follows:

(1) In SECTION 35 of the bill, strike amended Section 2210.551(a)(1), Insurance Code (page 11, line 67 through page 12, line 1), and substitute:

(1) does not apply to:

(A) a claimant who has made a claim, as those terms are defined by Section 2210.571; or

(B) a person insured under this chapter who has elected binding arbitration offered by the association under Section 2210.553; and

(2) In SECTION 36 of the bill, in the heading to Section 2210.552, Insurance Code (page 12, line 13), strike "CLAIM" and substitute "CERTAIN [~~CLAIM~~]".

(3) In SECTION 37 of the bill, strike added Subsections 2210.552(e), Insurance Code (page 12, lines 28-44), and substitute:

(e) This subchapter provides the exclusive remedies for a claimant to resolve a dispute with the association concerning the payment of, the amount of, or the denial of a claim. A claimant may not bring an action against the association concerning the payment of, the amount of, or the denial of a claim before exhausting all remedies under Subchapter L-1 and 2210.578. If a claimant brings an action against the association concerning the payment of, the amount of, or the denial of a claim before

exhausting all remedies under that subchapter, the court shall abate the action until all remedies under that subchapter have been exhausted. For purposes of this subsection, "claim" and "claimant" have the meanings assigned by Section 2210.571.

(5) In SECTION 39 of the bill, in added Section 2210.573, Insurance Code (page 13, line 10), between "(a)" and "Not later", insert:

Subject to the good cause extension to which a claimant is entitled under Section 2210.205(b), an insured must file a claim under an association policy not later than the first anniversary of the date on which the damage to property that is the basis of the claim occurs.

(b)

(6) In SECTION 39 of the bill, in added Section 2210.573, Insurance Code (page 13, lines 18 and 21), reletter subsections appropriately.

(7) In SECTION 39 of the bill, between added Sections 2210.575 and 2210.576 (page 14, between lines 3 and 4), insert:

Sec. 2210.5751. EXTENSION OF CERTAIN DEADLINES. In the event of a weather-related catastrophe or major natural disaster, as defined by the commissioner, the claim-handling deadlines under Sections 2210.573, 2210.574, and 2210.575 are extended for an additional 15 days.

(8) In SECTION 39 of the bill, in added Section 2210.578(a), Insurance Code (page 15, line 7), between "aggrieved by" and "an", insert "the association's decision concerning a claim under this subchapter, including".

(9) In SECTION 39 of the bill, in added Section 2210.578(a), Insurance Code (page 15, line 9), between "Section 2210.577" and "or seeking", insert an underlined comma.

(10) In SECTION 39 of the bill, in added Section 2210.578(a), Insurance Code (page 15, line 10), between "Section 2210.575(f)" and "may bring", insert an underlined comma.

The amendment to **CSHB 272** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 9.

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

**CSHB 272** as amended was passed to third reading by a viva voce vote.

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

### COMMITTEE SUBSTITUTE HOUSE BILL 272 ON THIRD READING

Senator Carona moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 272** be placed on its third reading and final passage.

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

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

**NOTICE GIVEN FOR  
LOCAL AND UNCONTESTED CALENDAR**

Senator Eltife announced that a Local and Uncontested Calendar had been furnished to each Member of the Senate. He then gave notice that the Local and Uncontested Calendar Session would be held at 9:00 a.m. tomorrow and that all bills and resolutions would be considered on second and third reading in the order in which they were listed.

**SENATE RULE 11.10(a) SUSPENDED  
(Public Notice of Committee Meetings)**

On motion of Senator Estes and by unanimous consent, Senate Rule 11.10(a) was suspended in order that the Committee on Agriculture and Rural Affairs might meet today.

**MOTION TO ADJOURN**

On motion of Senator Whitmire and by unanimous consent, the Senate at 11:33 p.m. agreed to adjourn, upon conclusion of the Local and Uncontested Calendar Session, until 10:30 a.m. tomorrow.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 316**

Senator Whitmire submitted the following Conference Committee Report:

Austin, Texas  
May 23, 2011

Honorable David Dewhurst  
President of the Senate

Honorable Joe Straus  
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 316** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

WHITMIRE  
CARONA  
HEGAR  
HUFFMAN

On the part of the Senate

GALLEGO  
HARTNETT  
RODRIGUEZ

On the part of the House

**A BILL TO BE ENTITLED  
AN ACT**

relating to criminal asset forfeiture, the disposition of proceeds and property from criminal asset forfeiture, and accountability for that disposition; providing civil penalties.

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

SECTION 1. Article 59.03, Code of Criminal Procedure, is amended by amending Subsection (d) and adding Subsection (e) to read as follows:

(d) A person in the possession of property at the time a peace officer seizes the property under this chapter may at the time of seizure assert the person's interest in or right to the property. A peace officer, including the peace officer who seizes the property, ~~under this chapter~~ may not ~~at the time of seizure~~ request, require, or in any manner induce any person, including a person who asserts an interest in or right to the property ~~seized~~, to execute a document purporting to waive the person's interest in or rights to ~~the~~ property seized under this chapter.

(e) At any time before notice is filed under Article 59.04(b), an attorney representing the state may not request, require, or in any manner induce any person, including a person who asserts an interest in or right to property seized under this chapter, to execute a document purporting to waive the person's interest in or rights to the property.

SECTION 2. Article 59.06, Code of Criminal Procedure, is amended by adding Subsections (c-2), (d-1), and (d-2) and amending Subsections (d) and (g) to read as follows:

(c-2) Any postjudgment interest from money, securities, negotiable instruments, stocks or bonds, or things of value, or proceeds from the sale of those items, that are deposited in an interest-bearing bank account under Subsection (c) shall be used for the same purpose as the principal.

(d) Proceeds awarded under this chapter to a law enforcement agency or to the attorney representing the state may be spent by the agency or the attorney after a budget for the expenditure of the proceeds has been submitted to the commissioners court or governing body of the municipality. The budget must be detailed and clearly list and define the categories of expenditures, but may not list details that would endanger the security of an investigation or prosecution. Expenditures are subject to the audit and enforcement provisions established under this chapter ~~article~~. A commissioners court or governing body of a municipality may not use the existence of an award to offset or decrease total salaries, expenses, and allowances that the agency or the attorney receives from the commissioners court or governing body at or after the time the proceeds are awarded.

(d-1) The head of a law enforcement ~~the~~ agency or an attorney representing the state may not use proceeds or property received under this chapter to:

(1) contribute to a political campaign;

(2) make a donation to any entity, except as provided by Subsection (d-2);

(3) pay expenses related to the training or education of any member of the

judiciary;

(4) pay any travel expenses related to attendance at training or education seminars if the expenses violate generally applicable restrictions established by the commissioners court or governing body of the municipality, as applicable;

(5) purchase alcoholic beverages;

(6) make any expenditure not approved by the commissioners court or governing body of the municipality, as applicable, if the head of a law enforcement agency or attorney representing the state holds an elective office and:

(A) the deadline for filing an application for a place on the ballot as a candidate for reelection to that office in the general primary election has passed and the person did not file an application for a place on that ballot; or

(B) during the person's current term of office, the person was a candidate in a primary, general, or runoff election for reelection to that office and was not the prevailing candidate in that election; or

(7) ~~[the existence of an award to]~~ increase a salary, expense, or allowance for an employee of the law enforcement agency or attorney representing the state ~~[or agency]~~ who is budgeted by the commissioners court or governing body of the municipality unless the commissioners court or governing body first approves the increase ~~[expenditure]~~.

(d-2) The head of a law enforcement agency or an attorney representing the state may use as an official purpose of the agency or attorney proceeds or property received under this chapter to make a donation to an entity that assists in:

(1) the detection, investigation, or prosecution of:

(A) criminal offenses; or

(B) instances of abuse, as defined by Section 261.001, Family Code;

(2) the provision of:

(A) mental health, drug, or rehabilitation services; or

(B) services for victims or witnesses of criminal offenses or instances of abuse described by Subdivision (1); or

(3) the provision of training or education related to duties or services described by Subdivision (1) or (2).

(g)(1) All law enforcement agencies and attorneys representing the state who receive proceeds or property under this chapter shall account for the seizure, forfeiture, receipt, and specific expenditure of all the ~~[such]~~ proceeds and property in an audit, which is to be performed annually by the commissioners court or governing body of a municipality, as appropriate. The annual period of the audit for a law enforcement agency is the fiscal year of the appropriate county or municipality and the annual period for an attorney representing the state is the state fiscal year. The audit must ~~shall~~ be completed on a form provided by the attorney general and must include a detailed report and explanation of all expenditures, including salaries and overtime pay, officer training, investigative equipment and supplies, and other items. Certified copies of the audit shall be delivered by the law enforcement agency or attorney representing the state to ~~[the comptroller's office and]~~ the attorney general not later than the 60th day after the date on which the annual period that is the subject of the audit ends.

(2) If a copy of the audit is not delivered to the attorney general within the period required by Subdivision (1), within five days after the end of the period the attorney general shall notify the law enforcement agency or the attorney representing the state of that fact. On a showing of good cause, the attorney general may grant an extension permitting the agency or attorney to deliver a copy of the audit after the period required by Subdivision (1) and before the 76th day after the date on which the annual period that is the subject of the audit ends. If the law enforcement agency or the attorney representing the state fails to establish good cause for not delivering the copy of the audit within the period required by Subdivision (1) or fails to deliver a copy of an audit within the extension period, the attorney general shall notify the comptroller of that fact.

(3) On notice under Subdivision (2) [~~this subdivision~~], the comptroller shall perform the audit otherwise required by Subdivision (1). At the conclusion of the audit, the comptroller shall forward a copy of the audit to the attorney general. The law enforcement agency or attorney representing the state is liable to the comptroller for the costs of the comptroller in performing the audit.

SECTION 3. Chapter 59, Code of Criminal Procedure, is amended by adding Articles 59.061 and 59.062 to read as follows:

Art. 59.061. AUDITS AND INVESTIGATIONS. (a) The state auditor may at any time perform an audit or conduct an investigation, in accordance with this article and Chapter 321, Government Code, related to the seizure, forfeiture, receipt, and specific expenditure of proceeds and property received under this chapter.

(b) The state auditor is entitled at any time to access any book, account, voucher, confidential or nonconfidential report, or other record of information, including electronic data, maintained under Article 59.06, except that if the release of the applicable information is restricted under state or federal law, the state auditor may access the information only with the approval of a court or federal administrative agency, as appropriate.

(c) If the results of an audit or investigation under this article indicate that a law enforcement agency or attorney representing the state has knowingly violated or is knowingly violating a provision of this chapter relating to the disposition of proceeds or property received under this chapter, the state auditor shall promptly notify the attorney general for the purpose of initiating appropriate enforcement proceedings under Article 59.062.

(d) The law enforcement agency or attorney representing the state shall reimburse the state auditor for costs incurred by the state auditor in performing an audit under this article.

Art. 59.062. ENFORCEMENT. (a) In the name of the state, the attorney general may institute in a district court in Travis County or in a county served by the law enforcement agency or attorney representing the state, as applicable, a suit for injunctive relief, to recover a civil penalty, or for both injunctive relief and a civil penalty if the results of an audit or investigation under Article 59.061 indicate that the law enforcement agency or attorney representing the state has knowingly violated or is knowingly violating a provision of this chapter relating to the disposition of proceeds or property received under this chapter.

(b) On application for injunctive relief and a finding that the law enforcement agency or attorney representing the state is knowingly violating a provision of this chapter relating to the disposition of proceeds or property received under this chapter, the district court shall grant the injunctive relief the facts may warrant, without requirement for bond.

(c) A law enforcement agency or attorney representing the state who knowingly commits a violation described by Subsection (a) is liable to the state for a civil penalty in an amount not to exceed \$100,000 as determined by the district court to be appropriate for the nature and seriousness of the violation. In determining an appropriate penalty for the violation, the court shall consider:

(1) any previous violations committed by the agency or attorney;

(2) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(3) the demonstrated good faith of the agency or attorney; and

(4) the amount necessary to deter future violations.

(d) If the attorney general brings a suit under this article and an injunction is granted or a civil penalty is imposed, the attorney general may recover reasonable expenses, court costs, investigative costs, and attorney's fees.

(e) Notwithstanding any other provision of this article, a law enforcement agency or attorney representing the state ordered to pay a civil penalty, expense, cost, or fee under this article shall make the payment out of money available in any fund established by the agency or attorney, as applicable, for the purpose of administering proceeds or property received under this chapter. If sufficient money is not available to make payment in full at the time the court enters an order requiring payment, the agency or attorney shall continue to make payments out of money available in any fund described by this subsection until the payment is made in full.

(f) A civil penalty collected under this article shall be deposited to the credit of the drug court account in the general revenue fund to help fund drug court programs established under Chapter 469, Health and Safety Code.

(g) A law enforcement agency or attorney representing the state is immune from liability under this article if the agency or attorney reasonably relied on:

(1) the advice, consent, or approval of an entity that conducts an audit of the agency or attorney under this chapter; or

(2) a written opinion of the attorney general relating to:

(A) the statute or other provision of law the agency or attorney is alleged to have knowingly violated; or

(B) a fact situation that is substantially similar to the fact situation in which the agency or attorney is involved.

SECTION 4. The changes in law made by this Act in amending Article 59.03, Code of Criminal Procedure, apply only to property seized on or after the effective date of this Act. Property seized before the effective date of this Act is covered by the law in effect when the property was seized, and the former law is continued in effect for that purpose. For purposes of this section, property was seized before the effective date of this Act if any portion of the property was seized before that date.

SECTION 5. Except as provided by Section 6 of this Act, the changes in law made by this Act in amending Article 59.06, Code of Criminal Procedure, apply to the disposition or use, on or after the effective date of this Act, of proceeds or property received by a law enforcement agency or attorney representing the state under Chapter 59, Code of Criminal Procedure, regardless of whether the receipt of the proceeds or property occurred before, on, or after the effective date of this Act.

SECTION 6. The changes in law made by this Act in amending Subsection (g), Article 59.06, Code of Criminal Procedure, and adding Articles 59.061 and 59.062, Code of Criminal Procedure, apply to any audit performed on or after the effective date of this Act.

SECTION 7. This Act takes effect September 1, 2011.

The Conference Committee Report on **SB 316** was filed with the Secretary of the Senate.

**CO-AUTHOR OF SENATE BILL 516**

On motion of Senator Patrick, Senator Uresti will be shown as Co-author of **SB 516**.

**CO-SPONSOR OF HOUSE BILL 1756**

On motion of Senator Watson, Senator Zaffirini will be shown as Co-sponsor of **HB 1756**.

**CO-SPONSOR OF HOUSE BILL 1757**

On motion of Senator Watson, Senator Zaffirini will be shown as Co-sponsor of **HB 1757**.

**CO-SPONSOR OF HOUSE BILL 1758**

On motion of Senator Watson, Senator Zaffirini will be shown as Co-sponsor of **HB 1758**.

**CO-SPONSOR OF HOUSE BILL 1821**

On motion of Senator West, Senator Uresti will be shown as Co-sponsor of **HB 1821**.

**CO-SPONSOR OF HOUSE BILL 1942**

On motion of Senator Van de Putte, Senator Whitmire will be shown as Co-sponsor of **HB 1942**.

**CO-SPONSOR OF HOUSE BILL 2761**

On motion of Senator West, Senator Uresti will be shown as Co-sponsor of **HB 2761**.

**CO-SPONSORS OF HOUSE BILL 2779**

On motion of Senator Patrick, Senators Birdwell, Uresti, and West will be shown as Co-sponsors of **HB 2779**.

**CO-SPONSOR OF HOUSE CONCURRENT RESOLUTION 42**

On motion of Senator Williams, Senator Davis will be shown as Co-sponsor of **HCR 42**.

**RESOLUTIONS OF RECOGNITION**

The following resolutions were adopted by the Senate:

**Memorial Resolutions**

**SR 1126** by Birdwell, In memory of John Edward Andrade, Sr.

**SR 1127** by Birdwell, In memory of Bryan A. Burgess.

**SR 1128** by Birdwell, In memory of Joel A. Ramirez.

**SR 1134** by Hinojosa, In memory of Glennis Waltz "Gee" Anderson of Corpus Christi.

**Congratulatory Resolutions**

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

**SR 1132** by Lucio, Recognizing Harvey and Tim Hull for their craftsmanship.



**SR 1133** by Hinojosa, Recognizing Lydia G. Sandoval for her 25 years of service at Lone Star National Bank in McAllen.

**SR 1136** by Carona, Recognizing Gary Slagel for his service to the City of Richardson.

**SR 1137** by Carona, Recognizing John Murphy for his service to the City of Richardson.

**SR 1138** by Carona, Recognizing Bob Macy for his service to the City of Richardson.

**SR 1139** by Van de Putte, Recognizing Mark Anthony Flores on the occasion of his retirement from the United States Navy.

**SR 1140** by Van de Putte, Recognizing Alamo Honor Flight for its support of our nation's veterans.

**SR 1141** by Van de Putte, Recognizing the class of 1961 of Edgewood High School of San Antonio on the occasion of its reunion.

**SR 1142** by Van de Putte, Recognizing the 173rd Airborne Brigade Association on the occasion of its reunion.

#### **Official Designation Resolutions**

**SR 1135** by Carona, Celebrating May 30, 2011, as Carry the Load Day.

**SR 1143** by Van de Putte, Declaring August of 2011 as Student Athlete Heart Screening Month in Texas.

#### **RECESS**

On motion of Senator Whitmire, the Senate at 11:33 p.m. recessed until 9:00 a.m. tomorrow for the Local and Uncontested Calendar Session.

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#### **APPENDIX**

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#### **COMMITTEE REPORTS**

The following committee reports were received by the Secretary of the Senate in the order listed:

May 23, 2011

STATE AFFAIRS — **CSHB 274**

BUSINESS AND COMMERCE — **CSHB 2643**

INTERNATIONAL RELATIONS AND TRADE — **HB 3864, CSHB 1788**

HIGHER EDUCATION — **CSHB 736**

CRIMINAL JUSTICE — **CSHB 290, CSHB 2337**

HIGHER EDUCATION — **CSHB 2910, HB 1053, CSHB 2999**

INTERGOVERNMENTAL RELATIONS — **HB 3836, HB 3831 (Amended),  
HB 3462, CSHB 3819, HB 3859 (Amended)**

HIGHER EDUCATION — **CSHB 3025, CSHB 1206**

NATURAL RESOURCES — **HB 3328**

CRIMINAL JUSTICE — **CSHB 1940, CSHB 3, CSHB 1646**

AGRICULTURE AND RURAL AFFAIRS — **HB 2996, HB 2997**

STATE AFFAIRS — **CSHB 2728**

GOVERNMENT ORGANIZATION — **CSHB 2439**

CRIMINAL JUSTICE — **CSHB 927**

HIGHER EDUCATION — **CSHB 3708**

### **BILLS ENGROSSED**

May 21, 2011

**SB 1193, SB 1837**

### **BILLS AND RESOLUTIONS ENROLLED**

May 21, 2011

**SB 31, SB 36, SB 41, SB 58, SB 74, SB 80, SB 122, SB 131, SB 155, SB 219,  
SB 246, SB 247, SB 256, SB 258, SB 264, SB 310, SB 311, SB 315, SB 387,  
SB 400, SB 402, SB 419, SB 431, SB 432, SB 436, SB 514, SB 520, SB 540,  
SB 545, SB 558, SB 601, SB 794, SB 795, SB 813, SB 822, SB 860, SB 882,  
SB 896, SB 910, SB 953, SB 992, SB 1047, SB 1057, SB 1154, SB 1187, SB 1208,  
SB 1248, SB 1295, SB 1311, SB 1352, SB 1410, SB 1414, SB 1578, SB 1598,  
SB 1660, SB 1667, SB 1668, SB 1669, SB 1687, SB 1692, SB 1719, SB 1755,  
SB 1831, SCR 57, SR 1056, SR 1057, SR 1058, SR 1059, SR 1060, SR 1061,  
SR 1062, SR 1063, SR 1064, SR 1065, SR 1066, SR 1067, SR 1068, SR 1069,  
SR 1070, SR 1071, SR 1072, SR 1073, SR 1074, SR 1075, SR 1076, SR 1077,  
SR 1078, SR 1079, SR 1080, SR 1081, SR 1082, SR 1083, SR 1084, SR 1085,  
SR 1086, SR 1087, SR 1088, SR 1089, SR 1090, SR 1091, SR 1092, SR 1093,  
SR 1094, SR 1095, SR 1096, SR 1097, SR 1098, SR 1099, SR 1100, SR 1101,  
SR 1102, SR 1103, SR 1104, SR 1105, SR 1106, SR 1107, SR 1108, SR 1109,  
SR 1110, SR 1111, SR 1112, SR 1113, SR 1114, SR 1115, SR 1116, SR 1117,  
SR 1118, SR 1119, SR 1120, SR 1121, SR 1122, SR 1123, SR 1124**

# SENATE JOURNAL

EIGHTY-SECOND LEGISLATURE — REGULAR SESSION

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AUSTIN, TEXAS

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## PROCEEDINGS

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**SIXTY-SIXTH DAY**  
(Continued)  
(Tuesday, May 24, 2011)

### AFTER RECESS

The Senate met at 9:00 a.m. and was called to order by Senator Uresti.

### SESSION HELD FOR LOCAL AND UNCONTESTED CALENDAR

The Presiding Officer announced that the time had arrived to consider bills and resolutions placed on the Local and Uncontested Calendar. Notice of consideration of the local calendar was given by Senator Eltife yesterday.

Pursuant to Senate Rule 9.03(d), the following bills and resolutions were laid before the Senate in the order listed, read second time, amended where applicable, passed to engrossment or third reading, read third time, and passed. The votes on passage to engrossment or third reading, suspension of the Constitutional Three-day Rule, and final passage are indicated after each caption. All Members are deemed to have voted "Yea" on viva voce votes unless otherwise indicated.

**SB 1460** (Harris)

Relating to energy savings performance contracts.  
(viva voce vote) (31-0) (31-0)

**HB 174** (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.  
(viva voce vote) (31-0) (31-0)

**HB 308** (Watson)

Relating to life preserving devices on recreational vessels.  
(viva voce vote) (31-0) (31-0).

**HB 343** (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.  
(viva voce vote) (31-0) (31-0)

**HB 360** (Duncan)

Relating to ballot language for a proposition to approve the imposition, increase, or reduction of a tax or the issuance of bonds.

(viva voce vote) (31-0) (31-0)

**HB 412** (Hegar)

Relating to the requirement that certain impaired veterinarians participate in a peer assistance program.

(viva voce vote) (31-0) (31-0)

**HB 528** (Van de Putte)

Relating to the provision of pharmaceutical services through informal and voluntary networks in the workers' compensation system; providing an administrative violation.

(viva voce vote) (31-0) (31-0)

**HB 577** (Deuell)

Relating to emergency prehospital care provided by emergency services personnel.

(viva voce vote) (31-0) (31-0)

**HB 588** (Whitmire)

Relating to surcharges under the Driver Responsibility Program.

(viva voce vote) (31-0) (31-0)

**HB 630** (Nichols)

Relating to the environmental review process for transportation projects.

(viva voce vote) (31-0) (31-0)

**HB 654** (Shapiro)

Relating to a report regarding the municipality or county of origin of certain tax revenue collected by the comptroller.

(viva voce vote) (31-0) (31-0)

**HB 692** (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.

(viva voce vote) (31-0) (31-0)

**HB 787** (Wentworth)

Relating to abandoned, wrecked, dismantled, discarded, and inoperable aircraft and vessels.

(viva voce vote) (31-0) (31-0)

**HB 788** (Wentworth)

Relating to the establishment and use of a private family cemetery by certain organizations in certain counties.

(viva voce vote) (31-0) (31-0)

**HB 805** (Hegar)

Relating to the requirement that certain water service providers ensure emergency operations during an extended power outage.

(viva voce vote) (31-0) (31-0)

**HB 990** (Watson)

Relating to certain homestead preservation reinvestment zones.  
(viva voce vote) (31-0) (31-0)

**(Senator Van de Putte in Chair)**

**HB 1040** (Uresti)

Relating to the validation of the creation of, and certain acts related to, a venue project, and the dissolution of certain venue districts.  
(viva voce vote) (31-0) (31-0)

**(Senator Uresti in Chair)**

**HB 1048** (Eltife)

Relating to the terms of the 102nd District Court in Red River County.  
(viva voce vote) (31-0) (31-0)

**HB 1060** (Hegar)

Relating to the de-annexation of land in Bastrop County by the Barton Springs-Edwards Aquifer Conservation District.  
(viva voce vote) (31-0) (31-0)

**HB 1070** (Hinojosa)

Relating to the taking of a defendant's bail bond by county jailers.  
(viva voce vote) (31-0) (31-0)

**HB 1116** (Shapiro)

Relating to prohibiting the sale and use of certain radar interference devices; creating an offense.  
(viva voce vote) (31-0) (31-0)

**HB 1144** (Deuell)

Relating to the Hopkins County Hospital District.  
(viva voce vote) (31-0) (31-0)

**HB 1148** (Hinojosa)

Relating to an exemption for certain disabled veterans from the payment of a fee for the issuance of a personal identification certificate.  
(viva voce vote) (31-0) (31-0)

**(Senator Van de Putte in Chair)**

**HB 1163** (Hegar)

Relating to tuition and fee exemptions at public institutions of higher education for certain peace officers and firefighters.  
(viva voce vote) (31-0) (31-0)

**HB 1226** (Ellis)

Relating to the eligibility of certain persons who have received deferred adjudication to vote.  
(viva voce vote) (31-0) (31-0)

**HB 1235** (Ogden)

Relating to the transfer of certain state property from the Texas Department of Transportation to the Parks and Wildlife Department.

(viva voce vote) (31-0) (31-0)

**HB 1274** (Wentworth)

Relating to an exemption from the payment of a toll for unmarked military vehicles conducting or training for emergency operations.

(viva voce vote) (31-0) (31-0)

**HB 1301** (Eltife)

Relating to making a voluntary contribution to the Parks and Wildlife Department when registering a motor vehicle or renewing a motor vehicle registration.

(viva voce vote) (31-0) (31-0)

**HB 1305** (Huffman)

Relating to the issuance of oversize or overweight vehicle permits by certain port authorities.

(viva voce vote) (31-0) (31-0)

**HB 1341** (Zaffirini)

Relating to the manner of payment of tuition and mandatory fees at public institutions of higher education.

(viva voce vote) (31-0) (31-0)

**HB 1456** (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.

(viva voce vote) (31-0) (31-0)

**HB 1486** (Wentworth)

Relating to signs posted under the memorial sign program for victims of certain vehicle accidents.

(viva voce vote) (31-0) (31-0)

**HB 1499** (Wentworth)

Relating to the designation of the Scenic Loop Road–Boerne Stage Road–Toutant Beauregard Road Historic Corridor.

(viva voce vote) (31-0) (31-0)

**HB 1504** (Hinojosa)

Relating to statutory references to the common electronic infrastructure project formerly known as TexasOnline.

(viva voce vote) (31-0) (31-0)

**HB 1523** (Watson)

Relating to the offense of transporting household goods without registration; providing a penalty.

(viva voce vote) (31-0) (31-0)

**HB 1593** (Huffman)

Relating to the inclusion of a candidate's e-mail address on an official application for a place on the ballot.

(viva voce vote) (31-0) (31-0)

**HB 1608** (Watson)

Relating to participation in and contributions to the state employee charitable campaign by retired state employees.

(viva voce vote) (31-0) (31-0)

**HB 1658** (Whitmire)

Relating to the refund of a cash bond to a defendant in a criminal case.

(viva voce vote) (31-0) (31-0)

**HB 1907** (Whitmire)

Relating to notification requirements concerning offenses committed by students and school district discretion over admission or placement of certain students.

(viva voce vote) (31-0) (31-0)

**HB 1959** (Carona)

Relating to appeal of the certification of an area's wet or dry status.

(viva voce vote) (31-0) (31-0)

**HB 1981** (Gallegos)

Relating to measuring, monitoring, and reporting emissions.

(viva voce vote) (31-0) (31-0)

**(Senator Uresti in Chair)**

**HB 2015** (Van de Putte)

Relating to certain conduct indicating a need for supervision and the sealing of records related to that conduct.

(viva voce vote) (31-0) (31-0)

**(Senator Van de Putte in Chair)**

**HB 2038** (Deuell)

Relating to prevention, treatment, and oversight of concussions affecting public school students participating in interscholastic athletics.

(viva voce vote) (31-0) (31-0)

**STATEMENT OF LEGISLATIVE INTENT**

Senator Deuell submitted the following statement of legislative intent for **HB 2038**:

It is my intent that this does affect a physician's referral of a student for treatment to a licensed health care professional.

It is also my intent that the physician described in Section 38.157(3) may be a medical doctor actively practicing in a neighboring state if he or she is the student's personal physician.

DEUELL

**HB 2077** (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.

(viva voce vote) (31-0) (31-0)

**HB 2103** (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.

(viva voce vote) (31-0) (31-0)

**HB 2109** (Uresti)

Relating to agency action concerning assisted living facilities, including regulation of inappropriate placement of residents at facilities; providing a penalty.

(viva voce vote) (31-0) (31-0)

**HB 2120** (Duncan)

Relating to the composition of the board of trustees of the Teacher Retirement System of Texas.

(viva voce vote) (31-0) (31-0)

**HB 2127** (Harris)

Relating to the municipal regulation of the discharge of firearms and certain other weapons in certain counties.

(viva voce vote) (31-0) (31-0)

**(Senator Rodriguez in Chair)****HB 2132** (Hegar)

Relating to the creation of magistrates in certain counties.

(viva voce vote) (31-0) (31-0)

**HB 2139** (Zaffirini)

Relating to the establishment of an Adopt-A-Library program and state employee charitable contributions to the program.

(viva voce vote) (31-0) (31-0)

**HB 2172** (Van de Putte)

Relating to the eligibility of certain children under group life insurance policies.

(viva voce vote) (31-0) (31-0)

**HB 2195** (Carona)

Relating to requirements for certain arrangements or agreements of certain regional transportation authorities.

(viva voce vote) West "Present-not voting" (30-0-1) West "Present-not voting" (30-0-1) West "Present-not voting"

**HB 2223** (Carona)

Relating to the contracts of certain regional transportation authorities that are required to be competitively bid.

(viva voce vote) West "Present-not voting" (30-0-1) West "Present-not voting" (30-0-1) West "Present-not voting"



**HB 2280** (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.

(viva voce vote) (31-0) (31-0)

**HB 2292** (Van de Putte)

Relating to payment of claims to pharmacies and pharmacists.

(viva voce vote) (31-0) (31-0)

**HB 2313** (Wentworth)

Relating to certain notice requirements for municipalities and counties under the open meetings law.

(viva voce vote) (31-0) (31-0)

**HB 2325** (Wentworth)

Relating to the competitive bidding and notice requirements for contracts of certain mass transportation authorities.

(viva voce vote) West "Present-not voting" (30-0-1) West "Present-not voting" (30-0-1) West "Present-not voting"

**HB 2330** (Estes)

Relating to the statutory county courts in Wise County.

(viva voce vote) (31-0) (31-0)

**HB 2359** (Williams)

Relating to direct campaign expenditures.

(viva voce vote) (31-0) (31-0)

**HB 2382** (Estes)

Relating to notice required upon nonrenewal of property and casualty insurance policies.

(viva voce vote) (31-0) (31-0)

**HB 2422** (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.

(viva voce vote) (31-0) (31-0)

**HB 2469** (Estes)

Relating to a memorial sign program for victims of motorcycle accidents.

(viva voce vote) (31-0) (31-0)

**HB 2471** (Deuell)

Relating to limiting the civil liability of certain persons who obtain or provide medical care and treatment for certain animals.

(viva voce vote) (31-0) (31-0)

**HB 2477** (Ellis)

Relating to provision of bilingual election materials.

(viva voce vote) (31-0) (31-0)

**HB 2510** (Eltife)

Relating to exempting the intrastate manufacture of certain incandescent light bulbs from federal regulation.

(viva voce vote) (31-0) (31-0)

**HB 2579** (Deuell)

Relating to relief for certain employers from penalties and sanctions under the Texas Unemployment Compensation Act.

(viva voce vote) (31-0) (31-0)

**HB 2610** (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.

(viva voce vote) Birdwell "Nay" (30-1) Birdwell "Nay" (30-1) Birdwell "Nay"

**(Senator Eltife in Chair)**

**HB 2619** (Whitmire)

Relating to emergency preparedness information about water facilities.

(viva voce vote) (31-0) (31-0)

**HB 2632** (Wentworth)

Relating to access to the criminal history record information of certain persons by the Texas Facilities Commission.

(viva voce vote) (31-0) (31-0)

**HB 2636** (Nelson)

Relating to a council to study neonatal intensive care units.

(viva voce vote) (31-0) (31-0)

**HB 2703** (Uresti)

Relating to the regulation of orthotists and prosthetists.

(viva voce vote) (31-0) (31-0)

**HB 2717** (Carona)

Relating to the duties and responsibilities of certain county officials and the functions of county government.

(viva voce vote) (31-0) (31-0)

**HB 2758** (Zaffirini)

Relating to mandatory emergency alert systems at institutions of higher education.

(viva voce vote) (31-0) (31-0)

**HB 2769** (Wentworth)

Relating to the authority of the Texas Facilities Commission regarding gifts, grants, and donations.

(viva voce vote) (31-0) (31-0)

**HB 2826** (Huffman)

Relating to the issuance of a certificate for a municipal setting designation.

(viva voce vote) (31-0) (31-0)

**HB 2869** (Shapiro)

Relating to the powers and duties of certain master mixed-use property owners' associations.

(viva voce vote) (31-0) (31-0)

**HB 2903** (Deuell)

Relating to the program of all-inclusive care for the elderly.

(viva voce vote) (31-0) (31-0)

**HB 2940** (Zaffirini)

Relating to the form of death certificates and fetal death certificates.

(viva voce vote) (31-0) (31-0)

**(Senator Van de Putte in Chair)**

**HB 3002** (Eltife)

Relating to certain conservation and reclamation districts exempted from filing a full audit.

(viva voce vote) (31-0) (31-0)

**(Senator Eltife in Chair)**

**HB 3017** (Duncan)

Relating to the prohibited use of discretionary clauses in certain health maintenance organization and insurance contracts.

(viva voce vote) (31-0) (31-0)

**HB 3093** (Duncan)

Relating to the amendment of certain reports of political contributions and expenditures.

(viva voce vote) (31-0) (31-0)

**HB 3167** (Carona)

Relating to the abolishment of the state regulation of talent agencies and personnel services.

(viva voce vote) (31-0) (31-0)

**HB 3270** (Deuell)

Relating to the list of candidates compiled by a state or county party chair for a primary election.

(viva voce vote) (31-0) (31-0)

**HB 3309** (Nichols)

Relating to the authority to set maximum weights for state highways, roads, and bridges.

(viva voce vote) (31-0) (31-0)

**HB 3311** (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.

(viva voce vote) (31-0) (31-0)

**HB 3314** (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.

(viva voce vote) (31-0) (31-0)

**HB 3333** (Hegar)

Relating to the authority of the governor to order the disconnection of state computer networks from the Internet.

(viva voce vote) (31-0) (31-0)

**HB 3336** (Deuell)

Relating to information regarding pertussis for parents of newborn children.

(viva voce vote) (31-0) (31-0)

**HB 3337** (Hinojosa)

Relating to the emergency medical services that give rise to an emergency medical services lien.

(viva voce vote) (31-0) (31-0)

**HB 3578** (Zaffirini)

Relating to clarification of the authorized uses for loans under public institution of higher education emergency loan programs.

(viva voce vote) (31-0) (31-0)

**HB 3579** (Zaffirini)

Relating to repayment assistance for certain physician education loans.

(viva voce vote) (31-0) (31-0)

**HB 3796** (Uresti)

Relating to the composition of certain judicial districts.

(viva voce vote) (31-0) (31-0)

**HB 3808** (Uresti)

Relating to fishing with certain archery equipment in certain counties.

(viva voce vote) (31-0) (31-0)

**HCR 24** (Duncan)

Designating Nymphaea Texas Dawn as the official State Waterlily of Texas.

(viva voce vote)

**HCR 130** (Carona)

Designating the city of Richardson as the official International Business Capital of North Texas.

(viva voce vote)

**BILLS REMOVED FROM  
LOCAL AND UNCONTESTED CALENDAR**

Senator Carona, sponsor of the bill, requested in writing that **HB 1580** be removed from the Local and Uncontested Calendar.

Senator Williams, sponsor of the bill, requested in writing that **HB 2040** be removed from the Local and Uncontested Calendar.

Senator Uresti and Senator Eltife requested in writing that **HCR 117** be removed from the Local and Uncontested Calendar.

**ADJOURNMENT**

Pursuant to a previously adopted motion, the Senate at 9:45 a.m. adjourned until 10:30 a.m. today.



# SENATE JOURNAL

EIGHTY-SECOND LEGISLATURE — REGULAR SESSION

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AUSTIN, TEXAS

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PROCEEDINGS

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SIXTY-SEVENTH DAY

(Tuesday, May 24, 2011)

The Senate met at 10:49 a.m. pursuant to adjournment and was called to order by Senator Eltife.

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

The Presiding Officer announced that a quorum of the Senate was present.

The Reverend Danny P. Reeves, First Baptist Church, Corsicana, was introduced by Senator Birdwell and offered the invocation as follows:

Almighty God, loving Lord, creator of life, I praise You and thank You for Your goodness. I praise You for the privilege of being in this place. I praise You that we have the blessing of being in a chamber like this where we can self-govern under Your authority. We thank You today that we have the honor of being citizens of the United States of America. We thank You even more that we are blessed to live in the great State of Texas. I ask today as we begin this day's session that You bless these leaders around me. Thank You so much for their commitment, their service, and their sacrifice. May You provide them support, guidance, courage, and wisdom. We know that You are well aware of the financial needs in our state, so I pray today that You would help us to be good stewards of the resources You have given. We pray You would open the floodgates of heaven and provide for us as only You can. We proclaim to You today that, "In God we trust." We humbly confess that we need You, we trust You, and we find our hope only in You. May everything that happens in this room be pleasing to You, and may our actions on this day be acceptable in Your sight. I pray these things humbly before You, my Lord and my God. Amen.

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

The motion prevailed without objection.

**MESSAGE FROM THE HOUSE**

HOUSE CHAMBER  
Austin, Texas  
Tuesday, May 24, 2011 - 1

The Honorable President of the Senate  
Senate Chamber  
Austin, Texas

Mr. President:

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

**THE HOUSE HAS PASSED THE FOLLOWING MEASURES:**

**SB 249** Estes Sponsor: Orr  
Relating to the composition of the Finance Commission of Texas.  
(Amended)

**SB 341** Uresti Sponsor: Menendez  
Relating to authorizing the dissolution of the Bexar Metropolitan Water District;  
providing a penalty.  
(Committee Substitute/Amended)

**SB 377** Huffman Sponsor: Riddle  
Relating to the murder of a child as a capital offense.  
(Amended)

**SB 425** Carona Sponsor: Hancock  
Relating to property and casualty certificates of insurance and approval of property  
and casualty certificate of insurance forms by the Texas Department of Insurance;  
providing penalties.  
(Committee Substitute/Amended)

**SB 479** Estes Sponsor: Miller, Sid  
Relating to limiting the liability of certain persons for farm animal activities.  
(Amended)

**SB 594** Van de Putte Sponsor: Zerwas  
Relating to certain procedures applicable to electronic prescriptions for Schedule II  
controlled substances.  
(Amended)

**SB 762** Carona Sponsor: Paxton  
Relating to the transfer of an ad valorem tax lien; providing for the imposition of an  
administrative penalty.  
(Committee Substitute/Amended)

**SB 859** Duncan Sponsor: Smithee  
Relating to small and large employer health group cooperatives.  
(Amended)

**SB 924** Carona Sponsor: Keffer  
Relating to energy efficiency reports by municipally owned utilities and electric  
cooperatives.  
(Amended)



- SB 958** Wentworth Sponsor: Larson  
Relating to the regulation of dangerous wild animals.  
(Committee Substitute/Amended)
- SB 1010** Huffman Sponsor: Workman  
Relating to providing a victim, guardian of a victim, or close relative of a deceased victim with notice of a plea bargain agreement in certain criminal cases.  
(Amended)
- SB 1026** Harris Sponsor: Naishtat  
Relating to the powers and duties of an attorney ad litem appointed for a parent or an alleged father in certain suits affecting the parent-child relationship.  
(Committee Substitute)
- SB 1068** Ellis Sponsor: Guillen  
Relating to the lease of certain state parking facilities to other persons.  
(Committee Substitute)
- SB 1094** Rodriguez Sponsor: Strama  
Relating to the availability of online testing for high school equivalency examinations.  
(Committee Substitute)
- SB 1114** Wentworth Sponsor: Smith, Todd  
Relating to the regulation of driver training schools and instructors.  
(Amended)
- SB 1134** Hegar Sponsor: Craddick  
Relating to the issuance of permits for certain facilities regulated by the Texas Commission on Environmental Quality.  
(Committee Substitute/Amended)
- SB 1169** Carona Sponsor: Hamilton  
Relating to the regulation of providers, administrators, and sellers of service contracts and identity recovery service contracts; providing penalties.  
(Committee Substitute)
- SB 1179** Nelson Sponsor: Harper-Brown  
Relating to the elimination of certain required reports prepared by state agencies and institutions of higher education and other obsolete provisions of law.  
(Amended)
- SB 1185** Nichols Sponsor: Gooden  
Relating to the authority of certain counties to impose a hotel occupancy tax for the operation and maintenance of a fairground in the county.  
(Committee Substitute)
- SB 1196** Rodriguez Sponsor: Hartnett  
Relating to guardianships and alternatives to guardianship for persons who have physical disabilities or who are incapacitated.  
(Amended)
- SB 1209** Whitmire Sponsor: Marquez  
Relating to the detention of certain juvenile offenders.  
(Amended)

- SB 1216** Estes Sponsor: Hartnett  
Relating to determination of the validity and enforceability of a contract containing an arbitration agreement in suits for dissolution of marriage and certain suits affecting the parent-child relationship.  
(Committee Substitute)
- SB 1233** West Sponsor: Coleman  
Relating to the promotion of efficiencies in and the administration of certain district court and county services and functions.  
(Committee Substitute/Amended)
- SB 1234** West Sponsor: Dutton  
Relating to municipal management districts.  
(Committee Substitute)
- SB 1271** Duncan Sponsor: Perry  
Relating to alternative dispute resolution systems established by counties.  
(Committee Substitute)
- SB 1413** Hegar Sponsor: Kleinschmidt  
Relating to the authority of certain counties to impose a county hotel occupancy tax and to the rate of the tax.  
(Committee Substitute)
- SB 1449** Zaffirini Sponsor: Raymond  
Relating to an alternative method of satisfying certain licensing requirements for chemical dependency treatment facilities.  
(Committee Substitute)
- SB 1489** Whitmire Sponsor: Madden  
Relating to educational, juvenile justice, and criminal justice responses to truancy.  
(Committee Substitute/Amended)
- SB 1600** Whitmire Sponsor: King, Phil  
Relating to the registration of peace officers as private security officers.  
(Committee Substitute)
- SB 1616** West Sponsor: Gallego  
Relating to the collection, storage, preservation, analysis, retrieval, and destruction of biological evidence.  
(Amended)
- SB 1636** Davis Sponsor: McClendon  
Relating to the collection, analysis, and preservation of sexual assault or DNA evidence.  
(Committee Substitute)
- SB 1649** Watson Sponsor: Margo  
Relating to a grant program to support the prosecution of certain crimes.  
(Amended)
- SB 1686** Ellis Sponsor: Anchia  
Relating to group health benefits coverage for persons wrongfully imprisoned.  
(Amended)

**SB 1726**

Zaffirini

Sponsor: Branch

Relating to the development of measurable learning outcomes for undergraduate courses at public institutions of higher education.

**SB 1733**

Van de Putte

Sponsor: Menendez

Relating to the occupational licensing of spouses of members of the military.  
(Committee Substitute)

**SB 1760**

Lucio

Sponsor: Oliveira

Relating to notice of water and wastewater requirements before certain sales of certain residential properties.

(Amended)

**SJR 9**

West

Sponsor: Thompson

Proposing a constitutional amendment authorizing the governor to grant a pardon to a person who successfully completes a term of deferred adjudication community supervision.

Respectfully,

/s/Robert Haney, Chief Clerk  
House of Representatives

**MESSAGE FROM THE HOUSE**

HOUSE CHAMBER

Austin, Texas

Tuesday, May 24, 2011 - 2

The Honorable President of the Senate  
Senate Chamber  
Austin, Texas

Mr. President:

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

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

**HB 109** (139 Yeas, 0 Nays, 2 Present, not voting)

**HB 257** (143 Yeas, 0 Nays, 2 Present, not voting)

**HB 260** (143 Yeas, 0 Nays, 2 Present, not voting)

**HB 268** (142 Yeas, 0 Nays, 2 Present, not voting)

**HB 378** (141 Yeas, 0 Nays, 2 Present, not voting)

**HB 397** (104 Yeas, 38 Nays, 2 Present, not voting)

**HB 592** (140 Yeas, 0 Nays, 1 Present, not voting)

**HB 943** (145 Yeas, 0 Nays, 2 Present, not voting)

**HB 970** (138 Yeas, 6 Nays, 2 Present, not voting)

**HB 1168** (144 Yeas, 3 Nays, 2 Present, not voting)

- HB 1179** (142 Yeas, 0 Nays, 2 Present, not voting)  
**HB 1201** (144 Yeas, 0 Nays, 2 Present, not voting)  
**HB 1278** (144 Yeas, 0 Nays, 3 Present, not voting)  
**HB 1422** (144 Yeas, 0 Nays, 3 Present, not voting)  
**HB 1615** (142 Yeas, 0 Nays, 2 Present, not voting)  
**HB 1818** (144 Yeas, 1 Nays, 2 Present, not voting)  
**HB 1992** (106 Yeas, 36 Nays, 1 Present, not voting)  
**HB 2135** (144 Yeas, 0 Nays, 2 Present, not voting)  
**HB 2160** (146 Yeas, 0 Nays, 3 Present, not voting)  
**HB 2603** (143 Yeas, 0 Nays, 1 Present, not voting)  
**HB 2904** (142 Yeas, 0 Nays, 2 Present, not voting)  
**HB 2971** (140 Yeas, 0 Nays, 2 Present, not voting)  
**HB 3134** (142 Yeas, 0 Nays, 2 Present, not voting)  
**HB 3329** (138 Yeas, 0 Nays, 2 Present, not voting)  
**HB 3391** (144 Yeas, 1 Nays, 2 Present, not voting)  
**HB 3410** (143 Yeas, 0 Nays, 3 Present, not voting)  
**HB 3616** (143 Yeas, 1 Nays, 3 Present, not voting)  
**HB 3788** (130 Yeas, 15 Nays, 2 Present, not voting)  
**HJR 109** (143 Yeas, 0 Nays, 2 Present, not voting)

THE HOUSE HAS REFUSED TO CONCUR IN THE SENATE AMENDMENTS TO THE FOLLOWING MEASURES AND REQUESTS THE APPOINTMENT OF A CONFERENCE COMMITTEE TO ADJUST THE DIFFERENCES BETWEEN THE TWO HOUSES:

**HB 1711** (non-record vote)

House Conferees: Davis, John - Chair/Anderson, Rodney/Geren/Hardcastle/Miles

**HB 1951** (non-record vote)

House Conferees: Taylor, Larry - Chair/Bonnen/Hancock/Smithee/Vo

**HB 2499** (non-record vote)

House Conferees: Cook - Chair/Bonnen/Branch/Geren/Menendez

**HB 2817** (non-record vote)

House Conferees: Taylor, Larry - Chair/Branch/Burkett/Hernandez Luna/King, Phil

**HB 3577** (non-record vote)

House Conferees: Gonzales, Larry - Chair/Schwertner/Scott/Strama/Workman

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

**SB 1087** (non-record vote)

House Conferees: Hilderbran - Chair/Frullo/Gallego/Gooden/King, Tracy O.

THE HOUSE HAS ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

**SB 201** (143 Yeas, 0 Nays, 2 Present, not voting)

Respectfully,

/s/Robert Haney, Chief Clerk  
House of Representatives

**GUESTS PRESENTED**

Senator Zaffirini was recognized and introduced to the Senate Lizbeth Martinez; her parents, Hervey Martinez and Maria Lesbia Martinez; accompanied by U.S. Border Patrol agents, Jorge Molano and Jesse Sánchez.

The Senate welcomed its guests.

**SENATE RESOLUTION 942**

Senator Watson offered the following resolution:

**SR 942**, Recognizing the Austin Jokers Fast Pitch Softball Team on the occasion of its 50th anniversary.

The resolution was again read.

The resolution was previously adopted on Monday, May 9, 2011.

**GUESTS PRESENTED**

Senator Watson was recognized and introduced to the Senate an Austin Jokers Fast Pitch Softball Team delegation: Tony Castillo, Eric Ramirez, Lucio Govea, and Robbie Abeita.

The Senate welcomed its guests.

**REPORT OF COMMITTEE ON NOMINATIONS**

Senator Deuell submitted the following report from the Committee on Nominations:

We, your Committee on Nominations, to which were referred the following appointments, have had same under consideration and report them back to the Senate with a recommendation that they be confirmed:

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

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

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

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

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

Members, Board of Directors, Nueces River Authority: Karen Olsen Bonner, Nueces County; Laura Orman Clader, Atascosa County; Judith Hoepfner Creveling, Nueces County; John W. Galloway, Bee County; Gary A. Jones, Bee County; James Richard Marmion, Dimmit County; Tomas Ramirez, Medina County; Fidel R. Rul, Jim Wells County; Stephen Hamilton Thomas, San Patricio County; Roxana Proctor Tom, Atascosa County.

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

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

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

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

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

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

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

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

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

#### **NOTICE OF CONSIDERATION OF NOMINATIONS**

Senator Deuell gave notice that he would tomorrow at the conclusion of morning call submit to the Senate for consideration nominations to agencies, boards, and commissions of the state.

**SENATE RESOLUTION 1145**

Senator Williams offered the following resolution:

WHEREAS, The Senate of the State of Texas is pleased to recognize the completion of the first documentary film made about the life of Sam Houston; and

WHEREAS, The documentary chronicles his life from his birth in Virginia through his death in Texas; it was written by Sam Houston's biographer, James L. Haley; and

WHEREAS, The film includes nearly 300 restored archival images and historical documents, as well as original artwork that was commissioned specifically for the project; the filmmakers interviewed numerous prominent subject matter experts to gather material for the project; and

WHEREAS, The documentary was filmed at 29 locations in Virginia, Tennessee, and Texas, at sites where the events being portrayed actually took place; over 200 reenactors participated in the project, and the film includes many newly discovered images and the only existing images of Sam and Margaret Houston together; and

WHEREAS, The project includes a massive website, which has been described by Dr. Patrick Nolan, director of the Sam Houston Memorial Museum, as the largest collection of digital information about Sam Houston that has ever been assembled; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 82nd Legislature, hereby extend congratulations to all who participated in the creation of this unique and historically valuable documentary on the life of Sam Houston; and, be it further

RESOLVED, That a copy of this Resolution be prepared in honor of this exceptional project.

**SR 1145** was read and was adopted without objection.

**GUESTS PRESENTED**

Senator Williams was recognized and introduced to the Senate Denton Eugene Florian, Mary Lou Florian, Daniel Alan Florian, Melinda Gayle Florian, and Sam Houston IV.

The Senate welcomed its guests.

**CONCLUSION OF MORNING CALL**

The Presiding Officer at 11:05 a.m. announced the conclusion of morning call.

**GUESTS PRESENTED**

Senator Zaffirini was recognized and introduced to the Senate Ruiz Elementary Courtesy Service Club students, accompanied by their teacher, Susana Sarmiento.

The Senate welcomed its guests.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 300 ON SECOND READING**

On motion of Senator Nelson and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 300** at this time on its second reading:

**CSHB 300**, Relating to the privacy of protected health information; providing administrative and civil penalties.

The bill was read second time.

Senator Nelson offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 300** (Senate Committee Report) by striking page 5, line 69 through page 6, line 7 and renumbering all subsequent sections as necessary.

The amendment to **CSHB 300** was read and was adopted by a viva voce vote.

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

Senator Hinojosa offered the following amendment to the bill:

**Floor Amendment No. 2**

Amend **CSHB 300** (senate committee printing) as follows:

(1) In SECTION 7 of the bill, strike proposed Sections 181.201(b) and (b-1), Health and Safety Code (page 4, lines 18 through 45), and substitute the following:

(b) In addition to the injunctive relief provided by Subsection (a), the attorney general may institute an action for civil penalties against a covered entity for a violation of this chapter. A civil penalty assessed under this section may not exceed:

(1) \$5,000 [~~\$3,000~~] for each violation that occurs in one year, regardless of how long the violation continues during that year, committed negligently;

(2) \$25,000 for each violation that occurs in one year, regardless of how long the violation continues during that year, committed knowingly or intentionally;  
or

(3) \$250,000 for each violation in which the covered entity knowingly or intentionally uses protected health information for financial gain.

(b-1) The total amount of a penalty assessed against a covered entity under Subsection (b) in relation to a violation or violations of Section 181.154 may not exceed \$250,000 annually if the court finds that the disclosure was made only to another covered entity and only for a purpose described by Section 181.154(c) and the court finds that:

(1) the protected health information disclosed was encrypted or transmitted using encryption technology designed to protect against improper disclosure;

(2) the recipient of the protected health information did not use or release the protected health information; or

(3) at the time of the disclosure of the protected health information, the covered entity had developed, implemented, and maintained security policies, including the education and training of employees responsible for the security of protected health information.

(2) In SECTION 10 of the bill, in added Section 181.206(a)(1), Health and Safety Code (page 5, line 48), between "entity" and "in", insert ", as that term is defined by 45 C.F.R. Section 160.103,".

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



SECTION \_\_\_\_\_. Section 522.002(b), Business & Commerce Code, is amended to read as follows:

(b) An offense under this section is a Class B misdemeanor, except that the offense is a state jail felony if the information accessed, read, scanned, stored, or transferred was protected health information as defined by the Health Insurance Portability and Accountability Act and Privacy Standards, as defined by Section 181.001, Health and Safety Code.

SECTION \_\_\_\_\_. The change in law made by Section 522.002(b), Business & Commerce Code, as amended by this Act, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect at the time the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense was committed before that date.

The amendment to **CSHB 300** was read and was adopted by a viva voce vote.

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

Senator Uresti offered the following amendment to the bill:

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

Amend **CSHB 300** (senate committee printing) in SECTION 18 of the bill as follows:

(1) In proposed Subsection (b)(1)(B) (page 8, line 5), strike "and".

(2) In proposed Subsection (b)(1), following Paragraph (C) (page 8, between lines 7 and 8), insert:

(D) at least one pharmacist; and

The amendment to **CSHB 300** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 3.

Senator Deuell offered the following amendment to the bill:

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

Amend **CSHB 300** by adding a new SECTION 4 and renumbering subsequent SECTIONS appropriately:

SECTION 4. Subchapter B, Chapter 181, Health and Safety Code, is amended by adding Section 181.059 as follows:

Sec. 181.059. CRIME VICTIM COMPENSATION. This Chapter does not apply to any person or entity in connection with providing, administering, supporting, or coordinating any of the benefits regarding compensation to victims of crime as provided by Subchapter B, Article 56, Code of Criminal Procedure.

The amendment to **CSHB 300** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 4.

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

**CSHB 300** as amended was passed to third reading by a viva voce vote.

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 300 ON THIRD READING**

Senator Nelson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 300** be placed on its third reading and final passage.

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

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1904 ON SECOND READING**

On motion of Senator Estes and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 1904** at this time on its second reading:

**CSHB 1904**, Relating to the deadlines for write-in candidates for the office of county or precinct chair of a political party.

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

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1904 ON THIRD READING**

Senator Estes moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 1904** be placed on its third reading and final passage.

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

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 3090 ON SECOND READING**

On motion of Senator Nichols and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 3090** at this time on its second reading:

**CSHB 3090**, Relating to the frequency of water audits by certain retail public utilities.

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

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 3090 ON THIRD READING**

Senator Nichols moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 3090** be placed on its third reading and final passage.

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

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 2284 ON SECOND READING**

On motion of Senator Deuell and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 2284** at this time on its second reading:

**CSHB 2284**, Relating to the practice of architecture and engineering.

The bill was read second time.

Senator Deuell offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 2284** (Senate Committee printing) on page 4, line 3 by striking "April" and inserting "January"

The amendment to **CSHB 2284** was read and was adopted by a viva voce vote.

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

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

**CSHB 2284** as amended was passed to third reading by a viva voce vote.

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 2284 ON THIRD READING**

Senator Deuell moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 2284** be placed on its third reading and final passage.

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

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 968 ON SECOND READING**

On motion of Senator Watson and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 968** at this time on its second reading:

**CSHB 968**, Relating to expulsion from school or placement in a disciplinary alternative education program.

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

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 968 ON THIRD READING**

Senator Watson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 968** be placed on its third reading and final passage.

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

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

**HOUSE BILL 1241 ON SECOND READING**

On motion of Senator Harris and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 1241** at this time on its second reading:

**HB 1241**, Relating to surety bond requirements for reserve deputy constables.

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

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

**HOUSE BILL 1241 ON THIRD READING**

Senator Harris moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1241** be placed on its third reading and final passage.

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

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

**HOUSE BILL 90 ON SECOND READING**

On motion of Senator Birdwell and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 90** at this time on its second reading:

**HB 90**, Relating to eligibility to obtain a driver's license.

The bill was read second time.

Senator Birdwell offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 90** (senate committee printing) as follows:

(1) Strike SECTIONS 2, 3, and 4 of the bill, amending Sections 521.201 and 521.223, Transportation Code, and adding Section 521.207, Transportation Code (page 1, line 12, through page 2, line 49), and substitute the following:

SECTION \_\_\_\_\_. Section 521.223(f), Transportation Code, is amended to read as follows:

(f) In the manner provided by Subchapter N, the department shall ~~may~~ suspend a license issued under this section if the holder of the license is convicted of two or more [a] moving violations committed within a 12-month period [violation].

(2) Strike SECTION 6 of the bill (page 2, lines 52-57).

(3) Renumber SECTIONS of the bill accordingly.

The amendment to **HB 90** was read and was adopted by a viva voce vote.

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

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

**HB 90** as amended was passed to third reading by a viva voce vote.

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

**HOUSE BILL 90 ON THIRD READING**

Senator Birdwell moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 90** be placed on its third reading and final passage.

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

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

**HOUSE BILL 1129 ON SECOND READING**

Senator Hegar moved to suspend the regular order of business to take up for consideration **HB 1129** at this time on its second reading:

**HB 1129**, Relating to a study by the attorney general of the effects on state law and authority of certain international and other agreements and bodies.

The motion prevailed.

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

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

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

Nays: Zaffirini.

**HOUSE BILL 1129 ON THIRD READING**

Senator Hegar moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1129** be placed on its third reading and final passage.

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

Nays: Zaffirini.

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1768 ON SECOND READING**

Senator Hinojosa moved to suspend the regular order of business to take up for consideration **CSHB 1768** at this time on its second reading:

**CSHB 1768**, Relating to the regulation of roadside vendors and solicitors in certain counties.

The motion prevailed.

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

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

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

Nays: Fraser.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1768 ON THIRD READING**

Senator Hinojosa moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 1768** be placed on its third reading and final passage.

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

Nays: Fraser.

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

**HOUSE BILL 2006 ON SECOND READING**

On motion of Senator Huffman and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 2006** at this time on its second reading:

**HB 2006**, Relating to the release of a photograph of a police officer and access to records maintained by internal investigative divisions in certain municipalities.

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

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

**HOUSE BILL 2006 ON THIRD READING**

Senator Huffman moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2006** be placed on its third reading and final passage.

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

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

**HOUSE BILL 3815 ON SECOND READING**

On motion of Senator Seliger and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 3815** at this time on its second reading:

**HB 3815**, Relating to the authority of the Ector County Hospital District to employ and commission peace officers.

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

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

**HOUSE BILL 3815 ON THIRD READING**

Senator Seliger moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3815** be placed on its third reading and final passage.

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

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

**HOUSE BILL 3439 ON SECOND READING**

On motion of Senator Rodriguez and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 3439** at this time on its second reading:

**HB 3439**, Relating to missing children; providing a criminal penalty.

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

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

**HOUSE BILL 3439 ON THIRD READING**

Senator Rodriguez moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3439** be placed on its third reading and final passage.

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

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

**HOUSE BILL 149 ON SECOND READING**

On motion of Senator Zaffirini and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 149** at this time on its second reading:

**HB 149**, Relating to the appointment of a parenting coordinator or parenting facilitator in a suit affecting the parent-child relationship.

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

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

**HOUSE BILL 149 ON THIRD READING**

Senator Zaffirini moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 149** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**GUESTS PRESENTED**

Senator Davis was recognized and introduced to the Senate Honorary Senate Page Dorothy Isgur, accompanied by her father, Ben Isgur.

The Senate welcomed its guests.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 2357 ON SECOND READING**

On motion of Senator Williams and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 2357** at this time on its second reading:

**CSHB 2357**, Relating to motor vehicles; providing penalties.

The bill was read second time.

Senator Williams offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 2357** (senate committee printing) as follows:

(1) In SECTION 44 of the bill, strike added Sections 501.1001(d), (e), and (f), Transportation Code (page 20, lines 21-34), and substitute the following:

(d) This subsection applies only to a motor vehicle in this state that is a self-insured motor vehicle and that is damaged to the extent it becomes a nonrepairable or salvage motor vehicle. The owner of a motor vehicle to which this subsection applies shall submit to the department before the 31st business day after the date of the damage, in a manner prescribed by the department, a statement that the motor vehicle was self-insured and damaged. When the owner submits a report, the owner shall surrender the ownership document and apply for a nonrepairable vehicle title, nonrepairable record of title, salvage vehicle title, or salvage record of title.



(2) In SECTION 70 of the bill, strike added Sections 501.176(b) and (c), Transportation Code (page 29, lines 45-58), and substitute the following:

(b) The department may collect a fee for processing a title or registration payment by electronic funds transfer, credit card, or debit card in an amount not to exceed the amount of the charges incurred by the department to process the payment.

(c) The department may collect the fee set under Section 2054.2591, Government Code, from a person making a payment by electronic funds transfer, credit card, or debit card through the online project implemented under Section 2054.252, Government Code.

(3) In SECTION 108 of the bill, strike added Sections 502.191(c) and (d), Transportation Code (page 50, lines 2-15), and substitute the following:

(c) The department may collect a fee for processing a payment by electronic funds transfer, credit card, or debit card in an amount not to exceed the amount of the charges incurred by the department to process the payment.

(d) The department may collect the fee set under Section 2054.2591, Government Code, from a person making a payment by electronic funds transfer, credit card, or debit card through the online project implemented under Section 2054.252, Government Code.

(4) In SECTION 179 of the bill, strike amended Section 504.3011, Transportation Code (page 76, lines 10-22), and substitute the following:

Sec. 504.3011. DESIGN OF CERTAIN LICENSE PLATES FOR THE MILITARY. ~~[(a) License plates issued under Section 504.303 must at a minimum bear a color depiction of the emblem of the appropriate branch of the United States armed forces.~~

~~[(b) License plates issued under Section 504.308(a) or 504.315(e), (f), or (g) must at a minimum bear a color depiction of the appropriate medal.~~

~~[(e)] The department shall design military license plates that:~~

(1) bear a color depiction of the emblem of the appropriate branch of the United States armed forces or a color depiction of the appropriate medal as provided by the United States Department of Defense; and

(2) include the words "Honorably Discharged" for license plates issued to former members of the United States armed forces [to which this section applies in consultation with veterans organizations].

(5) In SECTION 234 of the bill (page 87, line 37), strike "This" and substitute "Except as otherwise provided by this Act, this".

(6) Add the following appropriately numbered SECTIONS to the bill and renumber subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_ . Section 504.301, Transportation Code, is amended to read as follows:

Sec. 504.301. PROVISIONS GENERALLY APPLICABLE TO MILITARY SPECIALTY LICENSE PLATES. (a) Unless expressly provided by this subchapter or department rule:

(1) the department shall design specialty license plates for the military; and

(2) a person is not eligible to be issued a specialty license plate under this subchapter if the person was discharged from the armed forces under conditions less than honorable.

(b) Notwithstanding any other provision of this subchapter, the department may design the wording on a specialty license plate authorized by this subchapter to enhance the legibility and reflectivity of the license plate.

SECTION \_\_\_\_\_. Subchapter D, Chapter 504, Transportation Code, is amended by adding Section 504.317 to read as follows:

Sec. 504.317. SURVIVING SPOUSES OF DISABLED VETERANS SPECIALTY LICENSE PLATES. (a) In this section, "surviving spouse" means the individual married to a disabled veteran at the time of the veteran's death.

(b) The department shall issue specialty license plates for surviving spouses of disabled veterans of the United States armed forces.

SECTION \_\_\_\_\_. (a) Section 504.501(b), Transportation Code, as effective September 1, 2011, is amended to read as follows:

(b) A person eligible for the license plates may instead use license plates that were issued by this state in the same year as the model year of the vehicle and are approved by the department [~~if the plates are approved for the vehicle before January 1, 2011~~]. The department may require the attachment of a registration insignia to the license plate in a manner that does not affect the display of information originally on the license plate.

(b) This section takes effect September 1, 2011.

SECTION \_\_\_\_\_. (a) Subchapter J, Chapter 504, Transportation Code, is amended by adding Section 504.855 to read as follows:

Sec. 504.855. EXPIRATION. This subchapter expires August 31, 2014.

(b) Notwithstanding the expiration of Subchapter J, Chapter 504, Transportation Code, the Texas Department of Motor Vehicles may continue to operate under the terms of a contract entered into before the expiration of Subchapter J, Chapter 504, Transportation Code, until the expiration date specified in the contract.

SECTION \_\_\_\_\_. (a) Subchapter H, Chapter 2302, Occupations Code, is amended by adding Section 2302.354 to read as follows:

Sec. 2302.354. ADMINISTRATIVE PENALTY. (a) The department may impose an administrative penalty against a person licensed under this chapter who violates this chapter or a rule or order adopted under this chapter.

(b) The penalty may not be less than \$50 or more than \$1,000, and each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty. The amount of the penalty shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(2) the economic harm caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) efforts to correct the violation; and

(6) any other matter that justice requires.

(c) The person may stay enforcement during the time the order is under judicial review if the person pays the penalty to the court clerk or files a supersedeas bond with the court in the amount of the penalty. A person who cannot afford to pay the penalty or file the bond may stay enforcement by filing an affidavit in the manner

required by the Texas Rules of Civil Procedure for a party who cannot afford to file security for costs, subject to the right of the department to contest the affidavit as provided by those rules.

(d) A proceeding to impose an administrative penalty is subject to Chapter 2001, Government Code.

(b) Section 2302.354, Occupations Code, as added by this section, applies only to a violation of Chapter 2302, Occupations Code, or a rule or order of the Texas Department of Motor Vehicles adopted under that chapter, committed on or after the effective date of this section. A violation committed before the effective date of this section is governed by the law in effect when the violation was committed, and the former law is continued in effect for that purpose.

(c) This section takes effect September 1, 2011.

The amendment to **CSHB 2357** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1.

Senator Williams offered the following amendment to the bill:

### **Floor Amendment No. 2**

Amend **CSHB 2357** (senate committee report) as follows:

(1) Add the following appropriately numbered SECTION to the bill and renumber subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 681.005, Transportation Code, is amended to read as follows:

Sec. 681.005. DUTIES OF COUNTY ASSESSOR-COLLECTOR. Each county assessor-collector shall send to the department[-

~~(1)] each fee collected under Section 681.003, to be deposited in the state highway fund to defray the cost of providing the disabled parking placard[-and~~

~~(2) a copy of each application for a disabled parking placard].~~

(2) On page 87, line 22, insert "and" following the semicolon.

(3) On page 87, line 23, strike the semicolon and substitute a period.

(4) On page 87, strike lines 24 and 25.

The amendment to **CSHB 2357** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 2.

Senator Wentworth offered the following amendment to the bill:

### **Floor Amendment No. 3**

Amend **CSHB 2357** (senate committee printing) in SECTION 163 of the bill by striking amended Sections 502.491(b) and (c), Transportation Code (page 70, lines 38-49) and substituting:

(b) On a sale or transfer of a motor vehicle in which neither party holds a general distinguishing number issued under Chapter 503, the [A license plate removed from a motor vehicle under Subsection (a) or (a-1) must be:

~~(1) disposed of in the manner specified by the department; or~~

~~[(2) transferred to another vehicle owned by the seller or transferor as provided by Section 502.452.~~

~~[(e) The] part of the registration period remaining at the time of the sale or transfer shall continue with the vehicle being sold or transferred and does not transfer with the license plates or registration validation insignia. To continue the remainder of the registration period, the purchaser or transferee must file the documents required under Section 501.145 [520.031].~~

(c) On the sale or transfer of a motor vehicle to a dealer, as defined by Section 503.001, who holds a general distinguishing number issued under Chapter 503, the registration period remaining at the time of the sale or transfer expires at the time of the sale or transfer. On the sale of a used motor vehicle by a dealer, the dealer shall issue to the buyer new registration documents for an entire registration year.

The amendment to **CSHB 2357** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 3.

Senator Wentworth offered the following amendment to the bill:

#### **Floor Amendment No. 4**

Amend **CSHB 2357** (senate committee report) as follows:

(1) In SECTION 174 of the bill, in amended Section 504.003(c), (redesignated as 504.009(c)) Transportation Code (page 74, line 32), strike "September 1" and substitute "November 19 [~~September 1~~]".

(2) In SECTION 174 of the bill, in amended Section 504.003(c-1), (redesignated as 504.009(c-1)) Transportation Code (page 74, line 44), strike "September 1" and substitute "November 19 [~~September 1~~]".

(3) Strike the recital to SECTION 199 of the bill, amending Section 504.614, Transportation Code (page 79, lines 11 and 12), and substitute the following:

Section 504.614, Transportation Code, is amended by amending Subsection (a) and adding Subsection (b-1) to read as follows:

(4) In SECTION 199 of the bill, after amended Section 504.614(a), Transportation Code (page 79, between lines 24 and 25), add the following:

(b-1) A public entity that receives money under Subsection (b) may contract with the private vendor under Section 504.6011 to distribute the entity's portion of the money in a manner other than that described by Subsection (b).

(5) In the recital to SECTION 207 of the bill (page 80, line 51), strike "504.801(a) and (b)" and substitute "504.801(a), (b), (d), and (d-1)".

(6) In SECTION 207 of the bill, after amended Section 504.801(b), Transportation Code (page 80, immediately following line 69), add the following:

(d) The fee for issuance of license plates created under this subchapter before November 19 [~~September 1~~], 2009, is \$30 unless the department sets a higher fee. This subsection does not apply to a specialty license plate marketed and sold by a private vendor at the request of the specialty license plate sponsor.

(d-1) The fee for issuance of license plates created under this subchapter on or after November 19 [~~September 1~~], 2009, is the amount established under Section 504.851.

(7) Strike SECTIONS 208 and 209 of the bill, amending Sections 504.851 and 504.853, Transportation Code (page 81, lines 1 through 15), and substitute the following:

SECTION 208. Section 504.851, Transportation Code, is amended by amending Subsections (a-2), (c), (e), (f), and (h) and adding Subsections (a-3) and (m) to read as follows:

(a-2) Specialty license plates authorized for marketing and sale under Subsection (a) may be personalized and must include:

(1) specialty license plates created under Subchapters G and I on or after November 19 [September 1], 2009; and

(2) at the request of the specialty license plate sponsor, an existing specialty license plate created under Subchapters G and I before November 19 [September 1], 2009.

(a-3) The department may contract with the private vendor for the vendor to:

(1) host all or some of the specialty license plates on the vendor's website;

(2) process the purchase of specialty license plates hosted on the vendor's website and pay any additional transaction cost; and

(3) share in the personalization fee for the license plates hosted on the vendor's website.

(c) The board by rule shall establish the fees for the issuance or renewal of souvenir license plates, specialty license plates, or souvenir or specialty license plates that are personalized that are marketed and sold by the private vendor or hosted on the private vendor's website. The state's portion of the personalization fee may not be less than \$40 for each year issued. Other fees [Fees] must be reasonable and not less than the amounts necessary to allow the department to recover all reasonable costs to the department associated with the evaluation of the competitive sealed proposals received by the department and with the implementation and enforcement of the contract, including direct, indirect, and administrative costs. A fee established under this subsection is in addition to:

(1) the registration fee and any optional registration fee prescribed by this chapter for the vehicle for which specialty license plates are issued;

(2) any additional fee prescribed by this subchapter for the issuance of specialty license plates for that vehicle; and

(3) any additional fee prescribed by this subchapter for the issuance of personalized license plates for that vehicle.

(e) The portion of a contract with a private vendor regarding the marketing and sale of personalized license plates is payable only from amounts derived from the collection of the fee established under Subsection (b). The portion of a contract with a private vendor regarding the marketing, hosting, and sale of souvenir license plates, specialty license plates, or souvenir or specialty license plates that are personalized under Section 504.102 is payable only from amounts derived from the collection of the fee established under Subsection (c).

(f) The department may approve new design and color combinations for personalized or specialty license plates that are marketed and sold by a private vendor under a contract entered into with the private vendor. Each approved license plate design and color combination remains the property of the department.

(h) Subject to the limitations provided by Subsections (g) and (g-1), the department may disapprove a design, cancel a license plate, or require the discontinuation of a license plate design or color combination that is marketed, hosted, or [and] sold by a private vendor under contract at any time if the department determines that the disapproval, cancellation, or discontinuation is in the best interest of this state or the motoring public.

(m) If the private vendor ceases operation:

(1) the program may be operated temporarily by the department under new agreements with the license plate sponsors until another vendor is selected and begins operation; and

(2) the private vendor's share of the revenue is deposited to the credit of the general revenue fund.

SECTION 209. Section 504.853, Transportation Code, is amended to read as follows:

Sec. 504.853. SPECIALTY AND PERSONALIZED LICENSE PLATES ISSUED BEFORE NOVEMBER 19 [SEPTEMBER 1], 2009. (a) A specialty or personalized license plate issued before November 19 [September 1], 2009, may be issued for a subsequent registration period only if the applicant submits an application and pays the required fee for the applicable registration period. A person who is issued a personalized license plate has first priority on that license plate for each subsequent registration period for which the person submits a new application for that plate.

(b) Unless the board by rule adopts a higher fee or the license plate is not renewed annually, the [The] fee for issuance of a [personalized] license plate issued before November 19 [September 1], 2009, is:

(1) the fee provided for in Section 504.601 for a specialty license plate; and

(2) \$40 for a personalized license plate[~~, unless the director adopts by rule a higher fee].~~

(c) A person who is issued a specialty or personalized license plate by the department before November 19 [September 1], 2009, may:

(1) submit an application for the plate under Subsection (a) and pay the required fee for each subsequent registration period under Subsection (b); or

(2) purchase through the private vendor a license to display the alphanumeric pattern on a license plate for any term allowed by law.

(d) The department may not issue a replacement set of personalized license plates to the same person before the period set by rule [sixth anniversary of the date of issuance] unless the applicant for issuance of replacement plates pays an additional fee of \$30.

(e) Of each fee collected by the department under Subsection (b)(2) [this section]:

(1) \$1.25 shall be used by the department to defray the cost of administering this section; and

(2) the remainder shall be deposited to the credit of the general revenue fund.

(8) Insert the following appropriately numbered subdivisions in SECTION 231 of the bill and renumber subsequent subdivisions of that SECTION accordingly:

( ) Section 504.851(k);

( ) Section 504.854(c);

(9) Add the following appropriately numbered SECTIONS to the bill and renumber subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Subchapter B, Chapter 504, Transportation Code, is amended by adding Section 504.101 to read as follows:

Sec. 504.101. PERSONALIZED LICENSE PLATES. The department shall issue personalized license plates, including those sold by the private vendor under a contract with the department as provided by Section 504.851.

SECTION \_\_\_\_\_. Section 504.6011, Transportation Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) The sponsor of a specialty license plate [~~authorized to be issued under this subchapter before September 1, 2009,~~] may contract with the private vendor authorized under Subchapter J for the marketing and sale of the specialty license plate.

(d) A sponsor of a specialty license plate authorized to be issued under this subchapter before November 19, 2009, may reestablish its specialty license plate under Sections 504.601 and 504.702 and be credited its previous deposit with the department if a contract entered into by the sponsor under Subsection (a) terminates.

SECTION \_\_\_\_\_. The heading to Section 504.802, Transportation Code, is amended to read as follows:

Sec. 504.802. MARKETING AND SALE BY PRIVATE VENDOR OF SPECIALTY LICENSE PLATES [CREATED BEFORE SEPTEMBER 1, 2009].

SECTION \_\_\_\_\_. Section 504.802, Transportation Code, is amended by amending Subsections (a) and (c) and adding Subsection (d) to read as follows:

(a) A sponsor of a specialty license plate created under this subchapter [~~before September 1, 2009,~~] may contract with the private vendor authorized under Subchapter J for the marketing and sale of the specialty license plate.

(c) Notwithstanding any other law, from each fee received from the issuance of a specialty license plate marketed and sold by the private vendor under this section, the department shall:

(1) deduct the administrative costs described by Section 504.801(e)(1);

(2) deposit the portion of the fee for the sale of the plate that the state would ordinarily receive under the contract described by Section 504.851(a) to the credit of:

(A) the specialty license plate fund, if the sponsor nominated a state agency to receive the funds; ~~or~~

(B) the general revenue fund, if the sponsor did not nominate a state agency to receive the funds or if there is no sponsor; or

(C) for a license plate issued under Section 504.614, the public entity that provides or provided funds for the professional sports team's facility; and

(3) pay to the private vendor the remainder of the fee.

(d) A sponsor of a specialty license plate may reestablish its specialty license plate under Sections 504.601 and 504.702 and be credited its previous deposit with the department if a contract entered into by the sponsor under Subsection (a) terminates.

SECTION \_\_\_\_\_. Sections 504.854(a) and (b), Transportation Code, are amended to read as follows:

(a) The board by rule [~~private vendor~~] may provide for the private vendor to:

(1) sell at auction a license to display a unique alphanumeric pattern on a license plate for a period set by board rule;

(2) reserve an unissued alphanumeric pattern from the department for purposes of auctioning a license to display the pattern for a period set by board rule;  
and

(3) purchase from a customer an unexpired license to display an alphanumeric pattern for purposes of auction by the vendor.

(b) A [~~Only a~~] license to display an alphanumeric pattern purchased under this section [~~or a license to display an alphanumeric pattern sold by the private vendor under Section 504.853~~] may be transferred to another person without payment of the fee provided by Section 504.855. [~~The transferee is entitled to the same rights and privileges as the transferor.~~]

SECTION \_\_\_\_\_. Subchapter J, Chapter 504, Transportation Code, is amended by adding Section 504.855 to read as follows:

Sec. 504.855. TRANSFERABILITY OF CERTAIN PATTERNS. The board by rule may:

(1) authorize a person who purchases a license to display an alphanumeric pattern for a period of five years or more to transfer the license; and

(2) establish a transfer fee to be distributed in accordance with the contract with the private vendor.

The amendment to **CSHB 2357** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 4.

Senator Lucio offered the following amendment to the bill:

#### **Floor Amendment No. 5**

Amend **CSHB 2357** (senate committee printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. The heading to Section 411.0095, Government Code, is amended to read as follows:

Sec. 411.0095. VEHICLE [~~THEFT~~] CHECKPOINTS NEAR TEXAS-MEXICO [~~AT~~] BORDER [~~CROSSING~~].

SECTION \_\_\_\_\_. Sections 411.0095(a), (b), (c), and (d), Government Code, are amended to read as follows:

(a) The department may establish [~~a program for the purpose of establishing~~] border [~~crossing~~] checkpoints to prevent:

(1) stolen vehicles, farm tractors or implements, construction equipment, aircraft, or watercraft, in violation of Section 31.03, Penal Code, or Sec. 501.153, Transportation Code, from entering Mexico.

The established checkpoint may also prevent the unlawful possession or unlawful and imminent movement or transfer from this state to Mexico of:

(1) firearms, in violation of Section 46.14, Penal Code;



(2) controlled substances, in violation of Chapter 481, Health and Safety Code;

(3) currency, in violation of Section 34.02, Penal Code;

(b) A checkpoint may be established under Subsection (a) if the checkpoint is:

(1) located within 250 yards of a federally designated crossing facility located at or near the actual boundary between this state and Mexico;

(2) located on a public highway or street leading directly to an international border crossing;

(3) designed to stop only traffic bound for Mexico; and

(4) operated in such a manner as to prevent firearms, controlled substances, currency, [stop only] vehicles, tractors or implements, equipment, aircraft, or watercraft that [for which] law enforcement authorities have probable cause to believe are unlawfully possessed or being unlawfully and imminently transferred or moved from this state to [is stolen and bound for] Mexico from being possessed or transferred or moved to Mexico.

(c) The department may establish ~~[the]~~ border checkpoints ~~[crossing checkpoint program]~~ in conjunction with federal and local law enforcement authorities. The department and federal and local law enforcement authorities may share the cost of staffing the checkpoints.

(d) The department shall establish procedures governing the encounter between the driver and the peace officers operating the checkpoint that ensure that any intrusion on the driver is minimized and that the inquiries made are reasonably related to the purpose of the checkpoint. ~~[A peace officer at the checkpoint may not direct a driver or a passenger in a motor vehicle to leave the vehicle or move the vehicle off the roadway unless the officer has reasonable suspicion or probable cause to believe that the person committed or is committing an offense. However, a peace officer may require that each motor vehicle passing through the checkpoint be diverted to a location immediately adjacent to the roadway, if desirable, to ensure safety.]~~

SECTION \_\_\_\_\_. Effective September 1, 2015, Section 411.0095, Government Code, is amended to read as follows:

Sec. 411.0095. VEHICLE THEFT CHECKPOINTS AT BORDER CROSSING. (a) The department may establish a program for the purpose of establishing border crossing checkpoints to prevent stolen vehicles, farm tractors or implements, construction equipment, aircraft, or watercraft from entering Mexico.

(b) A checkpoint may be established under Subsection (a) if the checkpoint is:

(1) located within 250 yards of a federally designated crossing facility located at or near the actual boundary between this state and Mexico;

(2) located on a public highway or street leading directly to an international border crossing;

(3) designed to stop only traffic bound for Mexico; and

(4) operated in such a manner as to stop only vehicles, tractors or implements, equipment, aircraft, or watercraft for which law enforcement authorities have probable cause to believe is stolen and bound for Mexico.

(c) The department may establish the border crossing checkpoint program in conjunction with local law enforcement authorities. The department and local law enforcement authorities may share the cost of staffing the checkpoints.

(d) The department shall establish procedures governing the encounter between the driver and the peace officers operating the checkpoint that ensure that any intrusion on the driver is minimized and that the inquiries made are reasonably related to the purpose of the checkpoint. A peace officer at the checkpoint may not direct a driver or a passenger in a motor vehicle to leave the vehicle or move the vehicle off the roadway unless the officer has reasonable suspicion or probable cause to believe that the person committed or is committing an offense. However, a peace officer may require that each motor vehicle passing through the checkpoint be diverted to a location immediately adjacent to the roadway, if desirable, to ensure safety.

(e) In this section:

(1) "Motor vehicle" and "vehicle" have the meanings assigned to those terms by Section 541.201, Transportation Code.

(2) "Watercraft" has the meaning assigned by Section 49.01, Penal Code.

The amendment to **CSHB 2357** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 5.

Senator Hegar offered the following amendment to the bill:

#### **Floor Amendment No. 6**

Amend **CSHB 2357** (senate committee report) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. The heading to Subchapter F, Chapter 551, Transportation Code, is amended to read as follows:

#### SUBCHAPTER F. GOLF CARTS AND UTILITY VEHICLES

SECTION \_\_\_\_\_. Section 551.401, Transportation Code, is amended to read as follows:

Sec. 551.401. DEFINITIONS. In this subchapter:

(1) "Golf [~~golf~~] cart" and "public highway" have the meanings assigned by Section 502.001.

(2) "Utility vehicle" means a motor vehicle that is not a golf cart or lawn mower and is:

(A) equipped with side-by-side seating for the use of the operator and a passenger;

(B) designed to propel itself with at least four tires in contact with the ground;

(C) designed by the manufacturer for off-highway use only; and

(D) designed by the manufacturer primarily for utility work and not for recreational purposes.

SECTION \_\_\_\_\_. The heading to Section 551.404, Transportation Code, is amended to read as follows:

Sec. 551.404. OPERATION IN MUNICIPALITIES AND CERTAIN COUNTIES.

SECTION \_\_\_\_\_. Section 551.404, Transportation Code, is amended by adding Subsection (a-1) and amending Subsection (b) to read as follows:

(a-1) In addition to the operation authorized by Section 551.403, the commissioners court of a county that borders or contains a portion of the Guadalupe River and contains a part of a barrier island that borders the Gulf of Mexico may allow an operator to operate a golf cart or utility vehicle on all or part of a public highway that:

- (1) is located in the unincorporated area of the county; and
- (2) has a speed limit of not more than 35 miles per hour.

(b) A golf cart or utility vehicle operated under this section [~~Subsection (a)~~] must have the following equipment:

- (1) headlamps;
- (2) taillamps;
- (3) reflectors;
- (4) parking brake; and
- (5) mirrors.

The amendment to **CSHB 2357** was read and was adopted by the following vote: Yeas 16, Nays 10.

Yeas: Birdwell, Davis, Ellis, Eltife, Gallegos, Hegar, Hinojosa, Huffman, Jackson, Lucio, Nichols, Rodriguez, Seliger, Uresti, Van de Putte, Zaffirini.

Nays: Duncan, Estes, Fraser, Harris, Ogden, Watson, Wentworth, West, Whitmire, Williams.

Absent: Carona, Deuell, Nelson, Patrick, Shapiro.

On motion of Senator Williams and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**CSHB 2357** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

### **COMMITTEE SUBSTITUTE HOUSE BILL 2357 ON THIRD READING**

Senator Williams moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 2357** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

### **HOUSE BILL 3352 ON SECOND READING**

On motion of Senator Gallegos and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 3352** at this time on its second reading:

**HB 3352**, Relating to the sale of park land owned by certain municipalities.

The bill was read second time and was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

**HOUSE BILL 3352 ON THIRD READING**

Senator Gallegos moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3352** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**(President Pro Tempore Ogden in Chair)**

**COMMITTEE SUBSTITUTE  
HOUSE BILL 3033 ON SECOND READING**

On motion of Senator Watson and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 3033** at this time on its second reading:

**CSHB 3033**, Relating to retirement under public retirement systems for employees of certain municipalities.

The bill was read second time and was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 3033 ON THIRD READING**

Senator Watson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 3033** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**HOUSE BILL 3829 ON SECOND READING**

On motion of Senator Birdwell and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 3829** at this time on its second reading:

**HB 3829**, Relating to gifts and donations to the McLennan County Juvenile Board.

The bill was read second time and was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

**HOUSE BILL 3829 ON THIRD READING**

Senator Birdwell moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3829** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

### **HOUSE BILL 2367 ON SECOND READING**

On motion of Senator Uresti and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 2367** at this time on its second reading:

**HB 2367**, Relating to the creation of an advisory panel to study certain parental rights relating to possession of or access to the parent's child.

The bill was read second time.

Senator Uresti offered the following amendment to the bill:

#### **Floor Amendment No. 1**

Amend **HB 2367** (senate committee printing) in SECTION 1 of the bill as follows:

(1) Strike proposed Subsections (c) and (d) of that section (page 1, lines 40-48) and substitute the following:

(c) The advisory panel consists of nine members appointed by the governor.

(d) When making initial appointments under Subsection (c), the governor shall designate one of the appointees as presiding officer of the advisory panel.

(2) Strike proposed Subsection (g) of that section (page 1, lines 55-57) and substitute the following:

(g) The governor shall appoint members to the panel not later than December 31, 2011.

The amendment to **HB 2367** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1.

On motion of Senator Uresti and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**HB 2367** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

### **HOUSE BILL 2367 ON THIRD READING**

Senator Uresti moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2367** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

### HOUSE BILL 3862 ON SECOND READING

On motion of Senator Whitmire and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 3862** at this time on its second reading:

**HB 3862**, Relating to temporary directors and the continuation in existence of the Harris County Municipal Utility District No. 510.

The bill was read second time and was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

### HOUSE BILL 3862 ON THIRD READING

Senator Whitmire moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3862** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

### HOUSE BILL 628 ON SECOND READING

On motion of Senator Jackson and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 628** at this time on its second reading:

**HB 628**, Relating to contracts by governmental entities and related professional services and to public works performance and payment bonds.

The bill was read second time.

Senator Jackson offered the following amendment to the bill:

#### Floor Amendment No. 1

Amend **HB 628** (senate committee report) as follows:

In SECTION 2.02 of the bill, in amended section 44.031(a)(4) (page 1, lines 54-55) strike "for services other than construction services."

In SECTION 2.08 of the bill, in added section 2267.105 (page 8, line 26), strike "10th business" and substitute "seventh".

The amendment to **HB 628** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1.

Senator Jackson offered the following amendment to the bill:

#### Floor Amendment No. 2

Amend **HB 628** by adding the following appropriately numbered SECTIONS to the bill and renumbering the remaining SECTIONS of the bill accordingly:

SECTION \_\_\_\_ . Section 791.011, Government Code, is amended by adding Subsection (h-1) to read as follows:

(h-1) In this subsection, "roofing materials or services" includes materials or services for repair or replacement of a roof. An interlocal contract between a governmental entity and a purchasing cooperative may not be used to purchase roofing materials or services from a person who provided consulting services to the cooperative on the contract, including providing specifications for bids on the contract. This prohibition also applies to:

(1) a person that is an agent, subsidiary, or parent company of the person who consulted with the cooperative; or

(2) a person related in the second degree of consanguinity or affinity to a person who consulted with the cooperative.

SECTION \_\_\_\_\_. The change in law made by this Act to Section 791.011, Government Code, applies only to an interlocal contract or an amendment to, supplement to, or waiver of a provision of a contract made on or after the effective date of this Act. An interlocal contract or an amendment to, supplement to, or waiver of a provision of a contract made before the effective date of this Act is governed by the law in effect when the contract or amendment, supplement, or waiver was made, and the former law is continued for that purpose.

The amendment to **HB 628** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 2.

Senator Jackson, on behalf of Senator Ogden, offered the following amendment to the bill:

### **Floor Amendment No. 3**

Amend **HB 628** (senate committee printing) in proposed Sec. 2267.408, Government Code, as follows:

(1) on page 20, line 10, after "USE OF ARCHITECT OR ENGINEER." and "If a job order" insert "(a)".

(2) on page 20, between lines 17 and 18, and new subsection (b) to read as follows:

(b) Subsection (a) does not apply to a job order contract or an order issued under the contract for industrialized housing, industrialized buildings or relocatable educational facilities subject to and approved under Chapter 1202, Occupations Code, if the contractor employs the services of an architect or engineer of record who approves the documents for the project.

The amendment to **HB 628** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 3.

Senator Seliger offered the following amendment to the bill:

### **Floor Amendment No. 4**

Amend **HB 628** (engrossed version) as follows:

On page 52, between lines 8 and 9, insert a new SECTION 2.12 as follows and renumber SECTIONS of the bill appropriately:

SECTION 2.12. Section 271.9051(b), Local Government Code, is amended to read as follows:

(b) In purchasing under this title any real property, personal property that is not affixed to real property, or services, if a municipality receives one or more competitive sealed bids from a bidder whose principal place of business is in the municipality and whose bid is within five percent of the lowest bid price received by the municipality from a bidder who is not a resident of the municipality, the municipality may enter into a contract for construction services in an amount [an expenditure] of less than \$100,000 or a contract for other purchases in an amount of less than \$500,000 with:

(1) the lowest bidder; or

(2) the bidder whose principal place of business is in the municipality if the governing body of the municipality determines, in writing, that the local bidder offers the municipality the best combination of contract price and additional economic development opportunities for the municipality created by the contract award, including the employment of residents of the municipality and increased tax revenues to the municipality.

The amendment to **HB 628** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 4.

Senator Carona offered the following amendment to the bill:

#### **Floor Amendment No. 5**

Amend **HB 628** (senate committee report) as follows:

(1) Add the following appropriately numbered ARTICLE to the bill and renumbering subsequent ARTICLES and SECTIONS of the bill accordingly:

#### ARTICLE \_\_. INDUSTRIALIZED HOUSING

SECTION \_\_.01. Section 1202.155, Occupations Code, is amended by adding Subsection (c) to read as follows:

(c) Notwithstanding Subsections (a) and (b), the commission by rule may adopt another method of indicating that the designs, plans, and specifications of industrialized housing and buildings satisfy the requirements of Subsection (a)(1) and are approved in accordance with Subsection (a)(2) if the study conducted under Section 1202.1551 recommends the method.

SECTION \_\_.02. Subchapter D, Chapter 1202, Occupations Code, is amended by adding Section 1202.1551 to read as follows:

Sec. 1202.1551. STUDY CONCERNING APPROVAL OF DESIGNS, PLANS, AND SPECIFICATIONS. (a) The council shall conduct a study to:

(1) evaluate the current method of indicating approval of designs, plans, and specifications of industrialized housing and buildings under Sections 1202.155(a) and (b); and

(2) identify and evaluate methods of indicating approval of designs, plans, and specifications of industrialized housing and buildings that are alternatives to the method described by Subdivision (1).



(b) The study may recommend for adoption by the commission an alternative method identified under Subsection (a)(2) if the council determines that the method would:

(1) ensure that the designs, plans, and specifications of industrialized housing and buildings:

(A) meet or exceed the code standards and requirements under council interpretations and instructions; and

(B) are approved by the department or an approved design review agency; and

(2) be more efficient and cost-effective for the department or approved design review agencies.

(c) This section expires September 1, 2014.

SECTION \_\_.03. Subsection (a), Section 1202.252, Occupations Code, is amended to read as follows:

(a) A municipality that regulates the on-site construction or installation of industrialized housing and buildings may:

(1) require and review, for compliance with mandatory building codes, a complete set of designs, plans, and specifications approved by the council [~~bearing the council's stamp of approval~~] for each installation of industrialized housing or buildings in the municipality;

(2) require that all applicable local permits and licenses be obtained before construction begins on a building site;

(3) require, in accordance with commission rules, that all modules or modular components bear an approved decal or insignia indicating inspection by the department; and

(4) establish procedures for the inspection of:

(A) the erection and installation of industrialized housing or buildings to be located in the municipality, to ensure compliance with mandatory building codes and commission rules; and

(B) all foundation and other on-site construction, to ensure compliance with approved designs, plans, and specifications.

(2) Add the following appropriately numbered SECTION to ARTICLE 6 of the bill and renumbering subsequent SECTIONS of the ARTICLE accordingly:

SECTION 6. \_\_. Not later than September 1, 2012, the Texas Industrialized Building Code Council shall complete the study required by Section 1202.1551, Occupations Code, as added by this Act.

The amendment to **HB 628** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 5.

On motion of Senator Jackson and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**HB 628** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.



**SB 1799** West Sponsor: Branch  
 Relating to the student loan program administered by the Texas Higher Education Coordinating Board; authorizing the issuance of bonds.

Respectfully,  
 /s/Robert Haney, Chief Clerk  
 House of Representatives

**MESSAGE FROM THE HOUSE**

HOUSE CHAMBER

Austin, Texas

Tuesday, May 24, 2011 - 4

The Honorable President of the Senate  
 Senate Chamber  
 Austin, Texas

Mr. President:

I am directed by the House to inform the Senate that the House has taken the following action:

THE HOUSE HAS PASSED THE FOLLOWING MEASURES:

**SB 223** Nelson Sponsor: Gonzalez, Naomi  
 Relating to certain facilities and care providers, including providers under the state Medicaid program; providing penalties.  
 (Committee Substitute/Amended)

**SB 303** Nichols Sponsor: Scott  
 Relating to health care services provided or paid by a hospital district.  
 (Amended)

**SB 332** Fraser Sponsor: Ritter  
 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.  
 (Committee Substitute/Amended)

**SB 731** Nichols Sponsor: Kolkhorst  
 Relating to the attorney general's legal sufficiency review of a comprehensive development agreement.  
 (Committee Substitute)

**SB 781** Carona Sponsor: Cook  
 Relating to the repeal of certain legislative oversight committees.  
 (Amended)

**SB 1543** Wentworth Sponsor: Larson  
 Relating to the authority of an independent school district to invest in corporate bonds.  
 (Amended)

**SB 1714** Duncan Sponsor: Chisum  
 Relating to certain actions against an employer by an employee who is not covered by workers' compensation insurance.  
 (Committee Substitute/Amended)

**SB 1816** Zaffirini Sponsor: Raymond  
 Relating to county and municipal land development regulation.  
 (Amended)

**SB 1909** Lucio Sponsor: Oliveira  
 Relating to The University of Texas at Brownsville, including its partnership agreement with the Texas Southmost College District.  
 (Committee Substitute)

Respectfully,

/s/Robert Haney, Chief Clerk  
 House of Representatives

**COMMITTEE SUBSTITUTE  
 HOUSE BILL 1103 ON SECOND READING**

Senator Ellis moved to suspend the regular order of business to take up for consideration **CSHB 1103** at this time on its second reading:

**CSHB 1103**, Relating to the civil and criminal consequences of certain criminal offenses involving animal cruelty.

The motion prevailed by the following vote: Yeas 20, Nays 10.

Yeas: Birdwell, Davis, Deuell, Duncan, Ellis, Gallegos, Hinojosa, Huffman, Lucio, Nelson, Ogden, Rodriguez, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Carona, Eltife, Estes, Fraser, Hegar, Jackson, Nichols, Patrick, Seliger, Shapiro.

Absent: Harris.

The bill was read second time and was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading except as follows:

Nays: Carona, Eltife, Estes, Fraser, Hegar, Jackson, Nichols, Patrick, Seliger, Shapiro.

**MOTION TO PLACE  
 COMMITTEE SUBSTITUTE  
 HOUSE BILL 1103 ON THIRD READING**

Senator Ellis moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 1103** be placed on its third reading and final passage.

The motion was lost by the following vote: Yeas 21, Nays 10. (Not receiving four-fifths vote of Members present)

Yeas: Birdwell, Davis, Duncan, Ellis, Gallegos, Harris, Hegar, Hinojosa, Huffman, Lucio, Nelson, Ogden, Rodriguez, Uresti, Van de Putte, Watson, Wentworth, West, Whitmaire, Williams, Zaffrini.

Nays: Carona, Deuell, Eltife, Estes, Fraser, Jackson, Nichols, Patrick, Seliger, Shapiro.

### HOUSE BILL 2387 ON SECOND READING

On motion of Senator Lucio and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 2387** at this time on its second reading:

**HB 2387**, Relating to the selection, compensation, and duties of the general counsel to an appraisal district.

The bill was read second time and was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

### HOUSE BILL 2387 ON THIRD READING

Senator Lucio moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2387** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

### COMMITTEE SUBSTITUTE HOUSE BILL 1788 ON SECOND READING

Senator Uresti moved to suspend the regular order of business to take up for consideration **CSHB 1788** at this time on its second reading:

**CSHB 1788**, Relating to capturing reptiles and amphibians by nonlethal means; providing a penalty.

The motion prevailed.

Senators Birdwell, Estes, Fraser, Hegar, Ogden, Shapiro, and Van de Putte asked to be recorded as voting "Nay" on suspension of the regular order of business.

The bill was read second time.

Senator Uresti offered the following amendment to the bill:

#### Floor Amendment No. 1

Amend **CSHB 1788** (senate committee printing) in SECTION 2 of the bill, in amended Section 62.0031, Parks and Wildlife Code (page 2, lines 30-31), by striking Subsection (e) and substituting the following:

(e) A person may not use an artificial light from a motor vehicle in locating, capturing, or attempting to capture a reptile or amphibian under Subsection (c).

The amendment to **CSHB 1788** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1.

On motion of Senator Uresti and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**CSHB 1788** as amended was passed to third reading by the following vote: Yeas 23, Nays 8.

Yeas: Carona, Davis, Deuell, Duncan, Ellis, Eltife, Gallegos, Harris, Hinojosa, Huffman, Jackson, Lucio, Nelson, Nichols, Rodriguez, Seliger, Uresti, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Birdwell, Estes, Fraser, Hegar, Ogden, Patrick, Shapiro, Van de Putte.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1788 ON THIRD READING**

Senator Uresti moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 1788** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 24, Nays 6.

Yeas: Birdwell, Carona, Davis, Deuell, Duncan, Ellis, Eltife, Gallegos, Harris, Hinojosa, Huffman, Jackson, Lucio, Nelson, Nichols, Rodriguez, Seliger, Uresti, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Estes, Fraser, Hegar, Ogden, Shapiro, Van de Putte.

Absent: Patrick.

The bill was read third time and was passed by the following vote: Yeas 23, Nays 8.

Yeas: Carona, Davis, Deuell, Duncan, Ellis, Eltife, Gallegos, Harris, Hinojosa, Huffman, Jackson, Lucio, Nelson, Nichols, Rodriguez, Seliger, Uresti, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Birdwell, Estes, Fraser, Hegar, Ogden, Patrick, Shapiro, Van de Putte.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 326 ON SECOND READING**

On motion of Senator Zaffirini and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 326** at this time on its second reading:

**CSHB 326**, Relating to the reporting requirements of a state agency that is undergoing review by the Sunset Advisory Commission.

The bill was read second time and was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 326 ON THIRD READING**

Senator Zaffirini moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 326** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 274 ON SECOND READING**

Senator Huffman moved to suspend the regular order of business to take up for consideration **CSHB 274** at this time on its second reading:

**CSHB 274**, Relating to the reform of certain remedies and procedures in civil actions and family law matters.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read second time and was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 274 ON THIRD READING**

Senator Huffman moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 274** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**HOUSE BILL 2425 ON SECOND READING**

On motion of Senator Hegar and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 2425** at this time on its second reading:

**HB 2425**, Relating to notice to the attorney general of challenges to the constitutionality of Texas statutes.

The bill was read second time and was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

**HOUSE BILL 2425 ON THIRD READING**

Senator Hegar moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2425** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

#### **HOUSE BILL 3836 ON SECOND READING**

On motion of Senator Birdwell and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 3836** at this time on its second reading:

**HB 3836**, Relating to the creation of the Windsor Hills Municipal Management District No. 1; providing authority to levy an assessment and issue bonds.

The bill was read second time and was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

#### **HOUSE BILL 3836 ON THIRD READING**

Senator Birdwell moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3836** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

#### **COMMITTEE SUBSTITUTE**

#### **HOUSE BILL 3828 ON SECOND READING**

On motion of Senator Gallegos and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 3828** at this time on its second reading:

**CSHB 3828**, Relating to the creation of the Gulfton Area Municipal Management District; providing authority to impose a tax, levy an assessment, and issue bonds.

The bill was read second time and was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

#### **COMMITTEE SUBSTITUTE**

#### **HOUSE BILL 3828 ON THIRD READING**

Senator Gallegos moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 3828** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.



**COMMITTEE SUBSTITUTE  
HOUSE BILL 3133 ON SECOND READING**

Senator Hinojosa moved to suspend the regular order of business to take up for consideration **CSHB 3133** at this time on its second reading:

**CSHB 3133**, 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.

The motion prevailed.

Senators Birdwell and Nelson asked to be recorded as voting "Nay" on suspension of the regular order of business.

The bill was read second time.

Senator Van de Putte offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 3133** by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 23.55, Tax Code, is amended by adding Subsection (p) to read as follows:

(p) The sanctions provided by Subsection (a) do not apply to real property transferred to an organization described by Section 11.181(a) if the organization converts the real property to a use for which the real property is eligible for an exemption under Section 11.181(a). This subsection does not apply to the sanctions provided by Subsection (a) in connection with a change in use described by this subsection that are due to a county or school district unless the governing body of the county or school district, as applicable, waives the sanctions in the manner required by law for official action by the body.

SECTION \_\_\_\_\_. Section 23.55(p), Tax Code, as added by this Act, applies only to a transfer of real property that occurs on or after the effective date of this Act. A transfer of real property that occurs 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.

The amendment to **CSHB 3133** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1.

On motion of Senator Hinojosa and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**CSHB 3133** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading except as follows:

Nays: Birdwell, Nelson.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 3133 ON THIRD READING**

Senator Hinojosa moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 3133** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 2.

Yeas: Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hegar, Hinojosa, Huffman, Jackson, Lucio, Nichols, Ogden, Patrick, Rodriguez, Seliger, Shapiro, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Birdwell, Nelson.

The bill was read third time and was passed by the following vote: Yeas 29, Nays 2. (Same as previous roll call)

**HOUSE BILL 2649 ON SECOND READING**

Senator Ellis moved to suspend the regular order of business to take up for consideration **HB 2649** at this time on its second reading:

**HB 2649**, Relating to the award of diligent participation credit to defendants confined in a state jail felony facility.

The motion prevailed.

Senator Ogden asked to be recorded as voting "Nay" on suspension of the regular order of business.

The bill was read second time and was passed to third reading by the following vote: Yeas 30, Nays 1.

Nays: Ogden.

**HOUSE BILL 2649 ON THIRD READING**

Senator Ellis moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2649** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Ogden.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 1. (Same as previous roll call)

**HOUSE BILL 2098 ON SECOND READING**

Senator Uresti moved to suspend the regular order of business to take up for consideration **HB 2098** at this time on its second reading:

**HB 2098**, Relating to the authority of physicians and physician assistants to form certain entities.

The motion prevailed.

Senators Deuell and Shapiro asked to be recorded as voting "Nay" on suspension of the regular order of business.

The bill was read second time and was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading except as follows:

Nays: Deuell, Shapiro.

#### **HOUSE BILL 2098 ON THIRD READING**

Senator Uresti moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2098** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 2.

Yeas: Birdwell, Carona, Davis, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hegar, Hinojosa, Huffman, Jackson, Lucio, Nelson, Nichols, Ogden, Patrick, Rodriguez, Seliger, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Deuell, Shapiro.

The bill was read third time and was passed by the following vote: Yeas 29, Nays 2. (Same as previous roll call)

#### **COMMITTEE SUBSTITUTE HOUSE BILL 3691 ON SECOND READING**

Senator Carona moved to suspend the regular order of business to take up for consideration **CSHB 3691** at this time on its second reading:

**CSHB 3691**, Relating to community supervision and corrections departments and community justice plans.

The motion prevailed by the following vote: Yeas 28, Nays 3.

Yeas: Birdwell, Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hinojosa, Jackson, Lucio, Nelson, Ogden, Patrick, Rodriguez, Seliger, Shapiro, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Hegar, Huffman, Nichols.

The bill was read second time and was passed to third reading by the following vote: Yeas 28, Nays 3. (Same as previous roll call)

#### **COMMITTEE SUBSTITUTE HOUSE BILL 3691 ON THIRD READING**

Senator Carona moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 3691** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 3.

Yeas: Birdwell, Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hinojosa, Jackson, Lucio, Nelson, Ogden, Patrick, Rodriguez, Seliger, Shapiro, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Hegar, Huffman, Nichols.

The bill was read third time and was passed by the following vote: Yeas 28, Nays 3. (Same as previous roll call)

### **HOUSE BILL 3831 ON SECOND READING**

On motion of Senator Rodriguez and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 3831** at this time on its second reading:

**HB 3831**, Relating to the creation of the Montecillo Municipal Management District No. 1; providing authority to levy an assessment, impose a tax, and issue bonds.

The bill was read second time.

Senator Rodriguez offered the following committee amendment to the bill:

#### **Committee Amendment No. 1**

Amend **HB 3831** (engrossed) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_ . NO TOLL ROADS. The district may not construct, acquire, maintain, or operate a toll road.

RODRIGUEZ  
NICHOLS

The amendment to **HB 3831** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Committee Amendment No. 1.

On motion of Senator Rodriguez and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**HB 3831** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

### **HOUSE BILL 3831 ON THIRD READING**

Senator Rodriguez moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3831** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**HOUSE BILL 737 REREFERRED**  
**(Motion In Writing)**

Senator Williams submitted a Motion In Writing requesting that **HB 737** be withdrawn from the Committee on Intergovernmental Relations and rereferred to the Committee on International Relations and Trade.

The Motion In Writing prevailed without objection.

**SENATE RULES SUSPENDED**  
**(Posting Rules)**

On motion of Senator Lucio and by unanimous consent, Senate Rule 11.10(a) and Senate Rule 11.18(a) were suspended in order that the Committee on International Relations and Trade might meet and consider **HB 737** today.

**RECESS**

On motion of Senator Whitmire, the Senate at 1:32 p.m. recessed until 2:00 p.m. today.

**AFTER RECESS**

The Senate met at 2:16 p.m. and was called to order by Senator Eltife.

**HOUSE BILL 3852 ON SECOND READING**

On motion of Senator Birdwell and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 3852** at this time on its second reading:

**HB 3852**, Relating to the creation of the Midlothian Municipal Management District No. 2; providing authority to impose a tax, levy an assessment, and issue bonds.

The bill was read second time and was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

**HOUSE BILL 3852 ON THIRD READING**

Senator Birdwell moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3852** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**COMMITTEE SUBSTITUTE**  
**HOUSE BILL 1781 ON SECOND READING**

On motion of Senator Nelson and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 1781** at this time on its second reading:

**CSHB 1781**, Relating to obsolete or redundant reporting requirements applicable to state agencies.

The bill was read second time.

Senator Seliger offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 1781** by adding the appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION . Subsection (c), Section 61.0815, Education Code, is amended to read as follows:

(c) The [~~attorney general and the~~] president of each institution of higher education shall collect all necessary data for inclusion in the report required by this section.

SECTION 2. Subsection (a), Section 231.005, Family Code, is amended to read as follows:

(a) The Title IV-D agency shall report to the legislature each biennium on:

(1) the effectiveness of the agency's child support enforcement activity in reducing the state's public assistance obligations; and

(2) the use and effectiveness of all enforcement tools authorized by state or federal law or otherwise available to the agency[; and

~~[(3) the progress and impact of the Title IV D agency's efforts to use private contractors to perform Title IV D program functions].~~

SECTION 3. Section 41.002, Government Code, is amended to read as follows:

Sec. 41.002. NOTIFICATION OF ADDRESS. Each district and county attorney shall notify the [~~attorney general and~~] comptroller of his post office address as soon as practicable after his election and qualification.

SECTION 4. 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 5. 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 6. Subsection (b), Section 311.016, Tax Code, as amended by Chapters 977 (H.B. 1820) and 1094 (H.B. 2120), Acts of the 79th Legislature, Regular Session, 2005, is reenacted and amended to read as follows:

(b) The municipality or county shall send a copy of a report made under this section to[:

~~[(1) the attorney general; and~~

~~[(2)] the comptroller.~~

SECTION 7. The following provisions are repealed:

- (1) Subsection (e), Section 236.002, Family Code;
- (2) Section 402.034, Government Code;
- (3) Section 481.168, Government Code;
- (4) Section 2107.005, Government Code;
- (5) Subsection (b), Section 247.050, Health and Safety Code;
- (6) Section 240.903, Local Government Code; and
- (7) Section 395.082, Local Government Code.

SECTION 8. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2011.

The amendment to **CSHB 1781** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1.

On motion of Senator Nelson and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**CSHB 1781** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

#### **COMMITTEE SUBSTITUTE HOUSE BILL 1781 ON THIRD READING**

Senator Nelson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 1781** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

#### **SENATE RULE 5.14(a) SUSPENDED (Intent Calendar)**

Senator Williams moved to suspend Senate Rule 5.14(a) to extend the time to allow Members to place bills and resolutions on the Intent Calendar until 7:00 p.m. today.

The motion prevailed without objection.

#### **HOUSE BILL 3182 ON SECOND READING**

Senator Williams moved to suspend the regular order of business to take up for consideration **HB 3182** at this time on its second reading:

**HB 3182**, 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.

The motion prevailed.

Senator Ogden asked to be recorded as "Present-not voting" on suspension of the regular order of business.

The bill was read second time and was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading except as follows:

Present-not voting: Ogden.

#### **HOUSE BILL 3182 ON THIRD READING**

Senator Williams moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3182** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: Ogden.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0, Present-not voting 1. (Same as previous roll call)

#### **HOUSE BILL 3423 ON SECOND READING**

On motion of Senator Hinojosa and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 3423** at this time on its second reading:

**HB 3423**, Relating to certain criminal offenses committed in relation to a federal special investigator; providing criminal penalties.

The bill was read second time and was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

#### **HOUSE BILL 3423 ON THIRD READING**

Senator Hinojosa moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3423** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

#### **COMMITTEE SUBSTITUTE HOUSE BILL 3819 ON SECOND READING**

On motion of Senator Nelson and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 3819** at this time on its second reading:

**CSHB 3819**, Relating to the creation of the Valencia Municipal Management District No. 1; providing authority to levy an assessment and issue bonds.



The bill was read second time and was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 3819 ON THIRD READING**

Senator Nelson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 3819** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**HOUSE BILL 3821 ON SECOND READING**

On motion of Senator Huffman and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 3821** at this time on its second reading:

**HB 3821**, Relating to temporary directors and the continuation in existence of the Bolivar Yacht Basin Water Control and Improvement District No. 1 of Galveston County.

The bill was read second time and was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

**HOUSE BILL 3821 ON THIRD READING**

Senator Huffman moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3821** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**(President Pro Tempore Ogden in Chair)**

**HOUSE BILL 3859 ON SECOND READING**

On motion of Senator Deuell and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 3859** at this time on its second reading:

**HB 3859**, Relating to the creation of the Club Municipal Management District No. 1; providing authority to levy an assessment and issue bonds.

The bill was read second time.

Senator Deuell offered the following committee amendment to the bill:

**Committee Amendment No. 1**

Amend **HB 3859** (engrossed) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_ . NO TOLL ROADS. The district may not construct, acquire, maintain, or operate a toll road.

The amendment to **HB 3859** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Committee Amendment No. 1.

On motion of Senator Deuell and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**HB 3859** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

**HOUSE BILL 3859 ON THIRD READING**

Senator Deuell moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3859** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 2999 ON SECOND READING**

On motion of Senator Zaffirini and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 2999** at this time on its second reading:

**CSHB 2999**, Relating to a fixed tuition rate program for certain students who transfer to a state university after completing an associate degree program.

The bill was read second time and was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 2999 ON THIRD READING**

Senator Zaffirini moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 2999** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 736 ON SECOND READING**

On motion of Senator West and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 736** at this time on its second reading:

**CSHB 736**, Relating to required online information regarding public institutions of higher education.

The bill was read second time.

Senator Shapiro offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 736** by adding the following appropriately numbered SECTION to the bill and renumbering the remaining SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Subchapter C, Chapter 61, Education Code, is amended by adding Section 61.0778 to read as follows:

Sec. 61.0778. ONLINE INFORMATION REGARDING CERTAIN CAREER EDUCATIONAL ENTITIES. (a) In this section, "commission" means the Texas Workforce Commission.

(b) The board and commission jointly shall develop a comprehensive strategy to improve and coordinate the dissemination of online information regarding the operation and performance of career schools or colleges that the board or commission identifies as doing business in this state. As part of the comprehensive strategy, the board and the commission shall compile, share, and compare existing data and other applicable information under the control of each agency and shall organize that information as nearly as possible according to the categories of information required for the online resumes of lower-division public institutions under Section 51A.103.

The websites must:

(1) present information regarding those institutions, schools, and colleges in a manner that is:

(A) to the extent practicable, consistent among the institutions, schools, and colleges; and

(B) easily accessible and readily understandable to the public.

The amendment to **CSHB 736** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1.

Senator West temporarily postponed further consideration of **CSHB 736**.

Question — Shall **CSHB 736** as amended be passed to third reading?

**HOUSE BILL 3823 ON SECOND READING**

On motion of Senator Ellis and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 3823** at this time on its second reading:

**HB 3823**, Relating to the regulation of certain telecommunicators; providing penalties.

The bill was read second time and was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

### HOUSE BILL 3823 ON THIRD READING

Senator Ellis moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3823** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

### HOUSE BILL 1728 ON SECOND READING

On motion of Senator Harris and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 1728** at this time on its second reading:

**HB 1728**, Relating to energy savings performance contracts and energy efficiency planning.

The bill was read second time.

Senator Wentworth offered the following amendment to the bill:

#### Floor Amendment No. 1

Amend **HB 1728** (senate committee printing) as follows:

(1) In SECTION 1 of the bill, strike proposed Section 44.901(f-1), Education Code (page, 1 line 62, through page 2, line 6), and substitute the following:

(f-1) Notwithstanding other law, the board may use any available money, other than money borrowed from this state, to pay the provider of the energy or water conservation measures under this section, and the board is not required to pay for such costs solely out of the savings realized by the school district under an energy savings performance contract. The board may contract with the provider to perform work that is related to, connected with, or otherwise ancillary to the measures identified in the scope of an energy savings performance contract.

(2) In SECTION 3 of the bill, strike proposed Section 51.927(g-1), Education Code (page 3, lines 1 through 9), and substitute the following:

(g-1) Notwithstanding other law, the board may use any available money, other than money borrowed from this state, to pay the provider of the energy or water conservation measures under this section, and the board is not required to pay for such costs solely out of the savings realized by the institution of higher education under an energy savings performance contract. The board may contract with the provider to perform work that is related to, connected with, or otherwise ancillary to the measures identified in the scope of an energy savings performance contract.

(3) In SECTION 4 of the bill, strike proposed Section 2166.406(f-1), Government Code (page 3, line 61, through page 4, line 1), and substitute the following:

(f-1) Notwithstanding other law, the state agency may use any available money, other than money borrowed from this state, to pay the provider of the energy or water conservation measures under this section, and the state agency is not required to pay for such costs solely out of the savings realized by the state agency under an energy savings performance contract. The state agency may contract with the provider to perform work that is related to, connected with, or otherwise ancillary to the measures identified in the scope of an energy savings performance contract.

(4) In SECTION 6 of the bill, strike proposed Section 302.004(a-1), Local Government Code (page 4, line 69, through page 5, line 9), and substitute the following:

(a-1) Notwithstanding other law, the governing body of a local government may use any available money, other than money borrowed from this state, to pay the provider of the energy or water conservation measures under this section, and the governing body is not required to pay for such costs solely out of the savings realized by the local government under an energy savings performance contract. The governing body may contract with the provider to perform work that is related to, connected with, or otherwise ancillary to the measures identified in the scope of an energy savings performance contract.

The amendment to **HB 1728** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1.

On motion of Senator Harris and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**HB 1728** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

### **HOUSE BILL 1728 ON THIRD READING**

Senator Harris moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1728** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

### **COMMITTEE SUBSTITUTE HOUSE BILL 736 ON SECOND READING**

The President Pro Tempore laid before the Senate **CSHB 736** sponsored by Senator West on its second reading. The bill had been read second time, amended, and further consideration postponed:

**CSHB 736**, Relating to required online information regarding public institutions of higher education.

Question — Shall **CSHB 736** as amended be passed to third reading?

Senator Zaffirini offered the following amendment to the bill:

**Floor Amendment No. 2**

Amend **CSHB 736** (senate committee printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering the remaining SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Subchapter C, Chapter 61, Education Code, is amended by adding Section 61.09021 to read as follows:

Sec. 61.09021. COMPARISON TOOL. (a) The board shall make available to the public on the board's Internet website a search tool that allows a person to compare general academic teaching institutions that meet certain criteria selected by the person, including offering a particular major or program of study.

(b) The comparison tool required under this section must:

(1) be accessible from the board's Internet website;

(2) allow a user to identify general academic teaching institutions according to selection criteria as determined by the board; and

(3) be accessible to the public without requiring registration or use of a user name, password, or other user identification.

(c) The comparison tool required under this section must generate a comparison chart in a grid format that:

(1) lists the general academic teaching institutions that match a user's search criteria; and

(2) provides information for each institution listed that the board has determined would aid a prospective student in evaluating the institution.

(d) The Internet page displaying the comparison chart must include a link to the Internet website of the Texas Workforce Commission.

(e) To the extent practicable, the information provided under Subsection (c) must consist of information that a general academic teaching institution is required to report to the board under another provision of law, including board rule.

(f) Each general academic teaching institution shall provide to the board the information to be provided under Subsection (c) not later than October 1, or a date determined by the board, of each year. The board shall update the comparison tool as soon as practicable after receiving information from each institution.

SECTION 2. Not later than February 1, 2013, the Texas Higher Education Coordinating Board shall create and post on the board's Internet website the comparison tool required by Section 61.09021, Education Code, as added by this Act.

The amendment to **CSHB 736** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 2.

On motion of Senator West and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**CSHB 736** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 736 ON THIRD READING**

Senator West moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 736** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**HOUSE BILL 2449 ON SECOND READING**

Senator Hegar moved to suspend the regular order of business to take up for consideration **HB 2449** at this time on its second reading:

**HB 2449**, Relating to the illegal possession of another person's ballot to be voted by mail.

The motion prevailed.

Senators Ellis, Gallegos, and Lucio asked to be recorded as voting "Nay" on suspension of the regular order of business.

The bill was read second time.

Senator Hegar, on behalf of Senator Shapiro, offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 2449** (senate committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 86.014(a), Election Code, is amended to read as follows:

(a) A copy of an application for a ballot to be voted by mail is not available for public inspection, except to the voter seeking to verify that the information pertaining to the voter is accurate, until the first business day after may be obtained from the early voting clerk:

~~[(1) 72 hours after the time a ballot is mailed to the voter; or~~

~~[(2) 48 hours after the time a ballot is mailed to the voter if the mailing occurs on the fourth day before] election day.~~

The amendment to **HB 2449** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1.

On motion of Senator Hegar and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**HB 2449** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading except as follows:

Nays: Ellis, Gallegos, Lucio.

### HOUSE BILL 2449 ON THIRD READING

Senator Hegar moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2449** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 3.

Yeas: Birdwell, Carona, Davis, Deuell, Duncan, Eltife, Estes, Fraser, Harris, Hegar, Hinojosa, Huffman, Jackson, Nelson, Nichols, Ogden, Patrick, Rodriguez, Seliger, Shapiro, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Ellis, Gallegos, Lucio.

The bill was read third time and was passed by the following vote: Yeas 28, Nays 3. (Same as previous roll call)

### HOUSE BILL 1244 ON SECOND READING

On motion of Senator West and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 1244** at this time on its second reading:

**HB 1244**, Relating to developmental education courses and the assessment of student readiness under the Texas Success Initiative for public institutions of higher education.

The bill was read second time.

Senator West offered the following committee amendment to the bill:

#### Committee Amendment No. 1

Amend **HB 1244** as follows:

Add SECTION 54.225

SEC. 54.225 STUDENTS ENROLLED IN NON-SEMESTER-LENGTH DEVELOPMENTAL EDUCATION INTERVENTIONS. The governing board of an institution of higher education may exempt from the payment of tuition authorized by this chapter a student who is participating in an approved non-semester-length developmental education intervention (including course-based, non-course-based, alternative-entry/exit, and other intensive developmental education activities).

The amendment to **HB 1244** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Committee Amendment No. 1.

Senator West offered the following amendment to the bill:

#### Floor Amendment No. 1

Amend **HB 1244** (senate committee printing) by striking SECTION 1 of the bill, amending Section 51.3062, Education Code, and substituting the following appropriately numbered SECTION:



SECTION \_\_\_\_\_. Section 51.3062, Education Code, is amended by adding Subsections (a-1), (i-2), (i-3), and (i-4) and amending Subsections (f), (i), and (k) to read as follows:

(a-1) In this section, "program evaluation" means a systematic method of collecting, analyzing, and using information to answer questions about developmental education courses, interventions, and policies, particularly about their effectiveness and cost-efficiency.

(f) Each assessment instrument designated by the board for use under this section must be diagnostic in nature and designed to assess a student's readiness to perform freshman-level academic coursework. The board shall prescribe a single standard or set of standards for each [the] assessment instrument to effectively measure student readiness as demonstrated by current research [or instruments that reflect that student readiness. An institution of higher education may adopt more stringent assessment standards with respect to student readiness].

(i) The institution of higher education may refer a student to developmental coursework as considered necessary by the institution to address a student's deficiencies in the student's readiness to perform freshman-level academic coursework, except that the institution may not require enrollment in developmental coursework with respect to a student previously determined under Subsection (q-1) or determined by any institution of higher education to have met college-readiness standards. An institution that requires a student to enroll in developmental coursework must offer a range of developmental coursework, including online coursework, or instructional support that includes the integration of technology to efficiently address the particular developmental needs of the student.

(i-2) An institution of higher education must base developmental coursework on research-based best practices that include the following components:

- (1) assessment;
- (2) differentiated placement and instruction;
- (3) faculty development;
- (4) support services;
- (5) program evaluation;
- (6) integration of technology with an emphasis on instructional support

programs;

(7) non-course-based developmental education interventions; and

(8) course pairing of developmental education courses with credit-bearing

courses.

(i-3) The board shall adopt rules for the implementation of Subsection (i-2).

(i-4) The board, in consultation with institutions of higher education, shall develop and provide professional development programs, including instruction in differentiated instruction methods designed to address students' diverse learning needs, to faculty and staff who provide developmental coursework to students.

(k) An institution of higher education shall determine when a student is ready to perform freshman-level academic coursework. The institution must make its determination using learning outcomes for developmental education courses

developed by the board based on established college and career readiness standards and student performance on one or more appropriate assessments [on an individual basis according to the needs of the student. The determination shall include:

[(1) requiring a student to retake a board approved assessment instrument, if the student did not initially perform within a deviation established by the board; or

[(2) other board approved means of evaluating student readiness, if the student did not initially pass the assessment instrument but performed within a deviation established by the board].

The amendment to **HB 1244** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1.

On motion of Senator West and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**HB 1244** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

### **HOUSE BILL 1244 ON THIRD READING**

Senator West moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1244** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

### **HOUSE BILL 1043 ON SECOND READING**

Senator Lucio moved to suspend the regular order of business to take up for consideration **HB 1043** at this time on its second reading:

**HB 1043**, Relating to creating an offense for engaging in certain conduct relating to cockfighting.

The motion prevailed by the following vote: Yeas 26, Nays 5.

Yeas: Birdwell, Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hegar, Jackson, Lucio, Nelson, Ogden, Patrick, Seliger, Shapiro, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Zaffirini.

Nays: Hinojosa, Huffman, Nichols, Rodriguez, Williams.

The bill was read second time.

Senator Hegar offered the following amendment to the bill:

#### **Floor Amendment No. 1**

Amend **HB 1043** (Senate committee printing) as follows:

(1) In added Section 42.105, Penal Code (page 1, lines 27-28), strike "or operates a facility used for cockfighting" and substitute "a cockfight".

(2) In added Section 42.105, Penal Code (page 1, line 56), strike "(b)(1), (2), (3), or (5)" and substitute "(b)(1) or (2)".

(3) In added Section 42.105, Penal Code (page 1, line 57), strike "(b)(4)" and substitute "(b)(3), (4), or (5)".

(4) In added Section 42.105, Penal Code (page 1, between lines 55 and 56), insert the following new subsection (f) and renumber the subsequent subsections of added Section 42.105, Penal Code, accordingly:

(f) It is an exception to the application of Subsection (b)(6) that the actor is 15 years of age or younger at the time of the offense.

The amendment to **HB 1043** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1.

On motion of Senator Lucio and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**HB 1043** as amended was passed to third reading by the following vote: Yeas 26, Nays 5.

Yeas: Birdwell, Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hegar, Jackson, Lucio, Nelson, Ogden, Patrick, Seliger, Shapiro, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Zaffirini.

Nays: Hinojosa, Huffman, Nichols, Rodriguez, Williams.

### **HOUSE BILL 1043 ON THIRD READING**

Senator Lucio moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1043** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 26, Nays 5.

Yeas: Birdwell, Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hegar, Jackson, Lucio, Nelson, Ogden, Patrick, Seliger, Shapiro, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Zaffirini.

Nays: Hinojosa, Huffman, Nichols, Rodriguez, Williams.

The bill was read third time and was passed by the following vote: Yeas 26, Nays 5. (Same as previous roll call)

### **COMMITTEE SUBSTITUTE HOUSE BILL 3595 ON THIRD READING**

Senator Carona moved to suspend the regular order of business to take up for consideration **CSHB 3595** at this time on its third reading and final passage:

**CSHB 3595**, Relating to energy efficiency goals and energy efficiency programs.

The motion prevailed.

Senators Birdwell, Hegar, Jackson, Nichols, Patrick, and Shapiro asked to be recorded as voting "Nay" on suspension of the regular order of business.

The bill was read third time.

Senator Carona offered the following amendment to the bill:

**Floor Amendment No. 1 on Third Reading**

Amend **CSHB 3595** (senate committee report) on third reading as follows:

(1) On page 4, line 47, insert the following appropriately numbered SECTION to the bill and renumber subsequent SECTIONS accordingly:

SECTION \_\_\_\_\_. Section 39.916(a)(2), Utilities Code, is amended to read as follows:

(2) "Distributed renewable generation owner" means:

(A) the owner of distributed renewable generation;

(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.

(2) On page 4, line 47, insert the following appropriately numbered SECTION to the bill and renumber subsequent SECTIONS accordingly:

SECTION \_\_\_\_\_. Section 39.916, Utilities Code, is amended by adding subsection (p) to read as follows:

(p) 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 the 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 electric consumption.

The amendment to **CSHB 3595** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1 on Third Reading.

Senator Lucio offered the following amendment to the bill:

**Floor Amendment No. 2 on Third Reading**

Amend **CSHB 3595** on third reading by adding the following appropriately numbered SECTION to the bill and renumbering the remaining SECTIONS of the bill accordingly:

SECTION \_\_\_. (a) The legislature finds that:

(1) a competitive electric services market requires timely, accurate, and adequate information about the products and services offered to consumers in the market; and

(2) the Public Utility Commission of Texas operates an Internet website regarding the power to choose retail electric providers on which offers by those providers are published.

(b) Subchapter C, Chapter 39, Utilities Code, is amended by adding Section 39.110 to read as follows:

Sec. 39.110. TEXAS ELECTRIC CHOICE WEBSITE. (a) The commission shall publish and maintain an Internet website that allows customers to view competitive offers from retail electric providers. The website must enable a user to search by zip code offers available to a residential customer in the user's service area. Retail electric providers may, but are not required to, post offers available to residential customers on the website.

(b) At a minimum, the Internet website must include:

(1) features that make the website accessible to people with disabilities;

(2) a clear identification with each retail electric service price offer posted on the website of the category of the product as defined by commission rules;

(3) a searchable and sortable database of each retail electric provider offer on the website that allows the information to be read into a commercially available electronic database;

(4) information about the following programs available in the user's service area through a state agency or utility:

(A) energy efficiency programs, including weatherization and rebate programs;

(B) distributed renewable generation policies and programs, including rebate programs; and

(C) low-income utility assistance programs, including bill payment assistance, weatherization, and rebate programs; and

(5) access to information regarding retail electric providers' offers to residential distributed renewable generation owners for the owners' surplus electricity.

(c) The commission shall establish a project to implement this section. The commission shall create a working committee to provide input on the implementation of this section that is composed of members of commission staff, experts in user-centered web design, experts in consumer-choice web design, retail electric providers, consumer advocates, and representatives of various categories of potential users of the redesigned website, including people with disabilities and low-income customers.

(d) The commission shall establish protocols relating to the frequency with which information posted on the website is updated, except that a retail electric provider may not be limited with respect to the frequency with which the provider may change an offer.

(e) The commission shall consult and cooperate with other state agencies in the design, both for content and usability, of the website, including agencies providing low-income consumer assistance and energy efficiency assistance and the interagency coordinating group established under Section 535.053, Government Code.

(c) Section 39.116, Utilities Code, is amended to read as follows:

Sec. 39.116. NOTICE REGARDING CUSTOMER CHOICE INFORMATION. A retail electric provider shall include on each residential customer's bill a statement, in at least 12-point type on the front of the first page, that reads: "For more information about residential electric service please visit [www.powertochoose.com](http://www.powertochoose.com)." This section expires September 1, 2023 [2011].

(d) The Public Utility Commission of Texas shall publish and begin operation of a redesigned Internet website as provided by Section 39.110, Utilities Code, as added by this section, not later than September 1, 2012.

(e) The Public Utility Commission of Texas may accept funds from any source, including gifts, grants, or donations, to implement Section 39.110, Utilities Code, as added by this section. The commission may not incorporate a preference for information displayed directly or indirectly in favor of any funding source. The commission may not require an entity to contribute funds to have information posted on the Internet website. Implementation of Section 39.110, Utilities Code, as added by this section, is contingent on a finding by the commission that sufficient funding exists or is likely to exist to carry out the provisions of Section 39.110, Utilities Code, as added by this section.

(f) Notwithstanding any other provision of this Act, this section takes effect September 1, 2011.

The amendment to **CSHB 3595** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 2 on Third Reading.

Senator Fraser offered the following amendment to the bill:

### **Floor Amendment No. 3 on Third Reading**

Amend **CSHB 3595** (senate committee printing) on third reading as follows:

(1) Add the following appropriately numbered SECTIONS to the bill and renumber the subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. (a) This section may be cited as the Energy Policy Act.

(b) The Utilities Code is amended by adding Title 6 to read as follows:

#### TITLE 6. ENERGY POLICY ACT

#### CHAPTER 300. STRATEGIC ENERGY PLANNING

#### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 300.001. PURPOSE AND FINDINGS. (a) This title is enacted to promote, in accordance with the public interest, the strategic planning of energy development, production, delivery, commercialization, and utilization in this state.

(b) The purpose of this title is to establish a statewide energy policy planning entity and process that recognizes:

(1) public health and general welfare as a critical concern in the development of energy policies;

(2) energy as a valuable and vital commodity in the state's economy;

(3) protection of the environment as a major consideration in the production of energy and utilization of natural resources;

(4) cost-effective, market-based solutions as a preferred policy for energy planning;

(5) utilization of Texas-based resources to help provide energy security, stability, and reliability; and

(6) the importance of portfolio diversity in promoting energy system flexibility, affordability, and efficiency.

Sec. 300.002. DEFINITIONS. In this title:

(1) "Commission" means the Public Utility Commission of Texas.

(2) "Council" means the Texas Energy Policy Council.

(3) "Plan" means the statewide energy policy plan.

Sec. 300.003. TEXAS ENERGY POLICY COUNCIL. (a) The Texas Energy Policy Council is created to develop and present a statewide energy policy plan to the legislature. The plan must include a 20-year planning horizon and be updated to reflect changing conditions and should be considered a living document.

(b) The council is composed of 13 members as follows:

(1) the chairman of the Public Utility Commission of Texas;

(2) the chairman of the Railroad Commission of Texas;

(3) the chairman of the Texas Commission on Environmental Quality;

(4) the president and chief executive officer of the Electric Reliability

Council of Texas;

(5) the commissioner of the General Land Office;

(6) two members of the senate appointed by the lieutenant governor;

(7) two members of the house of representatives appointed by the speaker of

the house of representatives;

(8) one member of the academic community with expertise in energy appointed by the governor;

(9) one member of the academic community with expertise in environmental issues related to energy appointed by the governor;

(10) the director of the State Energy Conservation Office; and

(11) one member of the public with expertise in low-income energy issues, including the needs of low-income and vulnerable ratepayers, appointed by the governor.

(c) The governor shall designate the presiding officer from among the members of the council.

(d) An appointed member of the council serves for a full planning cycle and may be reappointed at the pleasure of the appointing official.

(e) The council shall meet at least quarterly in even-numbered years while developing a plan for submission to the legislature. The council may meet annually in odd-numbered years after submitting plans to the legislature.

(f) The council shall develop and implement policies and procedures that provide the public with reasonable opportunity to appear before the council and to speak on issues under the jurisdiction of the council.

(g) The commission is designated as the state agency responsible for administering the council. Staff from the commission shall be tasked, as necessary, with assisting the council in carrying out its duties.

Sec. 300.004. POWERS, DUTIES, AND RESPONSIBILITIES OF COUNCIL.

(a) In developing the plan, the council shall:

(1) encourage cooperation and coordination between public and private entities regarding energy usage, planning, research and development, and commercialization;

(2) seek policies that promote a diverse portfolio of clean, reliable, and competitively priced energy sources;

(3) promote research, pilot projects, and market-based incentives to explore and expand long-term energy options;

(4) develop policies to prevent supply interruptions and infrastructure failure;

(5) examine the impact on the environment of energy exploration, production, and use;

(6) take into account the statewide and regional water planning process;

(7) make recommendations for increasing public knowledge of energy use issues and public awareness of the importance of more efficient consumption of energy; and

(8) take into account the needs of low-income and vulnerable Texans.

(b) The council shall submit to the legislature the initial plan by December 1, 2012. Thereafter, the council shall report to the legislature by December 1 of each even-numbered year the status of the plan's implementation and make any recommendations for legislative action as necessary to implement or revise the plan. The council may update the plan as necessary to reflect evolving conditions.

Sec. 300.005. FUELS AND TECHNOLOGIES. (a) The council shall consider the following fuel sources, types of generation, and innovative technologies associated with these fuels and types of generation when creating the plan. These fuels, types of generation, and technologies include:

(1) oil and natural gas;

(2) coal and lignite;

(3) nuclear;

(4) renewable energy technologies;

(5) geothermal;

(6) methane;

(7) distributed generation;

(8) fuel cells and storage;

(9) water conservation technologies that could be utilized in the exploration, production, and generation of energy resources; and

(10) any other fuels and technologies as defined in Section 39.904(d), including solar and wind technologies.

(b) The council shall develop policies that ensure fuel resources available to the state are utilized in a balanced and efficient manner. The council shall consider the economic viability, price stability and volatility, and environmental impact of types of fuel and technology when making its recommendations. The council shall also consider all types of generation technology to identify in its recommendations current or potential operational or administrative advantages or disadvantages of each type of technology to which a protocol of the Electric Reliability Council of Texas applies.

Sec. 300.006. ENERGY EFFICIENT TECHNOLOGY. (a) In order to reduce the energy demand of customers in this state, the council shall consider energy-efficient technologies when formulating the plan and include them in its recommendations. Energy-efficient technologies shall be considered for the following:

(1) residential, commercial, industrial, and state and local energy users; and

(2) any other user group or application the council deems appropriate.



(b) The council shall consider the economic viability and competitiveness of new technologies when making its recommendations.

(c) The council shall consider the ability of energy-efficient technologies to reduce the demand for energy and the need for additional transmission capacity in the state and shall consider opportunities for reducing transmission constraints by using these technologies.

Sec. 300.007. TRANSMISSION. (a) The council shall consider and recommend strategies to ensure that customers in this state have access to reliable energy.

(b) The council shall consider transmission constraints, and make recommendations in the plan to alleviate or prevent those constraints, for the following sources of energy:

- (1) oil and natural gas;
- (2) coal and lignite;
- (3) wind and solar; and
- (4) electricity.

Sec. 300.008. ALTERNATIVE FUEL VEHICLES. (a) The council shall consider and make recommendations on strategies and incentives that promote the use of alternative fuel vehicles such as natural gas vehicles and plug-in electric vehicles.

(b) The council shall consider the economic feasibility of alternative fuel vehicles and infrastructure constraints and may make recommendations on incentives to incorporate and promote these vehicles as a component of the plan.

Sec. 300.009. ENVIRONMENT. (a) The council, when creating the plan or in formulating recommendations, shall consider the effects of energy exploration, production, and consumption on the environment.

(b) The council shall recommend strategies that protect and preserve the environment of the state and allow for access to and the production of safe, economically viable, and reliable sources of energy. The council shall consider:

- (1) air quality;
- (2) water quality;
- (3) water supply; and
- (4) waste disposal.

SECTION \_\_\_\_. Chapter 39, Utilities Code, is amended by adding Subchapter L to read as follows:

SUBCHAPTER L. REPORT ON RESERVES AND VOLUNTARY EMISSIONS  
REDUCTIONS PLAN

Sec. 39.551. STATEMENT OF INTENT. It is not the intent of this subchapter to:

(1) transfer environmental regulation from the Railroad Commission of Texas or the Texas Commission on Environmental Quality to the commission; or

(2) reduce the competitiveness of the existing energy market in Texas by re-regulating the market or requiring the decommissioning of any lawfully operating generating plant.

Sec. 39.552. REPORT ON RESERVES. (a) Not later than December 1, 2011, the Railroad Commission of Texas shall prepare and submit to the commission a report on coal and gas reserves in this state that includes information relating to:

(1) natural gas reserves in this state proven and probable on November 1, 2011;

(2) estimates of the proven and probable natural gas reserves in this state for each of the next 15 years;

(3) estimates of natural gas prices and potential price volatility for each of the next 15 years;

(4) coal reserves in this state proven and probable on November 1, 2011;

(5) estimates of the proven and probable coal reserves in this state for each of the next 15 years; and

(6) estimates of coal prices and potential price volatility for each of the next 15 years.

(b) The Railroad Commission of Texas may request financial information and forecasts from the comptroller to assist the Railroad Commission of Texas in carrying out its duties under this section. The comptroller shall provide that information and those forecasts to the Railroad Commission of Texas as quickly as possible after receiving such request.

Sec. 39.553. REPORT AND PLAN. (a) The commission shall prepare a report on electric energy generation in this state. The report must include an analysis of and policy recommendations for how to most cost-effectively comply with environmental regulation.

(b) In preparing the report, the commission shall:

(1) analyze information from the reports submitted under this subchapter by electric generating facilities and the Railroad Commission of Texas; and

(2) use information already in the possession of existing regulators by consulting with the Railroad Commission of Texas, the Texas Commission on Environmental Quality, the Electric Reliability Council of Texas, the Southwest Power Pool, the Southeastern Electric Reliability Council, and the Western Electricity Coordinating Council.

(c) The report must evaluate and consider measures that will:

(1) maintain electric grid reliability;

(2) ensure the availability of electric energy at reasonable rates;

(3) reduce air pollution, as defined by Section 382.003, Health and Safety

Code;

(4) increase the state's ability to comply with state and federal clean air standards in nonattainment and near-nonattainment areas; and

(5) reduce the use of water for electricity generation in this state.

(d) The report must identify the 10 percent of electric generation capacity that will be most impacted by compliance with environmental regulation.

(e) The report must identify combinations of market factors, plant operating characteristics, federal and state environmental regulations promulgated after January 1, 2011, and other conditions that might make it more economically attractive for the electric generation capacity identified in the report to be retired rather than comply with the regulations. The market factors considered in the analysis must include:

(1) long-term prices and price volatility for fuel sources used to generate electricity in this state;

(2) price projections for the cost of electricity going forward and factors that are relevant to determining the market price of electricity; and

(3) the potential impact of the voluntary decommissioning of existing units of electric generation capacity from facilities in this state.

(f) The report must consider plant operating characteristics including variable and fixed operating costs of electric generation facilities identified in the report. The analysis must also incorporate a range of costs projected by credible sources for complying with the specified federal and state air pollution regulations. In conducting this analysis, the commission shall consider electric generation facilities in this state of various vintages, sizes, fuel types, conversion efficiencies, and emission characteristics. The analysis must:

(1) estimate the amount of electric generation capacity that is likely to voluntarily be retired rather than incur the additional expense of complying with the federal and state air pollution regulations;

(2) provide an analysis of the cost and the impact on electric rates, and provide price projections, associated with voluntarily retiring electric generation facilities included in the report;

(3) identify any additional barriers to the retirement of the types of electric generation capacity identified and provide recommendations on how to most cost-effectively and voluntarily reduce air pollution, including recommendations to accelerate the permitting process for certain types of low-polluting generation; and

(4) identify the types, costs, and effects of incentives to promote the goals of this section.

(g) Not later than October 1, 2012, the commission shall make a draft of the report available for public review and comment for a period of not less than 30 days.

(h) Not later than December 1, 2012, the commission shall finalize and publish the report.

(i) Implementation of the requirements of this section shall be contingent upon receiving gifts, grants, or donations sufficient to cover the expenses incurred by the commission.

SECTION \_\_\_\_\_. As soon as practicable after the effective date of this Act, the designated appointing officials shall appoint the members to the Texas Energy Policy Council established under Chapter 300, Utilities Code, as added by this Act.

SECTION \_\_\_\_\_. This Act takes effect September 1, 2011.

(2) Strike SECTION 4 of the bill (page 4, lines 51-55).

The amendment to **CSHB 3595** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 3 on Third Reading.

On motion of Senator Carona and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**CSHB 3595** as amended was finally passed by the following vote: Yeas 25, Nays 6.

Yeas: Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hinojosa, Huffman, Lucio, Nelson, Ogden, Rodriguez, Seliger, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Birdwell, Hegar, Jackson, Nichols, Patrick, Shapiro.

**(President in Chair)**

### **LEAVE OF ABSENCE**

On motion of Senator Whitmire, Senator Ogden was granted leave of absence on account of important business.

### **HOUSE BILL 3145 ON SECOND READING**

Senator Zaffirini moved to suspend the regular order of business to take up for consideration **HB 3145** at this time on its second reading:

**HB 3145**, Relating to the regulation of chemical dependency counselors.

The motion prevailed.

Senators Birdwell and Shapiro asked to be recorded as voting "Nay" on suspension of the regular order of business.

The bill was read second time and was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading except as follows:

Nays: Birdwell, Hegar, Shapiro.

Absent-excused: Ogden.

### **HOUSE BILL 3145 ON THIRD READING**

Senator Zaffirini moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3145** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 2.

Yeas: Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hegar, Hinojosa, Huffman, Jackson, Lucio, Nelson, Nichols, Patrick, Rodriguez, Seliger, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Birdwell, Shapiro.

Absent-excused: Ogden.

The bill was read third time and was passed by the following vote: Yeas 27, Nays 3.

Yeas: Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hinojosa, Huffman, Jackson, Lucio, Nelson, Nichols, Patrick, Rodriguez, Seliger, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Birdwell, Hegar, Shapiro.

Absent-excused: Ogden.

**HOUSE BILL 2466 ON SECOND READING**

On motion of Senator Carona and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 2466** at this time on its second reading:

**HB 2466**, Relating to the licensing and operation of motor vehicles by minors.

The bill was read second time.

Senator Hegar offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 2466** (Senate committee printing) as follows:

(1) In SECTION 2 of the bill, in Section 521.296, Transportation Code (page 1, line 54), strike "or 521.2965".

(2) Strike SECTION 4 of the bill and renumber subsequent sections accordingly.

The amendment to **HB 2466** was read.

Senator Carona temporarily postponed further consideration of **HB 2466**.

Question — Shall Floor Amendment No. 1 to **HB 2466** be adopted?

**HOUSE BILL 2472 ON SECOND READING**

On motion of Senator Rodriguez and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 2472** at this time on its second reading:

**HB 2472**, Relating to the reporting of certain warrant or capias information to the national crime information center.

The bill was read second time and was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading except as follows:

Absent-excused: Ogden.

**HOUSE BILL 2472 ON THIRD READING**

Senator Rodriguez moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2472** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Ogden.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

**COMMITTEE SUBSTITUTE  
HOUSE BILL 213 ON SECOND READING**

On motion of Senator Lucio and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 213** at this time on its second reading:

**CSHB 213**, Relating to certain loans secured by a lien on residential real property and to other transactions involving residential real property; providing civil penalties.

The bill was read second time.

Senator Lucio offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 213** (Senate committee printing), by striking on page 3, lines 56 thru 66, and substituting the following:

"(c) A purchaser or borrower must bring an action to void a deed executed in violation of this section not later than the fourth anniversary of the date the deed was recorded. A purchaser or borrower who is a prevailing party in an action to void a deed under this section may recover reasonable and necessary attorney's fees.

Sec. 21.003 ACTION BY ATTORNEY GENERAL. (a) The attorney general may bring an action on behalf of the state:

(1) for injunctive relief to require compliance with this chapter;

(2) to recover a civil penalty of \$500 for each violation of this chapter; or

(3) for both injunctive relief and to recover the civil penalty.

(b) The attorney general is entitled to recover reasonable expenses incurred in obtaining injunctive relief or a civil penalty, or both, under this section, including court costs and reasonable attorney's fees.

(c) The court may make such additional orders or judgments as are necessary to return to the purchaser a deed conveying residential real estate that the court finds was acquired by means of any violation of this chapter.

(d) In bringing or participating in an action under this chapter, the attorney general acts in the name of the state and does not establish an attorney-client relationship with another person, including a person to whom the attorney general requests that the court award relief.

(e) An action by the attorney general must be brought not later than the fourth anniversary of the date the deed was recorded."

The amendment to **CSHB 213** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1 except as follows:

Absent-excused: Ogden.

On motion of Senator Lucio and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**CSHB 213** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading except as follows:

Absent-excused: Ogden.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 213 ON THIRD READING**

Senator Lucio moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 213** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Ogden.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

**HOUSE BILL 3833 ON SECOND READING**

On motion of Senator Harris and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 3833** at this time on its second reading:

**HB 3833**, Relating to the adoption of a uniform collaborative law Act in regard to family law matters.

The bill was read second time and was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading except as follows:

Absent-excused: Ogden.

**HOUSE BILL 3833 ON THIRD READING**

Senator Harris moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3833** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Ogden.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

**COMMITTEE SUBSTITUTE  
HOUSE BILL 6 ON SECOND READING**

On motion of Senator Shapiro and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 6** at this time on its second reading:

**CSHB 6**, 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.

The bill was read second time.

Senator Shapiro offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 6** by inserting the following new SECTIONS, appropriately numbered, and renumbering the subsequent SECTIONS accordingly:

SECTION \_\_\_\_\_. Subchapter A, Chapter 30A, Education Code, is amended by adding Section 30A.007 to read as follows:

Sec. 30A.007. LOCAL POLICY ON ELECTRONIC COURSES. (a) A school district or open-enrollment charter school shall adopt a policy that provides district or school students with the opportunity to enroll in electronic courses provided through the state virtual school network. The policy must be consistent with the requirements imposed by Section 26.0031.

(b) For purposes of a policy adopted under Subsection (a), the determination of whether or not an electronic course will meet the needs of a student with a disability shall be made by the student's admission, review, and dismissal committee in a manner consistent with state and federal law, including the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.) and Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794).

SECTION \_\_\_\_\_. Subchapter C, Chapter 30A, Education Code, is amended by adding Section 30A.1021 to read as follows:

Sec. 30A.1021. PUBLIC ACCESS TO USER COMMENTS REGARDING ELECTRONIC COURSES. (a) The administering authority shall provide students who have completed or withdrawn from electronic courses offered through the virtual school network and their parents with a mechanism for providing comments regarding courses that are part of the foundation curriculum under Section 28.002(a)(1).

(b) The administering authority may provide students who have completed or withdrawn from electronic courses offered through the virtual school network and their parents with a mechanism for providing comments regarding courses that are part of the enrichment curriculum under Section 28.002(a)(2).

(c) The mechanism required by Subsection (a) and authorized by Subsection (b) must include a quantitative rating system and a list of verbal descriptors that a student or parent may select as appropriate.

(d) The administering authority shall provide public access to the comments submitted by students and parents under this section. The comments must be in a format that permits a person to sort the comments by teacher, electronic course, and provider school district or school.

SECTION \_\_\_\_\_. Section 30A.104, Education Code, is amended to read as follows:

Sec. 30A.104. COURSE ELIGIBILITY IN GENERAL. (a) A course offered through the state virtual school network must:

(1) be in a specific subject that is part of the required curriculum under Section 28.002(a);

(2) be aligned with the essential knowledge and skills identified under Section 28.002(c) for a grade level at or above grade level three; and

(3) be the equivalent in instructional rigor and scope to a course that is provided in a traditional classroom setting during:

(A) a semester of 90 instructional days; and



(B) a school day that meets the minimum length of a school day required under Section 25.082.

(b) For purposes of Subsection (a)(2), a course is considered in compliance with the requirement imposed under that subdivision if:

(1) the course contains at least 80 percent of the applicable essential knowledge and skills; and

(2) the provider school district or school provides written documentation that the remaining 20 percent of the applicable essential knowledge and skills will be provided by the teacher of the course and instructional materials.

(c) If the essential knowledge and skills with which an approved course is aligned in accordance with Subsection (a)(2) are modified, the provider school district or school must be provided the same time period to revise the course and instructional materials to achieve alignment with the modified essential knowledge and skills as is provided for the modification of a course provided in a traditional classroom setting.

SECTION \_\_\_\_\_. Section 30A.105, Education Code, is amended by adding Subsections (a-1) and (a-2) and amending Subsection (d) to read as follows:

(a-1) The administering authority shall publish the schedule established under Subsection (a)(1), including any deadlines specified in that schedule, and any guidelines applicable to the submission and approval process for electronic courses.

(a-2) The evaluation required by Subsection (a)(2) must include review of each electronic course component, including off-line material proposed to be used in the course.

(d) If the agency determines that the costs of evaluating and approving a submitted electronic course will not be paid by the agency due to a shortage of funds available for that purpose, the school district, open-enrollment charter school, or public or private institution of higher education that submitted the course for evaluation and approval may pay a fee equal to the amount of the costs in order to ensure that evaluation of the course occurs. The agency shall establish and publish a fee schedule for purposes of this subsection.

The amendment to **CSHB 6** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1 except as follows:

Absent-excused: Ogden.

Senator Shapiro offered the following amendment to the bill:

### **Floor Amendment No. 2**

Amend **CSHB 6** by inserting the following new SECTIONS, appropriately numbered, and renumbering the subsequent SECTIONS accordingly:

SECTION \_\_\_\_\_. Subchapter D, Chapter 30A, Education Code, is amended by adding Section 30A.153 to read as follows:

Sec. 30A.153. FOUNDATION SCHOOL PROGRAM FUNDING. (a) A school district or open-enrollment charter school in which a student is enrolled is entitled to funding under Chapter 42 for the student's enrollment in an electronic course offered through the state virtual school network in the same manner that the

district or school is entitled to funding for the student's enrollment in courses provided in a traditional classroom setting, provided that the student successfully completes the electronic course.

(b) The commissioner, after considering comments from school district and open-enrollment charter school representatives, shall adopt a standard agreement that governs payment of funds and other matters relating to a student's enrollment in an electronic course offered through the state virtual school network. The agreement may not require a school district or open-enrollment charter school to pay the provider the full amount until the student has successfully completed the electronic course.

(c) A school district or open-enrollment charter school shall use the standard agreement adopted under Subsection (b) unless:

(1) the district or school requests from the commissioner permission to modify the standard agreement; and

(2) the commissioner authorizes the modification.

(d) The commissioner shall adopt rules necessary to implement this section, including rules regarding attendance accounting.

SECTION \_\_\_\_ . Section 42.302(a), Education Code, is amended to read as follows:

(a) Each school district is guaranteed a specified amount per weighted student in state and local funds for each cent of tax effort over that required for the district's local fund assignment up to the maximum level specified in this subchapter. The amount of state support, subject only to the maximum amount under Section 42.303, is determined by the formula:

$$GYA = (GL \times WADA \times DTR \times 100) - LR$$

where:

"GYA" is the guaranteed yield amount of state funds to be allocated to the district;

"GL" is the dollar amount guaranteed level of state and local funds per weighted student per cent of tax effort, which is an amount described by Subsection (a-1) or a greater amount for any year provided by appropriation;

"WADA" is the number of students in weighted average daily attendance, which is calculated by dividing the sum of the school district's allotments under Subchapters B and C, less any allotment to the district for transportation, any allotment under Section 42.158[~~42.159~~], or 42.160, and 50 percent of the adjustment under Section 42.102, by the basic allotment for the applicable year;

"DTR" is the district enrichment tax rate of the school district, which is determined by subtracting the amounts specified by Subsection (b) from the total amount of maintenance and operations taxes collected by the school district for the applicable school year and dividing the difference by the quotient of the district's taxable value of property as determined under Subchapter M, Chapter 403, Government Code, or, if applicable, under Section 42.2521, divided by 100; and

"LR" is the local revenue, which is determined by multiplying "DTR" by the quotient of the district's taxable value of property as determined under Subchapter M, Chapter 403, Government Code, or, if applicable, under Section 42.2521, divided by 100.

SECTION \_\_\_\_ . Section 42.159, Education Code, is repealed.

The amendment to **CSHB 6** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 2 except as follows:

Absent-excused: Ogden.

Senator Shapiro offered the following amendment to the bill:

### **Floor Amendment No. 3**

Amend **CSHB 6** by striking SECTION 67 of the bill (senate committee printing, page 21, line 34) and substituting the following new SECTION 67:

SECTION 67. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2011.

The amendment to **CSHB 6** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 3 except as follows:

Absent-excused: Ogden.

Senator Shapiro offered the following amendment to the bill:

### **Floor Amendment No. 4**

Amend **CSHB 6** (senate committee printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Subchapter D, Chapter 12, Education Code, is amended by adding Section 12.135 to read as follows:

Sec. 12.135. DESIGNATION AS CHARTER DISTRICT FOR PURPOSES OF BOND GUARANTEE. (a) On the application of the charter holder, the commissioner may grant designation as a charter district to an open-enrollment charter school that meets financial standards adopted by the commissioner. The financial standards must require an open-enrollment charter school to have an investment grade credit rating as specified by Section 45.0541.

(b) A charter district may apply for bonds issued under Chapter 53 for the open-enrollment charter school to be guaranteed by the permanent school fund as provided by Chapter 45.

SECTION \_\_\_\_\_. Section 45.051, Education Code, is amended by adding Subdivision (1-a) and amending Subdivision (2) to read as follows:

(1-a) "Charter district" means an open-enrollment charter school designated as a charter district under Section 12.135.

(2) "Paying agent" means the financial institution that is designated by a school district or charter district as its agent for the payment of the principal of and interest on guaranteed bonds.

SECTION \_\_\_\_\_. Section 45.052, Education Code, is amended to read as follows:

Sec. 45.052. GUARANTEE. (a) On approval by the commissioner, bonds issued under Subchapter A by a school district or Chapter 53 for a charter district, including refunding bonds, are guaranteed by the corpus and income of the permanent school fund.

(b) Notwithstanding any amendment of this subchapter or other law, the guarantee under this subchapter of school district or charter district bonds remains in effect until the date those bonds mature or are defeased in accordance with state law.

SECTION \_\_\_\_\_. Subchapter C, Chapter 45, Education Code, is amended by adding Section 45.0532 to read as follows:

Sec. 45.0532. LIMITATION ON GUARANTEE OF CHARTER DISTRICT BONDS. (a) In addition to the general limitation under Section 45.053, the commissioner may not approve charter district bonds for guarantee under this subchapter in a total amount that exceeds the percentage of the total available capacity of the guaranteed bond program that is equal to the percentage of the number of students enrolled in open-enrollment charter schools in this state compared to the total number of students enrolled in all public schools in this state, as determined by the commissioner.

(b) For purposes of Subsection (a), the total available capacity of the guaranteed bond program is the limit established by the board under Sections 45.053(d) and 45.0531 minus the total amount of outstanding guaranteed bonds. Each time the board increases the limit under Section 45.053(d), the total amount of charter district bonds that may be guaranteed increases accordingly under Subsection (a).

(c) Notwithstanding Subsections (a) and (b), the commissioner may not approve charter district bonds for guarantee under this subchapter if the guarantee will result in lower bond ratings for school district bonds for which a guarantee is requested under this subchapter.

(d) The commissioner may request that the comptroller place the portion of the permanent school fund committed to the guarantee of charter district bonds in a segregated account if the commissioner determines that a separate account is needed to avoid any negative impact on the bond ratings of school district bonds for which a guarantee is requested under this subchapter.

(e) A guarantee of charter district bonds must be made in accordance with this chapter and any applicable federal law.

SECTION \_\_\_\_\_. Section 45.054, Education Code, is amended to read as follows:

Sec. 45.054. ELIGIBILITY OF SCHOOL DISTRICT BONDS. To be eligible for approval by the commissioner, school district bonds must be issued under Subchapter A of this chapter or under Subchapter A, Chapter 1207, Government Code, to make a deposit under Subchapter B or C of that chapter, by an accredited school district.

SECTION \_\_\_\_\_. Subchapter C, Chapter 45, Education Code, is amended by adding Section 45.0541 to read as follows:

Sec. 45.0541. ELIGIBILITY OF CHARTER DISTRICT BONDS. To be eligible for approval by the commissioner, charter district bonds must:

(1) without the guarantee, be rated as investment grade by a nationally recognized investment rating firm; and

(2) be issued under Chapter 53.

SECTION \_\_\_\_\_. Subsections (a) and (b), Section 45.055, Education Code, are amended to read as follows:

(a) A school district or charter district seeking guarantee of eligible bonds under this subchapter shall apply to the commissioner using a form adopted by the commissioner for the purpose. The commissioner may adopt a single form on which a school district seeking guarantee or credit enhancement of eligible bonds may apply simultaneously first for guarantee under this subchapter and then, if that guarantee is rejected, for credit enhancement under Subchapter I.

(b) An application under Subsection (a) must include:

(1) the name of the school district or charter district and the principal amount of the bonds to be issued;

(2) the name and address of the district's paying agent for those bonds; and

(3) the maturity schedule, estimated interest rate, and date of the bonds.

SECTION \_\_\_\_\_. Section 45.056, Education Code, is amended to read as follows:

Sec. 45.056. INVESTIGATION. (a) Following receipt of an application for the guarantee of bonds, the commissioner shall conduct an investigation of the applicant school district or charter district in regard to:

(1) the status of the district's accreditation; and

(2) the total amount of outstanding guaranteed bonds.

(b) If following the investigation the commissioner is satisfied that the school district's bonds should be guaranteed under this subchapter or provided credit enhancement under Subchapter I, as applicable, or the charter district's bonds should be guaranteed under this subchapter, the commissioner shall endorse the bonds.

SECTION \_\_\_\_\_. Subsection (b), Section 45.057, Education Code, is amended to read as follows:

(b) The guarantee is not effective unless the attorney general approves the bonds under Section 45.005 or 53.40, as applicable.

SECTION \_\_\_\_\_. Subchapter C, Chapter 45, Education Code, is amended by adding Section 45.0571 to read as follows:

Sec. 45.0571. CHARTER DISTRICT BOND GUARANTEE RESERVE FUND. (a) The charter district bond guarantee reserve fund is a special fund in the state treasury outside the general revenue fund. The following amounts shall be deposited in the fund:

(1) money due from a charter district as provided by Subsection (b); and

(2) interest earned on balances in the fund.

(b) A charter district that has a bond guaranteed as provided by this subchapter must annually remit to the commissioner, for deposit in the charter district bond guarantee reserve fund, an amount equal to 10 percent of the savings to the charter district that is a result of the lower interest rate on the bond due to the guarantee by the permanent school fund. The amount due under this section shall be amortized and paid over the duration of the bond. Each payment is due on the anniversary of the date the bond was issued. The commissioner shall adopt rules to determine the total and annual amounts due under this section.

(c) The commissioner may direct the comptroller to annually withhold the amount due to the charter district bond guarantee reserve fund under Subsection (b) for that year from the state funds otherwise payable to the charter district.

(d) Each year, the commissioner shall:

(1) review the condition of the bond guarantee program and the amount that must be deposited in the charter district bond guarantee reserve fund from charter districts; and

(2) determine if charter districts should be required to submit a greater percentage of the savings resulting from the guarantee.

(e) The commissioner shall make recommendations to the legislature based on the review under Subsection (d).

SECTION \_\_\_\_\_. Section 45.058, Education Code, is amended to read as follows:

Sec. 45.058. NOTICE OF DEFAULT. Immediately following a determination that a school district or charter district will be or is unable to pay maturing or matured principal or interest on a guaranteed bond, but not later than the fifth day before maturity date, the school district or charter district shall notify the commissioner.

SECTION \_\_\_\_\_. The heading to Section 45.059, Education Code, is amended to read as follows:

Sec. 45.059. PAYMENT OF SCHOOL DISTRICT BOND ON DEFAULT [FROM PERMANENT SCHOOL FUND].

SECTION \_\_\_\_\_. Subsection (a), Section 45.059, Education Code, is amended to read as follows:

(a) Immediately following receipt of notice under Section 45.058 that a school district will be or is unable to pay maturing or matured principal or interest on a guaranteed bond, the commissioner shall instruct the comptroller to transfer from the appropriate account in the permanent school fund to the district's paying agent the amount necessary to pay the maturing or matured principal or interest.

SECTION \_\_\_\_\_. Subchapter C, Chapter 45, Education Code, is amended by adding Section 45.0591 to read as follows:

Sec. 45.0591. PAYMENT OF CHARTER DISTRICT BOND ON DEFAULT.

(a) Immediately following receipt of notice under Section 45.058 that a charter district will be or is unable to pay maturing or matured principal or interest on a guaranteed bond, the commissioner shall instruct the comptroller to transfer from the charter district bond guarantee reserve fund created under Section 45.0571 to the district's paying agent the amount necessary to pay the maturing or matured principal or interest.

(b) If money in the charter district bond guarantee reserve fund is insufficient to pay the amount due on a bond under Subsection (a), the commissioner shall instruct the comptroller to transfer from the appropriate account in the permanent school fund to the district's paying agent the amount necessary to pay the balance of the unpaid maturing or matured principal or interest.

(c) Immediately following receipt of the funds for payment of the principal or interest, the paying agent shall pay the amount due and forward the canceled bond or coupon to the comptroller. The comptroller shall hold the canceled bond or coupon on behalf of the fund or funds from which payment was made.

(d) Following full reimbursement to the charter district bond guarantee reserve fund and the permanent school fund, if applicable, with interest, the comptroller shall further cancel the bond or coupon and forward it to the charter district for which payment was made.

SECTION \_\_\_\_\_. Section 45.060, Education Code, is amended to read as follows:

Sec. 45.060. BONDS NOT ACCELERATED ON DEFAULT. If a school district or charter district fails to pay principal or interest on a guaranteed bond when it matures, other amounts not yet mature are not accelerated and do not become due by virtue of the school district's or charter district's default.

SECTION \_\_\_\_\_. The heading to Section 45.061, Education Code, is amended to read as follows:

Sec. 45.061. REIMBURSEMENT OF FUNDS [~~PERMANENT SCHOOL FUND~~].

SECTION \_\_\_\_\_. Section 45.061, Education Code, is amended by amending Subsections (a) and (b) and adding Subsection (a-1) to read as follows:

(a) If the commissioner orders payment from the permanent school fund or the charter district bond guarantee reserve fund on behalf of a school district or charter district, the commissioner shall direct the comptroller to withhold the amount paid, plus interest, from the first state money payable to the school district or charter district. Except as provided by Subsection (a-1), the [The] amount withheld shall be deposited to the credit of the permanent school fund.

(a-1) After the permanent school fund has been reimbursed for all money paid from the fund as the result of a default of a charter district bond guaranteed under this subchapter, any remaining amounts withheld under Subsection (a) shall be deposited to the credit of the charter district bond guarantee reserve fund.

(b) In accordance with the rules of the board, the commissioner may authorize reimbursement to the permanent school fund or charter district bond guarantee reserve fund with interest in a manner other than that provided by this section.

SECTION \_\_\_\_\_. Section 45.062, Education Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) If a total of two or more payments are made under this subchapter on charter district bonds and the commissioner determines that the charter district is acting in bad faith under the guarantee program under this subchapter, the commissioner may request the attorney general to institute appropriate legal action to compel the charter district and its officers, agents, and employees to comply with the duties required of them by law in regard to the bonds.

SECTION \_\_\_\_\_. Subdivision (10), Section 53.02, Education Code, is amended to read as follows:

(10) "Authorized charter school" means an open-enrollment charter school that holds a charter granted under Subchapter D, Chapter 12, and includes an open-enrollment charter school designated as a charter district as provided by Section 12.135.

SECTION \_\_\_\_\_. Section 53.351, Education Code, is amended by amending Subsection (f) and adding Subsection (f-1) to read as follows:

(f) Except as provided by Subsection (f-1), a [A] revenue bond issued under this section is not a debt of the state or any state agency, political corporation, or political subdivision of the state and is not a pledge of the faith and credit of any of these entities. A revenue bond is payable solely from the revenue of the authorized open-enrollment charter school on whose behalf the bond is issued. A revenue bond issued under this section must contain on its face a statement to the effect that:

(1) neither the state nor a state agency, political corporation, or political subdivision of the state is obligated to pay the principal of or interest on the bond; and

(2) neither the faith and credit nor the taxing power of the state or any state agency, political corporation, or political subdivision of the state is pledged to the payment of the principal of or interest on the bond.

(f-1) Subsection (f) does not apply to a revenue bond issued under this section for a charter district if the bond is approved for guarantee by the permanent school fund under Subchapter C, Chapter 45.

SECTION \_\_\_\_\_. The changes in law made by this Act relating to a charter district and the guarantee of a charter district's bonds apply only to a bond issued or refunded on or after the effective date of this Act by an open-enrollment charter school designated as a charter district under Section 12.135, Education Code, as added by this Act. A bond issued or refunded by an open-enrollment charter school 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.

The amendment to **CSHB 6** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 4 except as follows:

Absent-excused: Ogden.

Senator Patrick offered the following amendment to the bill:

#### **Floor Amendment No. 5**

Amend **CSHB 6** (senate committee printing) as follows:

(1) In SECTION 12 of the bill, strike the recital for Section 28.002, Education Code (page 3, lines 20-21), and substitute the following:

SECTION 12. Section 28.002, Education Code, is amended by amending Subsections (a), (c), (h), and (n) and adding Subsections (b-1), (b-2), (b-3), and (b-4) to read as follows:

(2) In SECTION 12 of the bill, following amended Section 28.002(a), Education Code (page 3, between lines 44 and 45), insert the following:

(b-1) In this section, "national curriculum standards" includes any curriculum standards endorsed, approved, sanctioned, or promoted by the United States Department of Education, the National Governors Association, or the Council of Chief State School Officers.

(b-2) The State Board of Education may not adopt national curriculum standards to comply with a duty imposed under this chapter.

(b-3) A school district may not use national curriculum standards to comply with the requirement to provide instruction in the essential knowledge and skills at appropriate grade levels under Subsection (c).



(b-4) Notwithstanding any other provision of this code, a school district or open-enrollment charter school may not be required to offer any aspect of a national curriculum.

(3) Add the following appropriately numbered SECTIONS to the bill and renumber subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 21.351(a), Education Code, is amended to read as follows:

(a) The commissioner shall adopt a recommended appraisal process and criteria on which to appraise the performance of teachers. The commissioner may not adopt or develop a recommended appraisal process and criteria based on any federally enacted or nationally applicable appraisal criteria incorporating the results of student performance on assessment instruments. The commissioner may include appraisal criteria based in part on a measurement of the teacher's effectiveness, including the annual improvement of the teacher's students' achievement and the performance of the teacher's students on assessment instruments required under Subchapter B, Chapter 39. The criteria must be based on observable, job-related behavior, including:

(1) teachers' implementation of discipline management procedures; and

(2) the performance of a teacher's [~~teachers'~~] students.

SECTION \_\_\_\_\_. Section 39.023, Education Code, is amended by adding Subsection (a-2) to read as follows:

(a-2) The agency may not adopt or develop a criterion-referenced assessment instrument under this section based on national curriculum standards as defined by Section 28.002(b-1).

The amendment to **CSHB 6** was read.

Senator Ellis offered the following amendment to Floor Amendment No. 5:

#### **Floor Amendment No. 6**

Amend Amendment No. 5 to **CSHB 6** by adding the following appropriately numbered section and renumbering the remaining sections as appropriate:

SECTION \_\_\_\_\_. STATE BOARD OF EDUCATION. Subchapter D, Chapter 7, Education Code, is amended by adding Section 7.114 to read as follows:

Sec. 7.114. SUNSET PROVISION. The State Board of Education is subject to review under Chapter 325, Government Code (Texas Sunset Act), but is not abolished under that chapter. The board shall be reviewed during the periods in which state agencies scheduled to be abolished in 2013 and every 12th year after that year are reviewed.

The amendment to Floor Amendment No. 5 to **CSHB 6** was read.

On motion of Senator Patrick, Floor Amendment No. 6 was tabled by the following vote: Yeas 18, Nays 12.

Yeas: Birdwell, Carona, Deuell, Duncan, Eltife, Estes, Fraser, Harris, Hegar, Huffman, Jackson, Nelson, Nichols, Patrick, Seliger, Shapiro, Wentworth, Williams.

Nays: Davis, Ellis, Gallegos, Hinojosa, Lucio, Rodriguez, Uresti, Van de Putte, Watson, West, Whitmire, Zaffirini.

Absent-excused: Ogden.

Question recurring on the adoption of Floor Amendment No. 5 to **CSHB 6**, the amendment was adopted by the following vote: Yeas 18, Nays 12.

Yeas: Birdwell, Carona, Deuell, Duncan, Eltife, Estes, Fraser, Harris, Hegar, Huffman, Jackson, Nelson, Nichols, Patrick, Seliger, Shapiro, Wentworth, Williams.

Nays: Davis, Ellis, Gallegos, Hinojosa, Lucio, Rodriguez, Uresti, Van de Putte, Watson, West, Whitmire, Zaffirini.

Absent-excused: Ogden.

Senator Patrick offered the following amendment to the bill:

### **Floor Amendment No. 7**

Amend **CSHB 6** (senate committee printing) as follows:

(1) In SECTION 24 of the bill, strike the recital (page 7, lines 55-56) and substitute the following:

Section 31.022, Education Code, is amended by amending Subsections (a), (b), (c), (e), and (f) and adding Subsection (d-1) to read as follows:

(2) In SECTION 24 of the bill, following amended Section 31.022(c), Education Code (page 8, between lines 26 and 27), insert the following:

(d-1) A notice published under Subsection (d) must state that a publisher of adopted instructional materials for a grade level other than prekindergarten must submit an electronic sample of the instructional materials as required by Sections 31.027(a) and (b) and may not submit a print sample copy.

(3) In SECTION 33 of the bill, in the heading to amended Section 31.027, Education Code (page 11, lines 44-45), strike "SAMPLE COPIES" and substitute "ELECTRONIC SAMPLE [COPIES]".

(4) In SECTION 33 of the bill, in amended Section 31.027(a), Education Code (page 11, line 49), strike "a sample copy in digital format" and substitute "an electronic [a] sample [copy]".

(5) In SECTION 33 of the bill, in amended Section 31.027(b), Education Code (page 11, lines 51-52), strike "at least two sample copies in digital format" and substitute "an electronic [at least two] sample [copies]".

The amendment to **CSHB 6** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 7 except as follows:

Absent-excused: Ogden.

**(Senator Eltife in Chair)**

Senator Patrick offered the following amendment to the bill:

### **Floor Amendment No. 8**

Amend **CSHB 6** (senate committee printing) as follows:

(1) In SECTION 27 of the bill, amending Section 31.0231(c), Education Code (page 9, line 42), following the period, insert "If the commissioner places material on the list adopted under Subsection (a), the State Board of Education may, not later than the 90th day after the date the material is placed on the list, require the commissioner to remove the material from the list."

(2) In SECTION 27 of the bill, amending Section 31.0231(e), Education Code (page 10, line 3), between the period and "[~~Before~~", insert "The State Board of Education may, in the manner provided by Subsection (c), require the commissioner to remove material placed on the updated list."

The amendment to **CSHB 6** was read and was adopted by the following vote: Yeas 17, Nays 13.

Yeas: Birdwell, Carona, Deuell, Duncan, Eltife, Estes, Fraser, Harris, Hegar, Huffman, Jackson, Nelson, Nichols, Patrick, Shapiro, Wentworth, Williams.

Nays: Davis, Ellis, Gallegos, Hinojosa, Lucio, Rodriguez, Seliger, Uresti, Van de Putte, Watson, West, Whitmire, Zaffirini.

Absent-excused: Ogden.

Senator Patrick offered the following amendment to the bill:

### **Floor Amendment No. 9**

Amend **CSHB 6** (senate committee printing) in SECTION 30 of the bill by striking amended Section 31.0241(b)(1), Education Code (page 10, lines 53-56), and substituting:

(1) by not later than the 90th day after the date the instructional material is submitted, the board reviews the instructional material and approves the placement of the instructional material on the list [~~the textbook is written, compiled, or edited primarily by faculty of the eligible institution who specialize in the subject area of the textbook~~];

The amendment to **CSHB 6** was read and was adopted by the following vote: Yeas 18, Nays 12.

Yeas: Birdwell, Carona, Deuell, Duncan, Eltife, Estes, Fraser, Harris, Hegar, Huffman, Jackson, Nelson, Nichols, Patrick, Seliger, Shapiro, Wentworth, Williams.

Nays: Davis, Ellis, Gallegos, Hinojosa, Lucio, Rodriguez, Uresti, Van de Putte, Watson, West, Whitmire, Zaffirini.

Absent-excused: Ogden.

Senator Harris offered the following amendment to the bill:

### **Floor Amendment No. 10**

Amend **CSHB 6** (senate committee printing) as follows:

(1) In SECTION 21 of the bill, strike added Section 31.021(c)(5), Education Code (page 5, lines 64-66), and substitute the following:

(5) pay the expenses associated with the purchase of instructional material, including intrastate freight and shipping and the insurance expenses associated with intrastate freight and shipping.

(2) In SECTION 57 of the bill, strike amended Section 31.151(a)(6), Education Code (page 19, lines 22-38), and substitute the following:

(6) shall[~~;~~

~~[(A) maintain a depository in this state or arrange with a depository in this state to receive and fill orders for textbooks, other than open source textbooks, on line textbooks, or on line textbook components, consistent with State Board of Education rules; or~~

~~[(B) deliver instructional materials [textbooks] to a school district or open-enrollment charter school [without a delivery charge to the school district, open enrollment charter school, or state, if:~~

~~(i) the publisher or manufacturer does not maintain or arrange with a depository in this state under Paragraph (A) and the publisher's or manufacturer's textbooks and related products are warehoused or otherwise stored less than 300 miles from a border of this state; or~~

~~(ii) the textbooks are open source textbooks, on line textbooks, or on line textbook components];~~

HARRIS  
WENTWORTH

The amendment to **CSHB 6** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 10 except as follows:

Absent-excused: Ogden.

Senator Wentworth offered the following amendment to the bill:

#### **Floor Amendment No. 11**

Amend **CSHB 6** by adding to the bill the following appropriately numbered SECTIONS and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 44.031, Education Code, is amended by adding Subsection (n) to read as follows:

(n) A school district contract to which Subsection (a) applies under which the district contracts with another entity for that entity to manage or otherwise provide food services at one or more district schools must require that any other contract the entity makes in performance of its duties under the contract with the district and to which Subsection (a) would apply if the district were making the contract be made:

(1) under the method listed by Subsection (a) that provides the best value to the entity and the district;

(2) with consideration of the factors specified under Subsection (b) and, as applicable, under Subsection (b-1), in determining to whom to award the contract; and

(3) as provided by Subsection (g).

SECTION \_\_\_\_\_. Section 44.031(n), Education Code, as added by this Act, applies only to a contract entered into on or after the effective date of this Act by a school district with another entity for that entity to manage or otherwise provide food services at one or more district schools. A contract entered into before the effective date of this Act by a school district with another entity for that entity to manage or otherwise provide food services at one or more district schools is governed by the law in effect on the date the contract was entered into, and that law is continued in effect for that purpose.

The amendment to **CSHB 6** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 11 except as follows:

Nays: Watson.

Absent-excused: Ogden.

Senator Nelson offered the following amendment to the bill:

### Floor Amendment No. 12

Amend **CSHB 6** by adding the following appropriately numbered SECTIONS to the bill and renumbering the subsequent SECTIONS of the bill accordingly.

SECTION \_\_\_\_\_. Section 28.0216, Education Code, is amended to read as follows:

Sec. 28.0216. DISTRICT GRADING POLICY. (a) Before each school year, a [A] school district shall adopt a grading policy, including provisions for the assignment of grades on class assignments and examinations and the calculation of cumulative averages of grades[, before each school year]. A district grading policy:

(1) must require a [classroom] teacher to assign a grade that reflects the student's relative mastery of the subject without employing grade inflation or misrepresenting a student's deserved grade [an assignment];

(2) may not require a [classroom] teacher to assign a minimum grade [for an assignment] without regard to the student's quality of work; and

(3) may allow a student a reasonable opportunity to make up or redo a class assignment or examination for which the student received a failing grade.

(b) A district grading policy shall apply to the assignment of a grade for which written notice is required under Section 28.022(a)(2), in addition to any other grade assigned by the district.

SECTION \_\_\_\_\_. This Act applies beginning with the 2011-2012 school year.

SECTION \_\_\_\_\_. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2011.

The amendment to **CSHB 6** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 12 except as follows:

Absent-excused: Ogden.

Senator Van de Putte offered the following amendment to the bill:

### Floor Amendment No. 13

Amend **CSHB 6** by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Subchapter D, Chapter 12, Education Code, is amended by adding Section 12.1141 to read as follows:

Sec. 12.1141. REVISION: ADDING SCHOOLS UNDER CERTAIN CIRCUMSTANCES. (a) Except as provided by Subsection (b), the commissioner may not deny approval for a charter holder to add one or more additional open-enrollment charter schools under an existing open-enrollment charter granted to the charter holder if:

(1) considering available data, the charter holder meets all criteria established by rule for adding a charter school under an existing charter other than criteria for performance based on dropout and completion rates of one or more existing charter schools under the charter and the charter holder demonstrates through a process developed by the agency that those criteria would be met if:

(A) a student enrolled at the charter school who is at least 17 years of age at the time of enrollment were not considered a dropout; and

(B) a student who graduates from the charter school before or during the student's sixth year of high school were considered a high school graduate;

(2) the charter holder, at the time of submission of the application for approval to add one or more additional charter schools, has been assigned a financial accountability rating under Subchapter D, Chapter 39, indicating financial performance that is satisfactory or better; and

(3) each additional charter school:

(A) will serve only high school students;

(B) will have an enrollment of students of whom at least 50 percent did not graduate with a ninth grade cohort; and

(C) will be in the geographical area described for the charter under Section 12.111(a)(14).

(b) The commissioner may not approve a total of more than 10 additional charter schools under Subsection (a). The commissioner may, in accordance with commissioner rule, limit the enrollment of an additional charter school as necessary to conform to the capacity limits of the charter holder or the demand for services in the geographical area, as determined by the commissioner, but may not limit the enrollment of an additional charter school to less than the number of students currently enrolled at the high school level at a charter school operated by the charter holder that focuses on dropout recovery.

(c) This section expires September 1, 2013.

SECTION \_\_\_\_. Subchapter D, Chapter 12, Education Code, is amended by adding Section 12.1151 to read as follows:

Sec. 12.1151. LIMITATION ON REVOCATION OR DENIAL OF RENEWAL FOR CERTAIN CHARTER SCHOOLS. (a) This section applies only to an open-enrollment charter school that has an enrollment of students of whom at least 50 percent did not graduate with a ninth grade cohort.

(b) The commissioner may not revoke or deny renewal of the charter of an open-enrollment charter school to which this section applies if:

(1) considering available data, the charter holder meets all criteria established by rule for adding a charter school under an existing charter other than criteria for performance based on dropout and completion rates of one or more existing charter schools under the charter and the charter holder demonstrates through a process developed by the agency that those criteria would be met if:

(A) a student enrolled at the charter school who is at least 17 years of age at the time of enrollment were not considered a dropout; and

(B) a student who graduates from the charter school before or during the student's sixth year of high school were considered a high school graduate; and

(2) the charter holder, at the time the ratings appeal is filed, has been assigned a financial accountability rating under Subchapter D, Chapter 39, that indicates financial performance that is satisfactory or better.

(c) This section expires September 1, 2013.

The amendment to **CSHB 6** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 13 except as follows:

Absent-excused: Ogden.

Senator Patrick offered the following amendment to the bill:

#### **Floor Amendment No. 14**

Amend **CSHB 6** (senate committee printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. The heading to Section 12.101, Education Code, is amended to read as follows:

Sec. 12.101. AUTHORIZATION FOR LICENSE.

SECTION \_\_\_\_\_. Section 12.101, Education Code, is amended by amending Subsections (a), (b), and (d) and adding Subsections (e) and (f) to read as follows:

(a) In accordance with this subchapter, the State Board of Education may issue ~~grant~~ a license ~~charter~~ on the application of an eligible entity for an open-enrollment charter school to operate in a facility of a commercial or nonprofit entity, an eligible entity, or a school district, including a home-rule school district. In this subsection, "eligible entity" means:

(1) an institution of higher education as defined under Section 61.003;

(2) a private or independent institution of higher education as defined under Section 61.003;

(3) an organization that is exempt from taxation under Section 501(c)(3), Internal Revenue Code of 1986 (26 U.S.C. Section 501(c)(3)); or

(4) a governmental entity.

(b) The State Board of Education, after thoroughly investigating and evaluating an applicant, may issue ~~grant~~ a license ~~charter~~ for an open-enrollment charter school only to an applicant that meets any financial, governing, curriculum development and implementation, and operational standards adopted by the commissioner under this subchapter. In a state fiscal year, the ~~The~~ State Board of Education may not issue ~~grant a total of~~ more than 10 new licenses ~~245 charters~~ for an open-enrollment charter school plus a number of licenses equal to any number of charters for an open-enrollment charter school revoked or surrendered during the preceding state fiscal year.

(d) An educator employed by a school district before the effective date of a license [~~charter~~] for an open-enrollment charter school operated at a school district facility may not be transferred to or employed by the open-enrollment charter school over the educator's objection.

(e) A license holder is subject to any law applicable to a charter holder.

(f) The commissioner shall adopt rules for the form of a license, the basis and a procedure for modification or revocation of a license, and any other rules necessary for the issuance and administration of licenses under this subchapter. A rule adopted under this subsection must, to the greatest extent practicable, be consistent with a provision of this subchapter or a rule adopted under this subchapter for the same purpose as applicable to a charter.

SECTION \_\_\_\_ . Subchapter D, Chapter 12, Education Code, is amended by adding Sections 12.1011 and 12.10111 to read as follows:

Sec. 12.1011. AUTHORIZATION FOR ISSUANCE OF LICENSES FOR SCHOOLS PRIMARILY SERVING STUDENTS WITH DISABILITIES. (a) The State Board of Education may issue under Section 12.101 a license on the application of an eligible entity for an open-enrollment charter school intended primarily to serve students with disabilities, including students with autism. The State Board of Education may not issue more than two new licenses for an open-enrollment charter school under this section each state fiscal year. A license issued under this section is not considered for purposes of the limit on the number of licenses imposed by Section 12.101(b).

(b) For purposes of the applicability of state and federal law, including a law prescribing requirements concerning students with disabilities, an open-enrollment charter school described by Subsection (a) is considered the same as any other school for which a license or charter is issued under this subchapter.

(c) To the fullest extent permitted under federal law, a parent of a student with a disability may choose to enroll the parent's child in an open-enrollment charter school described by Subsection (a) regardless of whether a disproportionate number of the school's students are students with disabilities.

(d) This section does not authorize an open-enrollment charter school to discriminate in admissions or in the services provided based on the presence, absence, or nature of an applicant's or student's disability.

Sec. 12.10111. AUTHORIZATION FOR CHARTER. (a) The State Board of Education shall grant a charter for an open-enrollment charter school to a license holder under Section 12.101 if:

(1) the open-enrollment charter school for which the license has been issued has been assigned an acceptable performance rating as provided by Subchapter C, Chapter 39, for any two of the preceding three school years;

(2) no campus operating under the license has been assigned an unacceptable performance rating as provided by Subchapter C, Chapter 39, for any two of the three preceding school years or such a campus has been closed; and

(3) the license holder satisfies standards of financial solvency and financial accountability established by the commissioner under Subchapter D, Chapter 39.



(b) Notwithstanding Section 12.101 and in accordance with Section 12.110, the State Board of Education may grant a charter for an open-enrollment charter school to an applicant for a charter that:

(1) is an entity described by Section 12.101(a)(3) that has operated one or more charter schools in another state and, as determined by the commissioner in accordance with commissioner rule, has achieved high performance under federal accountability and other appropriate academic and financial criteria, including at a minimum having achieved adequate yearly progress in accordance with federal law for the preceding three school years; or

(2) is an entity that has operated one or more charter schools established under Subchapter C, D, or E and, as determined by the commissioner in accordance with commissioner rule, has performed well under appropriate academic and financial criteria.

(c) A charter for an open-enrollment charter school granted under Subsection (b)(1) is considered a license for purposes of the limit on the number of licenses imposed by Section 12.101(b).

(d) A charter holder may establish one or more new open-enrollment charter school campuses under a charter without applying for authorization if:

(1) each open-enrollment charter school campus operating under the charter has been assigned an acceptable performance rating as provided by Subchapter C, Chapter 39, for the two preceding school years;

(2) the charter holder satisfies standards of financial solvency and financial accountability established by commissioner rule under Subchapter D, Chapter 39;

(3) the charter holder provides written notice, in the time, manner, and form provided by commissioner rule, to the State Board of Education and the commissioner of the establishment of any campus under this subsection; and

(4) not later than the 90th day after the date the charter holder provides written notice under Subdivision (3), the commissioner does not provide written notice to the charter holder disapproving a new campus under this section.

(e) For purposes of Subsection (d), an open-enrollment charter school campus rated as academically acceptable or higher under Subchapter D, Chapter 39, as that subchapter existed January 1, 2009, for the 2009-2010 or 2010-2011 school year is considered to have been assigned an acceptable performance rating for the applicable school year. This subsection expires January 1, 2015.

SECTION \_\_\_\_\_. Section 12.1012, Education Code, is amended by adding Subdivision (7) to read as follows:

(7) "License holder" means the entity to which a license is granted under this subchapter.

SECTION \_\_\_\_\_. Section 12.1056, Education Code, is amended to read as follows:

Sec. 12.1056. IMMUNITY [~~FROM LIABILITY~~]. (a) In matters related to operation of an open-enrollment charter school, an open-enrollment charter school is immune [~~from liability~~] to the same extent as a school district, and its employees and volunteers are immune [~~from liability~~] to the same extent as school district employees

and volunteers. A member of the governing body of an open-enrollment charter school or of a charter holder is immune [~~from liability~~] to the same extent as a school district trustee.

(b) An open-enrollment charter school is a governmental unit as defined by Section 101.001, Civil Practice and Remedies Code, and is subject to liability only as provided by Chapter 101, Civil Practice and Remedies Code, and only in the manner that liability is provided by that chapter for a school district.

(c) An open-enrollment charter school is a local government as defined by Section 102.001, Civil Practice and Remedies Code, and a payment on a tort claim must comply with Chapter 102, Civil Practice and Remedies Code.

(d) An open-enrollment charter school is a local governmental entity as defined by Section 271.151, Local Government Code, and is subject to liability on a contract as provided by Subchapter I, Chapter 271, Local Government Code, and only in the manner that liability is provided by that subchapter for a school district.

SECTION \_\_\_\_\_. Subchapter D, Chapter 12, Education Code, is amended by adding Section 12.1058 to read as follows:

Sec. 12.1058. APPLICABILITY OF OTHER LAWS. (a) An open-enrollment charter school is considered to be:

- (1) a local government for purposes of Chapter 791, Government Code;
- (2) a local government for purposes of Chapter 2259, Government Code, except that an open-enrollment charter school may not issue public securities as provided by Section 2259.031(b), Government Code; and
- (3) a political subdivision for purposes of Chapter 172, Local Government Code.

(b) An open-enrollment charter school may elect to extend workers' compensation benefits to employees of the school through any method available to a political subdivision under Chapter 504, Labor Code, except that an open-enrollment charter school that self-insures either individually or collectively under Chapter 504, Labor Code, may not provide workers' compensation medical benefits to injured employees in the manner described by Section 504.053(b)(2), Labor Code. An open-enrollment charter school that elects to extend workers' compensation benefits as permitted under this section is considered to be a political subdivision for all purposes under Chapter 504, Labor Code. An open-enrollment charter school that self-insures either individually or collectively under Chapter 504, Labor Code, is considered to be an insurance carrier for purposes of Subtitle A, Title 5, Labor Code.

SECTION \_\_\_\_\_. Section 12.110, Education Code, is amended by amending Subsections (a), (b), and (c) and adding Subsections (a-1) and (e) to read as follows:

- (a) The State Board of Education shall adopt:
  - (1) an application form and a procedure that must be used to apply for a license [~~charter~~] for an open-enrollment charter school; and
  - (2) criteria to use in selecting a program for which to issue [~~grant~~] a license [~~charter~~].

(a-1) The State Board of Education shall adopt:

- (1) an application form and a procedure that must be used by an applicant described by Section 12.10111(b)(1) or (2) to apply for a charter for an open-enrollment charter school; and

(2) criteria to use in selecting a program for which to grant a charter.

(b) The application forms under Subsections (a) and (a-1) [form] must provide for including the information required under Section 12.111 [to be contained in a charter].

(c) As part of the application procedure, the board may require a petition supporting a license or charter for a school signed by a specified number of parents or guardians of school-age children residing in the area in which a school is proposed or may hold a public hearing to determine parental support for the school.

(e) The commissioner by rule may establish a fee for applying for a license or charter for an open-enrollment charter school. A fee established under this subsection must be sufficient to cover the agency's administrative costs for the application process, including the costs of investigating the applicant.

SECTION \_\_\_\_\_. Section 12.1101, Education Code, is amended to read as follows:

Sec. 12.1101. NOTIFICATION OF LICENSE OR CHARTER APPLICATION OR ESTABLISHMENT OF CAMPUS. The commissioner by rule shall adopt a procedure for providing notice to the following persons on receipt by the State Board of Education of an application for a license or charter for an open-enrollment charter school under Section 12.110 or on receipt by the board and the commissioner of notice of the establishment of a campus as authorized under Section 12.1011(d):

(1) the board of trustees of each school district from which the proposed open-enrollment charter school or campus is likely to draw students, as determined by the commissioner; and

(2) each member of the legislature that represents the geographic area to be served by the proposed school or campus, as determined by the commissioner.

SECTION \_\_\_\_\_. Section 12.111, Education Code, is amended by amending Subsections (a) and (b) and adding Subsections (a-1) and (c) to read as follows:

(a) Except as provided by Subsection (a-1), each license issued or [Each] charter granted under this subchapter must:

(1) describe the educational program to be offered, which must include the required curriculum as provided by Section 28.002;

(2) specify the period for which the charter or, consistent with Section 12.116(b-1), any charter renewal is valid;

(3) provide that continuation or renewal of the charter is contingent on the status of the charter as provided by Section 12.116(b-1) [acceptable student performance on assessment instruments adopted under Subchapter B, Chapter 39, and on compliance with any accountability provision specified by the charter, by a deadline or at intervals specified by the charter];

(4) [establish the level of student performance that is considered acceptable for purposes of Subdivision (3);

[(5)] specify any basis, in addition to a basis specified by this subchapter, on which the charter may be placed on probation or revoked or on which an alternative to revoking the charter, as described by Section 12.115(a-1), may be used [renewal of the charter may be denied];

(5) ~~(6)~~ prohibit discrimination in admission policy on the basis of sex, national origin, ethnicity, religion, disability, academic, artistic, or athletic ability, or the district the child would otherwise attend in accordance with this code, although the license or charter, as applicable, may:

(A) provide for the exclusion of a student who has a documented history of a criminal offense, a juvenile court adjudication, or discipline problems under Subchapter A, Chapter 37; and

(B) provide for an admission policy that requires a student to demonstrate artistic ability if the school specializes in performing arts;

(6) ~~(7)~~ specify the grade levels to be offered;

(7) ~~(8)~~ describe the governing structure of the program, including:

(A) the officer positions designated;

(B) the manner in which officers are selected and removed from office;

(C) the manner in which members of the governing body of the school are selected and removed from office;

(D) the manner in which vacancies on that governing body are filled;

(E) the term for which members of that governing body serve; and

(F) whether the terms are to be staggered;

(8) ~~(9)~~ specify the powers or duties of the governing body of the school that the governing body may delegate to an officer;

(9) ~~(10)~~ specify the manner in which the school will distribute to parents information related to the qualifications of each professional employee of the program, including any professional or educational degree held by each employee, a statement of any certification under Subchapter B, Chapter 21, held by each employee, and any relevant experience of each employee;

(10) ~~(11)~~ describe the process by which the person providing the program will adopt an annual budget;

(11) ~~(12)~~ describe the manner in which an annual audit of the financial and programmatic operations of the program is to be conducted, including the manner in which the person providing the program will provide information necessary for the school district in which the program is located to participate, as required by this code or by State Board of Education rule, in the Public Education Information Management System (PEIMS);

(12) ~~(13)~~ describe the facilities to be used;

(13) ~~(14)~~ describe the geographical area served by the program; and

(14) ~~(15)~~ specify any type of enrollment criteria to be used.

(a-1) A license issued under this subchapter is not required to comply with Subsection (a)(2), (3), or (4).

(b) A license holder or charter holder ~~[of an open enrollment charter school]~~ shall consider including in the school's license or charter, as applicable, a requirement that the school develop and administer personal graduation plans under Section 28.0212.

(c) The enrollment of a student with a disability, including autism, is not considered for purposes of any maximum student enrollment described by the charter.

SECTION \_\_\_\_ . Section 12.115, Education Code, is amended to read as follows:

Sec. 12.115. BASIS FOR MODIFICATION, PLACEMENT ON PROBATION, OR REVOCATION; ALTERNATIVES TO REVOCATION~~[, OR DENIAL OF RENEWAL]~~. (a) The commissioner shall ~~[may]~~ modify, place on probation, or revoke~~[, or deny renewal of]~~ the charter of an open-enrollment charter school if the commissioner determines that the charter holder:

- (1) committed a material violation of the charter, including failure to satisfy accountability provisions prescribed by the charter;
- (2) failed to satisfy generally accepted accounting standards of fiscal management;
- (3) failed to protect the health, safety, or welfare of the students enrolled at the school; or
- (4) failed to comply with this subchapter or another applicable law or rule.

(a-1) Based on a determination described by Subsection (a) concerning the charter holder, as an alternative to revoking the charter of an open-enrollment charter school, the commissioner may:

- (1) reconstitute the governing body of the charter holder; or
- (2) assign operations of a school campus to a different charter holder.

(b) The action the commissioner takes under Subsection (a) or (a-1) shall be based on:

- (1) the best interest of the school's students;
- (2) [;] the severity of the violation[;] and any previous violation the school has committed; and
- (3) the accreditation status of the school under Subchapter C, Chapter 39.

SECTION \_\_\_\_\_. Section 12.116, Education Code, is amended to read as follows:

Sec. 12.116. PROCEDURE FOR MODIFICATION, PLACEMENT ON PROBATION, REVOCATION, ALTERNATIVE TO REVOCATION, OR DENIAL OF RENEWAL. (a) The commissioner shall adopt a procedure ~~[to be used]~~ for modifying, placing on probation, revoking, or denying renewal of the charter of an open-enrollment charter school or for using an alternative to revocation as described by Section 12.115(a-1).

~~[(b)]~~ The procedure ~~[adopted under Subsection (a)]~~ must, except as provided by Subsection (b), provide an opportunity for a hearing to the charter holder and to parents and guardians of students enrolled in the school. A hearing under this subsection must be held in the county in which the school is located ~~[at the facility at which the program is operated]~~.

(a-1) The commissioner shall revoke the charter of an open-enrollment charter school in accordance with the procedure adopted under Subsection (a) if, after all information required for determining a performance rating under Subchapter D, Chapter 39, has been considered, the commissioner determines that the school is insolvent. In determining whether the school is insolvent, the commissioner shall consider whether the insolvency is a result of recovery of overallocated state funds under Section 42.258(a).

(b) The commissioner shall revoke the charter of an open-enrollment charter school without a hearing if each campus operated under the school's charter has been ordered closed under Section 39.107.

(b-1) The procedure adopted under Subsection (a) for denying renewal of the charter of an open-enrollment charter school must provide that the charter automatically renews unless the school's charter is revoked under Subchapter E, Chapter 39, before the expiration of a charter term. In addition, the procedure must require the commissioner and the charter holder to act in a timely manner, according to the procedure, to initiate revocation or renewal of the charter, as applicable. The term for which a charter is renewed shall not be less than 10 years.

(c) Chapter 2001, Government Code, does not apply to a hearing that is related to a modification, placement on probation, revocation, alternative to revocation, or denial of renewal under this subchapter.

SECTION \_\_\_\_\_. Subsection (a), Section 12.1164, Education Code, is amended to read as follows:

(a) The commissioner must notify the Teacher Retirement System of Texas in writing of the revocation~~[, denial of renewal,]~~ or surrender of a charter under this subchapter not later than the 10th business day after the date of the event.

SECTION \_\_\_\_\_. Section 12.117, Education Code, is amended by adding Subsections (c) and (d) to read as follows:

(c) An open-enrollment charter school for which a license is issued on or after September 1, 2011, may not admit a student unless the student:

(1) was enrolled in a public school in this state during the school year preceding the school year for which the student is seeking admission to the charter school; or

(2) is seeking admission for the first grade or a lower grade level.

(d) An open-enrollment charter school authorized by a license issued or charter granted under this subchapter to a municipality:

(1) is considered a work-site open-enrollment charter school for purposes of federal regulations regarding admissions policies that apply to open-enrollment charter schools receiving federal funding; and

(2) notwithstanding Subsection (a), may admit children of employees of the municipality to the school before conducting a lottery to fill remaining available positions, provided that the number of children admitted under this subdivision constitutes only a small percentage, as may be further specified by federal regulation, of the school's total enrollment.

SECTION \_\_\_\_\_. Subsection (a), Section 12.118, Education Code, is amended to read as follows:

(a) The commissioner shall designate an impartial organization with experience in evaluating school choice programs to conduct, under the supervision of the commissioner, an annual evaluation of open-enrollment charter schools.

SECTION \_\_\_\_\_. Subsection (c), Section 12.119, Education Code, is amended to read as follows:

(c) On request, the State Board of Education shall provide the information required by this section and Section 12.111(a)(7) [12.111(8)] to a member of the public. The board may charge a reasonable fee to cover the board's cost in providing the information.

SECTION \_\_\_\_\_. Section 12.156, Education Code, is amended to read as follows:

Sec. 12.156. APPLICABILITY OF CERTAIN PROVISIONS. (a) Except as otherwise provided by this subchapter, Subchapter D applies to a college or university charter school or junior college charter school as though the college or university charter school or junior college charter school, as applicable, were issued a license or granted a charter under that subchapter.

(b) A license issued or charter granted under this subchapter is not considered for purposes of the limit on the number of open-enrollment charter schools imposed by Section 12.101(b).

SECTION \_\_\_\_\_. Subsection (b), Section 12.113, Education Code, is repealed.

SECTION \_\_\_\_\_. The amendment of Subchapter D, Chapter 12, Education Code, by this Act, does not affect the status of a charter granted under Subchapter D, Chapter 12, Education Code, before the effective date of this Act and the implementation of licensing under Subchapter D, Chapter 12, Education Code, in accordance with this Act.

SECTION \_\_\_\_\_. Section 12.101, Education Code, as amended by this Act, and Sections 12.1011 and 12.10111, Education Code, as added by this Act, apply beginning with the 2012-2013 school year.

The amendment to **CSHB 6** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 14 except as follows:

Absent-excused: Ogden.

On motion of Senator Shapiro and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**CSHB 6** as amended was passed to third reading by the following vote: Yeas 18, Nays 12.

Yeas: Birdwell, Carona, Deuell, Duncan, Eltife, Estes, Fraser, Harris, Hegar, Huffman, Jackson, Nelson, Nichols, Patrick, Seliger, Shapiro, Wentworth, Williams.

Nays: Davis, Ellis, Gallegos, Hinojosa, Lucio, Rodriguez, Uresti, Van de Putte, Watson, West, Whitmire, Zaffirini.

Absent-excused: Ogden.

### MESSAGE FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

Tuesday, May 24, 2011 - 5

The Honorable President of the Senate  
Senate Chamber  
Austin, Texas

Mr. President:

I am directed by the House to inform the Senate that the House has taken the following action:

THE HOUSE HAS PASSED THE FOLLOWING MEASURES:

**SJR 14** Van de Putte Sponsor: Anderson,  
Charles "Doc"

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 26** West Sponsor: Turner  
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 37** Van de Putte Sponsor: Taylor, Van  
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 50** West Sponsor: Branch  
Proposing a constitutional amendment providing for the issuance of general obligation bonds of the state to finance educational loans to students.

Respectfully,

/s/Robert Haney, Chief Clerk  
House of Representatives

**BILLS AND RESOLUTIONS SIGNED**

The Presiding Officer announced the signing of the following enrolled bills and resolutions in the presence of the Senate after the captions had been read:

**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, 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.**

**HOUSE BILL 335 ON SECOND READING**

Senator Birdwell moved to suspend the regular order of business to take up for consideration **HB 335** at this time on its second reading:

**HB 335**, Relating to implementation and requirements of certain health care reform laws.

The motion prevailed by the following vote: Yeas 22, Nays 8.



Yeas: Birdwell, Carona, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Harris, Hegar, Hinojosa, Huffman, Jackson, Nelson, Nichols, Patrick, Seliger, Shapiro, Wentworth, West, Whitmire, Williams.

Nays: Davis, Gallegos, Lucio, Rodriguez, Uresti, Van de Putte, Watson, Zaffirini.

Absent-excused: Ogden.

The bill was read second time.

Senator Ellis offered the following amendment to the bill:

### **Floor Amendment No. 1**

Amend **HB 335** (senate committee printing) in SECTION 1 of the bill, in added Section 322.021(b), Government Code (page 1, lines 16 - 18), by striking "may not implement a provision of a federal health care reform law described by Subsection (c) unless the state agency submits" and substituting "shall submit".

The amendment to **HB 335** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1 except as follows:

Absent-excused: Ogden.

Senator Ellis offered the following amendment to the bill:

### **Floor Amendment No. 2**

Amend **HB 335** as follows:

(1) In SECTION 1 of the bill, in added Section 322.021(c) of the Government Code (Committee Printing page 1, line 26), between "expenditure" and "incurred", by inserting "and revenue".

(2) In SECTION 1 of the bill, in added Section 322.021(d)(4) of the Government Code (Committee Printing page 1, lines 56) by striking "and".

(3) In SECTION 1 of the bill, in added Section 322.021(d)(5) of the Government Code (Committee Printing page 1, line 57), between "cost" and "to", by inserting "and savings".

(4) In SECTION 1 of the bill, in added Section 322.021(d)(5) of the Government Code (Committee Printing page 1, line 58), by striking the period and inserting "; and".

(5) In SECTION 1 of the bill, in added Section 322.021(d) of the Government Code (Committee Printing page 1, between lines 59 and 60) by inserting the following new subdivisions:

(6) describe the amount of federal funding the agency uses to fund agency operations, including each federal program from which the agency receives or is eligible to receive federal funding; and

(7) describe the amounts of any increases in federal funding, including matching funds, that would be available to the agency if state funding for agency operations were increased.

The amendment to **HB 335** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 2 except as follows:

Absent-excused: Ogden.

Senator Ellis offered the following amendment to the bill:

**Floor Amendment No. 3**

Amend **HB 335** (senate committee printing) between SECTIONS 1 and 2 of the bill (page 1, between lines 58 and 59) by inserting the following appropriately numbered SECTION and renumbering the subsequent SECTION accordingly:

SECTION \_\_\_\_\_. The changes in law made by Section 322.021, Government Code, as added by this Act, apply only to a provision of federal health care reform law implemented by a state agency on or after the effective date of this Act. A provision of federal health care reform law implemented by a state agency 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.

The amendment to **HB 335** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 3 except as follows:

Absent-excused: Ogden.

On motion of Senator Birdwell and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**HB 335** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading except as follows:

Nays: Davis, Lucio, Rodriguez, Uresti, Van de Putte, Watson, Zaffirini.

Absent-excused: Ogden.

**HOUSE BILL 2329 ON SECOND READING**

On motion of Senator Van de Putte and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 2329** at this time on its second reading:

**HB 2329**, 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.

The bill was read second time.

Senator Van de Putte offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 2329** (senate committee report) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 25.026, Tax Code, is amended to read as follows:

Sec. 25.026. CONFIDENTIALITY OF CERTAIN ~~[VIOLENCE]~~ SHELTER CENTER AND SEXUAL ASSAULT PROGRAM ADDRESS INFORMATION.

(a) In this section:

(1) "Family violence shelter center" has the meaning assigned by Section 51.002, Human Resources Code.

(2) "Sexual assault program" has the meaning assigned by Section 420.003, Government Code.

(3) "Victims of trafficking shelter center" means a program that:

(A) is operated by a public or private nonprofit organization; and

(B) provides comprehensive residential and nonresidential services to victims of trafficking of persons under Section 20A.02, Penal Code.

(b) Information in appraisal records under Section 25.02 is confidential and is available only for the official use of the appraisal district, this state, the comptroller, and taxing units and political subdivisions of this state if the information identifies the address of a family violence shelter center, ~~[or]~~ a sexual assault program, or a victims of trafficking shelter center.

The amendment to **HB 2329** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1 except as follows:

Absent-excused: Ogden.

Senator Estes offered the following amendment to the bill:

**Floor Amendment No. 2**

Amend **HB 2329** (Senate Committee Printing) as follows:

(1) In SECTION 1 of the bill, in added Article 7B.01(a), Code of Criminal Procedure (page 1, line 22), between "the applicant and the" and "alleged", insert "offender or"

(2) In SECTION 1 of the bill, in added Article 7B.01(b)(2), Code of Criminal Procedure (page 1, line 29), between "in which the" and "alleged", insert "offender or".

(3) In SECTION 1 of the bill, in added Article 7B.02, Code of Criminal Procedure (page 1, 36) between "to the" and "alleged", insert "offender or".

(4) In SECTION 1 of the bill, in the heading to proposed Article 7B.03, Code of Criminal Procedure (page 1, line 39) between "ISSUANCE OF" and "PROTECTIVE", insert "TEMPORARY PRETRIAL".

(5) In SECTION 1 of the bill, in proposed Article 7B.03(a), Code of Criminal Procedure (page 1, line 43), between "offense" and "under", insert "for which the subject of the protective order has been charged".

(6) In SECTION 1 of the bill, in proposed Article 7B.03(b), Code of Criminal Procedure (page 1, line 49), between "offense" and "under", insert "for which the subject of the protective order has been charged".

(7) In SECTION 1 of the bill, in proposed Article 7B.03(b), Code of Criminal Procedure (page 1, line 53), between "issue a" and "protective", insert "temporary".

(8) In SECTION 1 of the bill, in proposed Article 7B.03(b), Code of Criminal Procedure (page 1, line 54), before the underlined period, insert ", to be effective until the date the alleged offender is convicted or acquitted, or until the date on which the case involving the offense under Section 20A.02, Penal Code, is finally disposed.

(9) In SECTION 1 of the bill, in proposed Chapter 7B, Code of Criminal Procedure (page 1, between lines 54 and 55), insert the following proposed article of the chapter, and renumber subsequent articles of the chapter accordingly:

Art. 7B.04. REQUIRED FINDINGS; ISSUANCE OF POST-TRIAL PROTECTIVE ORDER. (a) At the close of a hearing on an application for a protective order under this chapter, the court shall find whether there are reasonable grounds to believe that the applicant is the victim of an offense for which the subject of the protective order has been convicted under Section 20A.02, Penal Code, and:

(1) is younger than 18 years of age; or

(2) regardless of age, is the subject of a threat that reasonably places the applicant in fear of further harm from the alleged offender.

(b) If the court finds reasonable grounds to believe that the applicant is the victim of an offense for which the subject of the protective order has been convicted under Section 20A.02, Penal Code, and is younger than 18 years of age, or regardless of age, the subject of a threat that reasonably places the applicant in fear of further harm from the offender, the court shall issue a protective order that includes a statement of the required findings.

(10) In SECTION 1 of the bill, in added Article 7B.05(a)(1), Code of Criminal Procedure (page 1, line 61) between "order the" and "alleged", insert "offender or".

(11) In SECTION 1 of the bill, in added Article 7B.05(a)(2), Code of Criminal Procedure (page 2, line 2) between "prohibit the" and "alleged", insert "offender or".

(12) In SECTION 1 of the bill, in added Article 7B.05(b), Code of Criminal Procedure (page 2, line 20) between "that the" and "alleged", insert "offender or".

(13) In SECTION 1 of the bill, in added Article 7B.05(c), Code of Criminal Procedure (page 2, line 26) between "by the" and "alleged", insert "offender or".

(14) In SECTION 1 of the bill, in added Article 7B.06(b), Code of Criminal Procedure (page 2, line 39) strike "IS" and substitute "MAY BE".

(15) In SECTION 1 of the bill, in the heading to proposed Article 7B.07, Code of Criminal Procedure (page 2, line 53), between "OF" and "PROTECTIVE", insert "POST-TRIAL".

(16) In SECTION 1 of the bill, strike proposed Article 7B.07(d), Code of Criminal Procedure (page 2, line 68 through page 3, line 4), and reletter subsequent subsections of the article accordingly.

The amendment to **HB 2329** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 2 except as follows:

Absent-excused: Ogden.

On motion of Senator Van de Putte and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**HB 2329** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading except as follows:

Absent-excused: Ogden.

#### **HOUSE BILL 2329 ON THIRD READING**

Senator Van de Putte moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2329** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Ogden.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

#### **HOUSE BILL 2792 ON SECOND READING**

On motion of Senator Hegar and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 2792** at this time on its second reading:

**HB 2792**, 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.

The bill was read second time and was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading except as follows:

Absent-excused: Ogden.

#### **HOUSE BILL 2792 ON THIRD READING**

Senator Hegar moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2792** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Ogden.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

#### **COMMITTEE SUBSTITUTE HOUSE BILL 2663 ON SECOND READING**

On motion of Senator Seliger and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 2663** at this time on its second reading:

**CSHB 2663**, 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.

The bill was read second time and was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading except as follows:

Absent-excused: Ogden.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 2663 ON THIRD READING**

Senator Seliger moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 2663** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Ogden.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1400 ON SECOND READING**

On motion of Senator West and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 1400** at this time on its second reading:

**CSHB 1400**, Relating to the boundaries and financing of public improvement districts designated by a municipality or county.

The bill was read second time.

Senator West offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 1400** (senate committee printing) in SECTION 5 of the bill, in added Section 372.031, Local Government Code, by striking Subsection (d) (page 2, lines 28-30) and substituting the following:

(d) When a municipality or county subject to this section submits bonds or obligations payable from assessments to the attorney general for approval and examination, the municipality or county must demonstrate compliance with this section. The attorney general shall adopt rules in accordance with Chapter 1202, Government Code, that require the municipality or county to demonstrate the municipality's or county's:

- (1) ability to repay the bonds or obligations; and
- (2) compliance with the requirements of this subchapter.

The amendment to **CSHB 1400** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1 except as follows:

Absent-excused: Ogden.

On motion of Senator West and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**CSHB 1400** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading except as follows:

Absent-excused: Ogden.

#### **COMMITTEE SUBSTITUTE HOUSE BILL 1400 ON THIRD READING**

Senator West moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 1400** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Ogden.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

#### **HOUSE BILL 963 ON SECOND READING**

Senator Rodriguez moved to suspend the regular order of business to take up for consideration **HB 963** at this time on its second reading:

**HB 963**, Relating to the costs associated with proceedings regarding cruelly treated animals.

The motion prevailed.

Senator Patrick asked to be recorded as voting "Nay" on suspension of the regular order of business.

The bill was read second time and was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading except as follows:

Nays: Patrick.

Absent-excused: Ogden.

Absent: Williams.

#### **HOUSE BILL 963 ON THIRD READING**

Senator Rodriguez moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 963** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 1.

Nays: Patrick.

Absent-excused: Ogden.

Absent: Williams.

The bill was read third time and was passed by the following vote: Yeas 28, Nays 1. (Same as previous roll call)

**COMMITTEE SUBSTITUTE  
HOUSE BILL 2761 ON SECOND READING**

On motion of Senator West and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 2761** at this time on its second reading:

**CSHB 2761**, Relating to meetings, elections, and records of certain property owners' associations.

The bill was read second time.

Senator West offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 2761** (senate committee printing) as follows:

(1) In SECTION 2 of the bill, in the recital (page 3, line 68), strike "Sections 209.0051 and 209.0056" and substitute "Sections 209.0051, 209.0056, 209.0057, 209.0058, 209.0059, 209.00591, 209.00592, and 209.00593".

(2) In SECTION 2 of the bill, following added Section 209.0056, Property Code (page 6, between lines 2 and 3), insert the following:

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 latest management certificate filed under Section 209.004; or

(2) in person to the property owners' association's managing agent as reflected on the latest 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. In this subsection, "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.

(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.

(3) In SECTION 5 of the bill, insert the following appropriately designated subsection and redesignate subsections of the SECTION accordingly:

( ) Section 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.

(4) Add the following appropriately numbered SECTION to the bill and renumber SECTIONS of the bill accordingly:

SECTION \_\_\_\_ . Section 209.003, Property Code, is amended by adding Subsection (e) to read as follows:

(e) The following provisions of this chapter do not apply to a property owners' association that is a mixed-use master association that existed before January 1, 1974, and that does not have the authority under a dedicatory instrument or other governing document to impose fines:

(1) Section 209.005(c);

(2) Section 209.0056;

(3) Section 209.0057;

(4) Section 209.0058; and

(5) Section 209.00592.

The amendment to **CSHB 2761** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1 except as follows:

Absent-excused: Ogden.

On motion of Senator West and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**CSHB 2761** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading except as follows:

Absent-excused: Ogden.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 2761 ON THIRD READING**

Senator West moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 2761** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Ogden.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

**HOUSE BILL 2872 ON SECOND READING**

Senator Davis moved to suspend the regular order of business to take up for consideration **HB 2872** at this time on its second reading:

**HB 2872**, Relating to restrictions on the sale of certain motor vehicles at vehicle shows or exhibitions.

The motion prevailed.

Senator Seliger asked to be recorded as voting "Nay" on suspension of the regular order of business.

The bill was read second time and was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading except as follows:

Nays: Seliger.

Absent-excused: Ogden.

**HOUSE BILL 2872 ON THIRD READING**

Senator Davis moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2872** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Seliger.

Absent-excused: Ogden.

The bill was read third time and was passed by the following vote: Yeas 29, Nays 1. (Same as previous roll call)

**HOUSE BILL 2466 ON SECOND READING**

The Presiding Officer, Senator Eltife in Chair, laid before the Senate **HB 2466** sponsored by Senator Carona on its second reading. The bill had been read second time, an amendment offered, and further consideration temporarily postponed:

**HB 2466**, Relating to the licensing and operation of motor vehicles by minors.

Question — Shall Floor Amendment No. 1 to **HB 2466** be adopted?

Senator Hegar again offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 2466** (Senate committee printing) as follows:

(1) In SECTION 2 of the bill, in Section 521.296, Transportation Code (page 1, line 54), strike "or 521.2965".

(2) Strike SECTION 4 of the bill and renumber subsequent sections accordingly.

The amendment to **HB 2466** was again read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1 except as follows:

Absent-excused: Ogden.

On motion of Senator Carona and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**HB 2466** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading except as follows:

Absent-excused: Ogden.

**HOUSE BILL 2466 ON THIRD READING**

Senator Carona moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2466** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Ogden.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

**COMMITTEE SUBSTITUTE  
HOUSE BILL 9 ON SECOND READING**

On motion of Senator Zaffirini and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 9** at this time on its second reading:

**CSHB 9**, Relating to student success-based funding for and reporting regarding public institutions of higher education.

The bill was read second time.

Senator Watson offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 9** (Senate Committee Printing) in SECTION 3 of the bill, in added Section 61.0593(d), Education Code, by striking page 2, lines 41 through 52, and substituting the following:

(d) This subsection applies only to a general academic teaching institution other than a public state college. In devising its funding formulas and making its recommendations to the legislature relating to institutional appropriations of funds under Section 61.059 for institutions to which this subsection applies, the board, in the manner and to the extent the board considers appropriate and in consultation with those institutions, shall incorporate the consideration of undergraduate student success measures achieved during the preceding state fiscal biennium by each of the institutions. At the time the board makes those recommendations, the board shall also make recommendations for incorporating the success measures, to the extent the board considers appropriate in consultation with those institutions, into the distribution of any incentive funds available for those institutions, including performance incentive funds under Subchapter D, Chapter 62. The board's recommendations must provide alternative approaches for applying the success measures and must compare the effects on funding of applying the success measures within the formula for base funding to applying the success measures as a separate formula. The success measures considered by the board under this subsection may include:

The amendment to **CSHB 9** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1 except as follows:

Absent-excused: Ogden.

On motion of Senator Zaffirini and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**CSHB 9** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading except as follows:

Absent-excused: Ogden.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 9 ON THIRD READING**

Senator Zaffirini moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 9** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Ogden.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

**MOTION TO PLACE  
HOUSE BILL 971 ON SECOND READING**

Senator Fraser moved to suspend the regular order of business to take up for consideration **HB 971** at this time on its second reading:

**HB 971**, 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.

Senator Fraser withdrew the motion to suspend the regular order of business.

**HOUSE BILL 2365 ON SECOND READING**

On motion of Senator Shapiro and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 2365** at this time on its second reading:

**HB 2365**, Relating to certain responsibilities of education research centers and to a joint advisory board for education research centers.

The bill was read second time.

Senator Shapiro offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 2365** (senate committee report) as follows:

(1) In SECTION 1 of the bill, in the introductory language (page 1, line 13), between "(g-1)," and "(l)", insert "(g-2),".

(2) In SECTION 1 of the bill, in amended Section 1.005(e), Education Code (page 1, line 22), between "state" and ":", insert ", giving priority to projects required under Subsection (f)(1)".

(3) In SECTION 1 of the bill, strike Section 1.005(g)(1), Education Code (page 1, lines 24-29), and substitute the following:

(1) may use and store data [~~on student performance~~], including data that is confidential under the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g), [~~the center has collected~~] from the Texas Education Agency, the coordinating board, any other state agency, any public or private institution of higher education, [and] any school district, any provider of services to public or private institutions of higher education or to school districts, and any entity explicitly named in an approved research project of a center; and

(4) In SECTION 1 of the bill, immediately following added Section 1.005(g-1), Education Code (page 1, between lines 44 and 45), insert the following:

(g-2) The Texas Education Agency and the coordinating board shall longitudinally link all data under Subsection (g)(1), to the greatest extent practicable.

(5) In SECTION 1 of the bill, in amended Section 1.005(k), Education Code (page 1, line 54), following "the center.", insert the following:

A center shall report annually to the commissioner of education and the commissioner of higher education the total amount of fees collected by the center for each purpose for which a fee is imposed under Subsection (h)(2).

(6) In SECTION 1 of the bill, in added Section 1.005(m), Education Code (page 1, line 59), strike "On behalf" and substitute "Subject to Subsection (n), on behalf".

(7) In SECTION 1 of the bill, following added Section 1.005(m), Education Code (page 2, between lines 1 and 2), insert the following:

(n) The commissioner of education and the coordinating board may, on behalf of a center, enter into a data agreement with the state education agency of another state only if:

(1) the United States Department of Education reviews the agreement; and

(2) the state education agency of the other state agrees to comply with all data security measures required of a center.

(8) In SECTION 2 of the bill, in added Section 1.006(c), Education Code (page 2, line 17), strike "three" and substitute "10".

(9) In SECTION 2 of the bill, in added Section 1.006(c), Education Code (page 2, lines 19-22), strike "The chief executive officer of each public institution of higher education of which a center is a part shall appoint not more than two additional members to the joint advisory board to serve one-year terms.", and substitute "The joint advisory board must include at least two educational researchers experienced in working with secure data.".

(10) In SECTION 2 of the bill, in added Section 1.006(c), Education Code (page 2, line 23), strike "appropriate appointing authority" and substitute "commissioner of education and the commissioner of higher education".

The amendment to **HB 2365** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1 except as follows:

Absent-excused: Ogden.

Senator Shapiro offered the following amendment to the bill:

### **Floor Amendment No. 2**

Amend **HB 2365** (senate committee printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering the subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 51.751, Education Code, is amended by amending Subsections (a), (b), and (c) and adding Subsection (e) to read as follows:

(a) ~~The Educational Economic Policy Center [is created as a consortium of universities. Each public senior college or university in the state shall participate in the Educational Economic Policy Center at the request of the governor. The center]~~ shall represent business, finance, public policy, ~~[education,~~ and other appropriate disciplines.

(b) ~~The center shall examine the efficiency of the public school system and [the effectiveness of instructional methods and curricular programs and promote the use of successful methods and programs. The center shall monitor and evaluate the~~



~~implementation of the accountability system under Chapter 39 and~~ provide annual progress reports to the governor, Legislative Budget Board, and commissioner of education.

(c) The center may be funded by donations, grants, and legislative appropriations. ~~[The office of the governor may receive grants and donations for the purposes of this subchapter.]~~

(e) In performing its duties under this section, the center may use research conducted by an education research center established under Section 1.005.

SECTION \_\_\_\_ . Sections 51.752(b), (d), and (g), Education Code, are amended to read as follows:

(b) The committee is composed of three ~~[nine]~~ members. The governor, lieutenant governor, and speaker of the house of representatives shall each appoint one member ~~[two members, only one of whom may be a board member or employee of a public school district, college, or university]~~. Those appointees shall include persons in the private sector who have an interest in improving public education. ~~[In addition, the governor shall appoint three members who serve on the boards of regents representing the universities or systems participating in the center.]~~

(d) The ~~[governor shall appoint one member of the]~~ committee shall elect a ~~[as the]~~ chairman from among its members.

(g) The committee shall report to the Legislative Budget Board at least once a year. The committee shall also report to the governor, the State Board of Education, ~~[the Texas Higher Education Coordinating Board,]~~ and the legislature before the convening of each regular session.

SECTION \_\_\_\_ . The terms of members of the Educational Economic Policy Committee serving on the effective date of this Act expire February 1, 2012, and members shall be appointed in accordance with Section 51.752(b), Education Code, as amended by this Act, for terms to begin February 1, 2012. Members whose terms begin February 1, 2012, shall draw lots to determine which two members will serve terms expiring February 1, 2014, and which member will serve a term expiring February 1, 2013.

The amendment to **HB 2365** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 2 except as follows:

Absent-excused: Ogden.

On motion of Senator Shapiro and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**HB 2365** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading except as follows:

Absent-excused: Ogden.

**HOUSE BILL 2365 ON THIRD READING**

Senator Shapiro moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2365** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Ogden.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

**RECESS**

On motion of Senator Whitmire, the Senate at 6:51 p.m. recessed until 7:30 p.m. today.

**AFTER RECESS**

The Senate met at 7:45 p.m. and was called to order by Senator Eltife.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 3 ON SECOND READING**

On motion of Senator Huffman and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 3** at this time on its second reading:

**CSHB 3**, Relating to the imposition of a sentence of life without parole on certain defendants who commit certain sexual offenses.

The bill was read second time and was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading except as follows:

Absent-excused: Ogden.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 3 ON THIRD READING**

Senator Huffman moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 3** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Ogden.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1754 ON SECOND READING**

Senator Wentworth moved to suspend the regular order of business to take up for consideration **CSHB 1754** at this time on its second reading:

**CSHB 1754**, 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.

The motion prevailed.

Senators Huffman, Nelson, and Williams asked to be recorded as voting "Nay" on suspension of the regular order of business.

The bill was read second time.

Senator Wentworth offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 1754** (senate committee printing) in SECTION 1 of the bill as follows:

(1) In added Section 79.035(b)(2)(C), Government Code (page 5, line 7), strike "and".

(2) In added Section 79.035(b)(2)(D), Government Code (page 5, line 9), between "state" and the underlined period, insert the following:  
; and

(E) the findings of a report submitted to the commission under Section 79.039

(3) In added Subchapter C, Chapter 79, Government Code (page 6, between lines 35 and 36), insert the following:

Sec. 79.039. EXONERATION REPORT. (a) Each legal clinic or program in this state that is operated by a law school and that receives financial support from the commission shall submit to the commission an annual report regarding criminal cases:

(1) in which the clinic or program has provided legal services to an indigent defendant during the preceding calendar year; and

(2) in which:

(A) based on a finding of actual innocence, the court of criminal appeals overturns a conviction; or

(B) the governor issues a pardon based on actual innocence.

(b) The report required under Subsection (a) must:

(1) identify each likely cause of a wrongful conviction listed in the report; and

(2) recommend to the judiciary and the legislature best practices, policies, and statutory changes to address or mitigate those likely causes with respect to future criminal cases.

(4) Add the following appropriately numbered SECTION to the bill and renumber subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Not later than December 1, 2012, each legal clinic or program in this state that is operated by a law school and that receives financial support from the Texas Indigent Defense Commission shall submit the initial report required by Section 79.039, Government Code, as added by this Act.

The amendment to **CSHB 1754** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1 except as follows:

Nays: Huffman, Nelson.

Absent-excused: Ogden.

Senator Wentworth offered the following amendment to the bill:

**Floor Amendment No. 2**

Amend **CSHB 1754** (senate committee printing) in SECTION 1 of the bill as follows:

(1) In added Section 79.001(3), Government Code (page 1, line 27), strike "agency" and substitute "permanent standing committee of the council".

(2) In added Section 79.002, Government Code (page 1, lines 60 through 61), strike ". The commission is an agency in the judicial branch of this state" and substitute "as a permanent standing committee of the council".

(3) Strike added Section 79.003, Government Code (page 2, lines 1 through 4).

(4) In added Section 79.011(b), Government Code (page 2, line 10), strike "79.038" and substitute "79.033(b)".

(5) Strike added Section 79.033, Government Code (page 3, lines 58 through 61), and substitute the following:

Sec. 79.033. ADMINISTRATIVE ATTACHMENT; SUPPORT; BUDGET. (a) The commission is administratively attached to the Office of Court Administration of the Texas Judicial System.

(b) The office of court administration shall provide administrative support services, including human resources, budgetary, accounting, purchasing, payroll, information technology, and legal support services, to the commission as necessary to carry out the purposes of this chapter.

(c) The commission, in accordance with the rules and procedures of the Legislative Budget Board, shall prepare, approve, and submit a legislative appropriations request that is separate from the legislative appropriations request for the Office of Court Administration of the Texas Judicial System and is used to develop the commission's budget structure. The commission shall maintain the legislative appropriations request and budget structure separately from those of the office of court administration.

(6) Strike added Section 79.038, Government Code (page 6, lines 32 through 35).

The amendment to **CSHB 1754** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 2 except as follows:

Nays: Huffman, Nelson.

Absent-excused: Ogden.

On motion of Senator Wentworth and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**CSHB 1754** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading except as follows:

Nays: Huffman, Nelson, Williams.

Absent-excused: Ogden.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1754 ON THIRD READING**

Senator Wentworth moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 1754** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 27, Nays 3.

Yeas: Birdwell, Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hegar, Hinojosa, Jackson, Lucio, Nichols, Patrick, Rodriguez, Seliger, Shapiro, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Zaffirini.

Nays: Huffman, Nelson, Williams.

Absent-excused: Ogden.

The bill was read third time and was passed by the following vote: Yeas 27, Nays 3. (Same as previous roll call)

**SENATE RULE 7.21 SUSPENDED  
(House Amendments to Senate Bills)**

On motion of Senator Watson and by unanimous consent, Senate Rule 7.21, as it relates to the printing and distribution of the House amendments to **SB 768**, was suspended.

**SENATE BILL 768 WITH HOUSE AMENDMENTS**

Senator Watson called **SB 768** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

**Floor Amendment No. 1**

Amend **SB 768** (house committee printing) as follows:

(1) In SECTION 1 of the bill, strike added Section 8379.004(b), Special District Local Laws Code (page 2, lines 6-15), and substitute the following:

(b) If the city does not consent to the creation of the district under this section before September 1, 2012:

(1) the district is dissolved September 1, 2012, except that:

(A) any debts incurred shall be paid;

(B) any assets that remain after the payment of debts shall be transferred to the city or another local governmental entity to be used for a public purpose; and

(C) the organization of the district shall be maintained until all debts are paid and remaining assets are transferred; and

(2) this chapter expires September 1, 2012.

(2) In SECTION 1 of the bill, in added Section 8379.007, Special District Local Laws Code (page 3, line 20), strike "created by a municipality in which the district is located".

(3) In SECTION 1 of the bill, strike added Section 8379.054(a), Special District Local Laws Code (page 4, lines 20-26), and substitute the following:

(a) The temporary board consists of:

(1) Jeff Frank;

(2) Gordon Westergren;

(3) Steve Soward;

(4) Clint Walker; and

(5) Rob Riviere.

(4) In SECTION 1 of the bill, in added Section 8379.105, Special District Local Laws Code (page 6, lines 7-8), strike "CONSENT ORDINANCE OR RESOLUTION. The district" and substitute "CONSENT AGREEMENT, ORDINANCE, OR RESOLUTION. (a) The district".

(5) In SECTION 1 of the bill, in added Section 8379.105, Special District Local Laws Code (page 6, between lines 12 and 13), insert the following:

(b) Any agreement between the district and the city related to the city's consent to the creation of the district is valid and enforceable.

(c) On the issuance of bonds, the district is considered to have acknowledged and consented to the exercise of the city's authority as to actions taken by the city under Section 54.016(g), Water Code.

(6) In SECTION 1 of the bill, in added Section 8379.108, Special District Local Laws Code (page 7, line 4), strike "RECLAMATION AND GRADING POWERS" and substitute "MASS GRADING AND IMPROVEMENTS TO LAND IN THE DISTRICT".

(7) In SECTION 1 of the bill, in added Section 8379.302(d), Special District Local Laws Code (page 12, line 13), strike "Rio de Vida Municipal Utility District No. 1" and substitute "(insert name of district or name of new district created under Subchapter D)".

(8) In SECTION 1 of the bill, strike added Section 8379.401, Special District Local Laws Code (page 15, lines 9-11), and substitute the following:

Sec. 8379.401. APPLICABILITY OF LAW ON ANNEXATION OF DISTRICT. (a) The district is a "water or sewer district" for the purposes of Section 43.071, Local Government Code.

(b) Sections 43.0561 and 43.0562, Local Government Code, do not apply to the annexation of the district.

(9) In SECTION 1 of the bill, strike added Section 8379.404, Special District Local Laws Code (page 16, lines 1-3).

(10) In SECTION 1 of the bill, in added Section 8379.405, Special District Local Laws Code (page 16, line 4), strike "Sec. 8379.405" and substitute "Sec. 8379.404".

**Floor Amendment No. 2**

Amend **SB 768** as follows:

(1) In SECTION 1 of the bill, strike added Section 8379.003, Special District Local Laws Code, and substitute the following new Section 8379.003, Special District Local Laws Code:

"Sec. 8379.003. CONFIRMATION AND DIRECTORS' ELECTION REQUIRED. The temporary directors shall hold an election to confirm the creation of the district and to elect permanent directors as provided in Section 8379.051 of this chapter and Section 49.107, Water Code."

(2) In SECTION 1 of the bill, strike added Section 8379.051, Special District Local Laws Code, and substitute the following new Section 8379.051, Special District Local Laws Code:

"Sec. 8379.051. GOVERNING BODY; TERMS. (a) Except as provided by Subsection (b), the district is governed by a board of five elected directors.

(b) If required under the terms of the agreement, ordinance, or resolution by which a municipality consents to the creation of the district, the board consists of:

(1) four elected directors; and

(2) one director appointed by the governing body of the municipality.

(c) A director appointed under Subsection (b)(2) is not required to be a qualified voter of the district or to own land subject to taxation in the district.

(d) Except as provided by Section 8379.052, directors serve staggered four-year terms.

(e) The common law doctrine of incompatibility of office does not disqualify an official or employee of a municipality from being appointed a director by the governing body of a municipality under Subsection (b)(2), and a director appointed to the board may continue to serve in a public office of or be employed by the municipality."

(3) In SECTION 1 of the bill, strike added Sections 8379.052, Special District Local Laws Code, and substitute the following new 8379.052, Special District Local Laws Code:

"Sec. 8379.052. TEMPORARY DIRECTORS. (a) The temporary board consists of:

(1) Jeff Frank;

(2) Gordon Westergren;

(3) Steve Soward;

(4) Clint Walker; and

(5) Rob Riviere.

(b) Temporary directors serve until the earlier of:

(1) the date permanent directors are elected under Section 8379.003; or

(2) the fourth anniversary of the effective date of the Act enacting this chapter.

(c) If permanent directors have not been elected under Section 8379.003 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 8379.003; 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."

(4) In SECTION 1 of the bill, strike added Sections 8379.053 and 8379.054, Special District Local Laws Code, and renumber the sections reserved for expansion accordingly.

The amendments were read.

Senator Watson moved to concur in the House amendments to **SB 768**.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Ogden.

### COMMITTEE SUBSTITUTE HOUSE BILL 1103 ON THIRD READING

Senator Ellis again moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 1103** be placed on its third reading and final passage:

**CSHB 1103**, Relating to the civil and criminal consequences of certain criminal offenses involving animal cruelty.

The motion prevailed by the following vote: Yeas 25, Nays 5.

Yeas: Birdwell, Carona, Davis, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hegar, Hinojosa, Huffman, Lucio, Nelson, Rodriguez, Seliger, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Deuell, Jackson, Nichols, Patrick, Shapiro.

Absent-excused: Ogden.

The bill was read third time.

Senator Seliger offered the following amendment to the bill:

#### **Floor Amendment No. 1 on Third Reading**

Amend **CSHB 1103** on third reading as follows:

(1) In SECTION 2 of the bill, in added Article 61A.02, Code of Criminal Procedure (page 1, line 35), strike "; PUBLIC INFORMATION".

(2) In SECTION 2 of the bill, in added Article 61A.02, Code of Criminal Procedure, strike Subsections (c) and (d) (page 1, lines 50-55), and reletter subsequent subsections accordingly.

(3) In SECTION 2 of the bill, in added Article 61A.03, Code of Criminal Procedure (page 2, line 30), strike "PEACE OFFICER" and substitute "LAW ENFORCEMENT".

(4) In SECTION 2 of the bill, in added Article 61A.03, Code of Criminal Procedure (page 2, line 31), between the period and "The", insert the following:



"(a) In this section, "animal control officer" has the meaning assigned by Section 829.001, Health and Safety Code.

(b)".

(5) In SECTION 2 of the bill, in added Article 61A.03, Code of Criminal Procedure (page 2, line 32), strike "or employee" and substitute ", an animal control officer employed by a county or municipality, or an employee".

(6) In SECTION 2 of the bill, strike added Article 61A.04, Code of Criminal Procedure (page 2, lines 41-61) and renumber subsequent articles accordingly.

(7) In SECTION 4 of the bill (page 3, line 49), strike "subsection (e)".

(8) Strike SECTION 3 of the bill, and renumber subsequent SECTIONS accordingly.

The amendment to **CSHB 1103** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1 on Third Reading except as follows:

Absent-excused: Ogden.

On motion of Senator Ellis and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**CSHB 1103** as amended was finally passed by the following vote: Yeas 25, Nays 5.

Yeas: Birdwell, Carona, Davis, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hegar, Hinojosa, Huffman, Lucio, Nelson, Rodriguez, Seliger, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Deuell, Jackson, Nichols, Patrick, Shapiro.

Absent-excused: Ogden.

### **HOUSE BILL 1517 ON SECOND READING**

Senator Hegar moved to suspend the regular order of business to take up for consideration **HB 1517** at this time on its second reading:

**HB 1517**, Relating to the disposition of fines for traffic violations collected by certain municipalities.

The motion prevailed.

Senator Harris asked to be recorded as voting "Nay" on suspension of the regular order of business.

The bill was read second time.

Senator Lucio offered the following amendment to the bill:

#### **Floor Amendment No. 1**

Amend **HB 1517** (senate committee report) as follows:

(1) Strike SECTION 1 of the bill (page 1, lines 12-20) and substitute the following:

SECTION 1. Section 542.402, Transportation Code, is amended by amending Subsections (a), (c), and (e) and adding Subsections (b-1), (b-2), (d-1), and (f) to read as follows:

(a) Except as provided by Subsection (b-1), a [A] municipality or county shall use a fine collected for a violation of a highway law in this title to:

(1) construct and maintain roads, bridges, and culverts in the municipality or county;

(2) enforce laws regulating the use of highways by motor vehicles; and

(3) defray the expense of county traffic officers.

(b-1) A county having a population of less than 5,000 may use a fine collected for a violation of a highway law as the county determines appropriate.

(b-2) In each fiscal year, a county having a population of less than 5,000 may retain, from fines collected for violations of this title and from special expenses collected under Article 45.051, Code of Criminal Procedure, in cases in which a violation of this title is alleged, an amount equal to 30 percent of the county's revenue for the preceding fiscal year from all sources, other than federal funds and bond proceeds, as shown by an audit performed under Chapter 115, Local Government Code. After a county has retained that amount, the county shall send to the comptroller any portion of a fine or a special expense collected that exceeds \$1.

(c) The comptroller shall enforce Subsections [~~Subsection~~] (b) and (b-1).

(d-1) In a fiscal year in which a county retains from fines and special expenses collected for violations of this title an amount equal to at least 20 percent of the county's revenue for the preceding fiscal year from all sources other than federal funds and bond proceeds, not later than the 120th day after the last day of the county's fiscal year, the county shall send to the comptroller:

(1) a copy of the county's financial statement; and

(2) a report that shows the total amount collected for that fiscal year from fines and special expenses under Subsection (b-1).

(e) If an audit is conducted by the comptroller under Subsection (c) and it is determined that the municipality or county is retaining more than 20 percent of the amounts under Subsection (b) or (b-1), as applicable, and has not complied with Subsection (d) or (d-1), as applicable, the municipality shall pay the costs incurred by the comptroller in conducting the audit.

(f) A municipality may include the revenue of a utility company operating within the municipality as municipal revenue for a fiscal year under Subsection (b) if:

(1) the municipality has a population of more than 1,000 but less than 1,200; and

(2) part of the municipality's boundary is a river that forms part of the boundary between two counties.

(2) Add the following appropriately numbered SECTION to the bill and renumber the subsequent SECTION accordingly:

SECTION \_\_\_\_. The change in law made by this Act in amending Sections 542.402(c) and (e) and in adding Sections 542.402(b-1) and (d-1) applies only to the fiscal year of a county that begins on or after the effective date of this Act.

The amendment to **HB 1517** was read.

Senator Hegar offered the following amendment to Floor Amendment No. 1:

**Floor Amendment No. 2**

Amend Floor Amendment No. 1 (Lucio) to **HB 1517**, in SECTION 1 of the amendment, in added Section 542.402(f), Transportation Code (page 2, line 17), by striking "of" and substituting "generated from services provided in the municipality by".

The amendment to Floor Amendment No. 1 to **HB 1517** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 2 except as follows:

Absent-excused: Ogden.

Question recurring on the adoption of Floor Amendment No. 1 to **HB 1517**, the amendment as amended was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1 as amended except as follows:

Absent-excused: Ogden.

On motion of Senator Hegar and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**HB 1517** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading except as follows:

Nays: Harris.

Absent-excused: Ogden.

**HOUSE BILL 1517 ON THIRD READING**

Senator Hegar moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1517** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Harris.

Absent-excused: Ogden.

The bill was read third time and was passed by the following vote: Yeas 29, Nays 1. (Same as previous roll call)

**HOUSE BILL 1541 ON SECOND READING**

On motion of Senator Wentworth and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 1541** at this time on its second reading:

**HB 1541**, Relating to the prevention of automobile burglary and theft.

The bill was read second time.

Senator Williams offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 1541** (senate committee report) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS accordingly:

SECTION \_\_\_\_\_. Section 10, Article 4413(37), Revised Statutes, is amended by amending Subsection (b) and adding Subsection (e) to read as follows:

(b) An insurer shall pay to the authority a fee equal to \$2 [~~\$1~~] multiplied by the total number of motor vehicle years of insurance for insurance policies delivered, issued for delivery, or renewed by the insurer. The fee shall be paid not later than:

(1) March 1 of each year for a policy issued, delivered, or renewed from July 1 through December 31 of the previous calendar year; and

(2) August 1 of each year for a policy issued, delivered, or renewed from January 1 through June 30 of that year.

(e) Fifty percent of each fee collected under Subsection (b) may be appropriated only to the authority for the purposes of this article.

SECTION \_\_\_\_\_. The changes in law made by Section 10, Article 4413(37), Revised Statutes, as amended by this Act, apply only to an insurance policy issued, delivered, or renewed on or after the effective date of this Act. An insurance policy issued, delivered, or renewed before the effective date of this Act is governed by the law in effect on the date the insurance policy was issued, delivered, or renewed, and the former law is continued in effect for that purpose.

WILLIAMS  
LUCIO

The amendment to **HB 1541** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1 except as follows:

Nays: Birdwell.

Absent-excused: Ogden.

On motion of Senator Wentworth and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**HB 1541** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading except as follows:

Absent-excused: Ogden.

**HOUSE BILL 1541 ON THIRD READING**

Senator Wentworth moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1541** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Ogden.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

### **HOUSE BILL 890 ON SECOND READING**

On motion of Senator Davis and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 890** at this time on its second reading:

**HB 890**, Relating to certain custom vehicles and street rods.

The bill was read second time and was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading except as follows:

Absent-excused: Ogden.

### **HOUSE BILL 890 ON THIRD READING**

Senator Davis moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 890** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Ogden.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

### **SENATE CONCURRENT RESOLUTION 58**

The Presiding Officer laid before the Senate the following resolution:

WHEREAS, Senate Bill No. 768 has been adopted by the senate and the house of representatives and is being prepared for enrollment; and

WHEREAS, The bill contains technical errors that should be corrected; now, therefore, be it

RESOLVED by the 82nd Legislature of the State of Texas, That the enrolling clerk of the senate be instructed to correct Senate Bill No. 768 as follows:

(1) In SECTION 1 of the bill, in Section 8379.003, Special District Local Laws Code, as added by House Floor Amendment No. 2 (2nd reading), strike "Section 49.107" and substitute "Section 49.102".

(2) In SECTION 1 of the bill, at the end of Subsection (d), Section 8379.051, Special District Local Laws Code, as added by House Floor Amendment No. 2 (2nd reading), add the following: "A permanent director may not serve more than two four-year terms.".

**SCR 58** was read.

On motion of Senator Lucio, the resolution was considered immediately and was adopted by the following vote: Yeas 30, Nays 0.

Absent-excused: Ogden.

### **HOUSE BILL 971 ON SECOND READING**

Senator Fraser again moved to suspend the regular order of business to take up for consideration **HB 971** at this time on its second reading:

**HB 971**, 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.

The motion prevailed without objection.

The bill was read second time.

Senator Fraser offered the following committee amendment to the bill:

#### **Committee Amendment No. 1**

Amend **HB 971** as follows:

(1) In SECTION 1 of the bill, in the introductory language (page 1, line 7), between "(c)" and "to" insert "and Subsection (d)".

(2) In SECTION 1 of the bill, in amended Section 37.053, Utilities Code (page 1, between lines 10 and 11), insert the following:

(d) For transmission facilities ordered or approved by the commission under Chapters 37 or 39 to mitigate market power in accordance with Section 39.157(a), address reliability needs, or to otherwise ensure the competitiveness of electricity markets in this state, the rights extended to an electric corporation under Section 181.004 extend to all public and private land on which the commission has approved the construction of the line. This subsection does not limit a municipality's rights or an electric utility's obligations under Chapter 33.

(3) In SECTION 3 of the bill (page 1, line 14), strike "This Act" and substitute "The change in law made by this Act to Section 37.053(c), Utilities Code,".

The amendment to **HB 971** was read.

Senator Fraser offered the following amendment to Committee Amendment No. 1:

#### **Floor Amendment No. 1**

Amend Committee Amendment No. 1 to **HB 971** (Committee report) as follows:

(1) On page 1, lines 16-19, in added Section 37.053(d), strike "to mitigate market power in accordance with Section 39.157(a), address reliability needs, or to otherwise ensure the competitiveness of electricity markets in this state".

(2) On page 1, line 20, in added Section 37.053(d), strike "extend to all public and private land" and substitute "include all public land, except land owned by the state,".

(3) On page 1, line 23, in added Section 37.053(d), after ":", insert "Nothing in this subsection shall be interpreted to prevent a public entity from expressing a route preference in a proceeding under this chapter."

The amendment to Committee Amendment No. 1 to **HB 971** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1 except as follows:

Absent-excused: Ogden.

Question recurring on the adoption of Committee Amendment No. 1 to **HB 971**, the amendment as amended was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Committee Amendment No. 1 as amended except as follows:

Absent-excused: Ogden.

Senator Hegar offered the following amendment to the bill:

#### **Floor Amendment No. 2**

Amend **HB 971** (senate committee report) by adding the following appropriately numbered SECTION and renumbering the subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. (a) Section 37.056, Utilities Code, is amended by adding Subsection (d) to read as follows:

(d) The commission by rule shall establish criteria, in addition to the criteria described by Subsection (c), for granting a certificate for a transmission project that serves the ERCOT power region, that is not necessary to meet state or federal reliability standards, and that does not serve a competitive renewable energy zone. The criteria must include a comparison of the estimated cost of the transmission project and the estimated cost savings that may result from the transmission project. The commission shall include with its decision on an application for a certificate to which this subsection applies findings on the criteria.

(b) The change in law made by this section applies only to a certificate application filed with the Public Utility Commission of Texas on or after the effective date of this Act and to a certificate application pending on the effective date of this Act. A certificate application filed with the Public Utility Commission of Texas before the effective date of this Act and not pending on the effective date of this Act is subject to the law in effect on the date the application is filed, and that law is continued in effect for that purpose.

The amendment to **HB 971** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 2 except as follows:

Absent-excused: Ogden.

**(President in Chair)**

On motion of Senator Fraser and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**HB 971** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading except as follows:

Absent-excused: Ogden.

**HOUSE BILL 971 ON THIRD READING**

Senator Fraser moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 971** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Ogden.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

**MOTION TO PLACE  
HOUSE BILL 1937 ON SECOND READING**

Senator Patrick moved to suspend the regular order of business to take up for consideration **HB 1937** at this time on its second reading:

**HB 1937**, Relating to prosecution and punishment for the offense of official oppression by the intrusive touching of persons seeking access to public buildings and transportation; providing penalties.

Senator Patrick withdrew the motion to suspend the regular order of business.

**SENATE BILL 1338 WITH HOUSE AMENDMENT**

Senator Eltife called **SB 1338** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

**Floor Amendment No. 1**

Amend **SB 1338** (house committee report) by striking page 2, line 26, through page 3, line 15.

The amendment was read.

Senator Eltife moved that the Senate do not concur in the House amendment, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed without objection.

The President asked if there were any motions to instruct the conference committee on **SB 1338** before appointment.

There were no motions offered.



The President announced the appointment of the following conferees on the part of the Senate: Senators Eltife, Chair; Uresti, Seliger, Hegar, and Zaffirini.

**SENATE BILL 958 WITH HOUSE AMENDMENTS**

Senator Wentworth called **SB 958** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

**Amendment**

Amend **SB 958** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to the regulation of dangerous wild animals.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 822.101, Health and Safety Code, is amended by adding Subdivision (8) to read as follows:

(8) "Wildlife sanctuary" means a public charitable organization that:

(A) is exempt from taxation under Section 501(a), Internal Revenue Code of 1986, by being listed as an exempt organization under Section 501(c)(3) of that code;

(B) is described by Section 170(b)(1)(A)(vi), Internal Revenue Code of 1986;

(C) operates a place of refuge where an abused, neglected, unwanted, impounded, abandoned, orphaned, or displaced wild animal is:

(i) provided care for the animal's lifetime;

(ii) transferred to another wildlife sanctuary; or

(iii) released back to the animal's natural habitat; and

(D) with respect to a wild animal owned by the organization, does not:

(i) conduct any commercial activity; or

(ii) breed the animal.

SECTION 2. Section 822.102(a), Health and Safety Code, is amended to read as follows:

(a) This subchapter does not apply to:

(1) a county, municipality, or agency of the state or an agency of the United States or an agent or official of a county, municipality, or agency acting in an official capacity;

(2) a research facility, as that term is defined by Section 2(e), Animal Welfare Act (7 U.S.C. Section 2132), and its subsequent amendments, that is licensed by the secretary of agriculture of the United States under that Act;

(3) an organization that is an accredited member of the American Zoo and Aquarium Association;

(4) an injured, infirm, orphaned, or abandoned dangerous wild animal while being transported for care or treatment;

(5) a sick or ~~an~~ injured~~[, infirm, orphaned, or abandoned]~~ dangerous wild animal while being rehabilitated or~~;~~ treated~~[, or cared for]~~ by and in the temporary possession of a licensed veterinarian~~[, an incorporated humane society or animal shelter]~~, or a person who holds a rehabilitation permit issued under Subchapter C, Chapter 43, Parks and Wildlife Code, for the animal being rehabilitated or treated;

(6) a dangerous wild animal owned by and in the custody and control of a transient circus company that is not based in this state if:

(A) the animal is used as an integral part of the circus performances; and

(B) the animal is kept within this state only during the time the circus is performing in this state or for a period not to exceed 30 days while the circus is performing outside the United States;

(7) a dangerous wild animal while in the temporary custody or control of a television or motion picture production company during the filming of a television or motion picture production in this state;

(8) a dangerous wild animal owned by and in the possession, custody, or control of a college or university solely as a mascot for the college or university;

(9) a dangerous wild animal while being transported in interstate commerce through the state in compliance with the Animal Welfare Act (7 U.S.C. Section 2131 et seq.) and its subsequent amendments and the regulations adopted under that Act;

(10) a nonhuman primate owned by and in the control and custody of a person whose only business is supplying nonhuman primates directly and exclusively to biomedical research facilities and who holds a Class "A" or Class "B" dealer's license issued by the secretary of agriculture of the United States under the Animal Welfare Act (7 U.S.C. Section 2131 et seq.) and its subsequent amendments;

(11) a dangerous wild animal that is:

(A) owned by or in the possession, control, or custody of a person who is a participant in a species survival plan of the American Zoo and Aquarium Association for that species; and

(B) an integral part of that species survival plan; ~~and~~

(12) in a county west of the Pecos River that has a population of less than 25,000, a cougar, bobcat, or coyote in the possession, custody, or control of a person that has trapped the cougar, bobcat, or coyote as part of a predator or depredation control activity;

(13) an organization that is an accredited member of the Zoological Association of America; and

(14) a wildlife sanctuary that is verified or accredited by:

(A) the Global Federation of Animal Sanctuaries; or

(B) a successor nonprofit organization that is similar to the Global Federation of Animal Sanctuaries and is designated by the Department of State Health Services if the Global Federation of Animal Sanctuaries ceases to exist.

SECTION 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.

**Floor Amendment No. 1**

Amend **CSSB 958** (house committee printing) in SECTION 1 of the bill, in added Section 822.101(8)(D)(i), Health and Safety Code (page 1, line 24), between "activity" and the underlined semi-colon, by inserting "or any research activity that threatens the health and safety of the wild animal".

**Floor Amendment No. 2**

Amend **CSSB 958** (house committee report) as follows:

(1) In SECTION 2 of the bill, in added Section 822.102(a)(14), Health and Safety Code (page 4, line 10), between "wildlife" and "sanctuary", insert "or animal".

(2) In SECTION 2 of the bill, in added Section 822.102(a)(14)(A), Health and Safety Code (page 4, lines 12-13), strike "; or" and substitute the following:

(B) the American Sanctuary Association; or

(3) In SECTION 2 of the bill, in added Section 822.102(a)(14), Health and Safety Code (page 4, line 14), reletter paragraphs appropriately.

**Floor Amendment No. 3**

Amend **CSSB 958** by adding the following:

SECTION 1. Section 822.101, Health and Safety Code, is amended by adding Subdivision (6-a) to read as follows:

(6-a) "Predatory animal" means:

(A) a lion;

(B) a tiger;

(C) a cougar;

(D) a leopard;

(E) a cheetah;

(F) a jaguar;

(G) any hybrid of an animal listed in this subdivision.

SECTION 2. Section 822.102(a), Health and Safety Code, is amended to read as follows:

(a) This subchapter does not apply to:

(1) a county, municipality, or agency of the state or an agency of the United States or an agent or official of a county, municipality, or agency acting in an official capacity;

(2) a research facility, as that term is defined by Section 2(e), Animal Welfare Act (7 U.S.C. Section 2132), and its subsequent amendments, that is licensed by the secretary of agriculture of the United States under that Act;

(3) an organization that is an accredited member of the American Zoo and Aquarium Association;

(4) an injured, infirm, orphaned, or abandoned dangerous wild animal while being transported for care or treatment;

(5) an injured, infirm, orphaned, or abandoned dangerous wild animal while being rehabilitated, treated, or cared for by a licensed veterinarian, an incorporated humane society or animal shelter, or a person who holds a rehabilitation permit issued under Subchapter C, Chapter 43, Parks and Wildlife Code;

(6) a dangerous wild animal owned by and in the custody and control of a transient circus company that is not based in this state if:

(A) the animal is used as an integral part of the circus performances; and

(B) the animal is kept within this state only during the time the circus is performing in this state or for a period not to exceed 30 days while the circus is performing outside the United States;

(7) a dangerous wild animal while in the temporary custody or control of a television or motion picture production company during the filming of a television or motion picture production in this state;

(8) a dangerous wild animal owned by and in the possession, custody, or control of a college or university solely as a mascot for the college or university;

(9) a dangerous wild animal while being transported in interstate commerce through the state in compliance with the Animal Welfare Act (7 U.S.C. Section 2131 et seq.) and its subsequent amendments and the regulations adopted under that Act;

(10) a nonhuman primate owned by and in the control and custody of a person whose only business is supplying nonhuman primates directly and exclusively to biomedical research facilities and who holds a Class "A" or Class "B" dealer's license issued by the secretary of agriculture of the United States under the Animal Welfare Act (7 U.S.C. Section 1 2131 et seq.) and its subsequent amendments;

(11) a dangerous wild animal that is:

(A) owned by or in the possession, control, or custody of a person who is a participant in a species survival plan of the American Zoo and Aquarium Association for that species; and

(B) an integral part of that species survival plan; ~~and~~

(12) in a county west of the Pecos River that has a population of less than 25,000, a cougar, bobcat, or coyote in the possession, custody, or control of a person that has trapped the cougar, bobcat, or coyote as part of a predator or depredation control activity;

(13) an organization that is an accredited member of:

(A) the Zoological Association of America;

(B) the American Sanctuary Association; or

(C) the Global Federation of Animal Sanctuaries; or

(D) the Feline Conservation Federation; and

(14) a Class "C" exhibitor such as a theme park, holding a valid Animal Welfare Act Class "C" license issued by the Animal and Plant Health Inspection Service (9 C.F.R. §1.1), also known as Exhibitor, and any entities or individuals, including independent contractors, working under contract with and for the Exhibitor to exhibit animals;

(15) a dangerous wild animal that is owned by or in the possession, custody, or control of a nonprofit organization that is dedicated to rescuing animals and educating the public, if the organization:

(A) is subject to inspection by the Animal and Plant Health Inspection Service of the United States Department of Agriculture as a Class A or Class C licensee under federal regulations;

(B) is a holder of a display permit issued by this state or a county authority;

(C) does not purchase a dangerous wild animal; and

(D) does not obtain a dangerous wild animal from a commercial breeder or a person engaged in the traffic or sale of a dangerous wild animal unless the animal is surrendered to the organization by a person who possesses the animal, including a law enforcement agency or applicable regulatory authority that confiscates the animal.

SECTION 3. The heading to Section 822.103, Health and Safety Code, is amended to read as follows:

Sec. 822.103. CERTIFICATE OF REGISTRATION; RESTRICTIONS; FEES.

SECTION 4. Section 822.103(c), Health and Safety Code, is amended to read as follows:

(c) The animal registration agency may establish and charge reasonable fees for application, issuance, and renewal of a certificate of registration in order to recover the costs associated with the administration and enforcement of this subchapter. The fee charged to an applicant may not exceed \$50 for each dangerous wild animal registered and may not exceed \$500 for each person registering animals, regardless of the number of animals owned by the person, unless the animal is a predatory animal. The fee charged to an applicant may not exceed \$500 for each dangerous wild animal registered that is a predatory animal. The fees collected under this section may be used only to administer and enforce this subchapter.

SECTION 5. Section 822.104(b), Health and Safety Code, is amended to read as follows:

(b) The application must include:

(1) the name, address, and telephone number of the applicant;

(2) a complete identification of each animal, including species, sex, age, if known, and any distinguishing marks or coloration that would aid in the identification of the animal;

(3) the exact location where each animal is to be kept;

(4) a sworn statement that:

(A) all information in the application is complete and accurate; and

(B) the applicant has read this subchapter and that all facilities used by the applicant to confine or enclose the animal comply with the requirements of this subchapter; ~~and~~

(5) the name of the person who owned the animal immediately before the applicant if the animal is a predatory animal;

(6) the address where the applicant obtained the animal if the animal is a predatory animal; and

(7) any other information the animal registration agency may require.

SECTION 6. Section 822.105, Health and Safety Code, is amended by adding Subsection (e) to read as follows:

(e) A person who is denied a certificate of registration for a dangerous wild animal that is a predatory animal may not reapply for a certificate of registration for a predatory animal before the first anniversary of the date:

(1) the denial of an application for a certificate of registration becomes final;

or

(2) the revocation of a certificate of registration becomes final.

SECTION 7. Section 822.107, Health and Safety Code, is amended to read as follows:

Sec. 822.107. LIABILITY INSURANCE. (a) Except as provided by Subsection (b), an [An] owner of a dangerous wild animal shall maintain liability insurance coverage in an amount of not less than \$100,000 for each occurrence for liability for damages for destruction of or damage to property and death or bodily injury to a person caused by the dangerous wild animal.

(b) An owner of a dangerous wild animal that is a predatory animal shall maintain liability insurance coverage in an amount sufficient to cover liability for damages for destruction of or damage to property and death or bodily injury to a person caused by the predatory animal.

(c) The executive commissioner of the Health and Human Services Commission by rule shall establish insurance requirements and standards to ensure that an owner of a dangerous wild animal that is a predatory animal maintains liability insurance coverage in an amount that protects and enhances the public's health and safety.

(d) An owner of a dangerous wild animal that is a predatory animal shall comply with the insurance requirements and standards established under Subsection (c).

SECTION 8. Section 822.113(c), Health and Safety Code, is amended to read as follows:

(c) An offense under this section is:

(1) a Class C misdemeanor; or

(2) a Class B misdemeanor if the dangerous wild animal with respect to which there is a violation is a predatory animal.

SECTION 9. Section 822.115, Health and Safety Code, is amended to read as follows:

Sec. 822.115. INJUNCTION. (a) Any person who is directly harmed or threatened with harm by a violation of this subchapter or a failure to enforce this subchapter may sue an owner of a dangerous wild animal to enjoin a violation of this subchapter or to enforce this subchapter.

(b) Any person who lives or owns property in the county where a dangerous wild animal that is a predatory animal is kept may sue the owner of the animal to enjoin a violation of this subchapter or to enforce this subchapter.

SECTION 10. (a) The changes in law made by this Act to Sections 822.103, 822.104, and 822.105, Health and Safety Code, apply to an application for an original or renewal certificate of registration for a dangerous wild animal that is a predatory animal filed on or after the effective date of this Act. An application for a certificate of registration for a dangerous wild animal that is a predatory animal filed before the effective date of this Act is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

(b) The change in law made by this Act to Section 822.113(c), Health and Safety 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 on the date the offense was committed, and the former law is continued in

effect for that purpose. For purposes of this subsection, an offense was committed before the effective date of this Act if any element 1 of the offense occurred before that date.

SECTION 11. This Act takes effect September 1, 2011.

#### **Floor Amendment No. 4**

Amend **CSSB 958** (house committee printing) in SECTION 2 of the bill, in amended Section 822.102(a), Health and Safety Code (page 4, lines 8-9), by striking Subdivision (13) and substituting the following:

(13) an organization that is an accredited member of:

(A) the Zoological Association of America; or

(B) the Feline Conservation Federation; and

#### **Floor Amendment No. 5**

Amend **CSSB 958** (house committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 822.007, Health and Safety Code, is amended to read as follows:

Sec. 822.007. LOCAL REGULATION OF DOGS. (a) Except as provided by Subsection (c), this [This] subchapter does not prohibit a municipality or county from adopting leash or registration requirements applicable to dogs.

(b) A volunteer search and rescue service dog that is a part of a volunteer search and rescue team is not considered a dangerous wild animal for purposes of this chapter.

(c) In this section, "volunteer search and rescue team" means an individual or an organized group of volunteers issued a written document by a law enforcement department that recognizes the individual or group as a person or group that trains dogs to assist in the location of a lost or missing person or for law enforcement purposes. A municipality may not adopt or enforce an ordinance, including a leash law, that restricts the ability of a volunteer search and rescue team to train a service dog for search and rescue or law enforcement purposes.

The amendments were read.

Senator Wentworth moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed without objection.

The President asked if there were any motions to instruct the conference committee on **SB 958** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate: Senators Wentworth, Chair; Watson, Eltife, Hegar, and Uresti.

### CONFERENCE COMMITTEE ON HOUSE BILL 2499

Senator Nichols called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2499** and moved that the request be granted.

The motion prevailed without objection.

The President asked if there were any motions to instruct the conference committee on **HB 2499** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate: Senators Nichols, Chair; Hegar, Huffman, Whitmire, and Hinojosa.

### SENATE BILL 156 WITH HOUSE AMENDMENTS

Senator Huffman called **SB 156** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

#### Floor Amendment No. 2

Amend **SB 156** (house committee printing) as follows:

(1) Strike page 1, lines 23 and 24 and substitute the following:

SECTION 3. Section 108.009, Health and Safety Code, is amended by amending Subsections (a), (c), and (h) and adding Subsections (a-1) and (d-1) to read as follows:

(a) The council may collect, and, except as provided by Subsections (c), ~~and~~ (d), and (d-1), providers shall submit to the council or another entity as determined by the council, all data required by this section. The data shall be collected according to uniform submission formats, coding systems, and other technical specifications necessary to make the incoming data substantially valid, consistent, compatible, and manageable using electronic data processing, if available.

(a-1) An ambulatory surgical center licensed under Chapter 243 is not required to submit data under this section.

(c) A rural provider or a hospital may, but is not required to, provide the data required by this chapter. ~~A hospital may, but is not required to, provide the data required by this chapter if the hospital:~~

~~[(1) is exempt from state franchise, sales, ad valorem, or other state or local taxes; and~~

~~[(2) does not seek or receive reimbursement for providing health care services to patients from any source, including:~~

~~[(A) the patient or any person legally obligated to support the patient;~~

~~[(B) a third party payor; or~~

~~[(C) Medicaid, Medicare, or any other federal, state, or local program for indigent health care].~~



(d-1) A provider may elect not to participate in the data collection program under Subsection (a). The executive commissioner of the Health and Human Services Commission by rule shall establish procedures for making the election authorized by this subsection.

(2) Adding the following appropriately numbered SECTIONS to the bill and renumber subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. 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 submits data as required by this chapter; and
- (2) the data may be sold 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.

SECTION \_\_\_\_\_. Not later than December 31, 2011, the executive commissioner of the Health and Human Services Commission shall adopt rules as required by Section 108.009(d-1), Health and Safety Code, as added by this Act, establishing procedures to allow health care providers to make the election authorized by that subsection.

### **Floor Amendment No. 1 on Third Reading**

Amend **SB 156** on third reading as follows:

(1) Strike the recital to the section of the bill amending Section 108.009, Health and Safety Code, as amended by Amendment No. 2 by King on second reading and substitute the following:

SECTION \_\_\_\_\_. Section 108.009, Health and Safety Code, is amended by adding Subsection (a-1) and amending Subsection (h) to read as follows:

(2) Strike amended Sections 108.009(a) and (c), Health and Safety Code, and added Section 108.009(d-1), Health and Safety Code, as added by Amendment No. 2 by King on second reading.

(3) Strike the SECTION of the bill adding transition language for added Section 108.009(d-1), Health and Safety Code, as added by Amendment No. 2 by King on second reading.

### **Floor Amendment No. 2 on Third Reading**

Amend **SB 156** on third reading by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Subtitle E, Title 2, Health and Safety Code, is amended by adding Chapter 103A to read as follows:

#### CHAPTER 103A. TEXAS BLEEDING DISORDERS ADVISORY COUNCIL

Sec. 103A.001. DEFINITIONS. In this chapter:

- (1) "Commissioner" means the commissioner of state health services.
- (2) "Council" means the Texas Bleeding Disorders Advisory Council.
- (3) "Department" means the Department of State Health Services.
- (4) "Hemophilia" has the meaning assigned by Section 41.001.

Sec. 103A.002. COMPOSITION OF COUNCIL. (a) The council is composed of:

(1) the commissioner and the commissioner of insurance, or their designees, serving as nonvoting members; and

(2) 10 voting members jointly appointed by the commissioner and the commissioner of insurance as follows:

(A) one member who is a physician licensed to practice medicine in this state under Subtitle B, Title 3, Occupations Code, who at the time of appointment treats individuals with hemophilia or other bleeding or clotting disorders;

(B) one member who is a nurse licensed under Chapter 301, Occupations Code, who at the time of appointment treats individuals with hemophilia or other bleeding or clotting disorders;

(C) one member who is a social worker licensed under Chapter 505, Occupations Code, who at the time of appointment treats individuals with hemophilia or other bleeding or clotting disorders;

(D) one member who is a representative of a hemophilia treatment center in this state that is federally funded;

(E) one member who is a representative of a health insurer or other health benefit plan issuer that holds a certificate of authority issued by the Texas Department of Insurance;

(F) one member who is a representative of a volunteer or nonprofit health organization that serves residents of this state who have hemophilia or another bleeding or clotting disorder;

(G) one member who has hemophilia or is a caregiver of a person with hemophilia;

(H) one member who has a bleeding disorder other than hemophilia or is a caregiver of a person with a bleeding disorder other than hemophilia;

(I) one member who has a clotting disorder or is a caregiver of a person with a clotting disorder; and

(J) one member who is a pharmacist licensed under Subtitle J, Title 3, Occupations Code, with hemophilia therapy experience, who at the time of appointment represents a pharmacy provider that is not a specialty pharmacy provider participating in the Drug Pricing Program under Section 340B, Public Health Service Act (42 U.S.C. Section 256b).

(b) In addition to council members appointed under Subsection (a), the commissioner and the commissioner of insurance may jointly appoint up to five nonvoting members, including:

(1) persons with hemophilia or other bleeding or clotting disorders or caregivers of persons with hemophilia or other bleeding or clotting disorders; and

(2) persons experienced in the diagnosis, treatment, care, and support of persons with hemophilia or other bleeding or clotting disorders.

Sec. 103A.003. VACANCY. If a vacancy occurs on the council, the commissioner and the commissioner of insurance shall jointly appoint a person to serve for the remainder of the unexpired term.

Sec. 103A.004. PRESIDING OFFICER. Council members shall elect from among the voting council members a presiding officer. The presiding officer retains all voting rights.

Sec. 103A.005. COMPENSATION AND REIMBURSEMENT. A council member may not:

(1) receive compensation for service on the council; and

(2) be reimbursed for actual and necessary expenses incurred while performing council business except to the extent that money available under Section 103A.009 is designated for that purpose.

Sec. 103A.006. MEETINGS. The council shall meet at least quarterly and at the call of the commissioner or presiding officer.

Sec. 103A.007. DUTIES OF COUNCIL. The council using existing resources shall conduct studies and advise the department, the Health and Human Services Commission, and the Texas Department of Insurance on:

(1) public use data, outcome data, and other information submitted to or collected by the department under Chapter 108 or other law related to hemophilia or other bleeding or clotting disorders and the department's disclosure and dissemination of that information within and outside the department; and

(2) other issues that affect the health and wellness of persons living with hemophilia or other bleeding or clotting disorders.

Sec. 103A.008. ANNUAL REPORTS BY COUNCIL AND COMMISSIONER. (a) Not later than December 1 of each even-numbered year, the council using existing resources shall submit a report of its findings and recommendations to the governor, the lieutenant governor, and the speaker of the house of representatives. The council's report must be made public and is subject to public review and comment before adoption by the council.

(b) Not later than six months after the date the council's annual report is issued, the commissioner shall report on efforts to implement the recommendations in the report. The commissioner's annual report must:

(1) be made available to the public; and

(2) include any related state or national activities in which the council participates.

Sec. 103A.009. GIFTS, GRANTS, AND DONATIONS. The commissioner may accept for the council gifts, grants, and donations to fulfill the council's purposes and duties under this chapter. The department is not required to perform any fund-raising activities or to solicit donations for the council.

Sec. 103A.010. CERTAIN FUNDING PROHIBITED. The council may not accept any funds that are appropriated by the legislature for the state fiscal biennium beginning September 1, 2011. This section expires September 1, 2013.

Sec. 103A.011. ADMINISTRATIVE SUPPORT. The department using existing resources shall provide reasonably necessary administrative support for council activities.

Sec. 103A.012. EXPIRATION. This chapter expires and the council is abolished September 1, 2015.

SECTION \_\_\_\_\_. As soon as practicable after the effective date of this Act and not later than December 1, 2011, the commissioner of state health services and the commissioner of insurance shall jointly appoint members to the Texas Bleeding Disorders Advisory Council as required by Section 103A.002, Health and Safety Code, as added by this Act.

The amendments were read.

Senator Huffman moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed without objection.

The President asked if there were any motions to instruct the conference committee on **SB 156** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate: Senators Huffman, Chair; Duncan, Deuell, Uresti, and Nelson.

#### **SENATE BILL 1320 WITH HOUSE AMENDMENT**

Senator Lucio called **SB 1320** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

#### **Floor Amendment No. 1**

Amend **SB 1320** (house committee printing), on page 2, line 10, by striking "fourth" and substituting "second".

The amendment was read.

Senator Lucio moved that the Senate do not concur in the House amendment, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed without objection.

The President asked if there were any motions to instruct the conference committee on **SB 1320** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate: Senators Lucio, Chair; Carona, Van de Putte, Eltife, and Estes.

#### **SENATOR ANNOUNCED PRESENT**

Senator Ogden, who had previously been recorded as "Absent-excused," was announced "Present."

#### **SENATE BILL 1489 WITH HOUSE AMENDMENTS**

Senator Whitmire called **SB 1489** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

### Amendment

Amend **SB 1489** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to educational, juvenile justice, and criminal justice responses to truancy.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 25.085(f), Education Code, is amended to read as follows:

(f) The board of trustees of a school district may adopt a policy requiring a person described by Subsection (e) who is under 21 years of age to attend school until the end of the school year. Section 25.094 ~~does not apply~~ ~~[applies]~~ to a person subject to a policy adopted under this subsection. Sections 25.093 and 25.095 do not apply to the parent of a person subject to a policy adopted under this subsection.

SECTION 2. Section 25.094(a), Education Code, is amended to read as follows:

(a) An individual commits an offense if the individual:

(1) is 12 years of age or older and younger than 18 years of age;

(2) is required to attend school under Section 25.085; and

(3) ~~[(2)]~~ fails to attend school on 10 or more days or parts of days within a six-month period in the same school year or on three or more days or parts of days within a four-week period.

SECTION 3. Section 51.03, Family Code, is amended by adding Subsection (e-1) to read as follows:

(e-1) Notwithstanding any other law, for purposes of conduct described by Subsection (b)(2), "child" means a person who is:

(1) 10 years of age or older;

(2) alleged or found to have engaged in the conduct as a result of acts committed before becoming 18 years of age; and

(3) required to attend school under Section 25.085, Education Code.

SECTION 4. Sections 54.021(a) and (b), Family Code, are amended to read as follows:

(a) The juvenile court may waive its exclusive original jurisdiction and transfer a child to the constitutional county court, if the county has a population of two million or more, or to an appropriate justice or municipal court, with the permission of the county, justice, or municipal court, for disposition in the manner provided by Subsection (b) if the child is 12 years of age or older and is alleged to have engaged in conduct described in Section 51.03(b)(2). A waiver of jurisdiction under this subsection may be for an individual case or for all cases in which a child is alleged to have engaged in conduct described in Section 51.03(b)(2). The waiver of a juvenile court's exclusive original jurisdiction for all cases in which a child is alleged to have engaged in conduct described in Section 51.03(b)(2) is effective for a period of one year.

(b) A county, justice, or municipal court may exercise jurisdiction over a person alleged to have engaged in conduct indicating a need for supervision by engaging in conduct described in Section 51.03(b)(2) in a case where:

(1) the person is 12 years of age or older;

(2) the juvenile court has waived its original jurisdiction under this section; and

(3) [(2)] a complaint is filed by the appropriate authority in the county, justice, or municipal court charging an offense under Section 25.094, Education Code.

SECTION 5. Chapter 54, Family Code, is amended by adding Section 54.0402 to read as follows:

Sec. 54.0402. DISPOSITIONAL ORDER FOR FAILURE TO ATTEND SCHOOL. A dispositional order regarding conduct under Section 51.03(b)(2) is effective for the period specified by the court in the order but may not extend beyond the 180th day after the date of the order or beyond the end of the school year in which the order was entered, whichever period is longer.

SECTION 6. Section 54.05, Family Code, is amended by amending Subsections (a) and (b) and adding Subsection (a-1) to read as follows:

(a) Except as provided by Subsection (a-1), any ~~Any~~ disposition, except a commitment to the Texas Youth Commission, may be modified by the juvenile court as provided in this section until:

(1) the child reaches his 18th birthday; or

(2) the child is earlier discharged by the court or operation of law.

(a-1) A disposition regarding conduct under Section 51.03(b)(2) may be modified by the juvenile court as provided by this section until the expiration of the period described by Section 54.0402.

(b) Except for a commitment to the Texas Youth Commission or a disposition under Section 54.0402, all dispositions automatically terminate when the child reaches his 18th birthday.

SECTION 7. Article 45.054, Code of Criminal Procedure, is amended by adding Subsections (i) and (j) to read as follows:

(i) A county, justice, or municipal court shall dismiss the complaint against an individual alleging that the individual committed an offense under Section 25.094, Education Code, if:

(1) the court finds that the individual has successfully complied with the conditions imposed on the individual by the court under this article; or

(2) the individual presents to the court proof that the individual has obtained a high school diploma or a high school equivalency certificate.

(j) A county, justice, or municipal court may waive or reduce a fee or court cost imposed under this article if the court finds that payment of the fee or court cost would cause financial hardship.

SECTION 8. Article 45.055, Code of Criminal Procedure, is amended by amending Subsection (a) and adding Subsection (e) to read as follows:

(a) Except as provided by Subsection (e), an ~~An~~ individual convicted of not more than one violation of Section 25.094, Education Code, may, on or after the individual's 18th birthday, apply to the court in which the individual was convicted to have the conviction and records relating to the conviction expunged.

(e) A court shall expunge an individual's conviction under Section 25.094, Education Code, and records relating to a conviction, regardless of whether the individual has previously been convicted of an offense under that section, if:

(1) the court finds that the individual has successfully complied with the conditions imposed on the individual by the court under Article 45.054; or

(2) before the individual's 21st birthday, the individual presents to the court proof that the individual has obtained a high school diploma or a high school equivalency certificate.

SECTION 9. Articles 102.0174(b) and (c), Code of Criminal Procedure, are amended to read as follows:

(b) The governing body of a municipality by ordinance may create a juvenile case manager fund and may require a defendant convicted of a fine-only misdemeanor offense in a municipal court to pay a juvenile case manager fee not to exceed \$5 as a cost of court if the municipal court employs a juvenile case manager. A municipal court that does not employ a juvenile case manager may not collect a fee under this subsection.

(c) The commissioners court of a county by order may create a juvenile case manager fund and may require a defendant convicted of a fine-only misdemeanor offense in a justice court, county court, or county court at law to pay a juvenile case manager fee not to exceed \$5 as a cost of court if the court employs a juvenile case manager. A justice court, county court, or county court at law that does not employ a juvenile case manager may not collect a fee under this subsection.

SECTION 10. Sections 25.091(a) and (b), Education Code, are amended to read as follows:

(a) A peace officer serving as an attendance officer has the following powers and duties concerning enforcement of compulsory school attendance requirements:

(1) to investigate each case of a violation of compulsory school attendance requirements referred to the peace officer;

(2) to enforce compulsory school attendance requirements by:

(A) applying truancy prevention measures adopted under Section 25.0915 to the student; and

(B) if the truancy prevention measures fail to meaningfully address the student's conduct:

(i) referring the [a] student to a juvenile court or filing a complaint against the [a] student in a county, justice, or municipal court if the student has unexcused absences for the amount of time specified under Section 25.094 or under Section 51.03(b)(2), Family Code; or ~~[and]~~

(ii) ~~(B)~~ filing a complaint in a county, justice, or municipal court against a parent who violates Section 25.093;

(3) to serve court-ordered legal process;

(4) to review school attendance records for compliance by each student investigated by the officer;

(5) to maintain an investigative record on each compulsory school attendance requirement violation and related court action and, at the request of a court, the board of trustees of a school district, or the commissioner, to provide a record to the individual or entity requesting the record;

(6) to make a home visit or otherwise contact the parent of a student who is in violation of compulsory school attendance requirements, except that a peace officer may not enter a residence without the permission of the parent of a student required under this subchapter to attend school or of the tenant or owner of the residence except to lawfully serve court-ordered legal process on the parent; and

(7) to take a student into custody with the permission of the student's parent or in obedience to a court-ordered legal process.

(b) An attendance officer employed by a school district who is not commissioned as a peace officer has the following powers and duties with respect to enforcement of compulsory school attendance requirements:

(1) to investigate each case of a violation of the compulsory school attendance requirements referred to the attendance officer;

(2) to enforce compulsory school attendance requirements by:

(A) applying truancy prevention measures adopted under Section 25.0915 to the student; and

(B) if the truancy prevention measures fail to meaningfully address the student's conduct:

(i) referring the [a] student to a juvenile court or filing a complaint against the [a] student in a county, justice, or municipal court if the student has unexcused absences for the amount of time specified under Section 25.094 or under Section 51.03(b)(2), Family Code; and

(ii) [~~B~~] filing a complaint in a county, justice, or municipal court against a parent who violates Section 25.093;

(3) to monitor school attendance compliance by each student investigated by the officer;

(4) to maintain an investigative record on each compulsory school attendance requirement violation and related court action and, at the request of a court, the board of trustees of a school district, or the commissioner, to provide a record to the individual or entity requesting the record;

(5) to make a home visit or otherwise contact the parent of a student who is in violation of compulsory school attendance requirements, except that the attendance officer may not enter a residence without permission of the parent or of the owner or tenant of the residence;

(6) at the request of a parent, to escort a student from any location to a school campus to ensure the student's compliance with compulsory school attendance requirements; and

(7) if the attendance officer has or is informed of a court-ordered legal process directing that a student be taken into custody and the school district employing the officer does not employ its own police department, to contact the sheriff, constable, or any peace officer to request that the student be taken into custody and processed according to the legal process.

SECTION 11. Subchapter C, Chapter 25, Education Code, is amended by adding Section 25.0915 to read as follows:

Sec. 25.0915. TRUANCY PREVENTION MEASURES; REFERRAL AND FILING REQUIREMENT. (a) A school district shall adopt truancy prevention measures designed to:



(1) address student conduct related to truancy in the school setting;  
(2) minimize the need for referrals to juvenile court for conduct described by Section 51.03(b)(2), Family Code; and

(3) minimize the filing of complaints in county, justice, and municipal courts alleging a violation of Section 25.094.

(b) Each referral to juvenile court for conduct described by Section 51.03(b)(2), Family Code, or complaint filed in county, justice, or municipal court alleging a violation by a student of Section 25.094 must:

(1) be accompanied by a statement from the student's school certifying that:

(A) the school applied the truancy prevention measures adopted under Subsection (a) to the student; and

(B) the truancy prevention measures failed to meaningfully address the student's school attendance; and

(2) specify whether the student is eligible for or receives special education services under Subchapter A, Chapter 29.

SECTION 12. Section 102.061, Government Code, as amended by Chapters 87 (S.B. 1969), 1172 (H.B. 3389), and 1183 (H.B. 3637), Acts of the 81st Legislature, Regular Session, 2009, is reenacted and amended to read as follows:

Sec. 102.061. ADDITIONAL COURT COSTS ON CONVICTION IN STATUTORY COUNTY COURT: CODE OF CRIMINAL PROCEDURE. The clerk of a statutory county court shall collect fees and costs under the Code of Criminal Procedure on conviction of a defendant as follows:

(1) a jury fee (Art. 102.004, Code of Criminal Procedure) . . . \$20;

(2) a fee for services of the clerk of the court (Art. 102.005, Code of Criminal Procedure) . . . \$40;

(3) a records management and preservation services fee (Art. 102.005, Code of Criminal Procedure) . . . \$25;

(4) a county and district court technology fee (Art. 102.0169, Code of Criminal Procedure) . . . \$4;

(5) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) . . . \$3;

(6) a juvenile delinquency prevention and graffiti eradication fee (Art. 102.0171, Code of Criminal Procedure) . . . \$50; ~~and~~

(7) a juvenile case manager fee (Art. 102.0174, Code of Criminal Procedure) . . . not to exceed \$5 if the court employs a juvenile case manager; and

(8) ~~(7)~~ a civil justice fee (Art. 102.022, Code of Criminal Procedure) . . . \$0.10.

SECTION 13. Section 102.081, Government Code, as amended by Chapters 87 (S.B. 1969), 1172 (H.B. 3389), and 1183 (H.B. 3637), Acts of the 81st Legislature, Regular Session, 2009, is reenacted and amended to read as follows:

Sec. 102.081. ADDITIONAL COURT COSTS ON CONVICTION IN COUNTY COURT: CODE OF CRIMINAL PROCEDURE. The clerk of a county court shall collect fees and costs under the Code of Criminal Procedure on conviction of a defendant as follows:

(1) a jury fee (Art. 102.004, Code of Criminal Procedure) . . . \$20;

(2) a fee for clerk of the court services (Art. 102.005, Code of Criminal Procedure) . . . \$40;

(3) a records management and preservation services fee (Art. 102.005, Code of Criminal Procedure) . . . \$25;

(4) a county and district court technology fee (Art. 102.0169, Code of Criminal Procedure) . . . \$4;

(5) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) . . . \$3;

(6) a juvenile delinquency prevention and graffiti eradication fee (Art. 102.0171, Code of Criminal Procedure) . . . \$50; ~~and~~

(7) a juvenile case manager fee (Art. 102.0174, Code of Criminal Procedure) . . . not to exceed \$5 if the court employs a juvenile case manager; and

(8) ~~(7)~~ a civil justice fee (Art. 102.022, Code of Criminal Procedure) . . . \$0.10.

SECTION 14. Section 102.101, Government Code, is amended to read as follows:

Sec. 102.101. ADDITIONAL COURT COSTS ON CONVICTION IN JUSTICE COURT: CODE OF CRIMINAL PROCEDURE. A clerk of a justice court shall collect fees and costs under the Code of Criminal Procedure on conviction of a defendant as follows:

(1) a jury fee (Art. 102.004, Code of Criminal Procedure) . . . \$3;

(2) a fee for withdrawing request for jury less than 24 hours before time of trial (Art. 102.004, Code of Criminal Procedure) . . . \$3;

(3) a jury fee for two or more defendants tried jointly (Art. 102.004, Code of Criminal Procedure) . . . one jury fee of \$3;

(4) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) . . . \$4;

(5) a fee for technology fund on a misdemeanor offense (Art. 102.0173, Code of Criminal Procedure) . . . \$4;

(6) a juvenile case manager fee (Art. 102.0174, Code of Criminal Procedure) . . . not to exceed \$5 if the court employs a juvenile case manager;

(7) a fee on conviction of certain offenses involving issuing or passing a subsequently dishonored check (Art. 102.0071, Code of Criminal Procedure) . . . not to exceed \$30;

(8) a court cost on conviction of a Class C misdemeanor in a county with a population of 3.3 million or more, if authorized by the county commissioners court (Art. 102.009, Code of Criminal Procedure) . . . not to exceed \$7; and

(9) a civil justice fee (Art. 102.022, Code of Criminal Procedure) . . . \$0.10.

SECTION 15. Section 102.121, Government Code, is amended to read as follows:

Sec. 102.121. ADDITIONAL COURT COSTS ON CONVICTION IN MUNICIPAL COURT: CODE OF CRIMINAL PROCEDURE. The clerk of a municipal court shall collect fees and costs on conviction of a defendant as follows:

(1) a jury fee (Art. 102.004, Code of Criminal Procedure) . . . \$3;

(2) a fee for withdrawing request for jury less than 24 hours before time of trial (Art. 102.004, Code of Criminal Procedure) . . . \$3;

(3) a jury fee for two or more defendants tried jointly (Art. 102.004, Code of Criminal Procedure) . . . one jury fee of \$3;

(4) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) . . . \$3;

(5) a fee for technology fund on a misdemeanor offense (Art. 102.0172, Code of Criminal Procedure) . . . not to exceed \$4;

(6) a juvenile case manager fee (Art. 102.0174, Code of Criminal Procedure) . . . not to exceed \$5 if the court employs a juvenile case manager; and

(7) a civil justice fee (Art. 102.022, Code of Criminal Procedure) . . . \$0.10.

SECTION 16. Subsection (e), Article 45.056, Code of Criminal Procedure, is repealed.

SECTION 17. The change in law made by this Act applies only to conduct that occurs on or after the effective date of this Act. Conduct that occurs before the effective date of this Act is governed by the law in effect at the time the conduct occurred, and the former law is continued in effect for that purpose. For purposes of this section, conduct occurs before the effective date of this Act if any element of the violation occurs before that date.

SECTION 18. To the extent of any conflict, this Act prevails over another Act of the 82nd Legislature, Regular Session, 2011, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 19. This Act takes effect September 1, 2011.

### Floor Amendment No. 1

Amend **CSSB 1489** (house committee printing) as follows:

(1) Strike SECTION 1 of the bill (page 1, lines 5 through 13).

(2) In SECTION 2 of the bill, in amended Section 25.094(a)(1), Education Code (page 1, lines 17 through 18), strike "and younger than 18 years of age".

(3) In SECTION 3 of the bill, in added Section 51.03(e-1)(2), Family Code (page 2, line 7), strike "18" and substitute "21".

(4) In SECTION 9 of the bill, in amended Article 102.0174(b), Code of Criminal Procedure (page 5, line 19), strike "the municipal court employs" and substitute "the municipality employs".

(5) In SECTION 9 of the bill, in amended Article 102.0174(b), Code of Criminal Procedure (page 5, line 20), strike "municipal court that does not employ" and substitute "municipality that does not employ".

(6) In SECTION 11 of the bill, in added Section 25.0915(b)(1), Education Code (page 9, line 21), between "school" and "certifying", insert "district".

(7) In SECTION 11 of the bill, in added Section 25.0915(b)(1)(A), Education Code (page 9, line 22), between "school" and "applied", insert "district".

(8) In SECTION 15 of the bill, in amended Section 102.121(6), Government Code (page 13, line 19), strike "the court" and substitute "the municipality".

(9) Renumber SECTIONS of the bill accordingly.

### Floor Amendment No. 2

Amend **CSSB 1489** (house committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 58.106, Family Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a) Except as otherwise provided by this section, information contained in the juvenile justice information system is confidential information for the use of the department and may not be disseminated by the department except:

(1) with the permission of the juvenile offender, to military personnel of this state or the United States;

(2) to a person or entity to which the department may grant access to adult criminal history records as provided by Section 411.083, Government Code;

(3) to a juvenile justice agency;

(4) to the Texas Youth Commission and the Texas Juvenile Probation Commission for analytical purposes; ~~and~~

(5) to the office of independent ombudsman of the Texas Youth Commission; and

(6) to a county, justice, or municipal court exercising jurisdiction over a juvenile under Section 54.021.

(a-1) Information disseminated under Subsection (a) remains confidential after dissemination and may be disclosed by the recipient only as provided by this title.

The amendments were read.

Senator Whitmire moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed without objection.

The President asked if there were any motions to instruct the conference committee on **SB 1489** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate: Senators Whitmire, Chair; Hinojosa, Shapiro, Huffman, and Harris.

#### **CONFERENCE COMMITTEE ON HOUSE BILL 1951**

Senator Hegar called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 1951** and moved that the request be granted.

The motion prevailed without objection.

The President asked if there were any motions to instruct the conference committee on **HB 1951** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate: Senators Hegar, Chair; Huffman, Williams, Nelson, and Uresti.

**CONFERENCE COMMITTEE ON HOUSE BILL 3577**

Senator Zaffirini called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 3577** and moved that the request be granted.

The motion prevailed without objection.

The President asked if there were any motions to instruct the conference committee on **HB 3577** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate: Senators Zaffirini, Chair; Carona, Duncan, Eltife, and Watson.

**SENATE BILL 1816 WITH HOUSE AMENDMENTS**

Senator Zaffirini called **SB 1816** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

**Committee Amendment No. 1**

Amend **SB 1816** (engrossed version) as follows:

(1) Strike SECTION 5 of the bill, adding Section 233.902, Local Government Code, and renumber subsequent SECTIONS of the bill accordingly.

(2) In SECTION 6 of the bill, strike added Section 16.343(f), Water Code (page 3, line 21, through page 4, line 1) and substitute the following:

(f) To augment regulatory compliance by political subdivisions, the model rules may impose requirements for platting, replatting, or any other method authorized by law. Notwithstanding any other law to the contrary and except as may be required by an agreement developed under Chapter 242, Local Government Code, a municipality that has adopted the model rules under this section may impose the platting requirements of Chapter 212, Local Government Code, and a county that has adopted the model rules under this section may impose the applicable platting requirements of Chapter 232, Local Government Code, to a division of real property that is required to be platted or replatted by the provisions of the model rules.

**Floor Amendment No. 1 on Third Reading**

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.

### **Floor Amendment No. 2 on Third Reading**

Amend **SB 1816** on third reading 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.

The amendments were read.

Senator Zaffirini moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed without objection.

The President asked if there were any motions to instruct the conference committee on **SB 1816** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate: Senators Zaffirini, Chair; Lucio, Rodriguez, Carona, and Fraser.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 201 ADOPTED**

Senator Uresti called from the President's table the Conference Committee Report on **SB 201**. The Conference Committee Report was filed with the Senate on Saturday, May 21, 2011.

On motion of Senator Uresti, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**SENATE BILL 1534 WITH HOUSE AMENDMENTS**

Senator Shapiro called **SB 1534** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

**Amendment**

Amend **SB 1534** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to the operation and certification of career schools or colleges.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 132.001(1) and (4), Education Code, are amended to read as follows:

(1) "Career school or college":

(A) means any business enterprise operated for a profit or on a nonprofit basis that maintains a physical place of business within this state or solicits business within this state, that is not specifically exempted by this chapter, and:

(i) [~~(A)~~] that offers or maintains a course or courses of instruction or study; or

(ii) [~~(B)~~] at which place of business such a course or courses of instruction or study are available through classroom instruction or by distance education, or both, to a person for the purpose of training or preparing the person for a field of endeavor in a business, trade, technical, or industrial occupation, or for avocational or personal improvement; and

(B) does not include a school or educational institution that:

(i) is physically located in another state;

(ii) is legally authorized by the state of its physical location to offer postsecondary education and award degrees;

(iii) is accredited by a national accrediting organization recognized by the United States secretary of education under the Higher Education Act of 1965 (20 U.S.C. Section 1001 et seq.); and

(iv) offers in this state only postsecondary distance or correspondence programs of instruction.

(4) "Representative" means a person employed by a career school or college [~~whether the school or college is located within or without this state,~~] to act as an agent, solicitor, broker, or independent contractor to directly procure students for the school or college by solicitation within [~~or without~~] this state at any place.

SECTION 2. Sections 132.052 and 132.151, Education Code, are amended to read as follows:

Sec. 132.052. APPLICATION FOR CERTIFICATE OF APPROVAL. Every career school or college desiring to operate in this state ~~[or do business in this state]~~ shall make written application to the commission for a certificate of approval. Such application shall be verified, be in such form as may be prescribed by the commission, and shall furnish the commission such information as the commission may require.

Sec. 132.151. PROHIBITIONS. A person may not:

- (1) operate a career school or college without a certificate of approval issued by the commission;
- (2) solicit prospective students for or on behalf of a career school or college without being registered as a representative of the career school or college as required by this chapter;
- (3) accept contracts or enrollment applications for or on behalf of a career school or college from a representative who is not bonded as required by this chapter;
- (4) utilize advertising designed to mislead or deceive prospective students;
- (5) fail to notify the commission of the closure ~~[discontinuance of the operation]~~ of any career school or college within 72 hours of cessation of classes and make available accurate records as required by this chapter;
- (6) negotiate any promissory instrument received as payment of tuition or other charge by a career school or college prior to completion of 75 percent of the applicable program, provided that prior to such time, the instrument may be transferred by assignment to a purchaser who shall be subject to all the defenses available against the career school or college named as payee; or
- (7) violate any provision of this chapter.

SECTION 3. Subchapter G, Chapter 132, Education Code, is amended by adding Section 132.202 to read as follows:

Sec. 132.202. REQUIRED POSTING BY CERTAIN SCHOOLS OR EDUCATIONAL INSTITUTIONS NOT OPERATING IN THIS STATE. (a) A school or educational institution described by Section 132.001(1)(B) shall post a conspicuous notice on the homepage of its website stating:

- (1) that the career school or college is not regulated in Texas under Chapter 132 of the Texas Education Code;
- (2) the name of any regulatory agencies which approve and regulate the school's programs in the state where the school is physically located and in which it has legal authorization to operate; and
- (3) how to file complaints or make other contact with applicable regulatory agencies.

SECTION 4. Section 132.059(d), Education Code, is repealed.

SECTION 5. The changes in law made by this Act apply only to a certificate of approval issued, an action filed, or any other proceeding commenced under Chapter 132, Education Code, on or after the effective date of this Act. A certificate of approval issued, an action filed, or any other proceeding commenced before the effective date of this Act is covered by the law in effect at the time the certificate of approval was issued, the action was filed, or the other proceeding was commenced, and the former law is continued in effect for that purpose.

SECTION 6. This Act takes effect September 1, 2011.

**Floor Amendment No. 1 on Third Reading**

Amend **CSSB 1534** on third reading as follows:

1. In SECTION 1 of the bill (page 2, line 2), after "by a", strike "national" and substitute "regional".

The amendments were read.

Senator Shapiro moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed without objection.

The President asked if there were any motions to instruct the conference committee on **SB 1534** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate: Senators Shapiro, Chair; Jackson, Harris, Eltife, and Zaffirini.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 316 ADOPTED**

Senator Whitmire called from the President's table the Conference Committee Report on **SB 316**. The Conference Committee Report was filed with the Senate on Monday, May 23, 2011.

On motion of Senator Whitmire, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 3647 ON SECOND READING**

On motion of Senator Ogden and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 3647** at this time on its second reading:

**CSHB 3647**, Relating to directing payment, after approval, of certain miscellaneous claims and judgments against the state out of funds designated by this Act; making appropriations.

The bill was read second time and was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 3647 ON THIRD READING**

Senator Ogden moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 3647** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 2439 ON SECOND READING**

On motion of Senator Watson and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 2439** at this time on its second reading:

**CSHB 2439**, Relating to posting suggestions and ideas on cost-efficiency and certain budget documents on certain state agency websites.

The bill was read second time.

Senator Carona offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 2439** by adding the following appropriately numbered SECTION to the bill and renumbering the remaining SECTIONS of the bill accordingly:

SECTION \_\_. (a) The legislature finds that:

(1) a competitive electric services market requires timely, accurate, and adequate information about the products and services offered to consumers in the market; and

(2) the Public Utility Commission of Texas operates an Internet website regarding the power to choose retail electric providers on which offers by those providers are published.

(b) Subchapter C, Chapter 39, Utilities Code, is amended by adding Section 39.110 to read as follows:

Sec. 39.110. TEXAS ELECTRIC CHOICE WEBSITE. (a) The commission shall publish and maintain an Internet website that allows customers to view competitive offers from retail electric providers. The website must enable a user to search by zip code offers available to a residential customer in the user's service area. Retail electric providers may, but are not required to, post offers available to residential customers on the website.

(b) At a minimum, the Internet website must include:

(1) features that make the website accessible to people with disabilities;

(2) a clear identification with each retail electric service price offer posted on the website of the category of the product as defined by commission rules;

(3) a searchable and sortable database of each retail electric provider offer on the website that allows the information to be read into a commercially available electronic database;

(4) information about the following programs available in the user's service area through a state agency or utility:

(A) energy efficiency programs, including weatherization and rebate programs;

(B) distributed renewable generation policies and programs, including rebate programs; and

(C) low-income utility assistance programs, including bill payment assistance, weatherization, and rebate programs; and

(5) access to information regarding retail electric providers' offers to residential distributed renewable generation owners for the owners' surplus electricity.

(c) The commission shall establish a project to implement this section. The commission shall create a working committee to provide input on the implementation of this section that is composed of members of commission staff, experts in user-centered web design, experts in consumer-choice web design, retail electric providers, consumer advocates, and representatives of various categories of potential users of the redesigned website, including people with disabilities and low-income customers.

(d) The commission shall establish protocols relating to the frequency with which information posted on the website is updated, except that a retail electric provider may not be limited with respect to the frequency with which the provider may change an offer.

(e) The commission shall consult and cooperate with other state agencies in the design, both for content and usability, of the website, including agencies providing low-income consumer assistance and energy efficiency assistance and the interagency coordinating group established under Section 535.053, Government Code.

(c) Section 39.116, Utilities Code, is amended to read as follows:

Sec. 39.116. NOTICE REGARDING CUSTOMER CHOICE INFORMATION.

A retail electric provider shall include on each residential customer's bill a statement, in at least 12-point type on the front of the first page, that reads: "For more information about residential electric service please visit [www.powertochoose.com](http://www.powertochoose.com)." This section expires September 1, 2023 [~~2011~~].

(d) The Public Utility Commission of Texas shall publish and begin operation of a redesigned Internet website as provided by Section 39.110, Utilities Code, as added by this section, not later than September 1, 2012.

(e) The Public Utility Commission of Texas may accept funds from any source, including gifts, grants, or donations, to implement Section 39.110, Utilities Code, as added by this section. The commission may not incorporate a preference for information displayed directly or indirectly in favor of any funding source. The commission may not require an entity to contribute funds to have information posted on the Internet website. Implementation of Section 39.110, Utilities Code, as added by this section, is contingent on a finding by the commission that sufficient funding exists or is likely to exist to carry out the provisions of Section 39.110, Utilities Code, as added by this section.

(f) Notwithstanding any other provision of this Act, this section takes effect September 1, 2011.

The amendment to **CSHB 2439** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1.

On motion of Senator Watson and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**CSHB 2439** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.



**COMMITTEE SUBSTITUTE  
HOUSE BILL 2439 ON THIRD READING**

Senator Watson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 2439** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**MESSAGE FROM THE HOUSE**

HOUSE CHAMBER  
Austin, Texas  
Tuesday, May 24, 2011 - 6

The Honorable President of the Senate  
Senate Chamber  
Austin, Texas

Mr. President:

I am directed by the House to inform the Senate that the House has taken the following action:

THE HOUSE HAS GRANTED THE REQUEST OF THE SENATE FOR THE APPOINTMENT OF A CONFERENCE COMMITTEE ON THE FOLLOWING MEASURES:

**SB 23** (non-record vote)

House Conferees with Instructions: Zerwas - Chair/Davis, John/Gonzales, Veronica/Hopson/Pitts

**SB 1811** (non-record vote)

House Conferees with Instructions: Pitts - Chair/Crownover/Eissler/Geren/Turner

THE HOUSE HAS ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

**SB 28** (143 Yeas, 1 Nays, 2 Present, not voting)

Respectfully,

/s/Robert Haney, Chief Clerk  
House of Representatives

**CONFERENCE COMMITTEE ON HOUSE BILL 2817**

Senator Duncan called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2817** and moved that the request be granted.

The motion prevailed without objection.

The President asked if there were any motions to instruct the conference committee on **HB 2817** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate: Senators Duncan, Chair; Ellis, Jackson, Van de Putte, and Williams.

**VOTES RECONSIDERED ON  
COMMITTEE SUBSTITUTE HOUSE BILL 6**

On motion of Senator Shapiro and by unanimous consent, the vote by which **CSHB 6** was passed to third reading was reconsidered:

**CSHB 6**, 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.

Question — Shall **CSHB 6** as amended be passed to third reading?

On motion of Senator Patrick and by unanimous consent, the vote by which Floor Amendment No. 5 was adopted was reconsidered.

Question — Shall Floor Amendment No. 5 to **CSHB 6** be adopted?

Senator Patrick withdrew Floor Amendment No. 5.

On motion of Senator Patrick and by unanimous consent, the vote by which Floor Amendment No. 9 was adopted was reconsidered.

Question — Shall Floor Amendment No. 9 to **CSHB 6** be adopted?

Senator Patrick withdrew Floor Amendment No. 9.

On motion of Senator Shapiro and by unanimous consent, the caption was again amended to conform to the body of the bill as amended.

**CSHB 6** as amended was again passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 6 ON THIRD READING**

Senator Shapiro moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 6** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time.

Senator Uresti offered the following amendment to the bill:

**Floor Amendment No. 1 on Third Reading**

Amend 2nd Reading Amendment No. 8 (Patrick) to **CSHB 6** on third reading by striking all below line 1 and substituting the following therefor:

(1) In SECTION 27 of the bill, amending Section 31.0231(c), Education Code (page 9, line 42), following the period, insert "The State Board of Education may review and comment on the material until the 90th day after the date the material is placed on the list."

(2) In SECTION 27 of the bill, amending Section 31.0231(e), Education Code (page 10, line 3), between the period and "~~Before~~", insert "The State Board of Education may, in the manner provided by Subsection (c), review and comment on material placed on the updated list."

The amendment to **CSHB 6** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1 on Third Reading.

Senator Uresti offered the following amendment to the bill:

### **Floor Amendment No. 2 on Third Reading**

Amend **CSHB 6**, on third reading, in SECTION 30 of the bill, by striking amended Section 31.0241(b), Education Code (page 10, line 49, through page 11, line 9), and substituting the following:

(b) The State Board of Education shall place ~~an~~ open-source instructional material ~~textbook~~ for a secondary-level course submitted for adoption by an eligible institution on a conforming or nonconforming list if:

(1) the instructional material ~~textbook~~ is written, compiled, or edited primarily by faculty of the eligible institution who specialize in the subject area of the instructional material ~~textbook~~;

(2) the eligible institution identifies each contributing author;

(3) the appropriate department of the eligible institution certifies the instructional material ~~textbook~~ for accuracy; ~~and~~

(4) the eligible institution determines that the instructional material ~~textbook~~ qualifies for placement on the conforming or nonconforming list based on the extent to which the instructional material ~~textbook~~ covers the essential knowledge and skills identified under Section 28.002 for the subject for which the instructional material ~~textbook~~ is written and certifies that:

(A) for instructional material ~~a textbook~~ for a senior-level course, a student who successfully completes a course based on the instructional material ~~textbook~~ will be prepared, without remediation, for entry into the eligible institution's freshman-level course in that subject; or

(B) for instructional material ~~a textbook~~ for a junior-level and senior-level course, a student who successfully completes the junior-level course based on the instructional material ~~textbook~~ will be prepared for entry into the senior-level course; and

(5) by not later than the 90th day after the date the instructional material is submitted and before placement of the instructional material on the list, the board reviews and comments on the instructional material.

The amendment to **CSHB 6** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 2 on Third Reading.

On motion of Senator Shapiro and by unanimous consent, the caption was again amended to conform to the body of the bill as amended.

**CSHB 6** as again amended was finally passed by the following vote: Yeas 31, Nays 0.

### REMARKS ORDERED PRINTED

On motion of Senator Rodriguez and by unanimous consent, his remarks regarding **CSHB 6** were ordered reduced to writing and printed in the *Senate Journal* as follows:

In the Senate Committee Substitute for House Bill 6, it is unclear to me whether new English as a Second Language (ESL) materials are included as priorities for our children. I want us to clarify for the record that ESL materials are a priority.

First, the Senate version of H.B. 1 has enough money for ESL materials. The amount for new materials is \$389 million. TEA testified that's enough funding for both the English Language Arts and English as a Second Language materials that were part of Proclamation 2011 and that are due to classrooms this fall.

- English Language Arts materials cost about \$312 million
- English as a Second Language materials for grades K-8 cost about \$77 million

Second, ESL materials are essential to meeting college and career readiness standards and passing both the STAAR and End-of-Course Exams. The Senate's H.B. 6 language, in Section 31.0211(d-1), requires districts to purchase materials that help students achieve readiness on STAAR and EOCs.

To improve English comprehension, federal law—and our state curriculum and annual TELPAS proficiency tests—now require districts to tailor instruction according to English proficiency levels. In other words, customize education to meet the kids where they are and get them to where they need to be.

A student can be conversational in English. But if a student can't comprehend, in the abstract, the language he sees on a test, he is more likely to fail it. For a student who can't completely comprehend the language of instruction and of state exams, frustration can overtake perseverance.

For an elementary teacher, having an effective ESL program will be like having a good Swiss army knife. She can pull out different strategies and differentiate instruction for the widely varying skill levels she finds in her classroom. If something doesn't work, she can pull out another strategy. The new programs provide that array of effective tools.

Once students learn vocabulary and can comprehend what they read, they will learn academic content more readily in math, science, and other subjects. This will be all the more critical with the rising rigor of new state exams.

Finally, ESL materials are integral to stemming the state's growing tide of dropouts. Failing a state exam, because a student doesn't fully comprehend the language of instruction and examination, can have dire consequences on students and our state's economy.

The demographics speak for themselves. More than one in six Texas students belong to the rapidly growing group of kids who are struggling to learn English. In 1999-2000, there were 498,000 limited English proficient students (12.5 percent of 3.9 million). Ten years later, there are 815,998 (17 percent of 4.8 million). The new Census data confirms this trend.

This growth is coupled with eye-popping statistics on failure on state exams and risks of dropping out. This underscores the critical need for the Legislature to give teachers and schools the tools they need to effectively educate and keep these students in school.

If we expect Texas to have a skilled workforce in the future, and attract and retain good jobs in our state, it is imperative that we educate our growing population of students who can't speak English.

### **HOUSE BILL 2770 ON SECOND READING**

On motion of Senator Williams and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 2770** at this time on its second reading:

**HB 2770**, Relating to the powers and duties of navigation districts, port authorities, and certain municipalities.

The bill was read second time.

Senator Williams offered the following amendment to the bill:

#### **Floor Amendment No. 1**

Amend **HB 2770** (senate committee printing) by striking SECTION 1 of the bill (page 1, lines 13-28) and renumbering subsequent SECTIONS accordingly.

The amendment to **HB 2770** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1.

Senator Williams offered the following amendment to the bill:

#### **Floor Amendment No. 2**

Amend **HB 2770** (senate committee printing) on page 4, lines 2-37, by striking SECTION 11 of the bill and renumbering subsequent SECTIONS accordingly.

The amendment to **HB 2770** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 2.

Senator Williams offered the following amendment to the bill:

#### **Floor Amendment No. 3**

Amend **HB 2770** (senate committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_ . Subchapter H, Chapter 60, Water Code, is amended by adding Section 60.207 to read as follows:

Sec. 60.207. AUDIT OF FUND. (a) A promotion and development fund established under this subchapter is subject to audit by the state auditor.

(b) The district shall reimburse the state auditor for all costs incurred by the state auditor associated with an audit under this section.

WILLIAMS  
ELLIS

The amendment to **HB 2770** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 3.

Senator Ellis offered the following amendment to the bill:

**Floor Amendment No. 4**

Amend **HB 2770** by adding the following appropriately numbered SECTIONS and renumbering subsequent SECTIONS accordingly:

SECTION \_\_\_\_\_. Section 60.403(a), Water Code, as amended by Chapters 415 (H.B. 1972) and 1191 (H.B. 3785), Acts of the 81st Legislature, Regular Session, 2009, is reenacted to read as follows:

(a) Notwithstanding the competitive bidding requirements and proposal procedures of this subchapter and Subchapter O and the requirements of Sections 60.408(a), (b), (c), (d), and (e), the executive director of a district or an officer of a district authorized in writing by the port commission may make emergency purchases or contracts or emergency amendments to existing purchase orders or contracts in an amount that exceeds the amount authorized under Section 60.403(a) for routine purchases or contracts if necessary:

(1) to preserve or protect the public health and safety of the residents of the district;

(2) to preserve the property of the district in the case of a public calamity;

(3) to repair unforeseen damage to the property of the district; or

(4) to respond to security directives issued by:

(A) the federal Department of Homeland Security, including the Transportation Security Administration;

(B) the United States Coast Guard;

(C) the federal Department of Transportation, including the Maritime Administration; or

(D) another federal or state agency responsible for domestic security.

SECTION \_\_\_\_\_. Sections 60.404(a) and (d), Water Code, as amended by Chapters 415 (H.B. 1972) and 1191 (H.B. 3785), Acts of the 81st Legislature, Regular Session, 2009, are reenacted to read as follows:

(a) If the materials, supplies, machinery, equipment, or other items to be purchased or contracted for are valued at an amount greater than the amount authorized under Section 60.403(a) for routine purchases or contracts, notice shall be published as provided by this section.

(d) The specifications must:

(1) describe in detail the item to be acquired;

(2) require that bids be sealed;

(3) require the attachment to the bid of a certified check, cashier's check, or bidders bond, if security is required in connection with the bid; and

(4) indicate whether a small business development program adopted by the port commission of the port authority or district applies to the purchase and, if so, where a copy of the program requirements may be obtained.

SECTION \_\_\_\_\_. Section 60.406(a), Water Code, as amended by Chapters 415 (H.B. 1972) and 1191 (H.B. 3785), Acts of the 81st Legislature, Regular Session, 2009, is reenacted to read as follows:

(a) Except as otherwise provided by Section 60.4035 or 60.412, before a district or port authority may purchase one or more items under a contract that will require an expenditure of more than the amount authorized under Section 60.403(a) for routine purchases or contracts, the port commission of that district or port authority must comply with the competitive bidding requirements or proposal procedures provided by this subchapter or Subchapter O. All bids must be sealed.

The amendment to **HB 2770** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 4.

Senator Whitmire offered the following amendment to the bill:

#### **Floor Amendment No. 5**

Amend **HB 2770** (senate committee printing) by adding the following SECTION to the bill and renumbering subsequent SECTIONS accordingly:

SECTION \_\_\_\_\_. Chapter 97, Acts of the 40th Legislature, 1st Called Session, 1927, is amended by adding Section 9 to read as follows:

Sec. 9. SUNSET REVIEW. (a) The Port of Houston Authority is subject to review under Chapter 325, Government Code (Texas Sunset Act), as if it were a state agency but may not be abolished under that chapter. The review shall be conducted as if the authority were scheduled to be abolished September 1, 2013. Another review shall be conducted as if the authority were scheduled to be abolished September 1, 2019.

(b) The reviews must assess the authority's governance, management, and operating structure, and the authority's compliance with legislative requirements.

(c) The authority shall pay the cost incurred by the Sunset Advisory Commission in performing a review of the authority under this section. The Sunset Advisory Commission shall determine the cost, and the authority shall pay the amount promptly on receipt of a statement from the Sunset Advisory Commission detailing the cost.

(d) This section expires September 1, 2019.

The amendment to **HB 2770** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 5.

On motion of Senator Williams and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**HB 2770** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

**HOUSE BILL 2770 ON THIRD READING**

Senator Williams moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2770** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**MESSAGE FROM THE HOUSE**

HOUSE CHAMBER  
Austin, Texas  
Tuesday, May 24, 2011 - 7

The Honorable President of the Senate  
Senate Chamber  
Austin, Texas

Mr. President:

I am directed by the House to inform the Senate that the House has taken the following action:

**THE HOUSE HAS CONCURRED IN THE SENATE AMENDMENTS TO THE FOLLOWING MEASURES:**

- HB 254** (118 Yeas, 23 Nays, 2 Present, not voting)
- HB 338** (142 Yeas, 0 Nays, 2 Present, not voting)
- HB 364** (113 Yeas, 30 Nays, 2 Present, not voting)
- HB 447** (136 Yeas, 0 Nays, 1 Present, not voting)
- HB 534** (142 Yeas, 0 Nays, 2 Present, not voting)
- HB 1315** (132 Yeas, 6 Nays, 1 Present, not voting)
- HB 1610** (144 Yeas, 1 Nays, 2 Present, not voting)
- HB 1942** (118 Yeas, 26 Nays, 1 Present, not voting)
- HB 1964** (145 Yeas, 0 Nays, 1 Present, not voting)
- HB 2170** (143 Yeas, 0 Nays, 2 Present, not voting)
- HB 2604** (142 Yeas, 0 Nays, 2 Present, not voting)
- HB 2725** (141 Yeas, 0 Nays, 2 Present, not voting)
- HB 3727** (143 Yeas, 0 Nays, 2 Present, not voting)

**THE HOUSE HAS REFUSED TO CONCUR IN THE SENATE AMENDMENTS TO THE FOLLOWING MEASURES AND REQUESTS THE APPOINTMENT OF A CONFERENCE COMMITTEE TO ADJUST THE DIFFERENCES BETWEEN THE TWO HOUSES:**



**HB 414** (non-record vote)

House Conferees: Aycock - Chair/Geren/Howard, Donna/Landtroop/Miller, Sid

**HB 871** (non-record vote)

House Conferees: Davis, Yvonne - Chair/Coleman/Gooden/Naishtat/Reynolds

**HB 1619** (non-record vote)

House Conferees: Orr - Chair/Coleman/Gonzales, Larry/Miller, Doug/Schwertner

THE HOUSE HAS GRANTED THE REQUEST OF THE SENATE FOR THE APPOINTMENT OF A CONFERENCE COMMITTEE ON THE FOLLOWING MEASURES:

**SB 263** (non-record vote)

House Conferees: Kolkhorst - Chair/Coleman/Davis, Sarah/King, Susan/Zerwas

Respectfully,

/s/Robert Haney, Chief Clerk  
House of Representatives**HOUSE BILL 3396 ON SECOND READING**

On motion of Senator Patrick and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 3396** at this time on its second reading:

**HB 3396**, Relating to the prosecution of and punishment for the offense of breach of computer security.

The bill was read second time.

Senator Ellis offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 3396** (senate committee report) as follows:

(1) In SECTION 2 of the bill, in proposed Section 33.02(b-1), Penal Code, on page 1, strike lines 48 and 49 and substitute the following:

~~defraud [unless in committing the offense the actor knowingly obtains a benefit, defrauds]~~ or harm [harms] another[;] or

(2) In SECTION 2 of the bill, in proposed Section 33.02(b-2), Penal Code, strike page 1, line 55, through page 2, line 11, and substitute the following:

(1) [~~a Class A misdemeanor if the aggregate amount involved is less than \$1,500;~~

~~(2)~~ a state jail felony if [;

~~(A)~~ the aggregate amount involved is [~~\$1,500 or more but~~] less than \$20,000[; ~~or~~

~~(B) the aggregate amount involved is less than \$1,500 and the defendant has been previously convicted two or more times of an offense under this chapter];~~

(2) ~~(3)~~ a felony of the third degree if the aggregate amount involved is \$20,000 or more but less than \$100,000;

~~(3)~~ ~~(4)~~ a felony of the second degree if:

(A) the aggregate amount involved is \$100,000 or more but less than \$200,000;

(B) the aggregate amount involved is any amount less than \$200,000 and the computer, computer network, or computer system is owned by the government or a critical infrastructure facility; or

(C) the actor obtains the identifying information of another by accessing only one computer, computer network, or computer system; or

(4) ~~[(5)]~~ a felony of the first degree if:

The amendment to **HB 3396** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1.

On motion of Senator Patrick and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**HB 3396** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

### HOUSE BILL 3396 ON THIRD READING

Senator Patrick moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3396** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

### SENATE BILL 329 WITH HOUSE AMENDMENT

Senator Watson called **SB 329** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

#### Amendment

Amend **SB 329** by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to the sale, recovery, and recycling of certain television equipment; providing administrative penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 361, Health and Safety Code, is amended by adding Subchapter Z to read as follows:

#### SUBCHAPTER Z. TELEVISION EQUIPMENT RECYCLING PROGRAM

Sec. 361.971. DEFINITIONS. In this subchapter:

(1) "Brand" has the meaning assigned by Section 361.952.

(2) "Consumer" means an individual who uses covered television equipment that is purchased primarily for personal or home business use.

(3) "Covered television equipment" means the following equipment marketed to and intended for consumers:

(A) a direct view or projection television with a viewable screen of nine inches or larger whose display technology is based on cathode ray tube, plasma, liquid crystal, digital light processing, liquid crystal on silicon, silicon crystal reflective display, light-emitting diode, or similar technology; or

(B) a display device that is peripheral to a computer that contains a television tuner.

(4) "Market share allocation" means the quantity of covered television equipment, by weight, that an individual television manufacturer submitting a recovery plan under Section 361.978 is responsible for collecting, reusing, and recycling, as computed by the commission under Section 361.984(g).

(5) "Recycling" means any process by which equipment that would otherwise become solid waste or hazardous waste is collected, separated, and refurbished for reuse or processed to be returned to use in the form of raw material or products. The term does not include incineration.

(6) "Retailer" means a person who owns or operates a business that sells new covered television equipment by any means directly to a consumer. The term does not include a person who, in the ordinary course of business, regularly leases, offers to lease, or arranges for leasing of merchandise under a rental-purchase agreement.

(7) "Television" means an electronic device that contains a tuner that locks onto a selected carrier frequency and is capable of receiving and displaying video programming from a broadcast, cable, or satellite source.

(8) "Television manufacturer" means a person that:

(A) manufactures covered television equipment under a brand the person owns or is licensed to use;

(B) manufactures covered television equipment without affixing a brand;

(C) resells covered television equipment produced by other suppliers under a brand the person owns or is licensed to use;

(D) manufactures covered television equipment, supplies it to any person within a distribution network that includes a wholesaler or retailer, and benefits from the sale of the covered television equipment through that distribution network; or

(E) assumes the responsibilities of a television manufacturer under this subchapter.

Sec. 361.972. LEGISLATIVE FINDINGS AND PURPOSE. The purpose of this subchapter is to establish a comprehensive, convenient, and environmentally sound program for the collection and recycling of television equipment. The program is based on individual television manufacturer responsibility and shared responsibility among consumers, retailers, and the government of this state.

Sec. 361.973. APPLICABILITY. (a) Except as provided by this section and Section 361.991, this subchapter applies only to covered television equipment that is:

(1) offered for sale or sold to a consumer in this state; or

(2) used by a consumer in this state and returned for recycling.

(b) This subchapter does not apply to:

- (1) computer equipment as that term is defined by Section 361.952;
- (2) a manufacturer of a display device that is peripheral to a computer and contains a television tuner, if that manufacturer collects and recycles the device in accordance with Subchapter Y;
- (3) any part of a motor vehicle, including a replacement part;
- (4) a device that is functionally or physically part of or connected to another system or piece of equipment:
  - (A) designed and intended for use in an industrial, governmental, commercial, research and development, or medical setting, including diagnostic monitoring or control equipment; or
  - (B) used for security, sensing, monitoring, antiterrorism, or emergency services purposes;
- (5) a device that is contained in exercise equipment intended for home use or an appliance intended for home use including a clothes washer, clothes dryer, refrigerator, refrigerator and freezer, microwave oven, conventional oven or range, dishwasher, room air conditioner, dehumidifier, and air purifier;
- (6) a telephone of any type;
- (7) a personal digital assistant;
- (8) a global positioning system;
- (9) a consumer's lease of covered television equipment or a consumer's use of covered television equipment under a lease agreement; or
- (10) the sale or lease of covered television equipment to an entity when the television manufacturer and the entity enter into a contract that effectively addresses the recycling of equipment that has reached the end of its useful life.

Sec. 361.974. SALES PROHIBITION. A person may not offer for sale in this state new covered television equipment unless the equipment has been labeled in compliance with Section 361.975.

Sec. 361.975. MANUFACTURER'S LABELING REQUIREMENT. A television manufacturer may sell or offer for sale in this state only covered television equipment that is labeled with the television manufacturer's brand. The label must be permanently affixed and readily visible.

Sec. 361.976. MANUFACTURERS' REGISTRATION AND REPORTING. (a) A television manufacturer of covered television equipment shall register with the commission and, except as provided by Section 361.979, pay a registration fee of \$2,500. A registered television manufacturer shall renew the registration and, except as provided by Section 361.979, pay the fee on or before January 31 of each year. The registration or registration renewal must include:

(1) a list of all brands the television manufacturer uses in this state on covered television equipment regardless of whether the television manufacturer owns or is licensed to use the brand; and

(2) contact information for the person the commission may contact regarding the television manufacturer's activities to comply with this subchapter.

(b) Except as provided by Section 361.979, not later than January 31 of each year, each registered television manufacturer of covered television equipment shall report to the commission:

(1) the total weight of covered television equipment for which the television manufacturer is responsible that was sold in this state during the preceding calendar year or, if the manufacturer does not track the weight of covered television equipment it sells by state, the television manufacturer may report the total amount of covered television equipment the television manufacturer sold nationally in the preceding calendar year; and

(2) the total weight of covered television equipment the television manufacturer collected and recycled in this state during the preceding calendar year.

(c) Fees collected under this section shall be deposited to the credit of the television recycling account created under Section 361.977.

Sec. 361.977. TELEVISION RECYCLING ACCOUNT. (a) The television recycling account is an account in the general revenue fund that consists of the:

(1) fees collected under Section 361.976; and

(2) interest earned on the money in the account.

(b) Money in the account may be appropriated only to the commission to be used by the commission to maintain a public Internet website and toll-free telephone number that provide consumers with information about covered television equipment recycling opportunities in this state.

Sec. 361.978. MANUFACTURER'S RECOVERY PLAN AND RELATED RESPONSIBILITIES. (a) This section does not apply to a television manufacturer that participates in a recycling leadership program described by Section 361.979.

(b) Not later than the first January 31 that occurs after the date the television manufacturer first registers with the commission under Section 361.976, each television manufacturer of covered television equipment sold in this state shall, individually or as a member of a group of television manufacturers, submit to the commission a recovery plan to collect, reuse, and recycle covered television equipment.

(c) An individual television manufacturer that submits a recovery plan under Subsection (b) shall collect, reuse, and recycle covered television equipment. Beginning with the television manufacturer's second year of registration, the individual television manufacturer shall collect, reuse, and recycle the quantity of covered television equipment computed by the commission as the television manufacturer's market share allocation.

(d) A group of television manufacturers that submits a recovery plan under Subsection (b) shall collect, reuse, and recycle covered television equipment. Beginning with the second year of registration for a group of television manufacturers, the group of television manufacturers shall collect, reuse, and recycle a quantity of covered television equipment equal to the sum of the combined market share allocations of the group's participants.

(e) A recovery plan under Subsection (b) must include at a minimum:

(1) a statement of whether the television manufacturer intends to collect and recycle its market share allocation through operation of its plan, individually or in partnership with other television manufacturers;

(2) beginning with the television manufacturer's second year of registration, the total weight of covered television equipment collected, reused, and recycled by or on behalf of the television manufacturer during the preceding year; and

(3) collection methods that allow a consumer to recycle covered television equipment without paying a separate fee at the time of recycling.

(f) The commission shall review the recovery plan for satisfaction of the requirements of this subchapter. If the registration and recovery plan are complete, the commission shall include the television manufacturer on the commission's Internet website listing as provided by Section 361.984(a). The commission may reject the recovery plan if it does not meet all requirements of this subchapter.

Sec. 361.979. MANUFACTURER RECYCLING LEADERSHIP PROGRAM.

(a) A group of television manufacturers may establish a recycling leadership program to provide collection, transportation, and recycling infrastructure for covered television equipment in this state.

(b) A recycling leadership program must provide at least 200 individual collection sites or programs in this state in a manner described by Subsection (d) where a consumer may return covered television equipment for reuse or recycling.

(c) A television manufacturer may not charge a separate fee at the time of recycling under this section unless at the time of recycling a financial incentive of equal or greater value to the fee charged is provided by the television manufacturer.

(d) Collection methods that may be used by a recycling leadership program under Subsection (b) for recycling of covered television equipment include:

(1) a system by which the television manufacturer, an entity designated by the television manufacturer, or another private or public sector entity associated with the television manufacturer offers a consumer a physical collection site to return covered television equipment;

(2) a system by which the television manufacturer, an entity designated by the television manufacturer, or another private or public sector entity associated with the television manufacturer offers the consumer a method for returning covered television equipment by mail; and

(3) a system by which the television manufacturer, an entity designated by the television manufacturer, or another private or public sector entity associated with the television manufacturer holds a collection event where the consumer may return covered television equipment.

(e) A television manufacturer of covered television equipment sold in this state that is participating in a recycling leadership program for covered television equipment as of January 1 of any year is not subject during that year to:

(1) the registration fees and renewal fees required by Section 361.976(a); and

(2) the reporting requirements of Section 361.976(b).

(f) Not later than January 31 of each year, each recycling leadership program must provide to the commission a list of the television manufacturers participating in the program for that year.

(g) A television manufacturer of covered television equipment that is sold in this state that participates in a recycling leadership program shall individually or through the recycling leadership program establish and implement a public education program regarding collection, reuse, and recycling opportunities that exist in this state for covered television equipment. The public education program must:

(1) inform consumers about the collection, reuse, and recycling opportunities for covered television equipment available in this state;

(2) work with the commission and other interested parties to develop educational materials that inform consumers about collection, reuse, and recycling opportunities available in this state;

(3) use television manufacturer-developed customer outreach materials, such as packaging inserts, television manufacturers' Internet websites, and other communication methods, to inform consumers about collection, reuse, and recycling opportunities for covered television equipment available in this state; and

(4) use television manufacturer-developed customer outreach materials to provide rural communities with a centralized Internet-based information center that provides information for those communities about:

(A) best practices for collection, reuse, and recycling of covered television equipment; and

(B) collection events and other recycling opportunities in those communities and surrounding areas.

Sec. 361.980. RECYCLING LEADERSHIP PROGRAM COLLECTION REPORT. (a) Not later than January 31 of every other year beginning with the television manufacturer's second year of registration, a television manufacturer of covered television equipment sold in this state that is participating in a recycling leadership program under Section 361.979 shall, individually or as a member of the recycling leadership program, submit to the commission a collection report regarding the television manufacturer's collection, reuse, and recycling of covered television equipment.

(b) The collection report must include:

(1) an inventory of covered television equipment collection, reuse, and recycling opportunities that are currently available to consumers through the individual television manufacturer or the recycling leadership program in this state;

(2) documentation of collection opportunities available to consumers in counties with populations of less than 50,000, including an analysis of the number of collection sites available to consumers in those counties compared to the number of opportunities available to consumers in those counties to purchase new covered television equipment;

(3) the amount by weight of the covered television equipment that the individual television manufacturer or the recycling leadership program collected in the two preceding years; and

(4) documentation that the collection, reuse, and recycling of the collected covered television equipment complies with Section 361.990.

(c) The inventory of covered television equipment collection, reuse, and recycling opportunities required by Subsection (b)(1) may be submitted in the form of a map noting the location of the opportunities.

(d) The collection report may include a listing of other existing collection and recycling infrastructure for covered television equipment not associated with the recycling leadership program, including electronic recyclers and repair shops,

recyclers of other appropriate commodities, reuse organizations, not-for-profit corporations, retailers, and other suitable operations, including local government collection events, if available.

Sec. 361.981. RETAILER RESPONSIBILITY. (a) A retailer may order and sell only products from a television manufacturer that is included on the list published under Section 361.984(a). A retailer shall consult that list before ordering covered television equipment in this state. A retailer is considered to have complied with this subsection and may sell a product in the retailer's inventory if, on the date the product was ordered from the television manufacturer, the television manufacturer was listed on the Internet website described by Section 361.984(a).

(b) A person who is a retailer of covered television equipment shall provide to consumers in writing the information published by the commission regarding the legal disposition and recycling of television equipment. The information may be included with the sales receipt or as part of the packaging of the equipment. Alternatively, the retailer may provide the information required by this subsection through a toll-free telephone number and address of an Internet website provided to consumers.

(c) This subchapter does not require a retailer to collect covered television equipment for recycling.

Sec. 361.982. RECYCLER RESPONSIBILITIES. (a) This section does not apply to a television manufacturer.

(b) A person who is engaged in the business of recycling covered television equipment in this state shall:

(1) register with the commission and certify that the person is in compliance with the standards adopted under Section 361.990;

(2) on or before January 31 of each year renew the registration with the commission and certify the person's continued compliance with the standards adopted under Section 361.990;

(3) recycle all covered television equipment accepted for recycling in accordance with the standards adopted under Section 361.990;

(4) maintain a written log recording the weight of all covered television equipment received by the person and the disposition of that equipment; and

(5) annually report to the commission the total weight of covered television equipment received and recycled by the person in the preceding 12 months.

Sec. 361.983. LIABILITY. (a) A television manufacturer, retailer, or person who recycles covered television equipment is not liable in any way for information in any form that a consumer leaves on covered television equipment that is collected or recycled under this subchapter.

(b) This subchapter does not exempt a person from liability under other law.

Sec. 361.984. COMMISSION RESPONSIBILITIES. (a) The commission shall publish on a publicly accessible Internet website a list of television manufacturers:

(1) whose recovery plans have been approved by the commission;

(2) whose public education programs are in full compliance with this subchapter; and

(3) who are in compliance with the registration and fee requirements of this subchapter, if applicable.



(b) The commission shall remove television manufacturers no longer in compliance under Subsection (a) from the Internet website once each fiscal quarter.

(c) The commission shall educate consumers regarding the collection and recycling of covered television equipment.

(d) The commission shall host or designate another person to host an Internet website and shall provide a toll-free telephone number to provide consumers with information about the recycling of covered television equipment, including best management practices and information about or links to information about:

(1) television manufacturers' collection and recycling programs, including television manufacturers' recovery plans; and

(2) covered television equipment collection events, collection sites, and community television equipment recycling programs.

(e) Information about collection and recycling provided on a television manufacturer's publicly available Internet website and through a toll-free telephone number does not constitute a determination by the commission that the television manufacturer's recovery plan or actual practices are in compliance with this subchapter or other law.

(f) Not later than November 1 of each year, the commission shall establish the state recycling rate by computing the ratio of the weight of total returns of covered television equipment in this state by television manufacturers submitting a recovery plan under Section 361.978 to the total weight of covered television equipment sold in this state by television manufacturers submitting a recovery plan under Section 361.978 during the preceding year.

(g) Not later than December 1 of each year, the commission shall compute and provide to each registered television manufacturer submitting a recovery plan under Section 361.978 the television manufacturer's market share allocation for collection, reuse, and recycling for that year. A television manufacturer's market share allocation equals the weight of the television manufacturer's covered television equipment sold in this state during the preceding calendar year multiplied by the state recycling rate determined under Subsection (f).

(h) In any year in which more than one recycling leadership program is implemented under Section 361.979, the commission shall review all active recycling leadership programs established under this subchapter to ensure the programs are operating in a manner consistent with the goals of this subchapter, including a balanced recycling effort. Based on the commission's review, the commission may make recommendations to the legislature on ways to improve the balance of the recycling effort.

(i) The commission shall provide to each county and municipality of this state information regarding the legal disposal and recycling of covered television equipment. The information must be provided in writing.

Sec. 361.985. ENFORCEMENT. (a) The commission may conduct audits and inspections to ensure compliance with this subchapter and rules adopted under this subchapter.

(b) The commission and the attorney general, as appropriate, shall enforce this subchapter and, except as provided by Subsections (d) and (e), take enforcement action against a television manufacturer, a retailer, or a person who recycles covered television equipment.

(c) The executive director or the attorney general may institute a suit under Section 7.032, Water Code, to enjoin an activity related to the sale of covered television equipment in violation of this subchapter.

(d) The commission shall issue a warning notice to a person on the person's first violation of this subchapter. The person must comply with this subchapter not later than the 60th day after the date the warning notice is issued.

(e) A retailer who receives a warning notice from the commission that the retailer's inventory violates this subchapter because it includes covered television equipment from a television manufacturer that is not in compliance with this subchapter must bring the inventory into compliance with this subchapter not later than the 60th day after the date the warning notice is issued.

Sec. 361.986. FINANCIAL AND PROPRIETARY INFORMATION. Financial or proprietary information submitted to the commission under this subchapter is exempt from public disclosure under Chapter 552, Government Code.

Sec. 361.987. BIENNIAL REPORT TO LEGISLATURE. (a) The commission shall compile information from television manufacturers and issue an electronic report to the committee in each house of the legislature having primary jurisdiction over environmental matters not later than March 1 of each even-numbered year.

(b) The report must include:

(1) collection information provided to the commission by each television manufacturer's report required by Section 361.976(b) or 361.980(a), as applicable;

(2) a summary of comments that have been received from stakeholders such as television manufacturers, electronic equipment recyclers, local governments, and nonprofit organizations;

(3) any recommendations under Section 361.984(h); and

(4) any other information that would assist the legislature in evaluating the effectiveness of this subchapter.

Sec. 361.988. FEES. (a) Except as provided by Section 361.976(a), this subchapter does not authorize the commission to impose a fee, including a recycling fee, on a consumer, television manufacturer, retailer, or person who recycles covered television equipment.

(b) Fees or costs collected under this subchapter may be used by the commission only to implement this subchapter.

Sec. 361.989. CONSUMER RESPONSIBILITIES. (a) A consumer is responsible for any information in any form left on the consumer's covered television equipment that is collected or recycled.

(b) A consumer is encouraged to learn about recommended methods for recycling covered television equipment that has reached the end of its useful life by visiting the commission's and television manufacturers' Internet websites or calling their toll-free telephone numbers.

Sec. 361.990. MANAGEMENT OF COLLECTED TELEVISION EQUIPMENT. (a) Covered television equipment collected under this subchapter must be disposed of or recycled in a manner that complies with federal, state, and local law.

(b) The commission shall adopt as standards for recycling or reuse of covered television equipment in this state the standards provided by "Electronics Recycling Operating Practices" as approved by the board of directors of the Institute of Scrap Recycling Industries, Inc., April 25, 2006, or other standards from a comparable nationally recognized organization.

Sec. 361.991. STATE PROCUREMENT REQUIREMENTS. (a) In this section, "state agency" has the meaning assigned by Section 2052.101, Government Code.

(b) A person who submits a bid for a contract with a state agency for the purchase or lease of covered television equipment must be in compliance with this subchapter.

(c) A state agency that purchases or leases covered television equipment shall require a prospective bidder to certify the bidder's compliance with this subchapter before the agency may accept the prospective bidder's bid.

(d) In considering bids for a contract for covered television equipment, in addition to any other preferences provided under other laws of this state, the state shall give special preference to a television manufacturer that:

(1) through its recovery plan collects more than its market share allocation;

or

(2) provides collection sites or recycling events in any county located in a council of governments region in which there are fewer than six permanent collection sites open at least twice each month.

(e) The comptroller shall adopt rules to implement this section.

Sec. 361.992. FEDERAL PREEMPTION; EXPIRATION. (a) If federal law establishes a national program for the collection and recycling of covered television equipment and the commission determines that the federal law substantially meets the purposes of this subchapter, the commission may adopt an agency statement that interprets the federal law as preemptive of this subchapter.

(b) This subchapter expires on the date the commission issues a statement under this section.

SECTION 2. Sections 7.052(b-1) and (b-2), Water Code, are amended to read as follows:

(b-1) The amount of the penalty assessed against a manufacturer that does not label its computer equipment or covered television equipment or adopt and implement a recovery plan as required by Section 361.955, 361.975, or 361.978, Health and Safety Code, as applicable, may not exceed \$10,000 for the second violation or \$25,000 for each subsequent violation. A penalty under this subsection is in addition to any other penalty that may be assessed for a violation of Subchapter Y or Z, Chapter 361, Health and Safety Code.

(b-2) Except as provided by Subsection (b-1), the amount of the penalty for a violation of Subchapter Y or Z, Chapter 361, Health and Safety Code, may not exceed \$1,000 for the second violation or \$2,000 for each subsequent violation. A penalty under this subsection is in addition to any other penalty that may be assessed for a violation of Subchapter Y or Z, Chapter 361, Health and Safety Code.

SECTION 3. (a) The Texas Commission on Environmental Quality shall adopt any rules required to implement this Act not later than May 1, 2012.

(b) This Act may not be enforced before July 1, 2012.

(c) A report required under Section 361.976, Health and Safety Code, as added by this Act, is not required to be prepared or submitted for the first time before January 31, 2013.

(d) A recovery plan required under Section 361.978, Health and Safety Code, as added by this Act, is not required to be prepared and submitted before January 31, 2013.

(e) A collection report required under Section 361.980, Health and Safety Code, as added by this Act, is not required to be prepared and submitted for the first time before January 31, 2015.

(f) A retailer of covered television equipment is not required to provide the information described by Section 361.981(b), Health and Safety Code, as added by this Act, before the date on which the Texas Commission on Environmental Quality rules implementing this Act take effect.

(g) Not later than April 1, 2013, the Texas Commission on Environmental Quality shall prepare and post for the first time the list required under Section 361.984(a), Health and Safety Code, as added by this Act.

(h) Not later than November 1, 2013, the Texas Commission on Environmental Quality shall establish for the first time the state recycling rate required under Section 361.984(f).

(i) Not later than December 1, 2013, the Texas Commission on Environmental Quality shall provide for the first time to each applicable television manufacturer the television manufacturer's market share allocation as required under Section 361.984(g).

(j) Notwithstanding Section 361.985, Health and Safety Code, as added by this Act, a retailer of television equipment may sell television equipment inventory that the retailer acquired before September 1, 2012, without incurring a penalty.

(k) The Texas Commission on Environmental Quality is not required to prepare or submit for the first time the report required under Section 361.987, Health and Safety Code, as added by this Act, before March 1, 2014.

SECTION 4. This Act takes effect September 1, 2011.

The amendment was read.

Senator Watson moved to concur in the House amendment to **SB 329**.

The motion prevailed by the following vote: Yeas 29, Nays 2.

Yeas: Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hegar, Hinojosa, Huffman, Jackson, Lucio, Nelson, Nichols, Ogden, Rodriguez, Seliger, Shapiro, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Birdwell, Patrick.

**MOTION TO PLACE  
HOUSE BILL 12 ON SECOND READING**

Senator Williams moved to suspend the regular order of business to take up for consideration **HB 12** at this time on its second reading:

**HB 12**, Relating to the enforcement of state and federal laws governing immigration by certain governmental entities.

The motion was lost by the following vote: Yeas 19, Nays 12. (Not receiving two-thirds vote of Members present)

Yeas: Birdwell, Carona, Deuell, Duncan, Eltife, Estes, Fraser, Harris, Hegar, Huffman, Jackson, Nelson, Nichols, Ogden, Patrick, Seliger, Shapiro, Wentworth, Williams.

Nays: Davis, Ellis, Gallegos, Hinojosa, Lucio, Rodriguez, Uresti, Van de Putte, Watson, West, Whitmire, Zaffirini.

**NOTICE GIVEN FOR  
LOCAL AND UNCONTESTED CALENDAR**

Senator Eltife announced that a Local and Uncontested Calendar had been furnished to each Member of the Senate. He then gave notice that the Local and Uncontested Calendar Session would be held at 9:00 a.m. tomorrow and that all bills and resolutions would be considered on second and third reading in the order in which they were listed.

**MOTION TO RECESS**

On motion of Senator Whitmire and by unanimous consent, the Senate at 11:22 p.m. agreed to recess, upon conclusion of the Local and Uncontested Calendar Session, until 10:30 a.m. tomorrow.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 321**

Senator Hegar submitted the following Conference Committee Report:

Austin, Texas  
May 23, 2011

Honorable David Dewhurst  
President of the Senate

Honorable Joe Straus  
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 321** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

HEGAR  
WENTWORTH

KLEINSCHMIDT  
GUILLEN

PATRICK  
 BIRDWELL  
 WHITMIRE  
 On the part of the Senate

FLETCHER  
 GEREN  
 HARDCASTLE  
 On the part of the House

A BILL TO BE ENTITLED  
 AN ACT

relating to an employee's transportation and storage of certain firearms or ammunition while on certain property owned or controlled by the employee's employer.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 52, Labor Code, is amended by adding Subchapter G to read as follows:

SUBCHAPTER G. RESTRICTIONS ON PROHIBITING EMPLOYEE  
 TRANSPORTATION OR STORAGE OF CERTAIN FIREARMS OR  
 AMMUNITION

Sec. 52.061. RESTRICTION ON PROHIBITING EMPLOYEE ACCESS TO OR STORAGE OF FIREARM OR AMMUNITION. A public or private employer may not prohibit an employee who holds a license to carry a concealed handgun under Subchapter H, Chapter 411, Government Code, who otherwise lawfully possesses a firearm, or who lawfully possesses ammunition from transporting or storing a firearm or ammunition the employee is authorized by law to possess in a locked, privately owned motor vehicle in a parking lot, parking garage, or other parking area the employer provides for employees.

Sec. 52.062. EXCEPTIONS. (a) Section 52.061 does not:

(1) authorize a person who holds a license to carry a concealed handgun under Subchapter H, Chapter 411, Government Code, who otherwise lawfully possesses a firearm, or who lawfully possesses ammunition to possess a firearm or ammunition on any property where the possession of a firearm or ammunition is prohibited by state or federal law; or

(2) apply to:

(A) a vehicle owned or leased by a public or private employer and used by an employee in the course and scope of the employee's employment, unless the employee is required to transport or store a firearm in the official discharge of the employee's duties;

(B) a school district;

(C) an open-enrollment charter school, as defined by Section 5.001, Education Code;

(D) a private school, as defined by Section 22.081, Education Code;

(E) property owned or controlled by a person, other than the employer, that is subject to a valid, unexpired oil, gas, or other mineral lease that contains a provision prohibiting the possession of firearms on the property; or

(F) property owned or leased by a chemical manufacturer or oil and gas refiner with an air authorization under Chapter 382, Health and Safety Code, and on which the primary business conducted is the manufacture, use, storage, or transportation of hazardous, combustible, or explosive materials, except in regard to an employee who holds a license to carry a concealed handgun under Subchapter H, Chapter 411, Government Code, and who stores a firearm or ammunition the

employee is authorized by law to possess in a locked, privately owned motor vehicle in a parking lot, parking garage, or other parking area the employer provides for employees that is outside of a secured and restricted area:

- (i) that contains the physical plant;
- (ii) that is not open to the public; and
- (iii) the ingress into which is constantly monitored by security

personnel.

(b) Section 52.061 does not prohibit an employer from prohibiting an employee who holds a license to carry a concealed handgun under Subchapter H, Chapter 411, Government Code, or who otherwise lawfully possesses a firearm, from possessing a firearm the employee is otherwise authorized by law to possess on the premises of the employer's business. In this subsection, "premises" has the meaning assigned by Section 46.035(f)(3), Penal Code.

Sec. 52.063. IMMUNITY FROM CIVIL LIABILITY. (a) Except in cases of gross negligence, a public or private employer, or the employer's principal, officer, director, employee, or agent, is not liable in a civil action for personal injury, death, property damage, or any other damages resulting from or arising out of an occurrence involving a firearm or ammunition that the employer is required to allow on the employer's property under this subchapter.

(b) The presence of a firearm or ammunition on an employer's property under the authority of this subchapter does not by itself constitute a failure by the employer to provide a safe workplace.

(c) For purposes of this section, a public or private employer, or the employer's principal, officer, director, employee, or agent, does not have a duty:

(1) to patrol, inspect, or secure:

(A) any parking lot, parking garage, or other parking area the employer provides for employees; or

(B) any privately owned motor vehicle located in a parking lot, parking garage, or other parking area described by Paragraph (A); or

(2) to investigate, confirm, or determine an employee's compliance with laws related to the ownership or possession of a firearm or ammunition or the transportation and storage of a firearm or ammunition.

Sec. 52.064. CONSTRUCTION OF PROVISION RELATING TO IMMUNITY FROM CIVIL LIABILITY. Section 52.063 does not limit or alter the personal liability of:

(1) an individual who causes harm or injury by using a firearm or ammunition;

(2) an individual who aids, assists, or encourages another individual to cause harm or injury by using a firearm or ammunition; or

(3) an employee who transports or stores a firearm or ammunition on the property of the employee's employer but who fails to comply with the requirements of Section 52.061.

SECTION 2. Section 411.203, Government Code, is amended to read as follows:

Sec. 411.203. RIGHTS OF EMPLOYERS. This subchapter does not prevent or otherwise limit the right of a public or private employer to prohibit persons who are licensed under this subchapter from carrying a concealed handgun on the premises of the business. In this section, "premises" has the meaning assigned by Section 46.035(f)(3), Penal Code.

SECTION 3. The change in law made 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 that date is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 4. This Act takes effect September 1, 2011.

The Conference Committee Report on **SB 321** was filed with the Secretary of the Senate on Monday, May 23, 2011.

### CONFERENCE COMMITTEE REPORT ON HOUSE BILL 275

Senator Ogden submitted the following Conference Committee Report:

Austin, Texas  
May 23, 2011

Honorable David Dewhurst  
President of the Senate

Honorable Joe Straus  
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 275** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

OGDEN  
PATRICK  
FRASER  
DUNCAN  
ELTIFE

On the part of the Senate

PITTS  
AYCOCK  
DARBY  
MORRISON

On the part of the House

The Conference Committee Report on **HB 275** was filed with the Secretary of the Senate on Monday, May 23, 2011.

### CONFERENCE COMMITTEE REPORT ON SENATE BILL 28

Senator Zaffirini submitted the following Conference Committee Report:

Austin, Texas  
May 20, 2011

Honorable David Dewhurst  
President of the Senate



Honorable Joe Straus  
 Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 28** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

ZAFFIRINI

CARONA

DUNCAN

ELTIFE

WATSON

On the part of the Senate

BRANCH

D. HOWARD

HUNTER

PATRICK

VILLARREAL

On the part of the House

A BILL TO BE ENTITLED  
 AN ACT

relating to eligibility for a TEXAS grant and to administration of the TEXAS grant program.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. This Act shall be known as the TEXAS Grant College Readiness Reform Act.

SECTION 2. Section 56.303, Education Code, is amended by amending Subsection (d) and adding Subsections (d-1), (e), and (f) to read as follows:

(d) From money appropriated by the legislature for the purposes of this subchapter, the coordinating board annually shall determine the allocation of money available for TEXAS grants among general academic teaching institutions and other eligible institutions and shall distribute the money accordingly.

(d-1) In allocating among general academic teaching institutions money available for initial TEXAS grants for an academic year, the coordinating board shall ensure that each of those institutions' percentage share of the total amount of money for initial grants that is allocated to general academic teaching institutions under this subsection for that year does not, as a result of the number of students who establish eligibility at the institution for an initial grant under Section 56.3041(2)(A), change from the institution's percentage share of the total amount of money for initial grants that is allocated to those institutions under this subsection for the preceding academic year.

(e) In determining who should receive a TEXAS grant, the coordinating board and the eligible institutions shall give [~~highest~~] priority to awarding TEXAS grants to students who demonstrate the greatest financial need and whose expected family contribution, as determined according to the methodology used for federal student financial aid, does not exceed 60 percent of the average statewide amount of tuition and required fees described by Section 56.307(a). In giving priority based on financial need as required by this subsection to students who meet the requirements for the highest priority as provided by Subsection (f), a general academic teaching

institution shall determine financial need according to the relative expected family contribution of those students, beginning with students who have the lowest expected family contribution.

(f) Beginning with TEXAS grants awarded for the 2013-2014 academic year, in determining who should receive an initial TEXAS grant, each general academic teaching institution, in addition to giving priority as provided by Subsection (e), shall give highest priority to students who meet the eligibility criteria described by Section 56.3041(2)(A). If there is money available in excess of the amount required to award an initial TEXAS grant to all students meeting those criteria, a general academic teaching institution shall make awards to other students who meet the eligibility criteria described by Section 56.304(a)(2)(A), provided that the institution continues to give priority to students as provided by Subsection (e).

SECTION 3. Subsection (h), Section 56.304, Education Code, is amended to read as follows:

(h) The coordinating board shall adopt rules to allow a person who is otherwise eligible to receive a TEXAS grant, in the event of a hardship or for other good cause shown, including a showing of a severe illness or other debilitating condition that may affect the person's academic performance or that the person is responsible for the care of a sick, injured, or needy person and that the person's provision of care may affect the person's academic performance, to receive a TEXAS grant while enrolled in a number of semester credit hours that is less than the number of semester credit hours required under Subsection (a)(5) or Section 56.3041(5), as applicable. The coordinating board may not allow a person to receive a TEXAS grant while enrolled in fewer than six semester credit hours.

SECTION 4. Subchapter M, Chapter 56, Education Code, is amended by amending Section 56.3041 and adding Section 56.3042 to read as follows:

Sec. 56.3041. INITIAL ELIGIBILITY OF PERSON GRADUATING FROM HIGH SCHOOL ON OR AFTER MAY 1, 2013, AND ENROLLING IN A GENERAL ACADEMIC TEACHING INSTITUTION. Notwithstanding Section 56.304(a), to be eligible initially for a TEXAS grant, a person graduating from high school on or after May 1, 2013, and enrolling in a general academic teaching institution must:

(1) be a resident of this state as determined by coordinating board rules;

(2) meet the academic requirements prescribed by Paragraph (A), (B), or

(C) as follows:

(A) be a graduate of a public or accredited private high school in this state who completed the recommended high school program established under Section 28.025 or its equivalent and have accomplished any two or more of the following:

(i) graduation under the advanced high school program established under Section 28.025 or its equivalent, successful completion of the course requirements of the international baccalaureate diploma program, or earning of the equivalent of at least 12 semester credit hours of college credit in high school through courses described in Sections 28.009(a)(1), (2), and (3);

(ii) satisfaction of the Texas Success Initiative (TSI) college readiness benchmarks prescribed by the coordinating board under Section 51.3062(f) on any assessment instrument designated by the coordinating board under Section 51.3062(c) or (e) or qualification for an exemption as described by Section 51.3062(p), (q), or (q-1);

(iii) graduation in the top one-third of the person's high school graduating class or graduation from high school with a grade point average of at least 3.0 on a four-point scale or the equivalent; or

(iv) completion for high school credit of at least one advanced mathematics course following the successful completion of an Algebra II course, as permitted by Section 28.025(b-3), or at least one advanced career and technical course, as permitted by Section 28.025(b-2);

(B) have received an associate degree from a public or private institution of higher education; or

(C) if sufficient money is available, meet the eligibility criteria described by Section 56.304(a)(2)(A);

(3) meet financial need requirements established by the coordinating board;

(4) be enrolled in an undergraduate degree or certificate program at the general academic teaching institution;

(5) except as provided under rules adopted under Section 56.304(h), be enrolled as:

(A) an entering undergraduate student for at least three-fourths of a full course load, as determined by the coordinating board, not later than the 16th month after the calendar month in which the person graduated from high school;

(B) an entering undergraduate student who entered military service not later than the first anniversary of the date the person graduated from high school and who enrolled for at least three-fourths of a full course load, as determined by the coordinating board, at the general academic teaching institution not later than 12 months after being honorably discharged from military service; or

(C) a continuing undergraduate student for at least three-fourths of a full course load, as determined by the coordinating board, not later than the 12th month after the calendar month in which the person received an associate degree from a public or private institution of higher education;

(6) have applied for any available financial aid or assistance; and

(7) comply with any additional nonacademic requirements adopted by the coordinating board under this subchapter.

Sec. 56.3042. INITIAL QUALIFICATION [ELIGIBILITY] OF PERSON ON TRACK TO MEET ELIGIBILITY REQUIREMENTS [COMPLETE RECOMMENDED OR ADVANCED CURRICULUM]. (a) If at the time an eligible institution awards TEXAS grants to initial recipients for an academic year an applicant has not completed high school or the applicant's final high school transcript is not yet available to the institution, the student is considered to have satisfied the eligibility requirements of Section 56.304(a)(2)(A) or 56.3041(2)(A) if the student's available high school transcript indicates that at the time the transcript was prepared the student was on schedule to graduate from high school and to meet the eligibility

requirements ~~[complete the recommended or advanced high school curriculum or its equivalent]~~, as applicable to the student, in time to be eligible for a TEXAS grant for the academic year.

(a-1) If at the time an eligible institution awards TEXAS grants to initial recipients for an academic year an applicant who is an associate degree candidate has not completed that degree or the applicant's final college transcript is not yet available to the institution, the student is considered to have satisfied the associate degree requirement of Section 56.304(a)(2)(B) or 56.3041(2)(B) if the student's available college transcript indicates that at the time the transcript was prepared the student was on schedule to complete the associate degree in time to be eligible for a TEXAS grant for the academic year.

(b) The coordinating board or the eligible institution may require the student to forgo or repay the amount of an initial TEXAS grant awarded to the student as described by Subsection (a) or (a-1) if the student fails to meet the eligibility requirements of Section ~~56.304(a)(2)(A), 56.3041(2)(A), 56.304(a)(2)(B), or 56.3041(2)(B)~~, as applicable to the student, ~~[complete the recommended or advanced high school curriculum or its equivalent]~~ after the issuance of the available high school or college transcript.

(c) A person who is required to forgo or repay the amount of an initial TEXAS grant under Subsection (b) may subsequently become eligible to receive an initial TEXAS grant under Section 56.304 or 56.3041 by satisfying the associate degree requirement prescribed by Section 56.304(a)(2)(B) or 56.3041(2)(B) and the other ~~[applicable]~~ requirements of those sections applicable to the person ~~[that section]~~ at the time the person reapplies for the grant.

(d) A person who receives an initial TEXAS grant under Subsection (a) or (a-1) and is not required to forgo or repay the amount of the grant under Subsection (b) may become eligible to receive a subsequent TEXAS grant under Section 56.305 only by satisfying the associate degree requirement prescribed by Section 56.304(a)(2)(B) or 56.3041(2)(B), as applicable to the person, in addition to the requirements of Section 56.305 at the time the person applies for the subsequent grant.

SECTION 5. Subchapter M, Chapter 56, Education Code, is amended by adding Section 56.3045 to read as follows:

Sec. 56.3045. TOLLING OF ELIGIBILITY FOR INITIAL AWARD. (a) This section applies only to a person who:

(1) was eligible to receive an initial TEXAS grant in an academic year for which sufficient money was not available through legislative appropriations to allow the coordinating board to award initial TEXAS grants to at least 10 percent of the persons eligible for initial TEXAS grants in that year, as determined by the coordinating board;

(2) has not previously been awarded a TEXAS grant; and

(3) has not received a baccalaureate degree.

(b) Provided that the person meets the requirements described by Section 56.305(a), a person to whom this section applies is eligible to receive an initial TEXAS grant in any academic year in which funding is sufficient to award initial TEXAS grants to eligible applicants for that year. The person's eligibility for an initial TEXAS grant under this section is not affected by:

(1) the period for which the person has been enrolled at an eligible institution; or

(2) any statutory changes to the eligibility requirements for initial TEXAS grants that are enacted after the person first established eligibility for an initial TEXAS grant as described by Subsection (a)(1).

(c) A person who is eligible for an initial TEXAS grant under this section is entitled to the highest priority as described by Section 56.303(f) if the person was entitled to that priority when the person first established eligibility for an initial TEXAS grant as described by Subsection (a)(1).

(d) A person who receives an initial TEXAS grant under this section:

(1) may receive subsequent TEXAS grants as provided by Section 56.305;  
and

(2) is not entitled to TEXAS grants for any previously completed academic year.

SECTION 6. Section 56.311, Education Code, is amended by adding Subsection (c-1) to read as follows:

(c-1) Not later than September 1 of each year, the coordinating board shall provide a report to the committee regarding the operation of the TEXAS grant program, including information from the three preceding state fiscal years as follows:

(1) allocations of TEXAS grants by eligible institution, disaggregated by initial and subsequent awards;

(2) the number of TEXAS grants awarded to students disaggregated by race, ethnicity, and expected family contribution;

(3) disaggregated as required by Subdivision (2) and reported both on a statewide basis and for each eligible institution, the number of TEXAS grants awarded to students who meet:

(A) only the eligibility criteria described by Section 56.304; or

(B) the eligibility criteria described by Section 56.3041(2)(A); and

(4) the persistence, retention, and graduation rates of students receiving TEXAS grants.

SECTION 7. The change in law made to Subchapter M, Chapter 56, Education Code, by this Act applies beginning with TEXAS grants awarded for the 2013 fall semester. Grants awarded for a semester or term before the 2013 fall semester are governed by the applicable law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 8. This Act takes effect September 1, 2011.

The Conference Committee Report on **SB 28** was filed with the Secretary of the Senate on Tuesday, May 24, 2011.

### **CONFERENCE COMMITTEE REPORT ON HOUSE BILL 3302**

Senator Hegar submitted the following Conference Committee Report:

Austin, Texas  
May 24, 2011

Honorable David Dewhurst  
President of the Senate

Honorable Joe Straus  
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 3302** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

HEGAR  
ELTIFE  
HINOJOSA  
JACKSON  
PATRICK

On the part of the Senate

REYNOLDS  
R. ANDERSON  
MILES  
MURPHY  
VO

On the part of the House

The Conference Committee Report on **HB 3302** was filed with the Secretary of the Senate.

#### **CO-SPONSOR OF HOUSE BILL 12**

On motion of Senator Williams, Senator Nelson will be shown as Co-sponsor of **HB 12**.

#### **CO-SPONSOR OF HOUSE CONCURRENT RESOLUTION 50**

On motion of Senator Patrick, Senator Nelson will be shown as Co-sponsor of **HCR 50**.

#### **RESOLUTIONS OF RECOGNITION**

The following resolutions were adopted by the Senate:

##### **Congratulatory Resolutions**

**SR 1144** by Uresti, Recognizing the Harlandale Independent School District for winning the H-E-B Excellence in Education Award.

**SR 1146** by Ogden, Recognizing Chris Osborne on the occasion of the 25th anniversary of his ministry at Central Baptist Church of Bryan-College Station.

**SR 1148** by Ellis, Recognizing Lindsey Hall for being presented by the Alpha Kappa Omega Chapter of Alpha Kappa Alpha Sorority, Incorporated, at its 13th Biennial Debutante Cotillion.

**SR 1149** by Ellis, Recognizing Alicia Frederick for being presented by the Alpha Kappa Omega Chapter of Alpha Kappa Alpha Sorority, Incorporated, at its 13th Biennial Debutante Cotillion.

**SR 1150** by Ellis, Recognizing Adrienne Tate for being presented by the Alpha Kappa Omega Chapter of Alpha Kappa Alpha Sorority, Incorporated, at its 13th Biennial Debutante Cotillion.

**SR 1151** by Ellis, Recognizing Hannah Johannes for being presented by the Alpha Kappa Omega Chapter of Alpha Kappa Alpha Sorority, Incorporated, at its 13th Biennial Debutante Cotillion.

**SR 1152** by Ellis, Recognizing Kaylan Young for being presented by the Alpha Kappa Omega Chapter of Alpha Kappa Alpha Sorority, Incorporated, at its 13th Biennial Debutante Cotillion.

**SR 1153** by Ellis, Recognizing Alexis Williams for being presented by the Alpha Kappa Omega Chapter of Alpha Kappa Alpha Sorority, Incorporated, at its 13th Biennial Debutante Cotillion.

**SR 1154** by Ellis, Recognizing Alexys Nunn for being presented by the Alpha Kappa Omega Chapter of Alpha Kappa Alpha Sorority, Incorporated, at its 13th Biennial Debutante Cotillion.

**SR 1155** by Ellis, Recognizing Brionne Doyle for being presented by the Alpha Kappa Omega Chapter of Alpha Kappa Alpha Sorority, Incorporated, at its 13th Biennial Debutante Cotillion.

**SR 1156** by Ellis, Recognizing Shaniese Foster for being presented by the Alpha Kappa Omega Chapter of Alpha Kappa Alpha Sorority, Incorporated, at its 13th Biennial Debutante Cotillion.

**SR 1157** by Ellis, Recognizing Bre'On Long for being presented by the Alpha Kappa Omega Chapter of Alpha Kappa Alpha Sorority, Incorporated, at its 13th Biennial Debutante Cotillion.

**SR 1158** by Ellis, Recognizing Karyn Korsah for being presented by the Alpha Kappa Omega Chapter of Alpha Kappa Alpha Sorority, Incorporated, at its 13th Biennial Debutante Cotillion.

**SR 1159** by Ellis, Recognizing Jennifer Gooden for being presented by the Alpha Kappa Omega Chapter of Alpha Kappa Alpha Sorority, Incorporated, at its 13th Biennial Debutante Cotillion.

**SR 1160** by Ellis, Recognizing Brandi Perry for being presented by the Alpha Kappa Omega Chapter of Alpha Kappa Alpha Sorority, Incorporated, at its 13th Biennial Debutante Cotillion.

**SR 1161** by Ellis, Recognizing Dariel Johnson for being presented by the Alpha Kappa Omega Chapter of Alpha Kappa Alpha Sorority, Incorporated, at its 13th Biennial Debutante Cotillion.

**SR 1162** by Ellis, Recognizing Taylor Dozier for being presented by the Alpha Kappa Omega Chapter of Alpha Kappa Alpha Sorority, Incorporated, at its 13th Biennial Debutante Cotillion.

**SR 1163** by Ellis, Recognizing Veronica Forge for being presented by the Alpha Kappa Omega Chapter of Alpha Kappa Alpha Sorority, Incorporated, at its 13th Biennial Debutante Cotillion.

**SR 1164** by Ellis, Recognizing Keia Broussard for being presented by the Alpha Kappa Omega Chapter of Alpha Kappa Alpha Sorority, Incorporated, at its 13th Biennial Debutante Cotillion.

**SR 1165** by Ellis, Recognizing Alexandria Barnes for being presented by the Alpha Kappa Omega Chapter of Alpha Kappa Alpha Sorority, Incorporated, at its 13th Biennial Debutante Cotillion.

**SR 1166** by Ellis, Recognizing Taylor Polidore for being presented by the Alpha Kappa Omega Chapter of Alpha Kappa Alpha Sorority, Incorporated, at its 13th Biennial Debutante Cotillion.

**SR 1167** by Ellis, Recognizing Opal Pierce for being presented by the Alpha Kappa Omega Chapter of Alpha Kappa Alpha Sorority, Incorporated, at its 13th Biennial Debutante Cotillion.

**SR 1168** by Ellis, Recognizing Victoria Dillard for being presented by the Alpha Kappa Omega Chapter of Alpha Kappa Alpha Sorority, Incorporated, at its 13th Biennial Debutante Cotillion.

**SR 1169** by Ellis, Recognizing Ja'Leah Davis for being presented by the Alpha Kappa Omega Chapter of Alpha Kappa Alpha Sorority, Incorporated, at its 13th Biennial Debutante Cotillion.

**SR 1170** by Ellis, Recognizing Kia Smith for being presented by the Alpha Kappa Omega Chapter of Alpha Kappa Alpha Sorority, Incorporated, at its 13th Biennial Debutante Cotillion.

**SR 1171** by Watson, Recognizing Deborah Kay Bennight on the occasion of her retirement from the Office of the Comptroller of Public Accounts.

### RECESS

On motion of Senator Whitmire, the Senate at 11:22 p.m. recessed until 9:00 a.m. tomorrow for the Local and Uncontested Calendar Session.

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## APPENDIX

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### COMMITTEE REPORTS

The following committee reports were received by the Secretary of the Senate in the order listed:

May 24, 2011

CRIMINAL JUSTICE — **CSHB 1199, CSHB 351**

ECONOMIC DEVELOPMENT — **CSHB 1560**

ADMINISTRATION — **HCR 84**

AGRICULTURE AND RURAL AFFAIRS — **HB 550**

INTERNATIONAL RELATIONS AND TRADE — **HB 737**

NATURAL RESOURCES — **CSHB 51, CSHB 125**

### BILLS AND RESOLUTIONS ENROLLED

May 23, 2011

**SB 19, SB 29, SB 32, SB 43, SB 54, SB 61, SB 77, SB 86, SB 116, SB 141, SB 149, SB 150, SB 162, SB 166, SB 187, SB 189, SB 192, SB 193, SB 226, SB 233, SB 234, SB 260, SB 266, SB 267, SB 290, SB 304, SB 335, SB 350, SB 367, SB 422, SB 449, SB 461, SB 471, SB 481, SB 482, SB 489, SB 494, SB 496, SB 512, SB 519, SB 530, SB 544, SB 554, SB 577, SB 578, SB 609, SB 626,**



SB 627, SB 639, SB 650, SB 682, SB 690, SB 735, SB 743, SB 791, SB 792, SB 796, SB 799, SB 811, SB 851, SB 855, SB 864, SB 867, SB 886, SB 889, SB 898, SB 899, SB 900, SB 901, SB 957, SB 959, SB 966, SB 987, SB 1002, SB 1020, SB 1030, SB 1043, SB 1044, SB 1046, SB 1103, SB 1106, SB 1133, SB 1159, SB 1167, SB 1176, SB 1220, SB 1228, SB 1231, SB 1273, SB 1292, SB 1308, SB 1322, SB 1330, SB 1342, SB 1361, SB 1368, SB 1404, SB 1421, SB 1431, SB 1438, SB 1441, SB 1480, SB 1484, SB 1493, SB 1521, SB 1522, SB 1557, SB 1596, SB 1610, SB 1613, SB 1638, SB 1662, SB 1681, SB 1698, SB 1737, SB 1751, SB 1787, SB 1789, SB 1807, SB 1812, SB 1857, SB 1875, SB 1880, SB 1887, SB 1907, SB 1914, SB 1915, SB 1927, SB 1928, SCR 11, SCR 16, SCR 35, SCR 51, SJR 16, SR 1125, SR 1126, SR 1127, SR 1128, SR 1132, SR 1133, SR 1134, SR 1135, SR 1136, SR 1137, SR 1138, SR 1139, SR 1140, SR 1141, SR 1142, SR 1143

SENT TO GOVERNOR

May 24, 2011

SB 31, SB 36, SB 41, SB 58, SB 74, SB 80, SB 122, SB 131, SB 155, SB 219, SB 246, SB 247, SB 256, SB 258, SB 264, SB 310, SB 311, SB 315, SB 387, SB 400, SB 402, SB 419, SB 431, SB 432, SB 436, SB 514, SB 520, SB 540, SB 545, SB 558, SB 601, SB 794, SB 795, SB 813, SB 822, SB 860, SB 882, SB 896, SB 910, SB 953, SB 992, SB 1047, SB 1057, SB 1154, SB 1187, SB 1208, SB 1248, SB 1295, SB 1311, SB 1352, SB 1410, SB 1414, SB 1578, SB 1598, SB 1660, SB 1667, SB 1668, SB 1669, SB 1687, SB 1692, SB 1719, SB 1755, SB 1831, SCR 57



# SENATE JOURNAL

EIGHTY-SECOND LEGISLATURE — REGULAR SESSION

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AUSTIN, TEXAS

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PROCEEDINGS

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**SIXTY-SEVENTH DAY**

(Continued)

(Wednesday, May 25, 2011)

**AFTER RECESS**

The Senate met at 9:00 a.m. and was called to order by Senator Eltife.

**SESSION HELD FOR  
LOCAL AND UNCONTESTED CALENDAR**

The Presiding Officer announced that the time had arrived to consider bills and resolutions placed on the Local and Uncontested Calendar. Notice of consideration of the local calendar was given by Senator Eltife yesterday.

Pursuant to Senate Rule 9.03(d), the following bills and resolutions were laid before the Senate in the order listed, read second time, amended where applicable, passed to engrossment or third reading, read third time, and passed. The votes on passage to engrossment or third reading, suspension of the Constitutional Three-day Rule, and final passage are indicated after each caption. All Members are deemed to have voted "Yea" on viva voce votes unless otherwise indicated.

**(Senator Uresti in Chair)**

**HB 14** (Eltife)

Relating to the eligibility for unemployment benefits of a person receiving certain forms of remuneration.

(viva voce vote) (31-0) (31-0)

**(Senator Eltife in Chair)**

**HB 25** (Patrick)

Relating to the carrying of certain weapons in a watercraft.

(viva voce vote) (31-0) (31-0)

**HB 42** (Van de Putte)

Relating to the duty imposed on the operator of a motor vehicle that strikes a structure adjacent to a highway.

(viva voce vote) (31-0) (31-0)

**HB 78** (Williams)

Relating to the purchase of food and beverages by certain state law enforcement agencies for peace officer training functions.

(viva voce vote) (31-0) (31-0)

**CSHB 167** (Zaffirini)

Relating to the transportation of certain mental health patients.

(viva voce vote) (31-0) (31-0)

**CSHB 218** (Uresti)

Relating to possessing a glass container within the boundaries of certain riverbeds; providing criminal penalties.

(viva voce vote) (31-0) (31-0)

**CSHB 232** (Ogden)

Relating to the amendment of restrictions affecting real property in certain subdivisions.

(viva voce vote) (31-0) (31-0)

**HB 242** (Hegar)

Relating to the authority of certain retired peace officers to carry certain firearms.

(viva voce vote) (31-0) (31-0)

**HB 289** (Nelson)

Relating to activity that constitutes maintaining a common nuisance.

(viva voce vote) (31-0) (31-0)

**CSHB 362** (West)

Relating to the regulation by a property owners' association of the installation of solar energy devices and certain roofing materials on property.

(viva voce vote) (31-0) (31-0)

**HB 371** (Hegar)

Relating to prohibiting deferred adjudication community supervision for certain defendants convicted of murder.

(viva voce vote) (31-0) (31-0)

**HB 384** (Wentworth)

Relating to the proper identification of boats and outboard motors; creating an offense.

(viva voce vote) (31-0) (31-0)

**HB 398** (Hegar)

Relating to the eligibility of employees convicted of certain offenses to provide services under a contract with a public school.

(viva voce vote) (31-0) (31-0)

**CSHB 422** (Williams)

Relating to certain oversize and overweight permits issued by the Texas Department of Transportation.

(viva voce vote) (31-0) (31-0)

**HB 427** (Deuell)

Relating to the creation of the Rowlett Waterfront Entertainment Management District; providing authority to impose a tax, levy an assessment, and issue bonds.

(viva voce vote) (31-0) (31-0)

**(Senator Birdwell in Chair)****HB 452** (Lucio)

Relating to temporary housing between academic terms for certain postsecondary students who have been under the conservatorship of the Department of Family and Protective Services.

(viva voce vote) (31-0) (31-0)

**HB 554** (Watson)

Relating to the civil service status of emergency medical services personnel in certain municipalities.

(viva voce vote) (31-0) (31-0)

**HB 559** (Hinojosa)

Relating to Bronze Star Medal and Bronze Star Medal with Valor specialty license plates.

(viva voce vote) (31-0) (31-0)

**HB 645** (Patrick)

Relating to the information required to be included on a form for an application for an exemption from ad valorem taxation of property owned by a charitable organization.

(viva voce vote) (31-0) (31-0)

**HB 673** (Harris)

Relating to the production and use of an instructional video on recreational water safety.

(viva voce vote) (31-0) (31-0)

**CSHB 680** (Huffman)

Relating to complaints filed with the Texas Medical Board.

(viva voce vote) (31-0) (31-0)

**HB 709** (Patrick)

Relating to the creation of the Harris County Municipal Utility District No. 524; providing authority to impose a tax and issue bonds; granting a limited power of eminent domain.

(viva voce vote) (31-0) (31-0)

**HB 710** (Deuell)

Relating to verification of identity of applicants for benefits under and prevention of duplicate participation in the financial assistance and supplemental nutrition assistance programs.

(viva voce vote) (31-0) (31-0)

**(Senator Eltife in Chair)****HB 718** (Birdwell)

Relating to the period in which a person commits the offense of funeral service disruption.

(viva voce vote) (31-0) (31-0)

(Senator Birdwell in Chair)

**CSHB 742** (Hinojosa)

Relating to student information required to be provided at the time of enrollment in public schools.

(viva voce vote) (31-0) (31-0)

**HB 748** (Van de Putte)

Relating to a criminal defendant's incompetency to stand trial, to certain related time credits, and to the maximum period allowed for restoration of the defendant to competency.

(viva voce vote) (31-0) (31-0)

**HB 782** (Wentworth)

Relating to a requirement that certain bond issuers obtain an appraisal of property that is to be purchased with bond proceeds.

(viva voce vote) (31-0) (31-0)

**HB 790** (Hegar)

Relating to the continuing issuance of freshwater fishing stamps by the Parks and Wildlife Department.

(viva voce vote) (31-0) (31-0)

(Senator Rodriguez in Chair)

**HB 807** (Nelson)

Relating to the notice provided to a foster parent before a change in a child's foster care placement.

(viva voce vote) (31-0) (31-0)

**CSHB 811** (Duncan)

Relating to the powers and duties of the Scurry County Hospital District.

(viva voce vote) (31-0) (31-0)

**HB 844** (Nelson)

Relating to the sale or lease of property by certain municipalities owning land near the shoreline of certain lakes.

(viva voce vote) (31-0) (31-0)

**HB 850** (Duncan)

Relating to the Rankin County Hospital District.

(viva voce vote) (31-0) (31-0)

**HB 896** (Patrick)

Relating to auxiliary members of an appraisal review board.

(viva voce vote) (31-0) (31-0)

**HB 961** (Hinojosa)

Relating to the sealing of and restricting access to juvenile records of adjudications of delinquent conduct or conduct indicating a need for supervision and to the confidentiality of records of certain misdemeanor convictions of a child.

(viva voce vote) (31-0) (31-0)

**CSHB 992** (Zaffirini)

Relating to excess undergraduate credit hours at public institutions of higher education.

(viva voce vote) (31-0) (31-0)

**CSHB 1000** (Zaffirini)

Relating to the distribution of money appropriated from the national research university fund; making an appropriation.

(viva voce vote) (31-0) (31-0)

**HB 1009** (Hegar)

Relating to procedures for obtaining informed consent before certain postmortem examinations or autopsies.

(viva voce vote) (31-0) (31-0)

**HB 1033** (Seliger)

Relating to the authority of certain counties to impose a county hotel occupancy tax.

(viva voce vote) (31-0) (31-0)

**HB 1046** (Huffman)

Relating to the confidentiality of certain personal information concerning current and former employees of certain divisions of the office of attorney general.

(viva voce vote) (31-0) (31-0)

**HB 1071** (Ellis)

Relating to the extension of deed restrictions in certain residential real estate subdivisions.

(viva voce vote) (31-0) (31-0)

**HB 1080** (Hinojosa)

Relating to an exemption for active duty personnel and certain veterans from the requirement to complete the live firing portion of a hunter education program.

(viva voce vote) (31-0) (31-0)

**HB 1083** (Hegar)

Relating to the issuance of an identification card to certain honorably retired peace officers.

(viva voce vote) (31-0) (31-0)

**CSHB 1111** (Harris)

Relating to a tenant's failure to pay rent during an appeal of an eviction for nonpayment of rent after filing a pauper's affidavit.

(viva voce vote) (31-0) (31-0)

**HB 1113** (Zaffirini)

Relating to the sentencing hearing or deferred adjudication hearing and conditions of community supervision for defendants convicted of certain offenses involving controlled substances.

(viva voce vote) (31-0) (31-0)

**HB 1118** (Huffman)

Relating to the resale of property purchased by a taxing unit at a tax sale.

(viva voce vote) (31-0) (31-0)

**HB 1205** (Ellis)

Relating to the procedures for reducing or terminating community supervision and the establishment of certain time credits through which a defendant's period of community supervision is reduced.

(viva voce vote) Nelson "Nay" (30-1) Nelson "Nay" (30-1) Nelson "Nay"

**HB 1224** (Huffman)

Relating to expulsion of a public school student who commits certain criminal acts involving a computer, computer network, or computer system owned by or operated on behalf of a school district.

(viva voce vote) (31-0) (31-0)

**HB 1234** (Wentworth)

Relating to the authority of certain counties to impose a county hotel occupancy tax.

(viva voce vote) (31-0) (31-0)

**HB 1247** (Birdwell)

Relating to the repeal of certain prohibitions on purchases of paper supplies and cabinets by state agencies.

(viva voce vote) (31-0) (31-0)

**HB 1293** (Seliger)

Relating to the Moore County Hospital District.

(viva voce vote) (31-0) (31-0)

**HB 1314** (Zaffirini)

Relating to the operation and jurisdiction of certain district courts serving Webb County.

(viva voce vote) (31-0) (31-0)

**HB 1330** (Zaffirini)

Relating to the use of safety guards or flaps on certain vehicles or vehicle combinations.

(viva voce vote) (31-0) (31-0)

**(Senator Van de Putte in Chair)****HB 1402** (Zaffirini)

Relating to the applicability of the law on the consequences of a criminal conviction to law enforcement officer license holders and applicants.

(viva voce vote) (31-0) (31-0)

**CSHB 1413** (Duncan)

Relating to the powers and duties of the Castro County Hospital District.

(viva voce vote) (31-0) (31-0)

**HB 1429** (Carona)

Relating to rights and remedies of certain residential tenants; providing civil penalties.

(viva voce vote) (31-0) (31-0)

**HB 1473** (Hinojosa)

Relating to creating the offense of altering a disabled parking placard.

(viva voce vote) (31-0) (31-0)



**HB 1476** (Nichols)

Relating to the grounds for revocation of an emergency medical services personnel certification.

(viva voce vote) (31-0) (31-0)

**CSHB 1496** (Uresti)

Relating to the contracting authority of the Val Verde County Hospital District.

(viva voce vote) (31-0) (31-0)

**HB 1500** (Nichols)

Relating to allowing the commissioners court of a county to deliberate in a closed meeting regarding business and financial issues related to a contract being negotiated.

(viva voce vote) (31-0) (31-0)

**HB 1528** (Fraser)

Relating to consolidating precincts in a primary election.

(viva voce vote) (31-0) (31-0)

**HB 1622** (Wentworth)

Relating to suits to enjoin gang activity that constitutes a public nuisance.

(viva voce vote) (31-0) (31-0)

**CSHB 1638** (Whitmire)

Relating to the disqualification of a district or county attorney who is the subject of a criminal investigation.

(viva voce vote) (31-0) (31-0)

**HB 1651** (West)

Relating to the North Oak Cliff Municipal Management District.

(viva voce vote) (31-0) (31-0)

**HB 1690** (Deuell)

Relating to the use of municipal hotel occupancy tax revenue to enhance and upgrade sports facilities in certain municipalities.

(viva voce vote) (31-0) (31-0)

**HB 1721** (Zaffirini)

Relating to protective orders for certain victims of stalking or sexual assault.

(viva voce vote) (31-0) (31-0)

**HB 1737** (Huffman)

Relating to the installation of a speed feedback sign by a property owners' association.

(viva voce vote) (31-0) (31-0)

**HB 1750** (Williams)

Relating to the authority of the Texas Department of Transportation to lease and contract for the operation of rolling stock during certain emergencies.

(viva voce vote) (31-0) (31-0)

**CSHB 1759** (Watson)

Relating to the creation of the Pilot Knob Municipal Utility District No. 4; providing authority to impose a tax and issue bonds.

(viva voce vote) (31-0) (31-0)

**CSHB 1760** (Watson)

Relating to the creation of the Pilot Knob Municipal Utility District No. 5; providing authority to impose a tax and issue bonds.

(viva voce vote) (31-0) (31-0)

**(Senator Uresti in Chair)**

**HB 1784** (Van de Putte)

Relating to requiring an interagency memorandum of understanding regarding the Public Assistance Reporting Information System and to the use of data from that system.

(viva voce vote) (31-0) (31-0)

**(Senator Van de Putte in Chair)**

**HB 1822** (Huffman)

Relating to the withdrawal of security by a bail bond surety.

(viva voce vote) (31-0) (31-0)

**HB 1823** (Huffman)

Relating to the authority of certain persons to execute bail bonds and act as sureties.

(viva voce vote) (31-0) (31-0)

**HB 1856** (Patrick)

Relating to the prosecution of and punishment for the offense of tampering with a witness.

(viva voce vote) (31-0) (31-0)

**HB 1891** (Huffman)

Relating to the execution of a search warrant for data or information contained in or on certain devices.

(viva voce vote) (31-0) (31-0)

**HB 1897** (Deuell)

Relating to the jurisdiction of, number of jurors in, and the clerk serving the County Court at Law of Van Zandt County.

(viva voce vote) (31-0) (31-0)

**(Senator Uresti in Chair)**

**HB 1930** (Van de Putte)

Relating to the membership and duties of the Human Trafficking Prevention Task Force.

(viva voce vote) (31-0) (31-0)

**HB 1967** (Duncan)

Relating to the contracting authority of the Collingsworth County Hospital District.

(viva voce vote) (31-0) (31-0)

**HB 1994** (Van de Putte)

Relating to the creation of a first offender prostitution prevention program.

(viva voce vote) (31-0) (31-0)

**CSHB 2004** (Jackson)

Relating to the sale of certain state property in Brazoria County by the Texas Board of Criminal Justice.

(viva voce vote) (31-0) (31-0)

(Senator Van de Putte in Chair)

**HB 2047** (Uresti)

Relating to service of process at the registered office of certain registered agents.

(viva voce vote) (31-0) (31-0)

(Senator Uresti in Chair)

**HB 2096** (Ellis)

Relating to the filing of writs of habeas corpus in mental health cases.

(viva voce vote) (31-0) (31-0)

**CSHB 2102** (Ellis)

Relating to the requirement that certain mammography reports contain information regarding supplemental breast cancer screening.

(viva voce vote) (31-0) (31-0)

**HB 2104** (West)

Relating to the amount of the bond for county taxes required to be given by the county assessor-collector for certain counties.

(viva voce vote) (31-0) (31-0)

**HB 2119** (Whitmire)

Relating to the requirement that the Texas Correctional Office on Offenders with Medical or Mental Impairments provide certain services and programs.

(viva voce vote) (31-0) (31-0)

**HB 2124** (Huffman)

Relating to victim notification regarding the release of a defendant who was acquitted by reason of insanity in a criminal case.

(viva voce vote) (31-0) (31-0)

**HB 2138** (Zaffirini)

Relating to the search for and rescue of victims of water-oriented accidents.

(viva voce vote) (31-0) (31-0)

**HB 2141** (Williams)

Relating to enforcement of laws related to water safety.

(viva voce vote) (31-0) (31-0)

**HB 2193** (Duncan)

Relating to service and qualifications for membership on an advisory committee established by the Employees Retirement System of Texas to provide advice to the board of trustees on investments and investment-related issues.

(viva voce vote) (31-0) (31-0)

**CSHB 2194** (Jackson)

Relating to certain election practices and procedures; providing a penalty.

(viva voce vote) (31-0) (31-0)

**HB 2220** (Ellis)

Relating to the requirement to prepay ad valorem taxes as a prerequisite to determining certain motions or protests and the authority of an appraisal review board to determine compliance with the requirement.

(viva voce vote) (31-0) (31-0)

**HB 2238** (Nichols)

Relating to the powers and duties of the Montgomery County Municipal Utility District No. 112.

(viva voce vote) (31-0) (31-0)

**HB 2247** (Gallegos)

Relating to the eligibility of the adjutant general's department to receive Foundation School Program funding for students enrolled in the Texas ChalleNGe Academy.

(viva voce vote) (31-0) (31-0)

**HB 2256** (Williams)

Relating to abating or deferring the suspension or revocation of a license issued by the Department of Public Safety for victims of identity theft.

(viva voce vote) (31-0) (31-0)

**CSHB 2265** (Gallegos)

Relating to a county audit of a hotel regarding the hotel occupancy tax.

(viva voce vote) (31-0) (31-0)

**HB 2266** (Patrick)

Relating to fire code certificates of compliance.

(viva voce vote) (31-0) (31-0)

**HB 2296** (Huffman)

Relating to the creation of Jefferson County Management District No. 1; providing authority to impose an assessment, impose a tax, and issue bonds.

(viva voce vote) (31-0) (31-0)

**HB 2310** (Wentworth)

Relating to appointment of bailiffs for the district courts in Comal, Hays, and Caldwell Counties.

(viva voce vote) (31-0) (31-0)

**HB 2315** (Deuell)

Relating to a county's general revenue levy for indigent health care.

(viva voce vote) (31-0) (31-0)

**HB 2346** (Huffman)

Relating to authorized investments for ports and navigation districts.

(viva voce vote) (31-0) (31-0)

**HB 2363** (Deuell)

Relating to the creation of the Bearpen Creek Municipal Utility District of Hunt County; providing authority to impose a tax and issue bonds; granting a limited power of eminent domain.

(viva voce vote) (31-0) (31-0)

**HB 2460** (Wentworth)

Relating to confidentiality of information held by a public retirement system.

(viva voce vote) (31-0) (31-0)

**CSHB 2463** (Ellis)

Relating to access to certain records regarding an employment discrimination claim.

(viva voce vote) (31-0) (31-0)

**(Senator Rodriguez in Chair)****HB 2492** (Uresti)

Relating to the family allowance, treatment of exempt property, and an allowance in lieu of exempt property in the administration of a decedent's estate.

(viva voce vote) (31-0) (31-0)

**HB 2496** (Carona)

Relating to creating a teen dating violence court program and the deferral of adjudication and dismissal of certain dating violence cases.

(viva voce vote) (31-0) (31-0)

**CSHB 2516** (Gallegos)

Relating to the appeal of an indefinite suspension of a municipal firefighter.

(viva voce vote) (31-0) (31-0)

**HB 2541** (Nelson)

Relating to the regulation of traffic on certain roads by counties.

(viva voce vote) (31-0) (31-0)

**CSHB 2549** (Estes)

Relating to the authority of a state employee to authorize a deduction from the employee's salary or wage payment for a charitable contribution to certain entities.

(viva voce vote) (31-0) (31-0)

**HB 2575** (Harris)

Relating to the Texas Department of Motor Vehicles' electronic lien system.

(viva voce vote) (31-0) (31-0)

**HB 2577** (Hegar)

Relating to the unlawful use of a criminal instrument or mechanical security device; providing a penalty.

(viva voce vote) (31-0) (31-0)

**HB 2584** (Harris)

Relating to authorizing certain municipalities to donate surplus real property of negligible or negative value to certain private persons.

(viva voce vote) (31-0) (31-0)

**CSHB 2596** (Wentworth)

Relating to the authority of certain municipalities to lower speed limits on certain highways.

(viva voce vote) (31-0) (31-0)

**HB 2651** (Ellis)

Relating to the eligibility of visitors to use certain public transportation services for people with disabilities.

(viva voce vote) (31-0) (31-0)

**CSHB 2655** (Carona)

Relating to notice of coverage reduction on renewal of a property/casualty insurance policy.

(viva voce vote) (31-0) (31-0)

**CSHB 2662** (Hinojosa)

Relating to the criteria for determining whether a child is a missing child.

(viva voce vote) (31-0) (31-0)

**HB 2678** (Wentworth)

Relating to driver training and education.

(viva voce vote) (31-0) (31-0)

**HB 2702** (Eltife)

Relating to the application of statutes that classify political subdivisions according to population.

(viva voce vote) (31-0) (31-0)

Senator Eltife offered the following committee amendment to the bill:

**Committee Amendment No. 1**

Amend **HB 2702** (house engrossment) as follows:

(1) In SECTION 181 of the bill, in amended Section 36.121, Water Code, insert "but greater than 100,000" between "less" and "and" on page 81, line 17.

(2) In SECTION 181 of the bill, in amended Section 36.121, Water Code, insert "but greater than 100,000" between "less" and the comma on page 81, line 20.

The amendment to **HB 2702** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Committee Amendment No. 1.

Senator Eltife offered the following committee amendment to the bill:

**Committee Amendment No. 2**

Amend **HB 2702** (house engrossed version) in SECTION 122 of the bill, in amended Section 352.002(a)(12), Tax Code (page 57, line 27), by striking "36,000 [~~35,000~~]" and substituting "35,000".

The amendment to **HB 2702** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Committee Amendment No. 2.

On motion of Senator Eltife and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**HB 2722** (Duncan)

Relating to the state Medicaid program as the payor of last resort.  
(viva voce vote) (31-0) (31-0)

**CSHB 2794** (Hegar)

Relating to the creation of the Calhoun County Groundwater Conservation District.  
(viva voce vote) (31-0) (31-0)

**HB 2819** (Nelson)

Relating to the operation and efficiency of the eligibility determination process for supplemental nutrition assistance program benefits.  
(viva voce vote) (31-0) (31-0)

**HB 2847** (Whitmire)

Relating to the use of video conferencing systems in certain criminal proceedings.  
(viva voce vote) (31-0) (31-0)

Senator Whitmire offered the following committee amendment to the bill:

**Committee Amendment No. 1**

Amend **HB 2847** (house engrossment) as follows:

(1) On page 3, lines 20-21, strike "Subsections (c-1) and (c-2)" and substitute "Subsection (c-1)".

(2) Strike the language beginning on page 3, line 22, and ending on page 4, line 3, and substitute the following:

(c) A record [~~recording~~] of the communication shall be made by a court reporter and preserved by the court reporter until all appellate proceedings have been disposed of. The defendant may obtain a copy of the record [~~recording~~] on payment of a reasonable amount to cover the costs of reproduction or, if the defendant is indigent, the court shall provide a copy to the defendant without charging a cost for the copy.

(3) On page 4, line 4, strike "(c-2)" and substitute "(c-1)".

(4) On page 4, lines 4-5, strike "video recording" and substitute "record".

(5) Add the following appropriately numbered SECTION to the bill and renumber existing SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Article 102.017(d-1), Code of Criminal Procedure, is amended to read as follows:

(d-1) For purposes of this article, the term "security personnel, services, and items" includes:

- (1) the purchase or repair of X-ray machines and conveying systems;
- (2) handheld metal detectors;
- (3) walkthrough metal detectors;
- (4) identification cards and systems;
- (5) electronic locking and surveillance equipment;
- (6) video conferencing systems;
- (7) bailiffs, deputy sheriffs, deputy constables, or contract security personnel during times when they are providing appropriate security services;
- (8) [~~7~~] signage;
- (9) [~~8~~] confiscated weapon inventory and tracking systems;
- (10) [~~9~~] locks, chains, alarms, or similar security devices;

(11) ~~[(40)]~~ the purchase or repair of bullet-proof glass; and  
 (12) ~~[(41)]~~ continuing education on security issues for court personnel and security personnel.

The amendment to **HB 2847** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Committee Amendment No. 1.

On motion of Senator Whitmire and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**CSHB 2909** (Shapiro)

Relating to increasing awareness in this state of the importance of higher education.  
 (viva voce vote) (31-0) (31-0)

**HB 2931** (Van de Putte)

Relating to certain debt cancellation agreements made in connection with retail installment contracts.  
 (viva voce vote) (31-0) (31-0)

Senator Van de Putte offered the following committee amendment to the bill:

**Committee Amendment No. 1**

Amend **HB 2931** (house engrossed version) as follows:

(1) Strike added Section 348.601(c), Finance Code (page 2, lines 2-4), and reletter subsequent subsections accordingly.

(2) In added Section 348.603(14), Finance Code (page 6, line 12), following the semicolon, strike "and".

(3) In added Section 348.603(15), Finance Code (page 6, line 15), strike "." and substitute "; and".

(4) Following added Section 348.603(15), Finance Code (page 6, between lines 15 and 16), insert the following:

(16) that the holder will cancel certain amounts under the debt cancellation agreement for total loss or theft of a motor vehicle, in the following or substantially similar language: "YOU WILL CANCEL CERTAIN AMOUNTS I OWE UNDER THIS CONTRACT IN THE CASE OF A TOTAL LOSS OR THEFT OF THE VEHICLE AS STATED IN THE DEBT CANCELLATION AGREEMENT."

(5) Strike added Section 348.604(e), Finance Code (page 7, lines 8-12), and substitute the following:

(e) If after approval of a form the Office of Consumer Credit Commissioner discovers that approval could have been denied under Subsection (d), the commissioner may order a retail seller, any administrator of the debt cancellation agreement, or a holder to submit a corrected form for approval. Beginning as soon as reasonably practicable after approval of the corrected form, the retail seller, administrator, or holder shall use the corrected form for all sales.

(f) A debt cancellation agreement form that has been approved by the commissioner is public information subject to disclosure under Chapter 552, Government Code. Section 552.110, Government Code, does not apply to a form approved under this subchapter.



(6) Following added Section 348.605(g), Finance Code (page 8, between lines 15 and 16), add the following:

(h) A retail seller that negotiates a debt cancellation agreement and subsequently assigns the contract shall:

(1) maintain documents relating to the agreement that come into the retail seller's possession; and

(2) on request of the Office of Consumer Credit Commissioner, cooperate in requesting and obtaining access to documents relating to the agreement not in the retail seller's possession.

The amendment to **HB 2931** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Committee Amendment No. 1.

On motion of Senator Van de Putte and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**CSHB 2947** (Shapiro)

Relating to the exception of an audit working paper of a hospital district from required disclosure under the public information law.

(viva voce vote) (31-0) (31-0)

**HB 2960** (Hinojosa)

Relating to vehicles used for the purpose of participating in equine activities or attending livestock shows.

(viva voce vote) (31-0) (31-0)

**HB 2966** (Zaffirini)

Relating to the confidentiality of certain communications and records made or collected in reference to certain sexual assault survivors.

(viva voce vote) (31-0) (31-0)

**HB 2972** (Wentworth)

Relating to the municipal sales and use tax for street maintenance.

(viva voce vote) (31-0) (31-0)

**(Senator Eltife in Chair)**

**CSHB 2975** (Harris)

Relating to continuing education for physicians and nurses regarding the treatment of tick-borne diseases.

(viva voce vote) (31-0) (31-0)

**CSHB 2981** (Hegar)

Relating to the operation on a highway or street of a motor vehicle that is drawing a boat or personal watercraft in or on which a child is riding; providing a penalty.

(viva voce vote) (31-0) (31-0)

**(Senator Uresti in Chair)****HB 3003 (Eltife)**

Relating to the issuance of an identification card to certain individuals to permit entrance into certain county buildings without passing through security services.

(viva voce vote) (31-0) (31-0)

**(Senator Eltife in Chair)****HB 3030 (Wentworth)**

Relating to the funding of projects in the boundaries of certain intermunicipal commuter rail districts.

(viva voce vote) (31-0) (31-0)

**HB 3076 (Uresti)**

Relating to the rate of the hotel occupancy tax in certain counties.

(viva voce vote) (31-0) (31-0)

**HB 3085 (Nelson)**

Relating to the period of a license for a freestanding medical emergency care facility.

(viva voce vote) (31-0) (31-0)

**HB 3096 (Carona)**

Relating to the cancellation of a subdivision by a commissioners court.

(viva voce vote) (31-0) (31-0)

**CSHB 3099 (Hegar)**

Relating to the office of inspector general of the Department of Public Safety.

(viva voce vote) (31-0) (31-0)

**CSHB 3117 (Watson)**

Relating to the reporting of information to claims databases by insurers.

(viva voce vote) (31-0) (31-0)

**HB 3125 (Patrick)**

Relating to the offenses of unauthorized duplication, unauthorized recording, unauthorized operation of recording device, and improper labeling of recordings.

(viva voce vote) (31-0) (31-0)

**HB 3197 (Deuell)**

Relating to creating a pilot program to implement the culture change model of care at certain state supported living centers.

(viva voce vote) (31-0) (31-0)

**HB 3208 (Deuell)**

Relating to the designation of a segment of U.S. Highway 80 in the town of Sunnyvale as a Blue Star Memorial Highway.

(viva voce vote) (31-0) (31-0)

**HB 3216 (West)**

Relating to electronic communication between property owners and chief appraisers, appraisal districts, appraisal review boards, or any combination of those persons.

(viva voce vote) (31-0) (31-0)

**HB 3369** (Nelson)

Relating to the registration of certain physical therapy facilities by the Texas Board of Physical Therapy Examiners.

(viva voce vote) (31-0) (31-0)

**HB 3384** (Whitmire)

Relating to the penalties for repeat and habitual felony offenders.

(viva voce vote) (31-0) (31-0)

**CSHB 3395** (Lucio)

Relating to state purchasing preferences for recycled products and to the efficient operation of certain telecommunications entities.

(viva voce vote) (31-0) (31-0)

**HB 3399** (Williams)

Relating to the requirements for grant programs funded through the Texas emissions reduction plan.

(viva voce vote) (31-0) (31-0)

**CSHB 3409** (Williams)

Relating to reporting of lobbying activities and changes in lobbying activities.

(viva voce vote) (31-0) (31-0)

**HB 3421** (Wentworth)

Relating to the designation of the El Camino Real de los Tejas National Historic Trail as a historic highway.

(viva voce vote) (31-0) (31-0)

**HB 3422** (Hinojosa)

Relating to the use of auction proceeds from the sale of abandoned motor vehicles, watercraft, or outboard motors to compensate certain property owners.

(viva voce vote) (31-0) (31-0)

**(Senator Uresti in Chair)****CSHB 3453** (Eltime)

Relating to the regulatory authority of the consumer credit commissioner and to fees and interest charged in connection with consumer credit transactions.

(viva voce vote) (31-0) (31-0)

**CSHB 3459** (Whitmire)

Relating to the containment of costs incurred in the correctional health care system.

(viva voce vote) (31-0) (31-0)

**CSHB 3468** (Shapiro)

Relating to high school readiness, to the assessment of public school students for college readiness and developmental education courses to prepare students for college-level coursework, and to teacher certification to teach at certain grade levels in public school.

(viva voce vote) (31-0) (31-0)

**HB 3474** (Watson)

Relating to criminal offenses regarding the possession or consumption of alcoholic beverages by a minor and providing alcoholic beverages to a minor.  
(viva voce vote) (31-0) (31-0)

**HB 3475** (West)

Relating to the recusal and disqualification of municipal judges.  
(viva voce vote) (31-0) (31-0)

**HB 3580** (Duncan)

Relating to the issuance of specialty license plates for surviving spouses of disabled veterans of the United States armed forces.  
(viva voce vote) (31-0) (31-0)

**(Senator Eltife in Chair)**

**HB 3597** (Uresti)

Relating to the powers and duties of certain public improvement districts operated by counties.  
(viva voce vote) (31-0) (31-0)

**(Senator Uresti in Chair)**

**HB 3674** (Duncan)

Relating to the use of an unsworn declaration.  
(viva voce vote) (31-0) (31-0)

**HB 3724** (Zaffirini)

Relating to the Chronic Kidney Disease Task Force.  
(viva voce vote) (31-0) (31-0)

**HB 3730** (Hinojosa)

Relating to certain privatization of maintenance contracts awarded by the Texas Department of Transportation.  
(viva voce vote) (31-0) (31-0)

**CSHB 3743** (Watson)

Relating to the rights, powers, functions, and duties of the West Travis County Municipal Utility District No. 5.  
(viva voce vote) (31-0) (31-0)

**HB 3746** (Carona)

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.  
(viva voce vote) (31-0) (31-0)

**CSHB 3771** (Williams)

Relating to the authority of the Texas Department of Transportation to adopt safety standards for high-speed rail.  
(viva voce vote) (31-0) (31-0)

**(Senator Eltife in Chair)****CSHB 3804 (Uresti)**

Relating to the creation of the Lajitas Utility District No. 1 of Brewster County; providing authority to impose taxes and issue bonds; granting a limited power of eminent domain.

(viva voce vote) (31-0) (31-0)

**(Senator Uresti in Chair)****HB 3813 (Wentworth)**

Relating to the Hudson Ranch Fresh Water Supply District No. 1.

(viva voce vote) (31-0) (31-0)

**CSHB 3827 (Hegar)**

Relating to the creation of the Fulshear Town Center Management District; providing authority to impose an assessment, impose a tax, and issue bonds.

(viva voce vote) (31-0) (31-0)

**HB 3834 (Hegar)**

Relating to the creation of North Fort Bend County Improvement District No. 1; providing authority to levy an assessment, impose a tax, and issue bonds.

(viva voce vote) (31-0) (31-0)

**HB 3837 (Hegar)**

Relating to the designation of a portion of U.S. Highway 183 as the Cpl. Jason K. LaFleur Memorial Highway.

(viva voce vote) (31-0) (31-0)

**HB 3840 (Nelson)**

Relating to the extension of the deadline for holding the confirmation and initial directors' election of the Tradition Municipal Utility District No. 2 of Denton County.

(viva voce vote) (31-0) (31-0)

**(Senator Eltife in Chair)****HB 3842 (Patrick)**

Relating to the creation of the Bridgeland Management District; providing authority to levy an assessment, impose a tax, and issue bonds.

(viva voce vote) (31-0) (31-0)

**HB 3843 (Whitmire)**

Relating to excluding certain territory from the Harris County Road Improvement District No. 2.

(viva voce vote) (31-0) (31-0)

**HB 3844 (Fraser)**

Relating to the creation of criminal law magistrates for Burnet County.

(viva voce vote) (31-0) (31-0)

**CSHB 3845 (Ogden)**

Relating to the powers of the CLL Municipal Utility District No. 1; providing authority to levy an assessment, impose a tax, and issue bonds.

(viva voce vote) (31-0) (31-0)

**HB 3856** (Watson)

Relating to the proceedings that may be referred to and the powers of a criminal law magistrate in Travis County.

(viva voce vote) (31-0) (31-0)

**HB 3866** (Fraser)

Relating to the date for the election of directors of the Hill Country Underground Water Conservation District.

(viva voce vote) (31-0) (31-0)

**HCR 129** (Zaffirini)

Notifying the U.S. Department of Education that certain career schools or colleges are legally authorized by the state of Texas to operate educational programs beyond secondary education.

(viva voce vote)

**SB 1929** (Seliger)

Relating to the application of the professional prosecutors law to the district attorney for the 287th Judicial District.

(viva voce vote) (31-0) (31-0)

**CSHB 2089** (Fraser)

Relating to the resolution of overpayment or underpayment of income benefits under the workers' compensation program.

(viva voce vote) (31-0) (31-0)

**BILLS REMOVED FROM  
LOCAL AND UNCONTESTED CALENDAR**

Senator Fraser, sponsor of the bill, requested in writing that **HB 831** be removed from the Local and Uncontested Calendar.

Senator Uresti, sponsor of the bill, requested in writing that **HB 1854** be removed from the Local and Uncontested Calendar.

Senator Davis and Senator Eltife requested in writing that **HB 2190** be removed from the Local and Uncontested Calendar.

Senator Davis and Senator Eltife requested in writing that **HB 2338** be removed from the Local and Uncontested Calendar.

Senator Davis and Senator Eltife requested in writing that **HB 3207** be removed from the Local and Uncontested Calendar.

**RECESS**

Pursuant to a previously adopted motion, the Senate at 10:30 a.m. recessed until 10:30 a.m. today.

# SENATE JOURNAL

EIGHTY-SECOND LEGISLATURE — REGULAR SESSION

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AUSTIN, TEXAS

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PROCEEDINGS

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SIXTY-SEVENTH DAY

(Continued)

(Wednesday, May 25, 2011)

AFTER RECESS

The Senate met at 10:57 a.m. and was called to order by President Pro Tempore Ogden.

The Reverend Garry Roberts, Mount Sinai Missionary Baptist Church, Austin, offered the invocation as follows:

Gracious God, our Father, we come calling upon You because You hear us when we pray. We call upon You because You are the creator of heaven and Earth. We thank You for all that You do because You do all things well. Lord, we ask that You would forgive us of all our sins and unrighteousness, for Your word declares that if we confess our sins, You are faithful and just to forgive us and cleanse us from all unrighteousness. We thank You now for the State of Texas and the great nation we are a part of and how You continue to bless us. We pray for our Texas government officials. We ask that You would keep them safe from all hurt, harm, and danger. Father, grant them vision and courage to make wise decisions that will benefit all citizens. Lord, empower them to have a mind of Christ and stand strong on Your principles of love, compassion, and justice. We thank You in advance for what You are going to do because we know the best is yet to come. We pray all these things in Your son Jesus' name. Amen.

**PHYSICIAN OF THE DAY**

Senator Watson was recognized and presented Dr. Elliot Trester of Austin as the Physician of the Day.

The Senate welcomed Dr. Trester and thanked him for his participation in the Physician of the Day program sponsored by the Texas Academy of Family Physicians.

**HOUSE CONCURRENT RESOLUTION 153**

The President Pro Tempore laid before the Senate the following resolution:

WHEREAS, Members of the Austin Area Urban League are visiting the State Capitol on May 25, 2011; and

WHEREAS, Founded on August 12, 1977, the Austin Area Urban League is affiliated with the National Urban League, a civil rights organization that has fought discrimination for more than a century; the Urban League has contributed immeasurably to social progress and remains dedicated to the economic empowerment of historically underserved residents in urban communities; and

WHEREAS, The Austin Area Urban League began operations in the basement of Wesley United Methodist Church; from that humble beginning, the organization has grown dramatically to meet the needs of area residents; and

WHEREAS, In addition to job readiness training, the group's Workforce Development program provides GED courses, job search assistance, and office and life skills instruction; the league works with 300 employers to help job candidates find suitable positions, and it conducts after-school computer and technology classes at four different Housing Authority of Austin sites; and

WHEREAS, The organization offers a first-time homebuyer's class and awards those who complete it a \$1,000 grant toward a down payment; moreover, it performs hundreds of emergency and scheduled home repairs annually, free of cost to low-income home owners, and it partners with some 40 other entities, including Dell, Seton, and the Meadows Foundation, to further its important goals; and

WHEREAS, Today, the Austin Area Urban League remains fortunate in the continued leadership of many of its esteemed founders, including the Reverend Freddie Dixon, who was pastor of Wesley United Methodist Church in 1977 when the church became the birthplace of the Urban League in Central Texas, and the Honorable Harriett Murphy, a retired municipal court judge who was a new attorney working to help found the league in the 1970s; also among this number are Linda Moore Smith, the organization's first executive director, who went on to serve the National Urban League in New York before reprising her role in Austin, and Carolyn Holt Goldston, a longtime advocate for racial justice and civil rights and a lifetime member of the organization; continuing the tradition of excellence established by these local legends are Austin native Scotty Holman, a financial executive, who serves as the 2010 chair, and the Honorable Jeffrey K. Richard, who was elected president and chief executive officer in 2005 and also serves as a trustee for the Austin Community College District; other noteworthy founders and longtime members continue to share their wisdom and experience with the organization and inspire the members of its newest program, the AAUL Young Professionals; and

WHEREAS, Unwavering in its determination to improve race relations and foster economic and social equality, the Austin Area Urban League has created an enduring legacy, and its efforts in behalf of education, employment readiness, wellness, and affordable housing are greatly benefiting innumerable people and making a lasting, positive difference in the community; now, therefore, be it

RESOLVED, That the 82nd Legislature of the State of Texas hereby honor the Austin Area Urban League for its outstanding achievements and extend to its members sincere best wishes for continued success; and, be it further

RESOLVED, That an official copy of this resolution be prepared for the organization as an expression of high regard by the Texas House of Representatives and Senate.

WATSON

HCR 153 was read.



On motion of Senator Watson, the resolution was considered immediately and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of the resolution.

### **GUESTS PRESENTED**

Senator Watson was recognized and introduced to the Senate an Austin Area Urban League delegation: Freddie Dixon, Harriet Murphy, Linda Moore Smith, Carolyn Holt Goldston, Jeffrey Richard, and Scotty Holman.

The Senate welcomed its guests.

### **SENATE RESOLUTION 1172**

Senator Davis offered the following resolution:

**SR 1172**, Recognizing Fred Chase, Sr., who served his country with honor and distinction during World War II and the Korean War.

The resolution was read and was adopted without objection.

### **GUESTS PRESENTED**

Senator Davis was recognized and introduced to the Senate Fred Chase, Sr., Fred Chase, Jr., and Ellen Chase.

The Senate welcomed its guests.

**(Senator Eltife in Chair)**

### **SENATE RESOLUTION 1129**

Senator Lucio offered the following resolution:

**SR 1129**, Commending Colleen McHugh on her service to The University of Texas System Board of Regents.

LUCIO  
HINOJOSA  
ZAFFIRINI

The resolution was read and was adopted without objection.

### **GUEST PRESENTED**

Senator Lucio, joined by Senators Zaffirini, Hinojosa, Watson, and Wentworth, was recognized and introduced to the Senate Colleen McHugh.

The Senate welcomed its guest.

### **SENATE RESOLUTION 1131**

Senator Hinojosa offered the following resolution:

**SR 1131**, Commending Amanda Aguilera on being named Youth of the Year for District 20 by the Rio Grande Valley Sector of the United States Border Patrol.

The resolution was read and was adopted without objection.

**GUEST PRESENTED**

Senator Hinojosa was recognized and introduced to the Senate Amanda Aguilera.

The Senate welcomed its guest.

**SENATE RESOLUTION 1130**

Senator Lucio offered the following resolution:

**SR 1130**, Commending Rodrigo Villarreal on being named Youth of the Year for District 27 by the Rio Grande Valley Sector of the United States Border Patrol.

The resolution was read and was adopted without objection.

**GUEST PRESENTED**

Senator Lucio was recognized and introduced to the Senate Rodrigo Villarreal.

The Senate welcomed its guest.

**SENATE RESOLUTION 1176**

Senator Rodriguez offered the following resolution:

**SR 1176**, In memory of Robert C. Thornell, Sr.

The resolution was read.

On motion of Senator Hinojosa and by unanimous consent, the names of the Lieutenant Governor and Senators were added to the resolution as signers thereof.

On motion of Senator Rodriguez, **SR 1176** was adopted by a rising vote of the Senate.

In honor of the memory of Robert C. Thornell, Sr., the text of the resolution is printed at the end of today's *Senate Journal*.

**GUEST PRESENTED**

Senator Rodriguez was recognized and introduced to the Senate Bryce Romero.

The Senate welcomed its guest and extended its sympathy.

**SENATE RESOLUTION 1052**

Senator Shapiro offered the following resolution:

**SR 1052**, In memory of James Wyatt "Jim" Edwards.

The resolution was again read.

The resolution was previously adopted on Friday, May 20, 2011.

In honor of the memory of James Wyatt Edwards, the text of **SR 1052** is printed at the end of today's *Senate Journal*.

**REMARKS ORDERED PRINTED**

On motion of Senator Estes and by unanimous consent, the remarks by Senator Shapiro regarding **SR 1052** were ordered reduced to writing and printed in the *Senate Journal* as follows:

Thank you very much Mr. President and Members. Senate Resolution 1052 recognizes Jim Edwards, a former two-term Mayor of the City of Plano, who died on May 13th at the age of 73. Jim died after a very short but very agonizing battle with cancer. This left a hole in our community that will not soon be filled. Born September the 6th, 1937, in Chicago, he grew up in Henderson, Kentucky, and loved those old Kentuckians. He talked about them all the time. He made his mark in Texas. Jim led a distinguished life, as I mentioned, he was the former Mayor of Plano and a very effective one at that. Jim is rightfully credited with drawing a number of large corporations to our area. In a sleepy little town back in the '70s and '80s, it became a burgeoning community. Jim helped spur development of major roadways, public transportation, retail centers, and educational institutions in Collin County. His background was extraordinary. He entered college when he was 16. After earning his bachelor's degree, he went on to earn a master's in accounting and two, Members, two doctorates, one in accounting and one in finance. And it's no surprise that with this love of learning, later in life, Jim also held leading roles in several colleges and universities. As his beloved son, Randy, has said of his father, education was paramount in his career. He was active in Republican politics. He served as a coordinator for Mike Huckabee's 2008 presidential campaign in Texas. Eight years before that, he worked where George W. Bush campaigned in Palm Beach County, Florida. As a passionate advocate for education, particularly the education of those students at risk, he worked with a nonprofit organization called Heart of a Champion. And true to his nature, his most recent initiative was the Changing Hearts Project, a program dedicated to aiding the children of combat veterans from Iraq and Afghanistan. A devoted husband, father, and grandfather, Jim knew what it meant in life and what was important in life. It was family and friends, and each one of us will miss him dearly. And yet, what we know is that Jim believed, above all else, it was service to others. Much like the legacy of his service that he will leave behind, he will also continue to live on in the hearts and the minds of all of those who knew Jim Edwards and loved him.

#### **RECESS**

On motion of Senator Whitmire, the Senate at 11:50 a.m. recessed until 1:00 p.m. today.

#### **AFTER RECESS**

The Senate met at 2:15 p.m. and was called to order by President Pro Tempore Ogden.

#### **COMMITTEE SUBSTITUTE HOUSE BILL 290 ON SECOND READING**

On motion of Senator Nelson and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 290** at this time on its second reading:

**CSHB 290**, Relating to the punishment for the offense of employment harmful to children.

The bill was read second time and was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 290 ON THIRD READING**

Senator Nelson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 290** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**SESSION TO CONSIDER EXECUTIVE APPOINTMENTS**

The President Pro Tempore announced the time had arrived to consider executive appointments to agencies, boards, and commissions. Notice of submission of these names for consideration was given yesterday by Senator Deuell.

Senator Deuell moved confirmation of the nominees reported yesterday by the Committee on Nominations.

The President Pro Tempore asked if there were requests to sever nominees.

There were no requests offered.

**NOMINEES CONFIRMED**

The following nominees, as reported by the Committee on Nominations, were confirmed by the following vote: Yeas 31, Nays 0.

Members, Oversight Committee, Cancer Prevention and Research Institute of Texas: Faith Simmons Johnson, Dallas County; Phil Wilson, Travis County.

District Attorney, 109th Judicial District, Crane and Winkler Counties: Dorothy Ann Holguin, Winkler County.

Members, Governing Board, Texas School for the Blind and Visually Impaired: Anne Lesley Corn, Travis County; Caroline Kupstas Daley, Harris County; Cynthia Ann Phillips Finley, Lubbock County.

Member, Gulf States Marine Fisheries Commission: Troy Bello Williamson, San Patricio County.

Member, Board of Directors, Lavaca-Navidad River Authority: Terri Lynn Green Parker, Jackson County.

Members, Board of Directors, Nueces River Authority: Karen Olsen Bonner, Nueces County; Laura Orman Clader, Atascosa County; Judith Hoepfner Creveling, Nueces County; John W. Galloway, Bee County; Gary A. Jones, Bee County;

James Richard Marmion, Dimmit County; Tomas Ramirez, Medina County; Fidel R. Rul, Jim Wells County; Stephen Hamilton Thomas, San Patricio County; Roxana Proctor Tom, Atascosa County.

Members, Product Development and Small Business Incubator Board: Molly Jane Dahm, Jefferson County; Ricardo David Leal, Cameron County; David L. Miller, Lubbock County; Ejike Edward Okpa, Dallas County.

Members, Board of Directors, San Jacinto River Authority: Fredrick Donald Koetting, Montgomery County; Mary Louise Rummell, Montgomery County.

Members, Board of Directors, Sulphur River Basin Authority: Borden E. Bell, Bowie County; Wallace Eugene Kraft, Lamar County; David T. Neeley, Titus County; Michael Edward Russell, Red River County; Patricia A. Wommack, Morris County.

Members, Texas Board of Chiropractic Examiners: Karen Marie Champion, Brazos County; Timothy Clarke McCullough, Galveston County; Kenya Scott Woodruff, Dallas County.

Members, Texas Real Estate Commission: Troy C. Alley, Dallas County; Billy Lawrence Jones, Bell County; Weston Martinez, Bexar County.

Members, Texas State Board of Examiners of Marriage and Family Therapists: Rick Allan Bruhn, Walker County; George Franklin Francis, Williamson County; Sean Benjamin Stokes, Denton County.

Members, Texas State Board of Public Accountancy: John Coalter Baker, Travis County; John Richard Broaddus, El Paso County; Jonathan Ballenger Cluck, Kendall County; Rocky Lynn Duckworth, Harris County; Catherine Rodewald, Dallas County.

Members, Board of Regents, University of North Texas System: Michael R. Bradford, Midland County; Steve Mitchell, Dallas County; George B. Ryan, Dallas County.

Members, Board of Directors, Upper Guadalupe River Authority: Harold James Danford, Kerr County; Lonnie Patricia Holloway, Kerr County.

### **HOUSE BILL 737 ON SECOND READING**

Senator Williams moved to suspend Senate Rule 7.12(a) and the regular order of business to take up for consideration **HB 737** at this time on its second reading:

**HB 737**, Relating to the East Montgomery County Improvement District.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read second time and was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

### **HOUSE BILL 737 ON THIRD READING**

Senator Williams moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 737** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1940 ON SECOND READING**

On motion of Senator Huffman and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 1940** at this time on its second reading:

**CSHB 1940**, Relating to certain matters affecting the supervision of persons released from the Texas Department of Criminal Justice and to certain hearings conducted concerning persons released from the Texas Department of Criminal Justice.

The bill was read second time and was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1940 ON THIRD READING**

Senator Huffman moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 1940** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1206 ON SECOND READING**

On motion of Senator Zaffirini and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 1206** at this time on its second reading:

**CSHB 1206**, Relating to training for members of governing boards of public junior college districts.

The bill was read second time and was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1206 ON THIRD READING**

Senator Zaffirini moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 1206** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 2337 ON SECOND READING**

On motion of Senator Uresti and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 2337** at this time on its second reading:

**CSHB 2337**, Relating to the admissibility of certain statements made by a child in a juvenile justice or criminal proceeding.

The bill was read second time and was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 2337 ON THIRD READING**

Senator Uresti moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 2337** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**HOUSE BILL 1376 ON SECOND READING**

On motion of Senator Ellis and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 1376** at this time on its second reading:

**HB 1376**, Relating to the definition of a junked vehicle for purposes of abatement of a public nuisance.

The bill was read second time and was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

**HOUSE BILL 1376 ON THIRD READING**

Senator Ellis moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1376** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 2327 ON SECOND READING**

Senator Wentworth moved to suspend the regular order of business to take up for consideration **CSHB 2327** at this time on its second reading:

**CSHB 2327**, Relating to the establishment and operation of a motor-bus-only lane pilot program in certain counties.

The motion prevailed by the following vote: Yeas 21, Nays 10.

Yeas: Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Gallegos, Hinojosa, Lucio, Nelson, Rodriguez, Seliger, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Birdwell, Fraser, Harris, Hegar, Huffman, Jackson, Nichols, Ogden, Patrick, Shapiro.

The bill was read second time.

Senator Estes offered the following amendment to the bill:

#### **Floor Amendment No. 1**

Amend **CSHB 2327** (Senate Committee printing) as follows:

On page 1, line 25 strike "Denton".

The amendment to **CSHB 2327** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1.

On motion of Senator Wentworth and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**CSHB 2327** as amended was passed to third reading by the following vote: Yeas 21, Nays 10.

Yeas: Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Gallegos, Hinojosa, Lucio, Nelson, Rodriguez, Seliger, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Birdwell, Fraser, Harris, Hegar, Huffman, Jackson, Nichols, Ogden, Patrick, Shapiro.

#### **HOUSE BILL 3079 ON SECOND READING**

On motion of Senator Deuell and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 3079** at this time on its second reading:

**HB 3079**, Relating to dealer agreements regarding the purchase and sale of certain equipment or machinery used for agricultural, construction, industrial, mining, outdoor power, forestry, and landscaping purposes.

The bill was read second time and was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

#### **HOUSE BILL 3079 ON THIRD READING**

Senator Deuell moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3079** be placed on its third reading and final passage.



The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

### STATEMENT OF LEGISLATIVE INTENT

Senator Deuell submitted the following statement of legislative intent for **HB 3079**:

It is my intent that House Bill 3079 will prohibit suppliers from "substantially changing the competitive circumstances of the dealer agreement" without good cause. The reason this protection is needed is that dealers have no negotiating power to prevent suppliers from inserting contract language that gives the suppliers the legal right to take actions that harm a dealer's business. For example, a dealer agreement may say that a supplier can approve another dealer to operate right next door to the original dealer even if the supplier knows that it would not have convinced the original dealer to invest millions of dollars if the dealer knew this was the supplier's intent. This provision is not intended to be limited to preventing action by a supplier that would violate the terms of the dealer agreement. Dealers already have a breach of contract remedy in that situation and therefore do not need additional legislation to address it. The very reason for this legislation is that dealer agreements represent "take it or leave it" propositions for dealers with little or no chance for dealers to negotiate with suppliers. The result is that dealers often sign contracts based on business expectations even if the dealer agreement permits the supplier to make future changes that impact the business expectation. The purpose of this law is to protect dealers from changes imposed by a supplier if the changes are substantial and negatively impact the dealer's business.

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### COMMITTEE SUBSTITUTE HOUSE BILL 51 ON SECOND READING

Senator Hinojosa moved to suspend the regular order of business to take up for consideration **CSHB 51** at this time on its second reading:

**CSHB 51**, Relating to energy efficiency standards for certain buildings and to high-performance design, construction, and renovation standards for certain buildings and facilities of institutions of higher education.

The motion prevailed.

Senators Birdwell, Nichols, Patrick, and Shapiro asked to be recorded as voting "Nay" on suspension of the regular order of business.

The bill was read second time.

Senator Hinojosa offered the following amendment to the bill:

#### Floor Amendment No. 1

Amend **CSHB 51** as follows:

In SECTION 1 of the bill, strike Subsections (c) and (d) of added Section 55.115, Education Code and substitute the following:

(c) Except as provided by this section, a building, structure, or other facility to which this section applies must be designed and constructed or renovated to comply with the applicable energy and water conservation design standards established by the state energy conservation office under Section 447.004, Government Code, unless the institution constructing the building determines that compliance with those standards is impractical and notifies the state energy conservation office of the determination and provides to the office documentation supporting the determination.

The amendment to **CSHB 51** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1.

On motion of Senator Hinojosa and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**CSHB 51** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading except as follows:

Nays: Birdwell, Nichols, Patrick, Shapiro.

#### **COMMITTEE SUBSTITUTE HOUSE BILL 51 ON THIRD READING**

Senator Hinojosa moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 51** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 27, Nays 4.

Yeas: Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hegar, Hinojosa, Huffman, Jackson, Lucio, Nelson, Ogden, Rodriguez, Seliger, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Birdwell, Nichols, Patrick, Shapiro.

The bill was read third time and was passed by the following vote: Yeas 27, Nays 4. (Same as previous roll call)

#### **HOUSE CONCURRENT RESOLUTION 86 ON SECOND READING**

On motion of Senator Duncan and by unanimous consent, the regular order of business was suspended to take up for consideration **HCR 86** at this time on its second reading:

**HCR 86**, Designating the Texas State Bison Herd at Caprock Canyons State Park as the official State Bison Herd of Texas.

The resolution was read second time and was adopted by the following vote: Yeas 31, Nays 0.

**HOUSE BILL 2994 ON SECOND READING**

Senator Estes moved to suspend the regular order of business to take up for consideration **HB 2994** at this time on its second reading:

**HB 2994**, Relating to the creation, operation, and funding of the urban farm microenterprise support program.

The motion prevailed.

Senators Birdwell, Hegar, and Shapiro asked to be recorded as voting "Nay" on suspension of the regular order of business.

The bill was read second time and was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading except as follows:

Nays: Birdwell, Hegar, Shapiro.

Absent: Williams.

**HOUSE BILL 2994 ON THIRD READING**

Senator Estes moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2994** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 27, Nays 3.

Yeas: Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hinojosa, Huffman, Jackson, Lucio, Nelson, Nichols, Ogden, Patrick, Rodriguez, Seliger, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Zaffirini.

Nays: Birdwell, Hegar, Shapiro.

Absent: Williams.

The bill was read third time and was passed by the following vote: Yeas 27, Nays 3. (Same as previous roll call)

**HOUSE BILL 3841 ON SECOND READING**

Senator Lucio moved to suspend the regular order of business to take up for consideration **HB 3841** at this time on its second reading:

**HB 3841**, Relating to the designation of a portion of Farm-to-Market Road 907 in Hidalgo County as Rudy Villarreal Road.

The motion prevailed.

Senator Ogden asked to be recorded as voting "Nay" on suspension of the regular order of business.

The bill was read second time and was passed to third reading by the following vote: Yeas 30, Nays 1.

Nays: Ogden.

### HOUSE BILL 3841 ON THIRD READING

Senator Lucio moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3841** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Ogden.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 1. (Same as previous roll call)

### COMMITTEE SUBSTITUTE HOUSE BILL 2910 ON SECOND READING

On motion of Senator Zaffirini and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 2910** at this time on its second reading:

**CSHB 2910**, Relating to agreements between the Texas Higher Education Coordinating Board and certain organizations for increasing degree completion rates.

The bill was read second time.

Senator Birdwell offered the following amendment to the bill:

#### Floor Amendment No. 1

Amend **CSHB 2910** (Senate Committee Printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering the SECTIONS of the bill appropriately:

SECTION \_\_\_\_\_. Chapter 61, Education Code, is amended by adding Subchapter GG to read as follows:

#### SUBCHAPTER GG. TEXAS SCIENCE, TECHNOLOGY, ENGINEERING, AND MATHEMATICS (T-STEM) CHALLENGE SCHOLARSHIP PROGRAM

Sec. 61.9791. DEFINITION. In this subchapter, "STEM program" means a Science, Technology, Engineering, and Mathematics program.

Sec. 61.9792. SCHOLARSHIP PROGRAM. The board shall establish and administer, in accordance with this subchapter and board rules, the Texas Science, Technology, Engineering, and Mathematics (T-STEM) Challenge Scholarship program under which the board provides a scholarship to a student who meets the eligibility criteria prescribed by Section 61.9793.

Sec. 61.9793. ELIGIBLE STUDENT. (a) To receive an initial scholarship under this subchapter, a student must:

(1) graduate from high school with a grade point average of at least 3.0 on a four-point scale in mathematics and science courses;

(2) enroll in a STEM program at an eligible institution; and

(3) agree to work no more than 15 hours a week for a business participating in the STEM program.

(b) To continue to qualify for a scholarship under this subchapter, a student must:

(1) remain enrolled in a STEM program at an eligible institution;

(2) maintain an overall grade point average of at least 3.0 on a four-point scale;

(3) complete at least 80 percent of all semester credit hours attempted for each semester;

(4) complete at least 30 semester credit hours per academic year; and

(5) work no more than 15 hours a week for a business participating in the STEM program.

Sec. 61.9794. ELIGIBLE INSTITUTION. (a) To qualify as an eligible institution under this subchapter, an institution must:

(1) be a public junior college or public technical institute;

(2) admit at least 50 students into a STEM program each academic year; and

(3) develop partnerships with business and industry to:

(A) identify local employment needs in Science, Technology, Engineering, and Mathematics (STEM) fields; and

(B) provide part-time employment for students enrolled in a STEM program.

(b) To maintain eligibility, beginning with the second year following implementation of a scholarship program under this subchapter, an institution must demonstrate to the board that at least 70 percent of the institution's T-STEM Challenge Scholarship graduates, within three months after graduation, are:

(1) employed by a business in a Science, Technology, Engineering, and Mathematics (STEM) field; or

(2) enrolled in upper-division courses leading to a baccalaureate degree in a Science, Technology, Engineering, and Mathematics (STEM) field.

Sec. 61.9795. AMOUNT; FUNDING. (a) Subject to available funding, the board shall award scholarships, with at least 50 percent of the amount awarded from private funds.

(b) An eligible student may receive a scholarship awarded under this subchapter for not more than two academic years.

(c) The board may use any available revenue, including legislative appropriations, and may solicit and accept gifts and grants for purposes of this subchapter.

SECTION \_\_\_\_. The Texas Higher Education Coordinating Board shall award scholarships under Subchapter GG, Chapter 61, Education Code, as added by this Act, beginning with the 2011-2012 academic year. The coordinating board shall adopt the rules required by that subchapter as soon as practicable after this Act takes effect.

The amendment to **CSHB 2910** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1.

On motion of Senator Zaffirini and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**CSHB 2910** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 2910 ON THIRD READING**

Senator Zaffirini moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 2910** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**HOUSE BILL 3864 ON SECOND READING**

On motion of Senator Deuell and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 3864** at this time on its second reading:

**HB 3864**, Relating to the creation of the Lazy W District No. 1; providing authority to impose a tax and issue bonds; granting a limited power of eminent domain.

The bill was read second time and was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

**HOUSE BILL 3864 ON THIRD READING**

Senator Deuell moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3864** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 2643 ON SECOND READING**

On motion of Senator Watson and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 2643** at this time on its second reading:

**CSHB 2643**, Relating to safety standards for elevators, escalators, and related equipment.

The bill was read second time.

Senator Carona offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 2643** (senate committee printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS accordingly:

SECTION \_\_\_\_\_. Section 1302.002, Occupations Code, is amended by amending Subdivision (5-b) and adding Subdivision (5-c) to read as follows:

(5-b) "Apprenticeship program" means an air conditioning and refrigeration training program that is:

(A) recognized by the Texas Workforce Commission or the Texas Higher Education Coordinating Board;

(B) registered with the United States Department of Labor; or

(C) a competency-based standardized craft training program that meets the standards of the United States Department of Labor Office of Apprenticeship.

(5-c) "Certified technician" means a registered technician who has completed a certification examination.

SECTION \_\_\_\_\_. Subchapter C, Chapter 1302, Occupations Code, is amended by adding Section 1302.1011 to read as follows:

Sec. 1302.1011. RULES. The commission shall adopt rules:

(1) providing for the licensing and registration of persons under this chapter, including requirements for the issuance and renewal of a contractor license and a technician registration;

(2) establishing fees necessary for the administration of this chapter, including fees for issuance and renewal of a contractor license and a technician registration; and

(3) implementing the requirements of this chapter as applicable to persons, entities, and activities regulated under this chapter.

SECTION \_\_\_\_\_. Subsection (a), Section 1302.102, Occupations Code, is amended to read as follows:

(a) The commission by rule [~~executive director~~] shall set insurance requirements for a license holder under this chapter.

SECTION \_\_\_\_\_. Section 1302.105, Occupations Code, is amended to read as follows:

Sec. 1302.105. PERSONNEL [~~EXAMINERS~~]. [~~(a)~~] The department may employ personnel necessary to administer this chapter.

~~[(b) The department shall employ at least two full-time air conditioning and refrigeration contractors to serve as examiners.]~~

SECTION \_\_\_\_\_. Section 1302.202, Occupations Code, is amended to read as follows:

Sec. 1302.202. APPOINTED MEMBERS. (a) Except for the public member, each [~~Each~~] appointed advisory board member must be experienced in the design, installation, construction, maintenance, service, repair, or modification of equipment used for environmental air conditioning, commercial refrigeration, or process cooling or heating. Other than the public member, of [~~Of~~] the appointed members:

(1) one must be an official of a municipality with a population of more than 250,000;

(2) one must be an official of a municipality with a population of not more than 250,000; and

(3) four must be full-time licensed air conditioning and refrigeration contractors, as follows:

(A) one member who holds a Class A license and practices in a municipality with a population of more than 250,000;

(B) one member who holds a Class B license and practices in a municipality with a population of more than 250,000;

(C) one member who holds a Class A license and practices in a municipality with a population of more than 25,000 but not more than 250,000; and

(D) one member who holds a Class B license and practices in a municipality with a population of not more than 25,000.

(b) At least one ~~[appointed]~~ advisory board member appointed under Subsection (a)(3) must be an air conditioning and refrigeration contractor who employs organized labor ~~[and at least two appointed members must be air conditioning and refrigeration contractors who are licensed engineers].~~

SECTION \_\_\_\_\_. The heading to Subchapter F, Chapter 1302, Occupations Code, is amended to read as follows:

SUBCHAPTER F. AIR CONDITIONING AND REFRIGERATION  
CONTRACTORS ~~[LICENSE REQUIREMENTS]~~

SECTION \_\_\_\_\_. Section 1302.251, Occupations Code, is amended to read as follows:

Sec. 1302.251. LICENSE REQUIRED. (a) A person may not engage in air conditioning and refrigeration contracting unless the person holds an air conditioning and refrigeration contractor [A] license under this subchapter or Subchapter G.

(b) An air conditioning and refrigeration contractor [A] license issued under this subchapter is valid throughout the state. A person who holds a license issued under this subchapter is not required to hold a municipal license under Subchapter G to engage in air conditioning and refrigeration contracting in any municipality in this state.

(c) A person holding an air conditioning and refrigeration contractor license may assign that license to only one permanent office of one air conditioning and refrigeration contracting company.

SECTION \_\_\_\_\_. Section 1302.255, Occupations Code, is amended to read as follows:

Sec. 1302.255. ELIGIBILITY REQUIREMENTS. (a) An applicant for a license under this subchapter ~~[chapter]~~ must:

(1) be at least 18 years old; and

(2) have at least 48 [36] months of practical experience in air conditioning and refrigeration-related work under the supervision of a licensed air conditioning and refrigeration contractor [with the tools of the trade] in the preceding 72 months [five years].

(a-1) An applicant who has equivalent experience in another state or who held an equivalent license in another state may receive credit for the experience as determined by the executive director.

(b) Notwithstanding the requirements of [For purposes of determining an applicant's practical experience under] Subsection (a)(2), an applicant may satisfy a portion of the practical experience requirement as provided by Subsection (c).



(c) An applicant who obtains a degree or diploma or completes a certification program from an institution of higher education that holds a certificate of authority issued by the Texas Higher Education Coordinating Board, or an equivalent governing body in another state as approved by the executive director, may satisfy a portion of the practical experience requirement as follows:

(1) completing a four-year degree or diploma in air conditioning engineering or technology, refrigeration engineering or technology, or mechanical engineering is equivalent to 24 months [two years] of practical experience [if:

[1] the degree or diploma is from an institution of higher education]; [and]

(2) completing a two-year associate's degree, a two-year diploma, or a two-year certification program primarily focused on air conditioning and refrigeration-related work is equivalent to 12 months of practical experience;

(3) completing a one-year certification program, or a program of at least two semesters, in air conditioning and refrigeration-related work is equivalent to six months of practical experience; and

(4) completing a program resulting in another applicable degree, diploma, or certification shall be equivalent to the amount of practical experience determined by the department under commission rule [the institution's program is approved by the Texas Board of Professional Engineers for the purpose of licensing engineers].

(d) Every 2,000 hours of on-the-job training in an apprenticeship program is equivalent to 12 months of practical experience under Subsection (a)(2).

(e) Notwithstanding the requirements of Subsection (a)(2), each of the following qualifies as practical experience for purposes of satisfying the 48-month requirement:

(1) verified military service in which the person was trained in or performed air conditioning and refrigeration-related work as part of the person's military occupational specialty; and

(2) experience performing air conditioning and refrigeration-related work as described by Section 1302.055, 1302.056, or 1302.057 or while employed by a governmental entity.

SECTION \_\_\_\_\_. Subsections (a) and (c), Section 1302.256, Occupations Code, are amended to read as follows:

(a) An applicant for an air conditioning and refrigeration contractor [a] license must submit a verified application on a form prescribed by the executive director.

(c) The application must be accompanied by:

(1) a statement containing evidence satisfactory to the executive director of the applicant's practical experience required by Section 1302.255 [1302.255(a)(2)]; and

(2) the required fees [examination fee].

SECTION \_\_\_\_\_. Subsection (b), Section 1302.257, Occupations Code, is amended to read as follows:

(b) The executive director shall prescribe the method and content of an examination administered under this subchapter [chapter] and shall set compliance requirements for the examination. To obtain an endorsement, an applicant must pass the examination for the endorsement.

SECTION \_\_\_\_\_. Section 1302.260, Occupations Code, is amended to read as follows:

Sec. 1302.260. ISSUANCE AND TERM OF LICENSE. (a) The department [~~On payment of the license fee, the executive director~~] shall issue an air conditioning and refrigeration contractor license to an applicant who:

(1) submits a verified application;  
 (2) passes the applicable examination;  
 (3) meets the requirements of this chapter and rules adopted under this chapter [~~subchapter~~];

(4) pays the required fees; and  
 (5) [~~(2)~~] provides evidence of insurance coverage required by rule [~~the executive director~~] in accordance with this chapter; [~~and~~]  
 [~~(3) passes the applicable examination.~~]

(b) A license issued under this chapter expires on the first anniversary of the date of issuance [~~at the end of the license period set by the commission~~].

SECTION \_\_\_\_\_. Section 1302.263, Occupations Code, is amended to read as follows:

Sec. 1302.263. LIMITATION ON LICENSE HOLDER [~~OR REGISTERED TECHNICIAN~~]. A person licensed as a contractor under this subchapter [~~chapter~~] may not:

(1) perform or offer or attempt to perform an act, service, or function that is:  
 (A) defined as the practice of engineering under Chapter 1001, unless the person holds a license under that chapter;

(B) regulated under Chapter 113, Natural Resources Code, unless the person holds a license or is exempt by rule under that chapter; or

(C) defined as plumbing under Chapter 1301, unless the person holds a license under that chapter; or

(2) use the services of a person who is not a registered technician or a licensed air conditioning and refrigeration contractor to assist in the performance of air conditioning and refrigeration maintenance work.

SECTION \_\_\_\_\_. Subsection (a), Section 1302.453, Occupations Code, is amended to read as follows:

(a) A person commits an offense if the person:

(1) knowingly engages in air conditioning and refrigeration contracting without holding a license issued under this chapter; [~~or~~]

(2) knowingly engages in air conditioning and refrigeration maintenance work without holding a contractor license or technician registration issued under this chapter; or

(3) purchases a refrigerant or equipment containing a refrigerant in this state in violation of Section 1302.353, 1302.355, or 1302.356.

SECTION \_\_\_\_\_. Section 1302.501, Occupations Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) An air conditioning and refrigeration technician [~~A~~] registration is valid throughout the state.

(c) A person is not required to obtain an air conditioning and refrigeration technician registration if the person only assists a licensed contractor in performing:

(1) the total replacement of a system; or

(2) the installation or repair of a boiler or pressure vessel that must be installed in accordance with rules adopted under Chapter 755, Health and Safety Code.

SECTION \_\_\_\_\_. Subchapter K, Chapter 1302, Occupations Code, is amended by adding Section 1302.5035 to read as follows:

Sec. 1302.5035. ELIGIBILITY REQUIREMENTS. (a) An applicant for a technician registration under this subchapter must be at least 18 years old.

(b) An applicant for a technician registration is not required to have practical experience or to take an examination to obtain the registration.

SECTION \_\_\_\_\_. Section 1302.504, Occupations Code, is amended to read as follows:

Sec. 1302.504. APPLICATION; FEE. (a) An applicant for an air conditioning and refrigeration technician registration must submit a verified ~~[an]~~ application on a form prescribed by the executive director ~~[commission].~~

(b) The completed application must be accompanied by the required fees ~~[application fee].~~

SECTION \_\_\_\_\_. Section 1302.505, Occupations Code, is amended to read as follows:

Sec. 1302.505. ISSUANCE AND TERM OF REGISTRATION. (a) The department shall issue an air conditioning and refrigeration technician registration to an applicant who:

(1) submits a verified application;

(2) meets the requirements of this chapter and rules adopted under this chapter; and

(3) pays the required fees ~~[On receipt of a completed application, the department shall register an applicant who meets the requirements of this subchapter].~~

(b) A registration issued under this subchapter is valid for one year from the date of issuance.

SECTION \_\_\_\_\_. Subchapter K, Chapter 1302, Occupations Code, is amended by adding Section 1302.509 to read as follows:

Sec. 1302.509. LIMITATIONS ON REGISTRANT. A person registered under this subchapter may not:

(1) perform, offer to perform, or attempt to perform an act that is:

(A) defined as the practice of engineering under Chapter 1001, unless the person holds a license under that chapter;

(B) regulated under Chapter 113, Natural Resources Code, unless the person holds a license under that chapter or is exempt by a rule adopted under that chapter; or

(C) defined as plumbing under Chapter 1301, unless the person holds a license under that chapter; or

(2) assist a person who is not a licensed air conditioning and refrigeration contractor in the performance of air conditioning and refrigeration maintenance work.

SECTION \_\_\_\_\_. The following sections of the Occupations Code are repealed:

(1) Section 1302.062;

(2) Section 1302.106;

(3) Section 1302.209;

- (4) Subsections (c) and (d), Section 1302.257;
- (5) Section 1302.502; and
- (6) Section 1302.507.

SECTION \_\_\_\_\_. (a) Not later than March 1, 2012, the Texas Commission of Licensing and Regulation shall adopt rules to implement Chapter 1302, Occupations Code, as amended by this Act.

(b) Section 1302.255, Occupations Code, as amended by this Act, applies only to an application for a license or registration under that section submitted to the Texas Department of Licensing and Regulation on or after November 1, 2012. An application for a license, registration, or certification submitted under that section before that date is governed by the law in effect on the date the application was submitted, and the former law is continued in effect for that purpose.

The amendment to **CSHB 2643** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1.

Senator Nelson offered the following amendment to the bill:

#### **Floor Amendment No. 2**

Amend **CSHB 2643** (senate committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 711.008, Health and Safety Code, is amended by amending Subsection (b) and adding Subsection (h) to read as follows:

(b) Subsection (a) does not apply to:

- (1) a cemetery heretofore established and operating;
- (2) the establishment and use of a columbarium by an organized religious society or sect that is exempt from income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed under Section 501(c)(3) of that code, as part of or attached to the principal church building owned by the society or sect;

(3) the establishment and use of a columbarium by an organized religious society or sect that is exempt from income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed under Section 501(c)(3) of that code, on land that:

(A) is owned by the society or sect; and

(B) is part of the campus on which an existing principal church building is located;

(4) the establishment and use of a columbarium on the campus of a private or independent institution of higher education, as defined by Section 61.003, Education Code, that is wholly or substantially controlled, managed, owned, or supported by or otherwise affiliated with an organized religious society or sect that is exempt from income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed under Section 501(c)(3) of that code, if a place of worship is located on the campus; [✗]

(5) the establishment and use of a mausoleum that is:

(A) constructed beneath the principal church building owned by an organized religious society or sect that:

(i) is exempt from income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed under Section 501(c)(3) of that code; and

(ii) has recognized religious traditions and practices of interring the remains of ordained clergy in or below the principal church building; and

(B) used only for the interment of the remains of ordained clergy of that organized religious society or sect; or

(6) the establishment and operation, if authorized in accordance with Subsection (h), of a perpetual care cemetery by an organized religious society or sect that:

(A) is exempt from income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed under Section 501(c)(3) of that code;

(B) has been in existence for at least five years;

(C) has at least \$500,000 in assets; and

(D) establishes and operates the cemetery on land that:

(i) is owned by the society or sect;

(ii) together with any other land owned by the society or sect and adjacent to the land on which the cemetery is located, is not less than 10 acres; and

(iii) is in a municipality with a population of at least one million that is located predominantly in a county that has a total area of less than 1,000 square miles.

(h) The governing body of a municipality described by Subsection (b)(6)(D)(iii) may authorize the establishment and use in accordance with Subsection (b)(6) of a cemetery located inside the boundaries of the municipality if the municipality determines and states in the ordinance that the establishment or use of the cemetery does not adversely affect public health, safety, and welfare.

The amendment to **CSHB 2643** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 2.

On motion of Senator Watson and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**CSHB 2643** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

### COMMITTEE SUBSTITUTE HOUSE BILL 2643 ON THIRD READING

Senator Watson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 2643** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1560 ON SECOND READING**

On motion of Senator Hinojosa and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 1560** at this time on its second reading:

**CSHB 1560**, Relating to the enterprise zone program.

The bill was read second time.

Senator Hinojosa offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 1560** (Senate Committee Printing) as follows:

(1) In SECTION 1, strike the period on page 1, line 22, and insert the following after "business":

"and continues to perform at least 50 percent of the person's service for the business at the qualified business site."

(2) In SECTION 2, strike subdivision (3) on page 1, lines 47 through 52 and insert the following:

(3) the person is engaged in or has provided substantial commitment to initiate the active conduct of a trade or business at a qualified business site, and at least 10 percent of the person's retained jobs at the qualified business site eligible for enterprise zone program benefits are held by:

(A) residents of any enterprise zone in this state; or

(B) economically disadvantaged individuals.

(3) In SECTION 5, on page 2, line 63, strike "or more".

The amendment to **CSHB 1560** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1.

On motion of Senator Hinojosa and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**CSHB 1560** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1560 ON THIRD READING**

Senator Hinojosa moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 1560** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1646 ON SECOND READING**

Senator Ellis moved to suspend the regular order of business to take up for consideration **CSHB 1646** at this time on its second reading:

**CSHB 1646**, Relating to representation of certain applicants for writs of habeas corpus in cases involving the death penalty.

The motion prevailed.

Senators Nelson, Patrick, and Shapiro asked to be recorded as voting "Nay" on suspension of the regular order of business.

The bill was read second time and was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading except as follows:

Nays: Nelson, Patrick, Shapiro.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1646 ON THIRD READING**

Senator Ellis moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 1646** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 3.

Yeas: Birdwell, Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hegar, Hinojosa, Huffman, Jackson, Lucio, Nichols, Ogden, Rodriguez, Seliger, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Nelson, Patrick, Shapiro.

The bill was read third time and was passed by the following vote: Yeas 28, Nays 3. (Same as previous roll call)

**HOUSE BILL 335 ON THIRD READING**

On motion of Senator Birdwell and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 335** at this time on its third reading and final passage:

**HB 335**, Relating to implementation and requirements of certain health care reform laws.

The bill was read third time and was passed by the following vote: Yeas 24, Nays 7.

Yeas: Birdwell, Carona, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hegar, Hinojosa, Huffman, Jackson, Nelson, Nichols, Ogden, Patrick, Seliger, Shapiro, Wentworth, West, Whitmire, Williams.

Nays: Davis, Lucio, Rodriguez, Uresti, Van de Putte, Watson, Zaffirini.

**MESSAGE FROM THE HOUSE**

HOUSE CHAMBER

Austin, Texas

Wednesday, May 25, 2011 - 1

The Honorable President of the Senate  
Senate Chamber  
Austin, Texas

Mr. President:

I am directed by the House to inform the Senate that the House has taken the following action:

**THE HOUSE HAS PASSED THE FOLLOWING MEASURES:****HCR 156** Raymond

Directing the Texas Historical Commission to work with the City of Austin to honor the memory of President John F. Kennedy with an official Texas Historical Marker at or near the site of the Austin Municipal Auditorium.

**HCR 165** Guillen

Honoring the 2011 and 2012 Texas State Artist appointees.

**HCR 166** Guillen

Commemorating the 10th anniversary of the death of John Austin Pena and the naming of the John Austin Pena Memorial Center in Edinburg.

**HCR 167** Otto

Instructing the enrolling clerk of the house to make corrections in H.B. No. 2203.

**SB 40** Zaffirini Sponsor: Callegari

Relating to the composition and functions of the Texas Guaranteed Student Loan Corporation.

(Committee Substitute/Amended)

**SB 49** Zaffirini Sponsor: Guillen

Relating to school district requirements regarding parental notification in connection with disciplinary alternative education programs.

(Committee Substitute)

**SB 173** West Sponsor: Dutton

Relating to civil remedy of violations of certain municipal health and safety ordinances.

**SB 197** West Sponsor: Phillips

Relating to the compulsory inspection of motor vehicles; providing penalties.

(Amended)

**SB 244** Patrick Sponsor: Fletcher

Relating to the continuing education requirements for certain peace officers.

**SB 286** Harris Sponsor: Hartnett

Relating to attorney's fees and other costs in guardianship proceedings.

(Committee Substitute)



- SB 327** Van de Putte Sponsor: Garza  
Relating to including certain veterans service organizations as small businesses for the purpose of state contracting.
- SB 365** Ogden Sponsor: Strama  
Relating to distributed generation of electric power.
- SB 391** Patrick Sponsor: Eissler  
Relating to the provision of electronic samples of a textbook adopted by the State Board of Education.  
(Committee Substitute)
- SB 462** West Sponsor: Veasey  
Relating to the expunction of records and files relating to a person's arrest.  
(Committee Substitute/Amended)
- SB 475** Patrick Sponsor: Fletcher  
Relating to the creation of the Harris County Municipal Utility District No. 524; providing authority to impose a tax and issue bonds; granting a limited power of eminent domain.
- SB 542** Hegar Sponsor: Fletcher  
Relating to the regulation of law enforcement officers by the Commission on Law Enforcement Officer Standards and Education.  
(Amended)
- SB 801** Hegar Sponsor: Weber  
Relating to the authority of the seawall commission in Matagorda County to build and maintain recreational facilities near the seawall.
- SB 841** Patrick Sponsor: Miller, Sid  
Relating to the prosecution of and punishment for the offense of breach of computer security.  
(Committee Substitute)
- SB 844** Patrick Sponsor: Hunter  
Relating to the offense of escape from custody by a person lawfully detained.  
(Committee Substitute)
- SB 847** Patrick Sponsor: Davis, John  
Relating to the authority of certain hospital districts to contract for the performance of administrative functions and services.
- SB 937** Lucio Sponsor: Naishtat  
Relating to priorities for restoration of electric service following an extended power outage.
- SB 969** Nelson Sponsor: Kolkhorst  
Relating to the establishment of the Public Health Funding and Policy Committee within the Department of State Health Services.
- SB 1003** Fraser Sponsor: Smith, Wayne  
Relating to penalties for, and emergency orders suspending, the operation of a rock crusher or certain concrete plants without a current permit under the Texas Clean Air Act.  
(Committee Substitute)

- SB 1042** Hegar Sponsor: Jackson, Jim  
Relating to the eligibility of employees convicted of certain offenses to provide services under a contract with a public school.
- SB 1055** Carona Sponsor: Madden  
Relating to reports concerning and the reporting of the use of certain funds by community supervision and corrections departments and to the preparation of commitment reduction plans by those departments.
- SB 1058** Nichols Sponsor: White  
Relating to the transfer of certain state property from the Department of Aging and Disability Services to the Angelina and Neches River Authority.
- SB 1170** Carona Sponsor: Hamilton  
Relating to the regulation of barbers and cosmetologists.  
(Committee Substitute/Amended)
- SB 1200** Patrick Sponsor: Fletcher  
Relating to the venue for prosecution of misdemeanor cases in justice of the peace courts located in certain counties.
- SB 1225** Hegar Sponsor: Isaac  
Relating to the disannexation of land in Caldwell County by the Gonzales County Underground Water Conservation District or the Plum Creek Conservation District.
- SB 1290** Hegar Sponsor: Hunter  
Relating to the creation of the Calhoun County Groundwater Conservation District; providing authority to issue bonds.
- SB 1383** Shapiro Sponsor: Eissler  
Relating to an appraisal and professional development system for public school principals.
- SB 1434** Carona Sponsor: Geren  
Relating to certain low-income weatherization programs.
- SB 1545** Patrick Sponsor: Woolley  
Relating to the liability of a volunteer health care practitioner who conducts a physical examination or medical screening of a student athlete.
- SB 1546** Patrick Sponsor: Murphy  
Relating to the right to a new hearing before an appraisal review board following a failure to attend a hearing.  
(Amended)
- SB 1619** Duncan Sponsor: Aycock  
Relating to participation of public high school students in college credit programs.
- SB 1620** Duncan Sponsor: Aycock  
Relating to substitution of certain career and technology courses for certain mathematics and science courses otherwise required under the recommended high school program.  
(Amended)

**SB 1788** Patrick Sponsor: Huberty  
 Relating to the development of a model individualized education program form by the Texas Education Agency.  
 (Amended)

**SB 1796** Van de Putte Sponsor: Miller, Sid  
 Relating to the creation of the Texas Coordinating Council for Veterans Services.  
 (Amended)

**SB 1877** Hegar Sponsor: Isaac  
 Relating to the creation of the Oatman Hill Municipal Utility District; providing authority to impose a tax and issue bonds; granting a limited power of eminent domain.

**SB 1899** Nichols Sponsor: Pitts  
 Relating to compensation for services and reimbursement for expenses of a member of the board of directors of the Lake View Management and Development District.

**SB 1913** Watson Sponsor: Rodriguez, Eddie  
 Relating to the creation of the Southeast Travis County Municipal Utility District No. 1; providing authority to impose a tax and issue bonds.

**SB 1916** Watson Sponsor: Rodriguez, Eddie  
 Relating to the creation of the Southeast Travis County Municipal Utility District No. 4; providing authority to impose a tax and issue bonds.

**SB 1920** Gallegos Sponsor: Eiland  
 Relating to the powers of the Coastal Water Authority; affecting the authority to issue bonds.  
 (Amended)

**SB 1925** Eltife Sponsor: Cain  
 Relating to the designation of a portion of U.S. Highway 271 as the Sergeant Jay M. Hoskins Memorial Highway.

**SB 1926** Lucio Sponsor: Lucio III  
 Relating to the Colonel H. William "Bill" Card, Jr., Outpatient Clinic.

Respectfully,

/s/Robert Haney, Chief Clerk  
 House of Representatives

**HOUSE BILL 3462 ON SECOND READING**

On motion of Senator Rodriguez and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 3462** at this time on its second reading:

**HB 3462**, Relating to the board of hospital managers of the El Paso County Hospital District.

The bill was read second time and was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

**HOUSE BILL 3462 ON THIRD READING**

Senator Rodriguez moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3462** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 3025 ON SECOND READING**

On motion of Senator Zaffirini and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 3025** at this time on its second reading:

**CSHB 3025**, Relating to the filing of a degree plan by undergraduate students at public institutions of higher education.

The bill was read second time.

Senator Van de Putte offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 3025** (Senate Committee Printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill appropriately:

SECTION \_\_\_\_\_. Section 54.203, Education Code, is amended by adding Subsection (a-3) to read as follows:

(a-3) Notwithstanding Subsection (a)(4), a person who meets the requirements of Subsection (a)(4), other than the requirement that the person must have served on active military duty for more than the stated number of days, is entitled to the exemption provided by Subsection (a)(4) regardless of the length of the member's active military duty if the person was a member of the Texas National Guard or the Texas Air National Guard who was assigned to a theater of combat operation with the armed forces of the United States.

SECTION \_\_\_\_\_. Section 54.203(a-3), Education Code, as added by this Act, applies beginning with tuition and fees at a public institution of higher education for the 2011 fall semester. Tuition and fees for a term or semester before the 2011 fall semester are covered by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

The amendment to **CSHB 3025** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1.

Senator Patrick offered the following amendment to the bill:

**Floor Amendment No. 2**

Amend **CSHB 3025** by adding the following appropriately numbered SECTIONS to the bill and renumbering the remaining SECTIONS of the bill accordingly:

SECTION \_\_\_\_ . Subchapter S, Chapter 61, Education Code, is amended by adding Section 61.833 to read as follows:

Sec. 61.833. CREDIT TRANSFER FOR ASSOCIATE DEGREE. (a) In this section, "lower-division institution of higher education" means a public junior college, public state college, or public technical institute.

(b) This section applies to a student enrolled in a general academic teaching institution who:

(1) transferred to the institution from or previously attended a lower-division institution of higher education;

(2) earned at least 30 credit hours for course work successfully completed at the lower-division institution of higher education; and

(3) has earned a cumulative total of at least 90 credit hours for course work successfully completed.

(c) As soon as practicable after a student who is enrolled in a general academic teaching institution has met the criteria established by Subsection (b)(3), the institution by e-mail or other reasonable method shall request authorization from the student for the institution to release the student's transcript to the lower-division institution of higher education that the student previously attended for the purpose of determining whether the student has earned the credits required for an associate degree awarded by the lower-division institution of higher education. On receipt of a student's authorization under this subsection, the general academic teaching institution shall release the student's transcript to the lower-division institution of higher education.

(d) After receiving a student transcript from a general academic teaching institution under Subsection (c), a lower-division institution of higher education shall review the transcript and, if the lower-division institution of higher education determines the student has earned the credits required to receive an associate degree awarded by the lower-division institution of higher education, may award the student the degree.

SECTION \_\_\_\_ . The change in law made by this Act by adding Section 61.833, Education Code, applies to a student who not earlier than the 2011 fall semester transfers to or otherwise initially enrolls in a general academic teaching institution after attending a lower-division institution of higher education.

The amendment to **CSHB 3025** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 2.

On motion of Senator Zaffirini and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**CSHB 3025** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 3025 ON THIRD READING**

Senator Zaffirini moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 3025** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 3246 ON SECOND READING**

Senator West moved to suspend the regular order of business to take up for consideration **CSHB 3246** at this time on its second reading:

**CSHB 3246**, Relating to public improvement districts designated by a municipality or county.

The motion prevailed.

Senator Harris asked to be recorded as voting "Nay" on suspension of the regular order of business.

The bill was read second time.

Senator West offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 3246** (senate committee printing) in SECTION 4 of the bill, in added Section 372.031, Local Government Code, by striking Subsection (d) (page 2, lines 52-54) and substituting the following:

(d) When a municipality or county subject to this section submits bonds or obligations payable from assessments to the attorney general for approval and examination, the municipality or county must demonstrate compliance with this section. The attorney general shall adopt rules in accordance with Chapter 1202, Government Code, that require the municipality or county to demonstrate the municipality's or county's:

- (1) ability to repay the bonds or obligations; and
- (2) compliance with the requirements of this subchapter.

The amendment to **CSHB 3246** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1.

On motion of Senator West and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**CSHB 3246** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading except as follows:

Nays: Harris.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 3246 ON THIRD READING**

Senator West moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 3246** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Harris.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 1. (Same as previous roll call)

**COMMITTEE SUBSTITUTE  
HOUSE BILL 2728 ON SECOND READING**

Senator Van de Putte moved to suspend the regular order of business to take up for consideration **CSHB 2728** at this time on its second reading:

**CSHB 2728**, Relating to the operation and regulation of charitable bingo.

The motion prevailed.

Senators Birdwell, Hegar, Huffman, Nelson, and Nichols asked to be recorded as voting "Nay" on suspension of the regular order of business.

The bill was read second time and was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading except as follows:

Nays: Birdwell, Hegar, Huffman, Nelson, Nichols.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 2728 ON THIRD READING**

Senator Van de Putte moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 2728** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 26, Nays 5.

Yeas: Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hinojosa, Jackson, Lucio, Ogden, Patrick, Rodriguez, Seliger, Shapiro, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Birdwell, Hegar, Huffman, Nelson, Nichols.

The bill was read third time and was passed by the following vote: Yeas 26, Nays 5. (Same as previous roll call)

**COMMITTEE SUBSTITUTE  
HOUSE BILL 3708 ON SECOND READING**

Senator Zaffirini moved to suspend the regular order of business to take up for consideration **CSHB 3708** at this time on its second reading:

**CSHB 3708**, Relating to the Early High School Graduation Scholarship program and to the funding of certain exemptions from tuition and fees at public institutions of higher education from savings attributable to the program.

The motion prevailed.

Senator Ogden asked to be recorded as voting "Nay" on suspension of the regular order of business.

The bill was read second time.

Senator Hinojosa offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 3708** by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Chapter 29, Education Code, is amended by adding Subchapter K to read as follows:

SUBCHAPTER K. PUBLIC JUNIOR COLLEGE AND SCHOOL DISTRICT  
PARTNERSHIP PROGRAM TO PROVIDE DROPOUT RECOVERY

Sec. 29.401. APPLICABILITY. (a) This subchapter applies only to a public junior college, as defined by Section 61.003, located in a county:

(1) with a population of 750,000 or more; and

(2) with less than 65 percent of the population 25 years and older having graduated from high school, according to the most recent American Community Survey five-year estimates compiled by the United States Census Bureau.

(b) The application of this subchapter to a public junior college is not affected if, after the public junior college enters into a partnership and begins providing a dropout recovery program as provided by this subchapter, the county's demographics under Subsection (a)(2) change and the county no longer meets the requirements under Subsection (a)(2).

(c) This subchapter applies only to a school district with a dropout rate that is higher than 15 percent based on four-year high school completion rates. The application of this subchapter to a district is not affected if, after the district enters into a partnership as provided by this subchapter, the district's dropout rate changes and the district no longer meets the requirements under this subsection.

(d) This section expires September 1, 2013.

Sec. 29.402. PARTNERSHIP. (a) Beginning September 1, 2012, a public junior college may enter into an articulation agreement to partner with one or more school districts located in the public junior college district to provide on the campus of the public junior college a dropout recovery program for students described by Subsection (b) to successfully complete and receive a diploma from a high school of the appropriate partnering school district.

(b) A person who is under 26 years of age is eligible to enroll in a dropout recovery program under this subchapter if the person:

(1) must complete not more than three course credits to complete the curriculum requirements for the minimum, recommended, or advanced high school program, as appropriate, for high school graduation; or



(2) has failed to perform satisfactorily on an end-of-course assessment instrument administered under Section 39.023(c) or an assessment instrument administered under Section 39.023(c) as that section existed before amendment by Chapter 1312 (S.B. 1031), Acts of the 80th Legislature, Regular Session, 2007.

(c) A public junior college under this section shall:

(1) design a dropout recovery curriculum that includes career and technology education courses that lead to industry or career certification;

(2) integrate into the dropout recovery curriculum research-based strategies to assist students in becoming able academically to pursue postsecondary education, including:

(A) high quality, college readiness instruction with strong academic and social supports;

(B) secondary to postsecondary bridging that builds college readiness skills, provides a plan for college completion, and ensures transition counseling; and

(C) information concerning appropriate supports available in the first year of postsecondary enrollment to ensure postsecondary persistence and success, to the extent funds are available for the purpose;

(3) offer advanced academic and transition opportunities, including dual credit courses and college preparatory courses, such as advanced placement courses; and

(4) coordinate with each partnering school district to provide in the articulation agreement that the district retains accountability for student attendance, student completion of high school course requirements, and student performance on assessment instruments as necessary for the student to receive a diploma from a high school of the partnering school district.

(d) A dropout recovery program provided under this subchapter must comply with the requirements of Sections 29.081(e) and (f).

Sec. 29.403. FINANCING. (a) A public junior college district may receive from each partnering school district for each student from that district enrolled in a dropout recovery program under this subchapter an amount negotiated between the junior college district and that partnering district not to exceed the total average per student funding amount in that district during the preceding school year for maintenance and operations, including state and local funding, but excluding money from the available school fund.

(b) A student who is enrolled in a program under this subchapter is included in determining the average daily attendance under Section 42.005 of the partnering school district.

Sec. 29.404. OTHER FUNDING. (a) To the extent consistent with the General Appropriations Act, a public junior college under this subchapter is eligible to receive dropout prevention and intervention program funds appropriated to the agency.

(b) A public junior college under this subchapter may receive gifts, grants, and donations to use for the purposes of this subchapter.

The amendment to **CSHB 3708** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1.

Senator Watson offered the following amendment to the bill:

**Floor Amendment No. 2**

Amend **CSHB 3708** by adding an appropriately numbered SECTION of the bill to read as follows and renumbering the existing SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Chapter 54, Education Code, is amended by adding Subchapter I to read as follows:

**SUBCHAPTER I. TEXAS SAVE AND MATCH PROGRAM**

Sec. 54.801. DEFINITIONS. In this subchapter:

(1) "Accredited out-of-state institution of higher education," "career school," "general academic teaching institution," "private or independent institution of higher education," and "two-year institution of higher education" have the meanings assigned by Section 54.751.

(2) "Beneficiary" means a beneficiary on whose behalf a purchaser enters into a prepaid tuition contract with the board under Subchapter H or for whom a savings trust account is opened under Subchapter G.

(3) "Board" means the Prepaid Higher Education Tuition Board.

(4) "Fund" means the Texas save and match trust fund established under

Section 54.808.

(5) "Program" means the Texas Save and Match Program established under this subchapter.

(6) "Program entity" means the Texas Match the Promise Foundation, a Texas nonprofit corporation, or any other tax-exempt charitable organization established by law to implement the program.

Sec. 54.802. TEXAS SAVE AND MATCH PROGRAM. (a) The board, in cooperation with the program entity, shall administer the Texas Save and Match Program, under which money contributed to a savings trust account by an account owner under a higher education savings plan established under Subchapter G or paid by a purchaser under a prepaid tuition contract under Subchapter H on behalf of an eligible beneficiary may be matched with:

(1) contributions made by any person to the program entity for use in making additional savings trust account contributions under Subchapter G or in purchasing additional tuition units under prepaid tuition contracts under Subchapter H; or

(2) money appropriated by the legislature for the program to be used by the board to make additional savings trust account contributions under Subchapter G or to purchase additional tuition units under Subchapter H.

(b) In addition to the board's powers assigned under Subchapters F, G, and H, the board has the powers necessary or proper to carry out its duties under this subchapter, including the power to:

(1) sue and be sued;

(2) enter into contracts and other necessary instruments;

(3) enter into agreements or other transactions with the United States, state agencies, general academic teaching institutions, two-year institutions of higher education, and local governments;

(4) appear on its own behalf before governmental agencies;

(5) contract for necessary goods and services, including specifying in the contract duties to be performed by the provider of a good or service that are a part of or are in addition to the person's primary duties under the contract;

(6) engage the services of private consultants, actuaries, trustees, records administrators, managers, legal counsel, and auditors for administrative or technical assistance;

(7) solicit and accept gifts, grants, donations, loans, and other aid from any source or participate in any other manner in any government program to carry out this subchapter;

(8) impose administrative fees;

(9) contract with a person to market the program;

(10) purchase liability insurance covering the board and employees and agents of the board; and

(11) establish other policies, procedures, and eligibility criteria to implement this subchapter.

(c) Notwithstanding other law, for purposes of Subchapter I, Chapter 659, Government Code:

(1) the program entity is considered an eligible charitable organization entitled to participate in a state employee charitable campaign under Subchapter I, Chapter 659, Government Code; and

(2) a state employee is entitled to authorize a payroll deduction for contributions to the program entity as a charitable contribution under Section 659.132, Government Code.

Sec. 54.803. INITIAL ELIGIBILITY FOR PARTICIPATION IN PROGRAM.

(a) To be initially eligible to participate in the program, a beneficiary, at the time a prepaid tuition contract is entered into on the beneficiary's behalf under Subchapter H or a savings trust account is opened on the beneficiary's behalf under Subchapter G, as applicable, must be:

(1) a resident of this state; or

(2) a dependent for purposes of Section 152, Internal Revenue Code of 1986, of a resident of this state.

(b) To be initially eligible to receive matching funds described by Section 54.802(a)(2) under the program, a beneficiary, at the time a prepaid tuition contract is entered into on the beneficiary's behalf under Subchapter H, or a savings trust account is opened on the beneficiary's behalf under Subchapter G, as applicable, must be eligible for free meals under the national free or reduced-price breakfast and lunch program.

Sec. 54.804. LIMITATIONS. A matching account established by the board or program entity on behalf of a beneficiary under this subchapter is forfeited and reverts to the board or program entity on the occurrence of any of the following:

(1) the 10th anniversary of the date the beneficiary is projected to graduate from high school, as indicated by the purchaser in the enrollment contract, except that time spent by the beneficiary as an active duty member of the United States armed services tolls the period described by this subdivision;

(2) a change of beneficiary by the account owner or purchaser of the matched account;

(3) a contract cancellation of the matched account and refund request;

(4) the successful completion by the beneficiary of an associate or bachelor's degree program;

(5) transfer of the matched account to another qualified tuition program of any state that meets the requirements of Section 529, Internal Revenue Code of 1986;  
or

(6) any other event the board or program entity determines would be inconsistent with the program's purposes.

Sec. 54.805. MATCHING ACCOUNT ADMINISTRATION. (a) A matching account established by the board or program entity on behalf of a beneficiary under this subchapter must be accounted for separately from the beneficiary's prepaid tuition contract balance or savings trust account balance.

(b) To the extent possible, money or tuition units in a beneficiary's matching account shall be used or redeemed after money is used from the beneficiary's savings trust account under Subchapter G or tuition units are redeemed from the prepaid tuition contract for the beneficiary under Subchapter H.

(c) To the extent possible, the board shall include information about a matching account in the periodic statement provided to applicable account owners and purchasers under Subchapters G and H.

Sec. 54.806. CONFIDENTIALITY. (a) Records in the custody of the board or program entity relating to the participation of specific purchasers, beneficiaries, applicants, scholarship recipients, or donors under the program are confidential.

(b) Notwithstanding Subsection (a), the board or program entity may release information described by Subsection (a) to the extent required by a general academic teaching institution, two-year institution of higher education, private or independent institution of higher education, career school, or accredited out-of-state institution of higher education at which a beneficiary may enroll or is enrolled. The institution or school receiving information described by Subsection (a) shall keep the information confidential.

(c) Notwithstanding any other provision of this subchapter, the board or program entity may release information to the Internal Revenue Service or to any state tax agency as required by applicable tax law.

(d) Notwithstanding any other provision of this subchapter, the board or program entity may release information relating to donors who authorize release of that information.

Sec. 54.807. PILOT PROJECTS UNDER PROGRAM. To fulfill the intent of the program, the board may use funds described by Section 54.802(a)(2) to establish pilot projects under the program in an effort to incentivize participation in the higher education savings program under Subchapter G and the prepaid tuition unit undergraduate education program under Subchapter H, including projects that incentivize participation by:

(1) awarding additional matching grants based on a beneficiary's achievement of specified academic goals;

(2) providing initial matching grants and paying application fees;

(3) providing incentives for employers to contribute matching funds to the program; and

(4) creating a program information portal designed to increase program awareness and accessibility among school districts, parents, and students.

Sec. 54.808. TEXAS SAVE AND MATCH TRUST FUND; AGREEMENTS BETWEEN BOARD AND PROGRAM ENTITY REGARDING PROGRAM ENTITY FUNDS. (a) The Texas save and match trust fund is established as a trust fund to be held with the comptroller.

(b) Money in the fund may be spent without appropriation and only to establish matching accounts, make deposits, purchase tuition units, and award matching grants and scholarships under the program and to pay the costs of program administration and operations.

(c) The board may invest, reinvest, and direct the investment of any available money in the fund.

(d) Interest and income from the assets of the fund shall be credited to and deposited in the fund.

(e) The board and the program entity may enter into an agreement under which the board may hold and manage funds of the program entity and provide services to the program entity.

Sec. 54.809. RULES. The board shall adopt rules for the administration of this subchapter.

SECTION 2. Subchapter A, Chapter 56, Education Code, is amended by adding Section 56.007 to read as follows:

Sec. 56.007. EXCLUSION OF ASSETS IN PREPAID TUITION PROGRAMS AND HIGHER EDUCATION SAVINGS PLANS. Notwithstanding any other law, the right of a person to assets held in or the right to receive payments or benefits under any fund or plan established under Subchapter G, H, or I, Chapter 54, including an interest in a savings trust account, prepaid tuition account, or related matching account, may not be considered an asset of the person, or otherwise included in the person's household income or other financial resources, for purposes of determining the person's eligibility for a TEXAS grant or any other state-funded student financial assistance.

SECTION 3. Subchapter C, Chapter 62, Health and Safety Code, is amended by adding Section 62.1012 to read as follows:

Sec. 62.1012. EXCLUSION OF ASSETS IN PREPAID TUITION PROGRAMS AND HIGHER EDUCATION SAVINGS PLANS. For purposes of determining whether a child meets family income and resource requirements for eligibility for the child health plan, the commission may not consider as income or resources a right to assets held in or a right to receive payments or benefits under:

(1) any fund or plan established under Subchapter G, H, or I, Chapter 54, Education Code, including an interest in a savings trust account, prepaid tuition contract, or related matching account; or

(2) any qualified tuition program of any state that meets the requirements of Section 529, Internal Revenue Code of 1986.

SECTION 4. Subchapter A, Chapter 31, Human Resources Code, is amended by adding Section 31.0039 to read as follows:

Sec. 31.0039. EXCLUSION OF ASSETS IN PREPAID TUITION PROGRAMS AND HIGHER EDUCATION SAVINGS PLANS. For purposes of determining the amount of financial assistance granted to an individual under this chapter for the support of dependent children or determining whether the family meets household income and resource requirements for financial assistance under this chapter, the department may not consider the right to assets held in or the right to receive payments or benefits under:

(1) any fund or plan established under Subchapter G, H, or I, Chapter 54, Education Code, including an interest in a savings trust account, prepaid tuition contract, or related matching account; or

(2) any qualified tuition program of any state that meets the requirements of Section 529, Internal Revenue Code of 1986.

SECTION 5. Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.02611 to read as follows:

Sec. 32.02611. EXCLUSION OF ASSETS IN PREPAID TUITION PROGRAMS AND HIGHER EDUCATION SAVINGS PLANS. (a) Except as provided by Subsection (b), in determining eligibility and need for medical assistance, the department may not consider as assets or resources a right to assets held in or a right to receive payments or benefits under:

(1) any fund or plan established under Subchapter G, H, or I, Chapter 54, Education Code, including an interest in a savings trust account, prepaid tuition contract, or related matching account; or

(2) any qualified tuition program of any state that meets the requirements of Section 529, Internal Revenue Code of 1986.

(b) In determining eligibility and need for medical assistance for an applicant who may be eligible on the basis of the applicant's eligibility for medical assistance for the aged, blind, or disabled under 42 U.S.C. Section 1396a(a)(10), the department may consider as assets or resources a right to assets held in or a right to receive payments or benefits under any fund, plan, or tuition program described by Subsection (a).

(c) Notwithstanding Subsection (b), the department shall seek a federal waiver authorizing the department to exclude, for purposes of determining the eligibility of an applicant described by that subsection, the right to assets held in or a right to receive payments or benefits under any fund, plan, or tuition program described by Subsection (a) if the fund, plan, or tuition program was established before the 21st birthday of the beneficiary of the fund, plan, or tuition program.

SECTION 6. Section 54.7521, Education Code, is repealed.

SECTION 7. The Prepaid Higher Education Tuition Board shall adopt the initial rules required by Subchapter I, Chapter 54, Education Code, as added by this Act, not later than May 31, 2012.

SECTION 8. The Texas Save and Match Program established by this Act is an expansion of the Texas Save and Match program created under Section 54.7521, Education Code. On and after the effective date of the repeal of Section 54.7521, Education Code, by this Act, the tax-exempt charitable organization created under that

section to provide matching funds under that program may continue to accept tax-deductible donations for the purpose of providing matching funds under the program established by this Act.

SECTION 9. Subchapter I, Chapter 54, Education Code, as added by this Act, applies to a prepaid tuition contract purchased for a beneficiary under Subchapter H, Chapter 54, Education Code, regardless of whether the prepaid tuition contract was purchased before, on, or after the effective date of this Act. Subchapter I, Chapter 54, Education Code, as added by this Act, applies only to a savings trust account opened for a beneficiary under Subchapter G, Chapter 54, Education Code, on or after January 1, 2012.

SECTION 10. If before implementing any provision of this Act a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

SECTION 11. The changes in law made by this Act apply to a person who receives health benefits coverage under Chapter 62, Health and Safety Code, financial assistance under Chapter 31, Human Resources Code, or medical assistance under Chapter 32, Human Resources Code, on or after the effective date of this Act, regardless of the date on which eligibility for coverage or assistance was initially determined.

SECTION 12. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2011.

(b) Section 6 of this Act takes effect January 1, 2012.

The amendment to **CSHB 3708** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 2.

On motion of Senator Zaffirini and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**CSHB 3708** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading except as follows:

Nays: Ogden.

#### **COMMITTEE SUBSTITUTE HOUSE BILL 3708 ON THIRD READING**

Senator Zaffirini moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 3708** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Ogden.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 1. (Same as previous roll call)

**COMMITTEE SUBSTITUTE  
HOUSE BILL 351 ON SECOND READING**

On motion of Senator West and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 351** at this time on its second reading:

**CSHB 351**, Relating to the expunction of records and files relating to a person's arrest.

The bill was read second time.

Senator West offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 351** (senate committee report) in SECTION 1 of the bill as follows:

(1) In amended Article 55.01(a)(2)(A), Code of Criminal Procedure (page 1, lines 40 and 41), strike "felony or misdemeanor offense arising out of the" and substitute "misdemeanor offense based on the person's arrest or charging the person with the commission of any felony offense arising out of the same".

(2) Strike added Articles 55.01(a)(2)(A)(i)(a)-(c), Code of Criminal Procedure (page 1, lines 45-53), and substitute the following:

(a) at least 180 days have elapsed from the date of arrest if the arrest for which the expunction was sought was for an offense punishable as a Class C misdemeanor and if there was no felony charge arising out of the same transaction for which the person was arrested;

(b) at least one year has elapsed from the date of arrest if the arrest for which the expunction was sought was for an offense punishable as a Class B or A misdemeanor and if there was no felony charge arising out of the same transaction for which the person was arrested;

(c) at least three years have elapsed from the date of arrest if the arrest for which the expunction was sought was for an offense punishable as a felony or if there was a felony charge arising out of the same transaction for which the person was arrested; or

The amendment to **CSHB 351** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1.

On motion of Senator West and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**CSHB 351** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 351 ON THIRD READING**

Senator West moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 351** be placed on its third reading and final passage.



The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**(Senator Eltife in Chair)**

### **HOUSE BILL 2133 ON SECOND READING**

Senator Fraser moved to suspend the regular order of business to take up for consideration **HB 2133** at this time on its second reading:

**HB 2133**, Relating to the Public Utility Commission of Texas' authority to disgorge revenue obtained as a result of certain violations; providing an administrative penalty.

The motion prevailed.

Senator Birdwell asked to be recorded as voting "Nay" on suspension of the regular order of business.

The bill was read second time and was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading except as follows:

Nays: Birdwell.

### **HOUSE BILL 2133 ON THIRD READING**

Senator Fraser moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2133** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Birdwell.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 1. (Same as previous roll call)

### **HOUSE BILL 3328 ON SECOND READING**

On motion of Senator Fraser and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 3328** at this time on its second reading:

**HB 3328**, Relating to the disclosure of the composition of hydraulic fracturing fluids used in hydraulic fracturing treatments.

The bill was read second time.

Senator Fraser offered the following amendment to the bill:

#### **Floor Amendment No. 1**

Amend **HB 3328** (senate committee printing) as follows:

(1) In SECTION 1 of the bill, in proposed Section 91.851, Natural Resources Code, between "FLUIDS." and "The" (page 1, line 16), insert "(a)".

(2) In SECTION 1 of the bill, in proposed Section 91.851(1)(B)(ii), Natural Resources Code, between "1910.1200(g)(2)" and the underlined semicolon (page 1, line 28), insert ", as provided by a service company or chemical supplier or by the operator, if the operator provides its own chemical ingredients".

(3) In SECTION 1 of the bill, in proposed Section 91.851(5)(C), Natural Resources Code (page 2, line 10), strike "state; and" and substitute "state with jurisdiction over a matter to which the claimed trade secret is relevant";

(4) In SECTION 1 of the bill, in proposed Section 91.851, Natural Resources Code, between Subdivisions (5) and (6) of the section (page 2, between lines 10 and 11), insert the following:

(6) require, in the event of a trade secret challenge, that the commission promptly notify the service company performing the hydraulic fracturing treatment on the relevant well, the supplier of the additive or chemical ingredient for which the trade secret claim is made, or any other owner of the trade secret being challenged and provide the owner an opportunity to substantiate its trade secret claim; and

(5) In SECTION 1 of the bill, in amended Section 91.851(6), Natural Resources Code (page 2, line 11), strike "(6)" and substitute "(7)".

(6) In SECTION 1 of the bill, in proposed Section 91.851(6), Natural Resources Code (page 2, line 11), strike "an efficient process" and substitute "a process, consistent with 29 C.F.R. Section 1910.1200,".

(7) In SECTION 1 of the bill, at the end of proposed Section 91.851, Natural Resources Code (page 2, between lines 16 and 17), insert the following:

(b) The protection and challenge of trade secrets under this section is governed by Chapter 552, Government Code.

(8) In SECTION 3 of the bill (page 2, line 29), strike "January" and substitute "July".

The amendment to **HB 3328** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1.

Senator Hegar offered the following amendment to the bill:

### **Floor Amendment No. 2**

Amend **HB 3328** (senate committee printing) by striking SECTION 3 and substituting the following:

SECTION 3. The Railroad Commission of Texas shall adopt rules under Subchapter S, Chapter 91, Natural Resources Code, as added by this Act, not later than September 1, 2012, with the exception of those rules under paragraph (e), which are not to take effect until September 1, 2013.

The amendment to **HB 3328** was read and failed of adoption by the following vote: Yeas 9, Nays 21.

Yeas: Birdwell, Deuell, Estes, Fraser, Hegar, Jackson, Ogden, Seliger, Williams.

Nays: Carona, Davis, Ellis, Eltife, Gallegos, Harris, Hinojosa, Huffman, Lucio, Nelson, Nichols, Patrick, Rodriguez, Shapiro, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Zaffirini.

Absent: Duncan.

Senator Davis offered the following amendment to the bill:

**Floor Amendment No. 3**

Amend **HB 3328** (senate committee report) by adding the following appropriately numbered SECTIONS and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Subchapter B, Chapter 91, Natural Resources Code, is amended by adding Section 91.021 to read as follows:

Sec. 91.021. HYDRAULIC FRACTURING FLUID TRACER. (a) In this section, "hydraulic fracturing treatment" means the stimulation of a well by the application of a base stimulation fluid containing a proppant with force in order to create artificial fractures in a formation for the purpose of improving the well's capacity to produce hydrocarbons.

(b) The commission shall conduct a study on the feasibility of requiring a person who performs a hydraulic fracturing treatment operation on a well to include a tracer substance in the base stimulation fluid used to perform the operation. If the commission determines that the technology necessary to include a tracer substance in base stimulation fluid exists and may feasibly be used in hydraulic fracturing treatment operations in this state, the commission shall adopt rules to require a person who performs a hydraulic fracturing treatment operation on a well to include a tracer substance in the base stimulation fluid used to perform the operation.

(c) Rules adopted under this section may specify the type of tracer substance a person is required to use in performing a hydraulic fracturing treatment operation, such as an isotope tracer or a color tracer, provided that:

(1) the tracer substance is traceable to a specific person after the tracer substance is used in a hydraulic fracturing treatment operation; and

(2) the commission has determined that the use of the tracer substance in a hydraulic fracturing treatment operation will not endanger the public health.

(d) If the commission determines that the technology necessary to include a tracer substance in base stimulation fluid does not exist or may not feasibly be used in hydraulic fracturing treatment operations in this state, the commission may encourage the development of the necessary technology.

(e) The commission may periodically update the study required by this section as necessary.

SECTION \_\_\_\_\_. The Railroad Commission of Texas shall conduct the initial study required by Section 91.021(b), Natural Resources Code, as added by this Act, not later than February 1, 2012.

The amendment to **HB 3328** was read.

On motion of Senator Fraser, Floor Amendment No. 3 was tabled by the following vote: Yeas 20, Nays 10.

Yeas: Birdwell, Carona, Deuell, Duncan, Eltife, Estes, Fraser, Harris, Hegar, Huffman, Jackson, Nelson, Nichols, Ogden, Patrick, Seliger, Shapiro, Uresti, Wentworth, Williams.

Nays: Davis, Ellis, Gallegos, Lucio, Rodriguez, Van de Putte, Watson, West, Whitmire, Zaffirini.

Absent: Hinojosa.

Senator Davis offered the following amendment to the bill:

**Floor Amendment No. 4**

Amend **HB 3328** (senate committee printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_ . Subchapter D, Chapter 91, Natural Resources Code, is amended by adding Section 91.118 to read as follows:

Sec. 91.118. HYDRAULIC FRACTURING ADVISORY COMMITTEE. (a) The commission shall establish an advisory committee to study and evaluate hydraulic fracturing activities performed by or on behalf of operators of oil and gas wells in this state, including:

- (1) the methods and technology used in performing the activities;
- (2) the benefits of the activities;
- (3) the long-term and short-term risks associated with the activities;
- (4) the effect of the activities on the water supply;
- (5) the use of water recycling in the activities;
- (6) methods of minimizing water use in performing the activities; and
- (7) the manner in which the commission may most effectively regulate the activities.

(b) The committee consists of the following nine members appointed by the commission:

- (1) two representatives of environmental organizations;
- (2) two representatives of the oil and gas industry;
- (3) two representatives of an institution of higher education with experience and knowledge in the area of hydraulic fracturing activities;
- (4) two public members who reside in an area affected by hydraulic fracturing activities; and
- (5) one hydrologist.

(c) The commission shall determine the length of the members' terms and shall appoint a member of the committee to serve as the committee's presiding officer.

(d) Chapter 2110, Government Code, does not apply to the size, composition, or duration of the committee or to the appointment of the committee's presiding officer.

(e) The committee shall meet at least once each year and may meet at other times at the call of the commission or the committee's presiding officer.

(f) The committee shall:

- (1) coordinate with the commission as necessary; and
- (2) submit to the commission an annual report of its findings.

SECTION \_\_\_\_ . Not later than January 1, 2012, the Railroad Commission of Texas shall appoint the members of the hydraulic fracturing advisory committee established under Section 91.118, Natural Resources Code, as added by this Act.

The amendment to **HB 3328** was read.

On motion of Senator Fraser, Floor Amendment No. 4 was tabled by the following vote: Yeas 19, Nays 11.

Yeas: Birdwell, Carona, Deuell, Duncan, Eltife, Estes, Fraser, Harris, Hegar, Huffman, Jackson, Nelson, Nichols, Ogden, Patrick, Seliger, Shapiro, Wentworth, Williams.

Nays: Davis, Ellis, Gallegos, Lucio, Rodriguez, Uresti, Van de Putte, Watson, West, Whitmire, Zaffirini.

Absent: Hinojosa.

Senator Davis offered the following amendment to the bill:

**Floor Amendment No. 5**

Amend **HB 3328** (senate committee report) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. (a) The Texas Commission on Environmental Quality shall conduct a study evaluating the risks and composition of storm water runoff from natural gas well sites, including an evaluation of whether hydraulic fracturing fluids are contained in the runoff. Not later than January 1, 2013, the Texas Commission on Environmental Quality shall submit to the presiding officer of the standing committee of each house of the legislature with primary jurisdiction over environmental matters a report addressing the matters described by this section and any recommended legislative changes.

(b) This section expires September 1, 2013.

The amendment to **HB 3328** was read.

On motion of Senator Fraser, Floor Amendment No. 5 was tabled by the following vote: Yeas 20, Nays 11.

Yeas: Birdwell, Carona, Deuell, Duncan, Eltife, Estes, Fraser, Harris, Hegar, Huffman, Jackson, Nelson, Nichols, Ogden, Patrick, Seliger, Shapiro, Uresti, Wentworth, Williams.

Nays: Davis, Ellis, Gallegos, Hinojosa, Lucio, Rodriguez, Van de Putte, Watson, West, Whitmire, Zaffirini.

Senator Hegar offered the following amendment to the bill:

**Floor Amendment No. 6**

Amend **HB 3328** by inserting the following appropriately numbered sections and renumbering accordingly:

SECTION 1. The heading to Chapter 81, Natural Resources Code, is amended to read as follows:

CHAPTER 81. TEXAS OIL AND GAS [~~RAILROAD~~] COMMISSION [~~OF TEXAS~~]

SECTION 2. Section 81.001, Natural Resources Code, is amended to read as follows:

Sec. 81.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Oil and Gas [~~Railroad~~] Commission [~~of Texas~~].

(2) "Commissioner" means any member of the Texas Oil and Gas [Railroad] Commission [of Texas].

SECTION 3. Subchapter A, Chapter 81, Natural Resources Code, is amended by adding Section 81.003 to read as follows:

Sec. 81.003. TEXAS OIL AND GAS COMMISSION. (a) The Railroad Commission of Texas is renamed the Texas Oil and Gas Commission.

(b) A reference in law to:

(1) the Railroad Commission of Texas means the Texas Oil and Gas Commission; and

(2) a railroad commissioner or a member of the Railroad Commission of Texas means a member of the Texas Oil and Gas Commission.

SECTION 4. Section 81.01001, Natural Resources Code, is amended to read as follows:

Sec. 81.01001. SUNSET PROVISION. The Texas Oil and Gas [Railroad] Commission [of Texas] is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished September 1, 2023 ~~[2014]~~.

SECTION 5. Subchapter B, Chapter 81, Natural Resources Code, is amended by adding Section 81.010015 to read as follows:

Sec. 81.010015. ELECTION AND TERMS OF COMMISSIONERS; CHAIRMAN. (a) The commission is composed of three commissioners elected at the general election for state and county officers.

(b) Commissioners serve terms of four years.

(c) The commissioner elected at the general election in 2014 and every fourth year after that year serves as the chairman of the commission. The other commissioners shall be elected at the general election in 2012 and every fourth year after.

(d) The designation of the office of chairman of the commission under Subsection (c) identifies the office for all purposes, including identification on official ballots for primary and general elections.

SECTION 6. Sections 81.01002 and 81.01004, Natural Resources Code, are amended to read as follows:

Sec. 81.01002. POWERS AND DUTIES OF CHAIRMAN. (a) The [commissioners shall elect one commissioner as the] chairman of the commission:

(1) shall manage the administrative affairs of the commission, subject to the applicable provisions of this code and other law;

(2) may organize the divisions of the commission in any manner so as to maximize the efficiency and effectiveness of the commission;

(3) shall set the agenda for commission meetings and hearings; and

(4) may hire and terminate commission employees.

(b) The chairman of the commission may delegate the chairman's powers and duties to one or more deputies, including the administrative chief.

Sec. 81.01004. PERSONAL FINANCIAL DISCLOSURE, STANDARDS OF CONDUCT, ~~[AND]~~ CONFLICT OF INTEREST, AND DISCLOSURE OF REASON FOR RECUSAL. (a) A commissioner is subject to the provisions of Chapter 572,

Government Code, that apply to elected officers, including the requirements governing personal financial statements, standards of conduct, and conflicts of interest.

(b) A commissioner who voluntarily recuses the commissioner from a commission decision because the commissioner has a material interest in the matter shall disclose the material interest in writing.

SECTION 7. Subchapter B, Chapter 81, Natural Resources Code, is amended by adding Sections 81.010045 and 81.010046 to read as follows:

Sec. 81.010045. CERTAIN POLITICAL CONTRIBUTIONS RESTRICTED.

(a) In this section, "political contribution" has the meaning assigned by Section 251.001, Election Code.

(b) A commissioner may not knowingly accept a political contribution given or offered with the intention that it be used in connection with a campaign for or the holding of a statewide or federal office, other than the office of commissioner.

SECTION 8. Sections 81.01005, 81.01008, and 81.017, Natural Resources Code, are amended to read as follows:

Sec. 81.01005. NAME AND SEAL. (a) The commissioners are known collectively as the "Texas Oil and Gas [Railroad] Commission [of Texas]."

(b) The seal of the commission contains a star of five points with the words "Texas Oil and Gas [Railroad] Commission [of Texas]" engraved on it.

Sec. 81.01008. PUBLIC HEARINGS [~~SESSIONS~~]. The commission may hold public hearings [~~sessions~~] at any place in this state when considered necessary.

SECTION 9. Section 81.0521(c), Natural Resources Code, is amended to read as follows:

(c) The [~~Two-thirds of the~~] proceeds from this fee, excluding [including] any penalties collected in connection with the fee, shall be deposited to the credit of the oil and gas regulation and [~~oil field~~] cleanup fund [~~as provided by Section 91.111~~].

SECTION 10. Sections 81.0531(c), (d), and (e), Natural Resources Code, are amended to read as follows:

(c) In determining the amount of the penalty, the commission shall consider the [~~permittee's history of previous violations, the seriousness of the violation, any hazard to the health or safety of the public, and the demonstrated good faith of the person charged. In determining the amount of the penalty for a violation of a provision of this title or a rule, order, license, permit, or certificate that relates to pipeline safety, the commission shall consider the~~] guidelines adopted under Subsection (d).

(d) The commission by rule shall adopt guidelines to be used in determining the amount of the penalty [~~for a violation of a provision of this title or a rule, order, license, permit, or certificate that relates to pipeline safety~~]. The guidelines shall include a penalty calculation worksheet that specifies the typical penalty for certain violations, circumstances justifying enhancement of a penalty and the amount of the enhancement, and circumstances justifying a reduction in a penalty and the amount of the reduction. The guidelines shall take into account:

(1) the permittee's history of previous violations, including the number of previous violations;

(2) the seriousness of the violation and of any pollution resulting from the violation;

- (3) any hazard to the health or safety of the public;
- (4) the degree of culpability;
- (5) the demonstrated good faith of the person charged; ~~and~~
- (6) the economic benefit gained through the violation; and
- (7) any other factor the commission considers relevant.

(e) A penalty collected under this section shall be deposited to the credit of the general revenue [~~oil field cleanup~~] fund.

SECTION 11. Section 81.056(g), Natural Resources Code, is amended to read as follows:

(g) The commission may use money in the oil and gas regulation and [oil field] cleanup fund to implement this section. The amount of money in the fund the commission may use for that purpose may not exceed the amount of money in the fund that is derived from fees collected under Section 91.142 from common carriers or owners or operators of pipelines as determined annually by the commission.

SECTION 12. Subchapter C, Chapter 81, Natural Resources Code, is amended by adding Sections 81.065, 81.066, 81.067, 81.068, 81.069, 81.070, and 81.071 to read as follows:

Sec. 81.065. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION POLICY. (a) The commission shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of commission rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the commission's jurisdiction.

(b) The commission's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The commission shall:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) provide training as needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures.

(d) The commission's alternative dispute resolution procedures do not apply to the resolution of an informal complaint described by Section 81.059 or filed under Section 85.065.

SECTION 13. Sec. 81.066. ENFORCEMENT POLICY. (a) The commission by rule shall adopt an enforcement policy to guide the employees of the commission in evaluating violations of the provisions of this title that pertain to safety or the prevention or control of pollution or the provisions of a rule, order, license, permit, or certificate that pertains to safety or the prevention or control of pollution and is issued under this title.

(b) The enforcement policy adopted under this section must include:

(1) a specific process for classifying violations based on:

(A) the seriousness of any pollution resulting from the violation; and



(B) any hazard to the health or safety of the public; and

(2) standards to provide guidance to commission employees on which violations may be dismissed once the permittee comes into compliance and which violations must be forwarded for enforcement.

(c) The standards adopted under Subsection (b)(2) must require a commission employee to take into account the permittee's history of previous violations in determining whether to dismiss a violation once the permittee comes into compliance or forward the violation for enforcement.

Sec. 81.067. OIL AND GAS REGULATION AND CLEANUP FUND. (a) The oil and gas regulation and cleanup fund is created as a an account in the general revenue fund of the state treasury.

(b) The commission shall certify to the comptroller the date on which the balance in the fund equals or exceeds \$20 million. The oil-field cleanup regulatory fees on oil and gas may not be collected or required to be paid on or after the first day of the second month following the certification, except that the comptroller shall resume collecting the fees on receipt of a commission certification that the fund has fallen below \$10 million. The comptroller shall continue collecting the fees until collections are again suspended in the manner provided by this subsection.

(c) The fund consists of:

(1) proceeds from bonds and other financial security required by this chapter and benefits under well-specific plugging insurance policies described by Section 91.104(c) that are paid to the state as contingent beneficiary of the policies, subject to the refund provisions of Section 91.1091, if applicable;

(2) private contributions, including contributions made under Section 89.084;

(3) expenses collected under Section 89.083;

(4) fees imposed under Section 85.2021;

(5) costs recovered under Section 91.457 or 91.459;

(6) proceeds collected under Sections 89.085 and 91.115;

(7) interest earned on the funds deposited in the fund;

(8) oil and gas waste hauler permit application fees collected under Section 29.015, Water Code;

(9) costs recovered under Section 91.113(f);

(10) hazardous oil and gas waste generation fees collected under Section 91.605;

(11) oil-field cleanup regulatory fees on oil collected under Section 81.116;

(12) oil-field cleanup regulatory fees on gas collected under Section 81.117;

(13) fees for a reissued certificate collected under Section 91.707;

(14) fees collected under Section 91.1013;

(15) fees collected under Section 89.088;

(16) fees collected under Section 91.142;

(17) fees collected under Section 91.654;

(18) costs recovered under Sections 91.656 and 91.657;

(19) fees collected under Section 81.0521;

(20) fees collected under Sections 89.024 and 89.026;

(21) legislative appropriations; and

(22) any surcharges collected under Section 81.071.

(d) All revenues and balances in the oil and gas regulation and cleanup fund created in this section are exempt from Section 403.095(b), Government Code.

Sec. 81.068. PURPOSE OF OIL AND GAS REGULATION AND CLEANUP FUND. Money in the oil and gas regulation and cleanup fund may be used by the commission or its employees or agents for any purpose related to the regulation of oil and gas development, including oil and gas monitoring and inspections, oil and gas remediation, oil and gas well plugging, public information and services related to those activities, and administrative costs and state benefits for personnel involved in those activities.

Sec. 81.069. REPORTING ON PROGRESS IN MEETING PERFORMANCE GOALS FOR THE OIL AND GAS REGULATION AND CLEANUP FUND.

(a) The commission, through the legislative appropriations request process, shall establish specific performance goals for the oil and gas regulation and cleanup fund for the next fiscal biennium, including goals for each quarter of each state fiscal year of the fiscal biennium for the number of:

(1) orphaned wells to be plugged with state-managed funds;

(2) abandoned sites to be investigated, assessed, or cleaned up with state funds; and

(3) surface locations to be remediated.

(b) The commission shall provide quarterly reports to the Legislative Budget Board that include:

(1) the following information with respect to the period since the last report was provided as well as cumulatively:

(A) the amount of money deposited in the oil and gas regulation and cleanup fund;

(B) the amount of money spent from the fund for the purposes described by Subsection (a);

(C) the balance of the fund;

(D) the commission's progress in meeting the quarterly performance goals established under Subsection (a) and, if the number of orphaned wells plugged with state-managed funds, abandoned sites investigated, assessed, or cleaned up with state funds, or surface locations remediated is at least five percent less than the number projected in the applicable goal established under Subsection (a), an explanation of the reason for the variance;

(E) the total number of permits issued by the commission;

(F) the average amount of time taken by the commission to complete the process for issuing a permit; and

(G) the average amount of time taken by the commission to rule on a contested case; and

(2) any additional information requested in writing by the Legislative Budget Board.

(c) The commission shall submit to the legislature and make available to the public annually a report that reviews the extent to which money provided under Section 81.067 has enabled the commission to better protect the environment through oil-field cleanup activities. The report must include:

(1) the performance goals established under Subsection (a) for that state fiscal year, the commission's progress in meeting those performance goals, and, if the number of orphaned wells plugged with state-managed funds, abandoned sites investigated, assessed, or cleaned up with state funds, or surface locations remediated is at least five percent less than the number projected in the applicable goal established under Subsection (a), an explanation of the reason for the variance;

(2) the number of orphaned wells plugged with state-managed funds, by region;

(3) the number of wells orphaned, by region;

(4) the number of inactive wells not currently in compliance with commission rules, by region;

(5) the status of enforcement proceedings for all wells in violation of commission rules and the period during which the wells have been in violation, by region in which the wells are located;

(6) the number of surface locations remediated, by region;

(7) a detailed accounting of expenditures of money in the fund for oil-field cleanup activities, including expenditures for plugging of orphaned wells, investigation, assessment, and cleaning up of abandoned sites, and remediation of surface locations;

(8) the method by which the commission sets priorities by which it determines the order in which orphaned wells are plugged;

(9) a projection of the amount of money needed for the next fiscal biennium for plugging orphaned wells, investigating, assessing, and cleaning up abandoned sites, and remediating surface locations; and

(10) the number of sites successfully remediated under the voluntary cleanup program under Subchapter O, Chapter 91, by region.

Sec. 81.070. IMPOSITION OF SURCHARGES ON FEES. (a) Except as provided by Subsection (b), the commission by rule shall provide for the imposition of reasonable surcharges as necessary on fees imposed by the commission that are required to be deposited to the credit of the oil and gas regulation and cleanup fund in amounts sufficient to enable the commission to recover the costs of performing the functions specified by Section 81.068 from those fees and surcharges.

(b) The commission may not impose a surcharge on an oil-field cleanup regulatory fee on oil collected under Section 81.116 or an oil-field cleanup regulatory fee on gas collected under Section 81.117.

(c) The commission by rule shall establish a methodology for determining the amount of a surcharge that takes into account:

(1) the time required for regulatory work associated with the activity in connection with which the surcharge is imposed;

(2) the number of individuals or entities from which the commission's costs may be recovered;

(3) the effect of the surcharge on operators of all sizes, as measured by the number of oil or gas wells operated;

(4) the balance in the oil and gas regulation and cleanup fund; and

(5) any other factors the commission determines to be important to the fair and equitable imposition of the surcharge.

(d) The commission shall collect a surcharge on a fee at the time the fee is collected.

(e) A surcharge collected under this section shall be deposited to the credit of the oil and gas regulation and cleanup fund.

Sec. 81.071. POWERS AND DUTIES OF STATE OFFICE OF ADMINISTRATIVE HEARINGS. (a) Notwithstanding any other law, the State Office of Administrative Hearings shall conduct each contested case hearing in an enforcement proceeding under a law administered by the commission. A hearing must be conducted in accordance with the rules and procedures adopted by the commission.

(b) The commission may delegate to the State Office of Administrative Hearings the authority to make a final decision and to issue findings of fact, conclusions of law, and other necessary orders in a proceeding in which there is not a contested issue of fact or law.

(c) The commission by rule shall define the procedures by which it delegates final decision-making authority under Subsection (b).

(d) For purposes of judicial review, an administrative law judge's final decision under Subsection (b) has the same effect as a final decision of the commission unless the commission requests formal review of the decision.

Section 81.115, Natural Resources Code, is amended to read as follows:

Sec. 81.115. APPROPRIATIONS [PAYMENTS] TO COMMISSION FOR OIL AND GAS REGULATION AND CLEANUP PURPOSES [OIL AND GAS DIVISION]. Money appropriated to the [oil and gas division of the] commission under the General Appropriations Act for the purposes described by Section 81.068 shall be paid from the oil and gas regulation and cleanup fund [~~General Revenue Fund~~].

Sections 81.116(d) and (e), Natural Resources Code, are amended to read as follows:

(d) The comptroller shall suspend collection of the fee in the manner provided by Section 81.067 [91.111]. The exemptions and reductions set out in Sections 202.052, 202.054, 202.056, 202.057, 202.059, and 202.060, Tax Code, do not affect the fee imposed by this section.

(e) Proceeds from the fee, excluding [~~including~~] any penalties collected in connection with the fee, shall be deposited to the credit of the oil and gas regulation and [oil field] cleanup fund [~~as provided by Section 91.111 of this code~~].

SECTION 15. Sections 81.117(d) and (e), Natural Resources Code, are amended to read as follows:

(d) The comptroller shall suspend collection of the fee in the manner provided by Section 81.067 [91.111]. The exemptions and reductions set out in Sections 201.053, 201.057, 201.058, and 202.060, Tax Code, do not affect the fee imposed by this section.

(e) Proceeds from the fee, excluding [~~including~~] any penalties collected in connection with the fee, shall be deposited to the credit of the oil and gas regulation and [oil field] cleanup fund [~~as provided by Section 91.111 of this code~~].

SECTION 16. Section 85.2021(d), Natural Resources Code, is amended to read as follows:

(d) All fees collected under this section shall be deposited in the oil and gas regulation and [state-oil-field] cleanup fund.

SECTION 17. Section 89.024(d), Natural Resources Code, is amended to read as follows:

(d) An operator who files an abeyance of plugging report must pay an annual fee of \$100 for each well covered by the report. A fee collected under this section shall be deposited in the oil and gas regulation and [oil-field] cleanup fund.

SECTION 18. Section 89.026(d), Natural Resources Code, is amended to read as follows:

(d) An operator who files documentation described by Subsection (a) must pay an annual fee of \$50 for each well covered by the documentation. A fee collected under this section shall be deposited in the oil and gas regulation and [oil-field] cleanup fund.

SECTION 19. Section 89.048(d), Natural Resources Code, is amended to read as follows:

(d) On successful plugging of the well by the well plugging, the surface estate owner may submit documentation to the commission of the cost of the well-plugging operation. The commission shall reimburse the surface estate owner from money in the oil and gas regulation and [oil-field] cleanup fund in an amount not to exceed 50 percent of the lesser of:

(1) the documented well-plugging costs; or

(2) the average cost incurred by the commission in the preceding 24 months in plugging similar wells located in the same general area.

SECTION 20. Section 89.083(j), Natural Resources Code, is amended to read as follows:

(j) Money collected in a suit under this section shall be deposited in the oil and gas regulation and [state-oil-field] cleanup fund.

SECTION 21. Section 89.085(d), Natural Resources Code, is amended to read as follows:

(d) The commission shall deposit money received from the sale of well-site equipment or hydrocarbons under this section to the credit of the oil and gas regulation and [oil-field] cleanup fund. The commission shall separately account for money and credit received for each well.

SECTION 22. The heading to Section 89.086, Natural Resources Code, is amended to read as follows:

Sec. 89.086. CLAIMS AGAINST OIL AND GAS REGULATION AND [THE OIL-FIELD] CLEANUP FUND.

SECTION 23. Sections 89.086(a), (h), (i), (j), and (k), Natural Resources Code, are amended to read as follows:

(a) A person with a legal or equitable ownership or security interest in well-site equipment or hydrocarbons disposed of under Section 89.085 [~~of this code~~] may make a claim against the oil and gas regulation and [oil-field] cleanup fund unless an element of the transaction giving rise to the interest occurs after the commission forecloses its statutory lien under Section 89.083.

(h) The commission shall suspend an amount of money in the oil and gas regulation and [oil field] cleanup fund equal to the amount of the claim until the claim is finally resolved. If the provisions of Subsection (k) ~~[of this section]~~ prevent suspension of the full amount of the claim, the commission shall treat the claim as two consecutively filed claims, one in the amount of funds available for suspension and the other in the remaining amount of the claim.

(i) A claim made by or on behalf of the operator or a nonoperator of a well or a successor to the rights of the operator or nonoperator is subject to a ratable deduction from the proceeds or credit received for the well-site equipment to cover the costs incurred by the commission in removing the equipment or hydrocarbons from the well or in transporting, storing, or disposing of the equipment or hydrocarbons. A claim made by a person who is not an operator or nonoperator is subject to a ratable deduction for the costs incurred by the commission in removing the equipment from the well. If a claimant is a person who is responsible under law or commission rules for plugging the well or cleaning up pollution originating on the lease or if the claimant owes a penalty assessed by the commission or a court for a violation of a commission rule or order, the commission may recoup from or offset against a valid claim an expense incurred by the oil and gas regulation and [oil field] cleanup fund that is not otherwise reimbursed or any penalties owed. An amount recouped from, deducted from, or offset against a claim under this subsection shall be treated as an invalid portion of the claim and shall remain suspended in the oil and gas regulation and [oil field] cleanup fund in the manner provided by Subsection (j) ~~[of this section]~~.

(j) If the commission finds that a claim is valid in whole or in part, the commission shall pay the valid portion of the claim from the suspended amount in the oil and gas regulation and [oil field] cleanup fund not later than the 30th day after the date of the commission's decision. If the commission finds that a claim is invalid in whole or in part, the commission shall continue to suspend in the oil and gas regulation and [oil field] cleanup fund an amount equal to the invalid portion of the claim until the period during which the commission's decision may be appealed has expired or, if appealed, during the period the case is under judicial review. If on appeal the district court finds the claim valid in whole or in part, the commission shall pay the valid portion of the claim from the suspended amount in the oil and gas regulation and [oil field] cleanup fund not later than 30 days after the date the court's judgment becomes unappealable. On the date the commission's decision is not subject to judicial review, the commission shall release from the suspended amount in the oil and gas regulation and [oil field] cleanup fund the amount of the claim held to be invalid.

(k) If the aggregate of claims paid and money suspended that relates to well-site equipment or hydrocarbons from a particular well equals the total of the actual proceeds and credit realized from the disposition of that equipment or those hydrocarbons, the oil and gas regulation and [oil field] cleanup fund is not liable for any subsequently filed claims that relate to the same equipment or hydrocarbons unless and until the commission releases from the suspended amount money derived from the disposition of that equipment or those hydrocarbons. If the commission releases money, then the commission shall suspend money in the amount of subsequently filed claims in the order of filing.

SECTION 24. Section 89.121(b), Natural Resources Code, is amended to read as follows:

(b) Civil penalties collected for violations of this chapter or of rules relating to plugging that are adopted under this code shall be deposited in the general revenue [~~state oil field cleanup~~] fund.

SECTION 25. Section 91.1013(c), Natural Resources Code, is amended to read as follows:

(c) Fees collected under this section shall be deposited in the oil and gas regulation and [~~state oil field~~] cleanup fund.

SECTION 26. Section 91.108, Natural Resources Code, is amended to read as follows:

Sec. 91.108. DEPOSIT AND USE OF FUNDS. Subject to the refund provisions of Section 91.1091, if applicable, proceeds from bonds and other financial security required pursuant to this chapter and benefits under well-specific plugging insurance policies described by Section 91.104(c) that are paid to the state as contingent beneficiary of the policies shall be deposited in the oil and gas regulation and [~~oil field~~] cleanup fund and, notwithstanding Sections 81.068 [~~91.112~~] and 91.113, may be used only for actual well plugging and surface remediation.

SECTION 27. Section 91.109(a), Natural Resources Code, is amended to read as follows:

(a) A person applying for or acting under a commission permit to store, handle, treat, reclaim, or dispose of oil and gas waste may be required by the commission to maintain a performance bond or other form of financial security conditioned that the permittee will operate and close the storage, handling, treatment, reclamation, or disposal site in accordance with state law, commission rules, and the permit to operate the site. However, this section does not authorize the commission to require a bond or other form of financial security for saltwater disposal pits, emergency saltwater storage pits (including blow-down pits), collecting pits, or skimming pits provided that such pits are used in conjunction with the operation of an individual oil or gas lease. Subject to the refund provisions of Section 91.1091 [~~of this code~~], proceeds from any bond or other form of financial security required by this section shall be placed in the oil and gas regulation and [~~oil field~~] cleanup fund. Each bond or other form of financial security shall be renewed and continued in effect until the conditions have been met or release is authorized by the commission.

SECTION 28. Sections 91.113(a) and (f), Natural Resources Code, are amended to read as follows:

(a) If oil and gas wastes or other substances or materials regulated by the commission under Section 91.101 are causing or are likely to cause the pollution of surface or subsurface water, the commission, through its employees or agents, may use money in the oil and gas regulation and [~~oil field~~] cleanup fund to conduct a site investigation or environmental assessment or control or clean up the oil and gas wastes or other substances or materials if:

(1) the responsible person has failed or refused to control or clean up the oil and gas wastes or other substances or materials after notice and opportunity for hearing;

(2) the responsible person is unknown, cannot be found, or has no assets with which to control or clean up the oil and gas wastes or other substances or materials; or

(3) the oil and gas wastes or other substances or materials are causing the pollution of surface or subsurface water.

(f) If the commission conducts a site investigation or environmental assessment or controls or cleans up oil and gas wastes or other substances or materials under this section, the commission may recover all costs incurred by the commission from any person who was required by law, rules adopted by the commission, or a valid order of the commission to control or clean up the oil and gas wastes or other substances or materials. The commission by order may require the person to reimburse the commission for those costs or may request the attorney general to file suit against the person to recover those costs. At the request of the commission, the attorney general may file suit to enforce an order issued by the commission under this subsection. A suit under this subsection may be filed in any court of competent jurisdiction in Travis County. Costs recovered under this subsection shall be deposited to the credit of the oil and gas regulation and [oil-field] cleanup fund.

SECTION 29. Section 91.264(c), Natural Resources Code, is amended to read as follows:

(c) A penalty collected under this section shall be deposited to the credit of the general revenue [oil-field cleanup] fund [account].

SECTION 30. Section 91.457(b), Natural Resources Code, is amended to read as follows:

(b) If a person ordered to close a saltwater disposal pit under Subsection (a) ~~[of this section]~~ fails or refuses to close the pit in compliance with the commission's order and rules, the commission may close the pit using money from the oil and gas regulation and [oil-field] cleanup fund and may direct the attorney general to file suits in any courts of competent jurisdiction in Travis County to recover applicable penalties and the costs incurred by the commission in closing the saltwater disposal pit.

SECTION 31. Section 91.459(c), Natural Resources Code, is amended to read as follows:

(c) Any ~~[penalties or]~~ costs recovered by the attorney general under this subchapter shall be deposited in the oil and gas regulation and [oil-field] cleanup fund.

SECTION 32. Section 91.605(e), Natural Resources Code, is amended to read as follows:

(e) The fees collected under this section shall be deposited in the oil and gas regulation and [oil-field] cleanup fund.

SECTION 33. Section 91.654(e), Natural Resources Code, is amended to read as follows:

(e) Fees collected under this section shall be deposited to the credit of the oil and gas regulation and [oil-field] cleanup fund [under Section 91.111].

SECTION 34. Section 91.707(b), Natural Resources Code, is amended to read as follows:



(b) Fees collected under this section shall be deposited to the credit of the oil and gas regulation and [oil-field] cleanup fund.

SECTION 35. Subchapter B, Chapter 102, Natural Resources Code, is amended by adding Sections 102.0125 and 102.0165 to read as follows:

Sec. 102.0125. WITHDRAWAL AND REFILING OF APPLICATION. (a) The commission by rule shall:

(1) provide procedures requiring an interested owner who applies to the commission for the pooling of mineral interests to give notice to the commission before withdrawing the application if a hearing on the application has been scheduled; and

(2) require an applicant who refiles an application that was withdrawn without proper notice as required by rules adopted under Subdivision (1) to pay a filing fee that exceeds the amount of any fee required for filing the initial application.

(b) Rules adopted under Subsection (a)(1) must specify the deadline for giving notice of withdrawal of the application before the hearing is held.

Sec. 102.0165. LOCATION OF HEARING. (a) At the request of an interested party, the commission may hold the hearing on the application in person or by telephone at a location in the vicinity of the proposed unit.

(b) The commission may contract with another state agency to hold hearings on applications for pooling of interests into a unit under the provisions of this chapter in person or by telephone at field offices of that agency.

SECTION 36. Section 117.012(a), Natural Resources Code, is amended to read as follows:

(a) The commission shall adopt rules that include:

(1) safety standards for and practices applicable to the intrastate transportation of hazardous liquids or carbon dioxide by pipeline and intrastate hazardous liquid or carbon dioxide pipeline facilities; and

(2) [~~including~~] safety standards related to the prevention of damage to interstate and intrastate hazardous liquid or carbon dioxide pipeline facilities [~~such a facility~~] resulting from the movement of earth by a person in the vicinity of such a [~~the~~] facility, other than movement by tillage that does not exceed a depth of 16 inches.

SECTION 37. Section 211.033(q), Natural Resources Code, is amended to read as follows:

(q) A penalty collected under this section shall be remitted to the comptroller for [~~the~~] deposit to the credit of the general revenue [oil-field-cleanup] fund.

SECTION 38. Section 52.092(c), Election Code, is amended to read as follows:

(c) Statewide offices of the state government shall be listed in the following order:

- (1) governor;
- (2) lieutenant governor;
- (3) attorney general;
- (4) comptroller of public accounts;
- (5) commissioner of the General Land Office;
- (6) commissioner of agriculture;
- (7) chairman of the Texas Oil and Gas Commission;

- (8) ~~railroad~~ commissioner of the Texas Oil and Gas Commission;  
 (9) ~~(8)~~ chief justice, supreme court;  
 (10) ~~(9)~~ justice, supreme court;  
 (11) ~~(10)~~ presiding judge, court of criminal appeals;  
 (12) ~~(11)~~ judge, court of criminal appeals.

SECTION 39. Section 756.126, Health and Safety Code, is amended to read as follows:

Sec. 756.126. SAFETY STANDARDS AND BEST PRACTICES. The Texas Oil and Gas [Railroad] Commission [of Texas] shall adopt and enforce safety standards and best practices, including those described by 49 U.S.C. Section 6105 et seq., relating to the prevention of damage by a person to a facility, including an interstate or intrastate pipeline facility, under the jurisdiction of the commission.

SECTION Section 102.006, Utilities Code, is amended to read as follows:

Sec. 102.006. POWERS AND DUTIES OF STATE OFFICE OF ADMINISTRATIVE HEARINGS ~~[IN CONTESTED CASES]~~. (a) ~~The [railroad commission by rule shall provide for administrative hearings in contested cases to be conducted by one or more members of the railroad commission, by railroad commission hearings examiners, or by the utility division of the State Office of Administrative Hearings. The rules must provide for a railroad commission hearings examiner or the utility division of the] State Office of Administrative Hearings shall [to] conduct each hearing in a contested case under this subtitle [that is not conducted by one or more members of the railroad commission].~~ A hearing must be conducted in accordance with the rules and procedures adopted by the railroad commission.

(b) ~~The railroad commission may delegate to [a railroad commission hearings examiner or to the utility division of] the State Office of Administrative Hearings the authority to make a final decision and to issue findings of fact, conclusions of law, and other necessary orders in a proceeding in which there is not a contested issue of fact or law.~~

(c) ~~The railroad commission by rule shall define the procedures by which it delegates final decision-making authority under Subsection (b) [to a railroad commission hearings examiner or to the utility division of the State Office of Administrative Hearings].~~

(d) For purposes of judicial review, an administrative law judge's [the] final decision [of a railroad commission hearings examiner or an administrative law judge of the State Office of Administrative Hearings in a matter delegated] under Subsection (b) has the same effect as a final decision of the railroad commission unless [a member of] the commission requests formal review of the decision.

~~[e] The State Office of Administrative Hearings shall charge the railroad commission a fixed annual rate for hearings conducted by the office under this section only if the legislature appropriates money for that purpose. If the legislature does not appropriate money for the payment of a fixed annual rate under this section, the State Office of Administrative Hearings shall charge the railroad commission an hourly rate of not more than \$90 per hour for hearings conducted by the office under this section.]~~

SECTION \_\_\_\_\_. Section 121.201(a), Utilities Code, is amended to read as follows:

(a) The railroad commission may:

(1) by rule prescribe or adopt safety standards for the transportation of gas and for gas pipeline facilities, including safety standards related to the prevention of damage to an interstate or intrastate gas pipeline [~~such a~~] facility resulting from the movement of earth by a person in the vicinity of the facility, other than movement by tillage that does not exceed a depth of 16 inches;

(2) by rule require an operator that does not file operator organization information under Section 91.142, Natural Resources Code, to provide the information to the commission in the form of an application;

(3) by rule require record maintenance and reports;

(4) inspect records and facilities to determine compliance with safety standards prescribed or adopted under Subdivision (1);

(5) make certifications and reports from time to time;

(6) seek designation by the United States secretary of transportation as an agent to conduct safety inspections of interstate gas pipeline facilities located in this state; and

(7) by rule take any other requisite action in accordance with 49 U.S.C. Section 60101 et seq., or a succeeding law.

SECTION 41. Section 29.015, Water Code, is amended to read as follows:

Sec. 29.015. APPLICATION FEE. With each application for issuance, renewal, or material amendment of a permit, the applicant shall submit to the railroad commission a nonrefundable fee of \$100. Fees collected under this section shall be deposited in the oil and gas regulation and [~~oil field~~] cleanup fund.

SECTION \_\_\_\_\_. The heading to Section 121.211, Utilities Code, is amended to read as follows:

Sec. 121.211. PIPELINE SAFETY AND REGULATORY FEES.

SECTION \_\_\_\_\_. Sections 121.211(a), (b), (c), (d), (e), and (h), Utilities Code, are amended to read as follows:

(a) The railroad commission by rule may adopt a [ ] fee to be assessed annually against operators of natural gas distribution pipelines and their pipeline facilities and natural gas master metered pipelines and their pipeline facilities subject to this title [ ].

(b) The railroad commission by rule shall establish the method by which the fee will be calculated and assessed. In adopting a fee structure, the railroad commission may consider any factors necessary to provide for the equitable allocation among operators of the costs of administering the railroad commission's pipeline safety and regulatory program under this title [ ].

(c) The total amount of fees estimated to be collected under rules adopted by the railroad commission under this section may not exceed the amount estimated by the railroad commission to be necessary to recover the costs of administering the railroad commission's pipeline safety and regulatory program under this title [ ], excluding costs that are fully funded by federal sources.

(d) The commission may assess each operator of a natural gas distribution system subject to this title [ ] an annual [ ] fee not to exceed one dollar for each service line reported by the system on the Distribution Annual Report, Form RSPA F7100.1-1, due on March 15 of each year. The fee is due March 15 of each year.

(e) The railroad commission may assess each operator of a natural gas master metered system subject to this title [ ] an annual [ ] fee not to exceed \$100 for each master metered system. The fee is due June 30 of each year.

(h) A fee collected under this section shall be deposited to the credit of the general revenue fund to be used for the pipeline safety and regulatory program.

SECTION 42. The following provisions of the Natural Resources Code are repealed:

- (1) Section 91.111;
- (2) Section 91.112;
- (3) Section 91.1135; and
- (4) Subchapter I, Chapter 113.

SECTION 54. On the effective date of this Act:

(1) the oil-field cleanup fund and the alternative fuels research and education fund are abolished;

(2) any money remaining in the oil-field cleanup fund is transferred to the oil and gas regulation and cleanup fund;

(3) any money remaining in the alternative fuels research and education fund is transferred to the undedicated portion of the general revenue fund;

(4) any claim against the oil-field cleanup fund is transferred to the oil and gas regulation and cleanup fund;

(5) any claim against the alternative fuels research and education fund is transferred to the undedicated portion of the general revenue fund;

(6) any amount required to be deposited to the credit of the oil-field cleanup fund shall be deposited to the credit of the oil and gas regulation and cleanup fund; and

(7) any amount required to be deposited to the credit of the alternative fuels research and education fund shall be deposited to the credit of the undedicated portion of the general revenue fund.

SECTION 55. (a) As soon as possible after the effective date of this Act, the governor shall appoint the initial commissioners of the Texas Oil and Gas Commission two of whom serve a term that expires January 1, 2013 and the chairman who serves a term that expires January 1, 2015.

(b) The office of commissioner of the Texas Oil and Gas Commission exists for purposes of the primary and general election in 2012. The office of the chairman of the Texas Oil and Gas Commission exists for the purposes of the primary and general election in 2014.

(c) The initial two elected commissioners of the Texas Oil and Gas Commission shall be elected at the general election for state and county officers in 2012 to serve a four-year term. The initial chairman of the Texas Oil and Gas Commission shall be elected at the general election for state and county officers in 2014 to serve a four-year term.

(d) The initial two elected commissioners of the Texas Oil and Gas Commission shall take office January 1, 2013. The initial elected chairman of the Texas Oil and Gas Commission shall take office January 1, 2015.

SECTION 56. (a) On the date the initial appointed commissioners of the Texas Oil and Gas Commission take office:

- (1) the Texas Oil and Gas Commission is created;
- (2) the Railroad Commission of Texas is abolished and the terms of the members of the Railroad Commission of Texas serving on that date expire;
- (3) the powers, duties, functions, programs, and activities of the Railroad Commission of Texas are transferred to the Texas Oil and Gas Commission;
- (4) an employee of the Railroad Commission of Texas becomes an employee of the Texas Oil and Gas Commission;
- (5) all obligations and contracts of the Railroad Commission of Texas are transferred to the Texas Oil and Gas Commission;
- (6) all property and records in the custody of the Railroad Commission of Texas and all funds appropriated by the legislature to the Railroad Commission of Texas shall be transferred to the Texas Oil and Gas Commission;
- (7) all complaints, investigations, or contested cases that are pending before the Railroad Commission of Texas, or the governing body of the Railroad Commission of Texas, are transferred without change in status to the Texas Oil and Gas Commission;
- (8) a rule or form adopted by the Railroad Commission of Texas is a rule or form of the Texas Oil and Gas Commission and remains in effect until altered by that commission;
- (9) a reference in law to the Railroad Commission of Texas means the Texas Oil and Gas Commission;
- (10) a reference in law to a railroad commissioner or a member of the Railroad Commission of Texas means the commissioner of the Texas Oil and Gas Commission; and
- (11) a license, permit, or certification in effect that was issued by the Railroad Commission of Texas is continued in effect as a license, permit, or certification of the Texas Oil and Gas Commission.

(b) The abolition of the Railroad Commission of Texas and the transfer of its powers, duties, functions, programs, activities, obligations, rights, contracts, records, property, funds, and employees as provided by this Act do not affect or impair an act done, any obligation, right, order, permit, certificate, rule, criterion, standard, or requirement existing, or any penalty accrued under former law, and that law remains in effect for any action concerning those matters.

SECTION 57. The Railroad Commission of Texas shall adopt a timetable for phasing in the use of the name of the Texas Oil and Gas Commission so as to minimize the fiscal impact of the change of name of the entity responsible for performing the functions of the Railroad Commission of Texas. Until January 1, 2012, to allow for phasing in the use of the name of the Texas Oil and Gas Commission and in accordance with the timetable established as required by this section, the Texas Oil and Gas Commission may perform any act authorized by law for the Railroad Commission of Texas as the Railroad Commission of Texas or as the Texas Oil and Gas Commission and any act of the Texas Oil and Gas Commission acting as the Railroad Commission of Texas is an act of the Texas Oil and Gas Commission.

SECTION 58. This Act takes effect September 1, 2011.

The amendment to **HB 3328** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 6.

On motion of Senator Fraser and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**HB 3328** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

### HOUSE BILL 3328 ON THIRD READING

Senator Fraser moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3328** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

### MESSAGE FROM THE HOUSE

#### HOUSE CHAMBER

Austin, Texas

Wednesday, May 25, 2011 - 2

The Honorable President of the Senate  
Senate Chamber  
Austin, Texas

Mr. President:

I am directed by the House to inform the Senate that the House has taken the following action:

#### THE HOUSE HAS PASSED THE FOLLOWING MEASURES:

**SB 81** Nelson Sponsor: Kolkhorst  
Relating to food safety.  
(Committee Substitute/Amended)

**SB 158** Williams Sponsor: Fletcher  
Relating to the fraudulent obtaining of a controlled substance from a practitioner;  
providing a penalty.  
(Amended)

**SB 293** Watson Sponsor: Davis, John  
Relating to telemedicine medical services, telehealth services, and home  
telemonitoring services provided to certain Medicaid recipients.  
(Committee Substitute/Amended)

**SB 573** Nichols Sponsor: Creighton  
Relating to certificates of public convenience and necessity for water or sewer  
services.  
(Amended)

- SB 738** Shapiro Sponsor: Villarreal  
Relating to a parental role in determining sanctions applied to a public school campus under certain circumstances.
- SB 776** Zaffirini Sponsor: Guillen  
Relating to customs brokers.  
(Committee Substitute/Amended)
- SB 981** Carona Sponsor: Anchia  
Relating to the regulation of distributed renewable generation of electricity.  
(Committee Substitute/Amended)
- SB 1048** Jackson Sponsor: Davis, John  
Relating to the creation of public and private facilities and infrastructure.  
(Committee Substitute/Amended)
- SB 1073** Jackson Sponsor: King, Tracy O.  
Relating to rainwater harvesting systems that are connected to public water supply systems.
- SB 1120** Seliger Sponsor: Lewis  
Relating to the exemption from taxation of property of a local government corporation.
- SB 1285** Watson Sponsor: Strama  
Relating to contributions to the retirement systems for certain police officers in certain municipalities.  
(Amended)
- SB 1286** Watson Sponsor: Rodriguez, Eddie  
Relating to the funding of retirement systems for firefighters in certain municipalities.  
(Committee Substitute)
- SB 1393** Seliger Sponsor: Keffer  
Relating to the use of contracts by local governments to purchase electricity.
- SB 1551** Rodriguez Sponsor: Raymond  
Relating to missing children; providing a criminal penalty.  
(Amended)
- SB 1588** Ogden Sponsor: Pitts  
Relating to the creation and re-creation of funds and accounts, the dedication and rededication of revenue, and the exemption of unappropriated money from use for general governmental purposes.  
(Amended)
- SB 1605** Seliger Sponsor: Lewis  
Relating to the Texas Low-Level Radioactive Waste Disposal Compact Commission.  
(Committee Substitute/Amended)

**SB 1664**

Duncan

Sponsor: Truitt

Relating to the powers and duties of and contributions to and benefits from the systems and programs administered by the Employees Retirement System of Texas.  
(Committee Substitute/Amended)

Respectfully,

/s/Robert Haney, Chief Clerk  
House of Representatives

**HOUSE BILL 2338 ON SECOND READING**

On motion of Senator Birdwell and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 2338** at this time on its second reading:

**HB 2338**, Relating to the posting on the Internet by the county assessor-collector of information regarding ad valorem tax rates.

The bill was read second time and was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

**HOUSE BILL 2338 ON THIRD READING**

Senator Birdwell moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2338** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**HOUSE BILL 2996 ON SECOND READING**

Senator Estes moved to suspend the regular order of business to take up for consideration **HB 2996** at this time on its second reading:

**HB 2996**, Relating to the creation of the Texas Urban Agricultural Innovation Authority.

The motion prevailed.

Senators Birdwell, Hegar, Jackson, Patrick, and Shapiro asked to be recorded as voting "Nay" on suspension of the regular order of business.

The bill was read second time and was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading except as follows:

Nays: Birdwell, Hegar, Jackson, Patrick, Shapiro.

Absent: Williams.



**HOUSE BILL 2996 ON THIRD READING**

Senator Estes moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2996** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 25, Nays 5.

Yeas: Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hinojosa, Huffman, Lucio, Nelson, Nichols, Ogden, Rodriguez, Seliger, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Zaffirini.

Nays: Birdwell, Hegar, Jackson, Patrick, Shapiro.

Absent: Williams.

The bill was read third time and was passed by the following vote: Yeas 25, Nays 5. (Same as previous roll call)

**HOUSE BILL 2997 ON SECOND READING**

Senator Estes moved to suspend the regular order of business to take up for consideration **HB 2997** at this time on its second reading:

**HB 2997**, Relating to the creation and funding of the urban farming pilot program and the creation of the Select Committee on Urban Farming.

The motion prevailed.

Senators Birdwell, Hegar, Jackson, Patrick, and Shapiro asked to be recorded as voting "Nay" on suspension of the regular order of business.

The bill was read second time and was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading except as follows:

Nays: Birdwell, Hegar, Jackson, Patrick, Shapiro.

Absent: Williams.

**HOUSE BILL 2997 ON THIRD READING**

Senator Estes moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2997** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 25, Nays 5.

Yeas: Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hinojosa, Huffman, Lucio, Nelson, Nichols, Ogden, Rodriguez, Seliger, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Zaffirini.

Nays: Birdwell, Hegar, Jackson, Patrick, Shapiro.

Absent: Williams.

The bill was read third time and was passed by the following vote: Yeas 25, Nays 5. (Same as previous roll call)

**COMMITTEE SUBSTITUTE  
HOUSE BILL 2327 ON THIRD READING**

Senator Wentworth moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 2327** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 3.

Yeas: Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Gallegos, Hegar, Hinojosa, Huffman, Jackson, Lucio, Nelson, Nichols, Ogden, Patrick, Rodriguez, Seliger, Shapiro, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Birdwell, Fraser, Harris.

The bill was read third time and was passed by the following vote: Yeas 21, Nays 10.

Yeas: Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Gallegos, Hinojosa, Lucio, Nelson, Rodriguez, Seliger, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Birdwell, Fraser, Harris, Hegar, Huffman, Jackson, Nichols, Ogden, Patrick, Shapiro.

**SENATE BILL 341 WITH HOUSE AMENDMENTS**

Senator Uresti called **SB 341** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

**Amendment**

Amend **SB 341** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to authorizing the dissolution of the Bexar Metropolitan Water District; providing a penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. FINANCIAL AND OPERATIONAL AUDITS

SECTION 1.01. Section 1, Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, is amended to read as follows:

Sec. 1. In obedience to the provisions of Article 16, Section 59 of the Constitution of Texas, there is hereby created Bexar Metropolitan Water District. [~~hereinafter in this Act sometimes called the "District."~~]

SECTION 1.02. Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, is amended by adding Sections 1A, 34, 35, 36, 37, 38, 39, 40, 41, 42, and 43 to read as follows:

Sec. 1A. In this Act:

(1) "Board" means the District's Board of Directors.

(2) "Commission" means the Texas Commission on Environmental Quality.

(3) "Committee" means the Bexar Metropolitan Water District Oversight Committee.

(4) "Director" means a Board member.

(5) "District" means the Bexar Metropolitan Water District.

(6) "System" means a water utility owned by a municipality with a population of more than one million in the area served by the District.

Sec. 34. (a) Not later than the 30th day after the effective date of the Act enacting this section, the Commission shall begin an on-site evaluation of the District.

The evaluation must include:

(1) a complete inventory and evaluation of each distinct water system in the District to determine:

(A) the District's basis in, or the intrinsic value of, the infrastructure associated with that water system;

(B) the District's bonded debt and commercial paper reasonably associated with or allocable to the infrastructure in that water system; and

(C) the adequacy of the water supply sources, water storage facilities, and distribution systems located in that water system's service area to supply current and projected demands in that service area;

(2) a list of any District assets whose transfer to another appropriate public water utility would be likely to improve:

(A) service to the former customers of the District who would be served by that utility; or

(B) the District's overall efficiency;

(3) a list and copies of existing contracts to which the District is a party, including for each contract:

(A) effective and termination dates;

(B) the general scope of the property and services involved;

(C) obligations of the District, including financial obligations;

(D) how the District benefits from the contract; and

(E) whether the District has waived governmental immunity;

(4) a list of the following in regard to the District:

(A) property;

(B) rights, including certificates of convenience and necessity, pumping rights, and any other rights;

(C) staff; and

(D) internal policies, including employment rules, benefits, and an evaluation of the usefulness and efficacy of each policy;

(5) a comprehensive rehabilitation plan for the District that:

(A) identifies strategies for restoring the District's financial integrity and developing a system of sound financial management;

(B) describes a standard of ethics, professionalism, and openness expected of each Director and employee of the District;

(C) provides a mechanism to enforce compliance with District policies, including procurement policies;

(D) identifies ways to enhance the District's operational efficiency and improve the District's provision of redundancy in water services; and

(E) provides for educating the Board and management personnel on improving management practices and complying with District policy and state and federal laws and regulations;

(6) an assessment of the District's ability to provide reliable, cost-effective, quality service to customers, including an assessment of operations compared to the best management practices of modern utilities;

(7) a study of the District's current infrastructure improvements, including:

(A) personnel for the improvements, including staffing levels of engineers, capital improvement program personnel, and mains and services personnel; and

(B) contracts related to any capital improvements; and

(8) a financial audit of the District.

(b) On commencement of the evaluation, the Commission shall notify the District in writing that the Commission has begun the evaluation and shall specify a time period for completion of the evaluation. The Commission may extend the specified time period for good cause. The District shall cooperate and provide assistance and access to all necessary records, confidential or not, to the Commission.

(c) The Commission may contract with utility management consultants, accountants, and other persons as necessary to conduct the evaluation.

(d) The Commission may require the District to reimburse the Commission for the reasonable cost of conducting the evaluation.

(e) The Commission shall file copies of the completed evaluation with:

(1) the committee;

(2) the Board; and

(3) the lieutenant governor, the speaker of the house of representatives, and the chairs of the house and senate committees with primary oversight over the District.

Sec. 35. At the Commission's request, the state auditor's office may audit the District under Chapter 321, Government Code. The District shall reimburse the state auditor's office for the cost of the audit.

Sec. 36. The Commission may employ or contract with a person to carry out the duties described by Section 34 of this Act who, at the time of the person's hire:

(1) has demonstrated a high level of expertise in utility management;

(2) is not a Director; and

(3) has no financial interest in the District or any entity that has a contract with the District or that is likely to develop a contractual relationship with the District.

Sec. 37. (a) The Commission may employ or contract with additional persons who will report to and assist the Commission if:

(1) assistance from District staff is not provided; or

(2) the Commission needs special expertise from one or more of the persons.

(b) A person employed or contracted with under Section 36 of this Act and any additional persons employed or contracted with under this section are entitled to receive a salary determined by the executive director of the Commission for performing those duties.

(c) The District shall pay the compensation of any persons employed or contracted with under this section or Section 36 of this Act.

(d) The executive director of the Commission shall set the compensation of the person employed or contracted with under this section or Section 36 of this Act after considering the person's:

(1) level of expertise in utility management; and

(2) certifications and education.

Sec. 38. (a) A person employed or contracted with under Section 36 or 37 of this Act is entitled to reimbursement of the reasonable and necessary expenses incurred by that person in the course of performing duties under this Act.

(b) The District shall pay the expenses incurred by the persons employed or contracted with under Section 36 or 37 of this Act. The executive director of the Commission shall determine if an expense is reasonable and necessary after considering whether the expense is:

(1) necessary to complete the duties assigned by this Act;

(2) at or below the cost of a similar expense incurred by other utilities;

(3) documented by an invoice, bill, or work order that includes details

relating to the:

(A) time spent on services; or

(B) cost of supplies; and

(4) in accordance with procedures used to minimize expenses, including comparing vendor rates or competitive bidding.

Sec. 39. The executive director of the Commission may employ or contract with a person to carry out any purpose described by this Act. The District shall reimburse the Commission for all related expenses.

Sec. 40. (a) The Commission shall evaluate the condition of the District and determine whether the District has been sufficiently rehabilitated to enable the District to provide reliable, cost-effective, quality service to its customers.

(b) If the Commission finds that the District has not been rehabilitated, the Commission may order the District to implement any part of the rehabilitation plan developed under Section 34.

(c) If the District fails to comply with a Commission order, the Commission may assess a penalty against the District in the manner provided by Section 13.4151, Water Code.

Sec. 41. From the effective date of the Act enacting this section until the date election results are certified to the Secretary of State, the attorney general may not approve any public security, as defined by Chapter 1201, Government Code, of the District unless:

(1) the Commission consents in writing before approval; or

(2) the District provides written evidence that issuing the public security represents a refunding of outstanding debt for the purpose of realizing debt service savings in each year that outstanding obligations are refunded and that results in a cumulative net present value savings of at least three percent compared to refunded debt service.

Sec. 42. (a) From the effective date of the Act enacting this section until the date election results are certified to the Secretary of State, a contract or other agreement entered into, amended, or renewed during that period to which the District is a party must include a provision that the contract or other agreement is subject to:

(1) review by the System; and

(2) termination by the System at the System's sole discretion, including the termination of all rights, duties, obligations, and liabilities of the District or the System under the contract or other agreement, if the contract or other agreement is assumed by the System.

(b) A person or entity is not entitled to compensation for loss or other damages resulting from the termination of the contract or other agreement under Subsection (a)(2) of this section.

Sec. 43. From the effective date of the Act enacting this section until the date the election results are certified to the Secretary of State, the District may not dispose of, sell, transfer, assign, impair, or restrict any of the District's rights or assets outside the normal and customary course of business.

#### ARTICLE 2. ELECTION; EFFECTIVE DATE OF ARTICLES 3 AND 4

SECTION 2.01. (a) In this article:

(1) "Board" means the board of directors of the district.

(2) "Commission" means the Texas Commission on Environmental Quality.

(3) "District" means the Bexar Metropolitan Water District.

(b) On the next uniform election date the board, after consultation with the secretary of state, shall hold an election in the district on the question of dissolving the district and disposing of the district's assets and obligations. The board shall call the election not later than the 90th day before the date the election is to be held.

(c) The order calling the election must state:

(1) the nature of the election, including the proposition to appear on the ballot;

(2) the date of the election;

(3) the hours during which the polls will be open; and

(4) the location of the polling places.

(d) The board shall give notice of an election under this section by publishing once a week for two consecutive weeks a substantial copy of the election order in a newspaper with general circulation in the district. The first publication of the notice must appear not later than the 35th day before the date of the beginning of early voting for the election.

(e) The ballot for an election under this section must be printed to permit voting for or against the proposition: "The dissolution of the Bexar Metropolitan Water District and the transfer of all the district's assets, obligations, and duties to the water utility owned by the municipality with the largest population in the area served by the district."

(f) The board shall certify that a majority of the voters voting in the district have voted:

(1) in favor of dissolution; or

(2) not in favor of dissolution.

(g) If the board fails to call an election on or before the 90th day before the date the election is to be held, the commission or its executive director shall file a writ of mandamus and pursue all other legal and equitable remedies available to compel the board to call the election.

SECTION 2.02. (a) Not later than the 20th day after the date on which the election results are officially declared, the board shall certify that result to the secretary of state.

(b) If the proposition is approved by a majority of the voters voting in the election:

- (1) Article 3 of this Act does not take effect; and
- (2) Article 4 of this Act takes effect on the date the results are certified.

(c) If a majority of the voters voting in the election do not approve the proposition:

- (1) Article 3 of this Act takes effect on the date the results are certified; and
- (2) Article 4 of this Act does not take effect.

ARTICLE 2A. ALTERNATE ELECTION PROCEDURES IF ARTICLE 2  
ELECTION IS IN VIOLATION

SECTION 2A.01. It is the intent of the legislature that the preferred method of election be the method described by Section 2.01 of this Act. This article provides an alternate means of conducting the election on the question of dissolving the Bexar Metropolitan Water District if the method described in Section 2.01 of this Act cannot be used due to a final, unappealable administrative or judicial decision. It is the intent of the legislature to comply fully with the requirements of the federal Voting Rights Act of 1965 (42 U.S.C. Section 1973 et seq.). It is not the intent of the legislature to influence any preclearance decision made by the U.S. Department of Justice relating to the Act creating this section.

SECTION 2A.02. (a) In this article:

- (1) "Board" means the board of directors of the district.
- (2) "Commission" means the Texas Commission on Environmental Quality.
- (3) "District" means the Bexar Metropolitan Water District.
- (4) "Voting district" means a subdivision of the district created to elect the district's board of directors.

(b) On the next uniform election date following the date of a final, unappealable administrative or judicial decision that any portion of this Act is in violation of the federal Voting Rights Act of 1965 (42 U.S.C. Section 1973 et seq.) or United States Constitution, the board, after consultation with the secretary of state, shall hold an election as provided by this section in the district on the question of dissolving the district and disposing of the district's assets and obligations. The board shall call the election not later than the 90th day before the date the election is to be held.

(c) The order calling the election must state:

- (1) the nature of the election, including the proposition to appear on the ballot;
- (2) the date of the election;
- (3) the hours during which the polls will be open; and
- (4) the location of the polling places.

(d) The board shall give notice of an election under this section by publishing once a week for two consecutive weeks a substantial copy of the election order in a newspaper with general circulation in the district. The first publication of the notice must appear not later than the 35th day before the date of the beginning of early voting for the election.

(e) The ballot for an election under this section must be printed to permit voting for or against the proposition: "The dissolution of the Bexar Metropolitan Water District and the transfer of all the district's assets, obligations, and duties to the water utility owned by the municipality with the largest population in the area served by the district."

(f) The election shall be held in numbered voting districts established by the board. The board shall draw each voting district to reflect population changes from the latest decennial census and to conform with state law, the federal Voting Rights Act of 1965 (42 U.S.C. Section 1973 et seq.), and any applicable court order.

(g) The board shall certify the election results for each voting district. The board shall then certify that a majority of the voting districts have voted:

- (1) in favor of dissolution; or
- (2) not in favor of dissolution.

(h) If the board fails to call an election on or before the 90th day before the date the election is to be held, the commission or its executive director shall file a writ of mandamus and pursue all other legal and equitable remedies available to compel the board to call the election.

SECTION 2A.03. (a) Not later than the 20th day after the date on which the election results are officially declared, the board shall certify that result to the secretary of state.

(b) If the proposition is approved by a majority of the voting districts in the election:

- (1) Article 3 of this Act does not take effect; and
- (2) Article 4 of this Act takes effect on the date the results are certified.

(c) If a majority of the voting districts in the election do not approve the proposition:

- (1) Article 3 of this Act takes effect on the date the results are certified; and
- (2) Article 4 of this Act does not take effect.

### ARTICLE 3. CHANGES TO THE BEXAR METROPOLITAN WATER DISTRICT IF VOTERS DO NOT DISSOLVE THE DISTRICT UNDER ARTICLE 2

SECTION 3.01. Section 8, Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, is amended to read as follows:

Sec. 8. (a) [-] The seven [~~five (5)~~] members of the Board of Directors ~~are [shall hereafter be]~~ elected to staggered two-year terms in an election held on the uniform election date in November. Directors are elected from numbered single-member districts established by the Board. The Board shall revise each single-member district after each decennial census to reflect population changes and to conform with state law, the federal Voting Rights Act of 1965 (42 U.S.C. Section 1973 et seq.), and any applicable court order [for a term of six (6) years each, provided that an election for two (2) Directors for a term of six (6) years shall be held on the first Tuesday in April, 1954; the terms of three (3) members of the present Board shall be, and are, hereby,



~~extended to the first Tuesday in April, 1957; and the present Directors shall determine such three (3) by lot. Three (3) Directors shall be elected on the first Tuesday in April, 1957, and two (2) Directors and three (3) Directors, alternately, shall be elected each three (3) years thereafter on the first Tuesday in April as the six-year terms expire]. At an election of Directors, the candidate from each single-member district who receives [The two (2) or three (3) persons, respectively, receiving] the greatest number of votes is [shall be declared] elected to represent that single-member district. Each Director shall hold office until his successor is [shall have been] elected or appointed and has [shall have] qualified.~~

~~(a-1) A person is not eligible to serve as a Director for more than three terms or for more than a total of seven years of service.[;]~~

~~(b) Such [such] elections shall be called, conducted and canvassed in the manner provided by the Election Code. [Chapter 25, General Laws of the Thirty-ninth Legislature, Regular Session, 1925, and any amendments thereto;]~~

~~(c) The [the] Board of Directors shall fill all vacancies on the Board by appointment and such appointees shall hold office until a successor elected at the next scheduled election date has qualified. [for the unexpired term for which they were appointed;]~~

~~(d) Any four [any three] members of the Board are [shall constitute] a quorum for the adoption or [of] passage of any resolution or order or the transaction of any business of the District.[;]~~

~~(e) A Director must [Directors succeeding the first Board, whether now or hereafter elected, shall] be a qualified voter of the single-member district from which the Director is elected [resident electors of Bexar County, Texas, and owners of taxable property within the area comprising said District, and shall organize in like manner].~~

~~(f) A payment to a Director for fees of office under Section 49.060, Water Code, may not be made for a meeting that occurs in a different fiscal year from the one in which the payment is made.~~

SECTION 3.02. Section 33A, Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, is amended by amending Subsection (c) and adding Subsection (g) to read as follows:

(c) The oversight committee is comprised of seven [5] members appointed as follows [to represent the following members]:

(1) two Senators who represent Senate districts that include territory within the Bexar Metropolitan Water District, [the Senator sponsor of this Act, or, in the event this Senator cannot serve, a Senator] appointed by the Lieutenant Governor, who shall also designate one of the Senators as co-chair;

(2) two Representatives who represent [the] House districts that include territory within the District, [author of this Act, or, in the event this Representative cannot serve, a Representative] appointed by the Speaker of the Texas House of Representatives, who shall also designate one of the Representatives as co-chair;

(3) one member with special expertise in the operation of public water utilities appointed by the Governor;

(4) one member appointed by the Governor to represent the public; and

(5) one [a] member of the Bexar County Commissioners Court who represents a precinct in which customers of the District reside.

(g) On or before December 31, 2012, the oversight committee shall provide a report under Subsection (e) of this section to the legislature. The committee is abolished and this section expires January 1, 2013.

SECTION 3.03. Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, is amended by adding Sections 8A, 8B, 8C, 10A, and 10B to read as follows:

Sec. 8A. (a) To be eligible to be a candidate for or to be elected or appointed as a Director, a person must have:

(1) resided continuously in the single-member district that the person seeks to represent for 12 months immediately preceding the date of the regular filing deadline for the candidate's application for a place on the ballot;

(2) viewed the open government training video provided by the attorney general and provided to the Board a signed affidavit stating that the candidate viewed the video;

(3) obtained 200 signatures from individuals living in the District; and

(4) paid a filing fee of \$250 or filed a petition in lieu of the filing fee that satisfies the requirements prescribed by Section 141.062, Election Code.

(b) In this subsection, "political contribution" and "specific-purpose committee" have the meanings assigned by Section 251.001, Election Code. A Director or a candidate for the office of Director may not knowingly accept political contributions from a person or organization that in the aggregate exceed \$500 in connection with each election in which the candidate is involved. For purposes of this subsection, a contribution to a specific-purpose committee for the purpose of supporting a candidate for the office of Director, opposing the candidate's opponent, or assisting the candidate as an officeholder is considered to be a contribution to the candidate.

Sec. 8B. (a) A person who is elected or appointed to and qualifies for office as a Director on or after the effective date of this section may not vote, deliberate, or be counted as a member in attendance at a meeting of the Board until the person completes a training program on District management issues. The training program must provide information to the person regarding:

(1) the enabling legislation that created the District;

(2) the operation of the District;

(3) the role and functions of the Board;

(4) the rules of the Board;

(5) the current budget for the Board;

(6) the results of the most recent formal audit of the Board;

(7) the requirements of the:

(A) open meetings law, Chapter 551, Government Code;

(B) public information law, Chapter 552, Government Code; and

(C) administrative procedure law, Chapter 2001, Government Code;

(8) the requirements of the conflict of interest laws and other laws relating to public officials; and

(9) any applicable ethics policies adopted by the Board or the Texas Ethics Commission.

(b) The Commission may create an advanced training program designed for a person who has previously completed a training program described by Subsection (a) of this section. If the Commission creates an advanced training program under this subsection, a person who completes that advanced training program is considered to have met the person's obligation under Subsection (a) of this section.

(c) Each Director who is elected or appointed on or after the effective date of this section shall complete a training program described by Subsection (a) or (b) of this section at least once in each term the Director serves.

(d) The Board shall adopt rules regarding the completion of the training program described by Subsection (a) or (b) of this section by a person who is elected or appointed to and qualifies for office as a Director before the effective date of this section. A Director described by this subsection who does not comply with Board rules is considered incompetent as to the performance of the duties of a Director in any action to remove the Director from office.

(e) A Director may not:

(1) accept or solicit a gift, favor, or service, the value of which exceeds \$50 per gift, favor, or service, that:

(A) might reasonably influence the Director in the discharge of an official duty; or

(B) the Director knows or should know is being offered with the intent to influence the Director's official conduct;

(2) accept other employment or engage in a business or professional activity that the Director might reasonably expect would require or induce the Director to disclose confidential information acquired by reason of the official position;

(3) accept other employment or compensation that could reasonably be expected to impair the Director's independence of judgment in the performance of the Director's official duties;

(4) make personal investments that could reasonably be expected to create a substantial conflict between the Director's private interest and the interest of the District;

(5) intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised the Director's official powers or performed the Director's official duties in favor of another; or

(6) have a personal interest in an agreement executed by the District.

(f) Not later than April 30 each year, a Director shall file with the Bexar County clerk a verified financial statement complying with Sections 572.022, 572.023, 572.024, and 572.0252, Government Code. The District shall keep a copy of a financial statement filed under this section in the main office of the District.

Sec. 8C. (a) A Director may be recalled for:

(1) incompetency or official misconduct as defined by Section 21.022, Local Government Code;

(2) conviction of a felony;

(3) incapacity;

(4) failure to file a financial statement as required by Section 8B(f) of this

Act;

(5) failure to complete a training program described by Section 8B(a) or (b) of this Act; or

(6) failure to maintain residency in the District.

(b) If at least 10 percent of the registered voters in a single-member voting district of the District submit a petition to the Board requesting the recall of the Director who serves that single-member voting district, the Board, not later than the 10th day after the date the petition is submitted, shall mail a written notice of the petition and the date of its submission to each registered voter in the single-member voting district.

(c) Not later than the 30th day after the date a petition requesting the recall of a Director is submitted, the Board shall order an election on the question of recalling the Director.

(d) A recall election under this section may be held on any uniform election date.

(e) If a majority of the voters of a single-member voting district voting at an election held under this section favor the recall of the Director who serves that single-member voting district, the Director is recalled and ceases to be a Director.

Sec. 10A. All Board reimbursements and expenditures must be approved by the Board in a regularly scheduled meeting.

Sec. 10B. The Board may not select the same auditor to conduct an audit required by Section 49.191, Water Code, for more than three consecutive annual audits.

SECTION 3.04. (a) Section 8, Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, as amended by this Act, applies only to a member of the board of directors of the Bexar Metropolitan Water District who is elected to the board on or after the effective date of this Act.

(b) Section 8A, Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, as added by this Act, applies only to a member of the board of directors of the Bexar Metropolitan Water District who is elected to the board on or after the effective date of this Act. A director who is elected before the effective date of this Act is governed by the law in effect when the director was elected, and the former law is continued in effect for that purpose.

(c) For two of the numbered single-member district director's positions that expire in 2012, the Bexar Metropolitan Water District shall call and hold an election on a uniform election date in that year to elect the directors for those positions for terms that expire on the uniform election date in November 2013. For the other two director's positions that expire in 2012, the district shall call and hold an election on the same uniform election date in that year to elect the directors for those positions for terms that expire on the uniform election date in November 2014. The district shall determine by lot which single-member districts shall elect directors to serve one-year terms and which shall elect directors to serve two-year terms.

#### ARTICLE 4. TRANSFER OF DISTRICT ASSETS AND LIABILITIES IF VOTERS DISSOLVE THE BEXAR METROPOLITAN WATER DISTRICT UNDER ARTICLE 2

SECTION 4.01. Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, is amended by adding Sections 50, 51, 52, 53, 54, and 55 to read as follows:

Sec. 50. (a) The term of each person who is serving as a Director of the District on the date the election results are certified to the Secretary of State as authorized by Article 2 of the Act enacting this section expires on that date.

(b) On the date the election results are certified to the Secretary of State, the System assumes control of the operation and management of the District, subject to Sections 52 and 53 of this Act and other law applicable to the System.

(c) Not later than the 90th day after the date the election results are certified to the Secretary of State, the Commission, in consultation with the committee, shall transfer or assign all:

(1) rights and duties of the District, including existing contracts, duties, assets, and obligations of the District;

(2) files, records, and accounts of the District, including those that pertain to the control, finances, management, and operation of the District; and

(3) permits, approvals, and certificates necessary to provide water services.

(d) To the extent that the transfer of an item listed in Subsection (c) of this section requires the approval of a state agency, the state agency shall grant approval without additional notice or hearing.

(e) After the Commission has transferred the property, assets, and liabilities as prescribed by this section, the Commission shall enter an order dissolving the District.

Sec. 51. (a) This Act does not enhance or harm the position of a contracting party.

(b) No law or charter provision may be construed to limit the System's performance of an obligation under a contract transferred or assigned to the System as a result of the dissolution of the District, if revenue from the contract was pledged wholly or partly to pay debt service on revenue bonds approved by the attorney general.

Sec. 52. (a) Not later than five years after the date the election results were certified in favor of dissolution under Article 2 of the Act enacting this section, the System shall integrate the services and infrastructure of the District into the System in a reasonable and orderly manner. The Commission for good cause may grant an extension to complete integration of not more than three additional years. The System shall base the integration on the consideration of relevant information, including:

(1) the location and condition of the infrastructure;

(2) debt obligations;

(3) prudent utility practices and fiscal policies;

(4) costs and revenue; and

(5) potential impacts on the customers of the District and the System.

(b) During the integration period described by Subsection (a) of this section, the System shall provide an annual report on the progress of integration to the Commission, including the status of any relevant contract provision.

(c) Until the date specified in Subsection (a) of this section, the System may operate the former District as a special project under the System's existing senior lien revenue bond ordinances.

(d) Once the Commission has transferred the assets, obligations, and duties to the System, the System shall provide affordable and reliable water services to all of the former ratepayers of the District under the System's certificate of convenience and necessity.

(e) After the integration described by Subsection (a) of this section is complete, the System shall provide water service to former ratepayers of the District in the same manner the System provides water service to other ratepayers of the System. The integration is considered complete if:

(1) the areas of service located in the former District are no longer operated as a special project within the System;

(2) the ratepayers of the former District pay the same rates for services provided by the System as other similarly situated ratepayers of the System; and

(3) the ratepayers of the former District receive water service that meets the requirements of the Commission.

(f) If the System fails to integrate the services and infrastructure of the District into the System in accordance with Subsection (a) of this section, the Commission may find the System in violation of the obligation under the System's certificate of convenience and necessity to provide continuous and adequate service. The Commission may bring an enforcement action against the System, including the imposition of an administrative penalty under Section 13.4151, Water Code.

Sec. 53. (a) For a 24-month period following the transfer of the employment of any employee of the former District, the System may not terminate that employee, except for cause, as defined by the System's standards of conduct for all employees, if the employee:

(1) is vested in the retirement program of the District on the effective date of this Act; and

(2) earns an annual base salary of less than \$50,000 on the effective date of the Act enacting this section.

(b) For a five-year period following the transfer of the employment of any employee of the former District, the System may not terminate that employee, except for cause, as defined by the System's standards of conduct for all employees, if:

(1) the employee meets the requirements of Subsections (a)(1) and (2) of this section; and

(2) the sum of the years of service of the employee and the employee's age is equal to or greater than 80.

(c) An employee who qualifies under Subsection (a) or (b) of this section and who is terminated by the System has the same opportunity for appeal as a person employed by the System who is not an employee of the former District.

(d) The System is not required to employ an employee of the District if that person was formerly terminated from, or resigned in lieu of termination from, the System.

Sec. 54. A state agency at which an administrative or enforcement action is pending against the District shall grant the System special consideration and reasonable extensions to identify and resolve the action in a manner satisfactory to the agency.

Sec. 55. (a) In this section, "advisory committee" means a committee appointed under Subsection (b) of this section.

(b) Not later than the 60th day after the date the District is dissolved under Section 50 of this Act, the System shall work cooperatively with the commissioners court of each county in which the former District was wholly or partly located to establish an advisory committee to advise the System regarding the integration of the services and infrastructure of the former District, including service integration issues and the delivery of water services by the System, in specific areas or water systems located in the area outside the corporate boundaries of the largest municipality served by the System.

(c) The advisory committee shall include at least one representative from each county served by the System who resides in the boundaries of the former District or the owner or operator of a business located in the boundaries of the former District.

(d) Until the integration described by Section 52 of this Act is complete, the board of directors of the System shall:

(1) consult with the advisory committee about the matters described by Subsection (b) of this section at least quarterly, during a regularly scheduled or specially called board meeting of the System; and

(2) on request by the advisory committee chair, provide members of the advisory committee an opportunity to address the System's board of trustees on matters relating to the duties of the advisory committee.

#### ARTICLE 5. DEADLINES; NOTICE; EFFECTIVE DATE OF ACT

SECTION 5.01. If a deadline established in Articles 1 through 4 of this Act cannot be met because of a requirement imposed by the federal Voting Rights Act of 1965 (42 U.S.C. Section 1973c or any other provisions of that act), the deadline is the next available date after the requirement is met.

SECTION 5.02. (a) The legal notice of the intention to introduce this Act, setting forth the general substance of this Act, has been published as provided by law, and the notice and a copy of this Act have been furnished to all persons, agencies, officials, or entities to which they are required to be furnished under Section 59, Article XVI, Texas Constitution, and Chapter 313, Government Code.

(b) The governor, one of the required recipients, has submitted the notice and Act to the Texas Commission on Environmental Quality.

(c) The Texas Commission on Environmental Quality has filed its recommendations relating to this Act with the governor, the lieutenant governor, and the speaker of the house of representatives within the required time.

(d) All requirements of the constitution and laws of this state and the rules and procedures of the legislature with respect to the notice, introduction, and passage of this Act are fulfilled and accomplished.

SECTION 5.03. Except as otherwise provided by Article 2 of this Act, this Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2011.

**Floor Amendment No. 1**

Amend **CSSB 341** in ARTICLE 2 of the bill (page 10, after line 27), by inserting the following new SECTION in the ARTICLE:

SECTION 2.03. (a) The purpose of this article is to provide all of the eligible voters of the district an opportunity to determine by election whether to continue with the current managing authority of the district or to transition to another managing authority which owns, operates, and manages the system, as defined by Section 1A, Chapter 306, Acts of the 49th Legislature, Regular Session, 1945.

(b) In order to provide all of the district's eligible voters an equal opportunity to vote on the determination in Subsection (a) of this section, the preferred method of election is a district-wide vote with all votes weighted equally. The reasons for this preference include:

(1) the election is a referendum on a single issue, involving different considerations in its structure than the considerations for an election to select members of a multi-member governing body;

(2) neither the vote dilution principles addressed under Section 2 of the Voting Rights Act of 1965 (42 U.S.C. Section 1973 et seq.) nor the three-part analytical framework used to measure vote dilution under Thornburg v. Gingles, 478 U.S. 30 (1986), are applicable to such a single-issue referendum;

(3) the explanation in Butts v. City of New York, 779 F.2d 141 (2d Cir. 1985), cert. denied, 478 U.S. 1021 (1986), that, if "the winner of an election for a single-member office is chosen directly by all the eligible voters" for that office, electoral arrangements are unlikely to deny a class of voters equal opportunity for representation, is equally applicable to the preferred method of election for the single-issue referendum established in this article; and

(4) the preferred method of election established in this article adheres strictly to the constitutional principle of "one person, one vote," a principle which a federal court has stated specifically applies to the district in an order dated September 21, 2006, in Civil Action No. SA-96-CA-335, Rios v. Bexar Metropolitan Water District et al., in the United States District Court, Western District of Texas, and which the district has never challenged by appeal or otherwise.

**Floor Amendment No. 2**

Amend **CSSB 341** (house committee report) as follows:

(1) In the recital to SECTION 1.02 of the bill (page 1, line 14), strike "42, and 43" and substitute "and 42".

(2) In SECTION 1.02 of the bill, in amended Chapter 306, Acts of the 49th Legislature, Regular Session, 1945 (page 7, lines 10-19), strike Section 40.

(3) In SECTION 1.02 of the bill, in amended Chapter 306, Acts of the 49th Legislature, Regular Session, 1945 (page 7, line 20), strike "Sec. 41." and substitute the following:

Sec. 40. (a) This section does not apply to bonds related to a water supply contract existing on or after the effective date of the Act enacting this section entered into by the District and a governmental entity, including the Canyon Regional Water



Authority and the Bexar-Medina-Atascosa Counties Water Improvement District No. 1, if revenue from the contract is to be pledged wholly or partly to pay debt service on revenue bonds approved by the attorney general.

(b)

(4) In SECTION 1.02 of the bill, in added Section 41, Chapter 306, Acts of the 49th Legislature, Regular Session, 1945 (page 7, line 22), between "State" and the comma, insert "under Article 2 or Article 2A of the Act enacting this section".

(5) In SECTION 1.02 of the bill, in added Section 42, Chapter 306, Acts of the 49th Legislature, Regular Session, 1945 (page 8, line 6), strike "Sec. 42. (a)" and substitute the following:

Sec. 41. (a) This section does not apply to a water supply contract existing on or after the effective date of the Act enacting this section entered into by the District and a governmental entity, including the Canyon Regional Water Authority and the Bexar-Medina-Atascosa Counties Water Improvement District No. 1, if revenue from the contract is to be pledged wholly or partly to pay debt service on revenue bonds approved by the attorney general.

(b)

(6) In SECTION 1.02 of the bill, in added Section 42(a), Chapter 306, Acts of the 49th Legislature, Regular Session, 1945 (page 8, line 8), between "State" and the comma, insert "under Article 2 or Article 2A of the Act enacting this section".

(7) In SECTION 1.02 of the bill, in added Section 42(a)(1), Chapter 306, Acts of the 49th Legislature, Regular Session, 1945 (page 8, line 12), between "System" and the semicolon, insert "if the contract or other agreement is assumed by the System".

(8) In SECTION 1.02 of the bill, in added Section 42, Chapter 306, Acts of the 49th Legislature, Regular Session, 1945 (page 8, line 18), strike "(b)" and substitute "(c)".

(9) In SECTION 1.02 of the bill, in added Section 42(b), Chapter 306, Acts of the 49th Legislature, Regular Session, 1945 (page 8, line 20), strike "(a)(2)" and substitute "(b)(2)".

(10) In SECTION 1.02 of the bill, in amended Chapter 306, Acts of the 49th Legislature, Regular Session, 1945 (page 8, line 22), strike "43" and substitute "42".

(11) In SECTION 1.02 of the bill, in added Section 43, Chapter 306, Acts of the 49th Legislature, Regular Session, 1945 (page 8, line 24), between "State" and the comma, insert "under Article 2 or Article 2A of the Act enacting this section".

(12) In SECTION 2.01(b) of the bill (page 9, line 11), between "district" and "on the", insert "solely".

(13) In SECTION 2.01(b) of the bill (page 9, line 12), strike "The board" and substitute "Notwithstanding Section 3.005(b), Election Code, the board".

(14) In SECTION 2.01(b) of the bill (page 9, line 14), between "held" and the period, insert "or as soon as practicable, if the effective date of this Act is after the 90th day".

(15) In SECTION 2.01 of the bill (page 10, between lines 14 and 15), insert the following:

(h) The election directed to be held under this article is not intended to prohibit a regular or special election to elect board members.

(16) In SECTION 2.02(a) of the bill (page 10, lines 15-16), strike "Not later than the 20th day after the date on which the election results are officially declared" and substitute "Not later than the 10th day after the determination under Section 67.005(a), Election Code, of the official results of the election".

(17) In SECTION 2A.02(b) of the bill (page 12, line 3), between "district" and "on the", insert "solely".

(18) In SECTION 2A.02(b) of the bill (page 12, line 4), strike "The board" and substitute "Notwithstanding Section 3.005(b), Election Code, the board".

(19) In SECTION 2A.02(b) of the bill (page 12, line 6), between "held" and the period, insert "or as soon as practicable, if the effective date of this Act is after the 90th day".

(20) In SECTION 2A.02 of the bill (page 13, between lines 12 and 13), insert the following:

(i) The election directed to be held under this article is not intended to prohibit a regular or special election to elect board members.

(21) In SECTION 2A.03(a) of the bill (page 13, lines 13-14), strike "Not later than the 20th day after the date on which the election results are officially declared" and substitute "Not later than the 10th day after the determination under Section 67.005(a), Election Code, of the official results of the election".

(22) In the recital to SECTION 3.03 of the bill (page 17, line 1), strike "and 10B" and substitute "10B, and 43".

(23) In SECTION 3.03 of the bill, in added Section 8A(b), Chapter 306, Acts of the 49th Legislature, Regular Session, 1945 (page 17, line 20), between "\$500" and "in", insert "from each person or organization".

(24) In SECTION 3.03 of the bill, in added Section 8A(b), Chapter 306, Acts of the 49th Legislature, Regular Session, 1945 (page 17, line 21), between "the" and "candidate", insert "Director or".

(25) In SECTION 3.03 of the bill, in amended Chapter 306, Acts of the 49th Legislature, Regular Session, 1945 (page 21, between lines 23 and 24), insert the following:

Sec. 43. (a) The Commission shall evaluate the condition of the District and determine whether the District has been sufficiently rehabilitated to enable the District to provide reliable, cost-effective, quality service to its customers.

(b) If the Commission finds that the District has not been rehabilitated, the Commission may order the District to implement any part of the rehabilitation plan developed under Section 34.

(c) If the District fails to comply with a Commission order, the Commission may assess a penalty against the District in the manner provided by Section 13.4151, Water Code.

(26) In SECTION 4.01 of the bill, in added Section 50(a), Chapter 306, Acts of the 49th Legislature, Regular Session, 1945 (page 23, line 1), between "2" and "of", insert "or 2A".

(27) In SECTION 4.01 of the bill, in added Section 50(c), Chapter 306, Acts of the 49th Legislature, Regular Session, 1945 (page 23, line 9), between "assign" and "all", insert "to the System".

(28) In SECTION 4.01 of the bill, in added Section 52, Chapter 306, Acts of the 49th Legislature, Regular Session, 1945 (page 24, line 8), between "2" and "of", insert "or 2A".

(29) In SECTION 5.01 of the bill (page 28, lines 2-3), strike "1973c or any other provisions of that act" and substitute "1973 et seq."

(30) Strike SECTION 5.03 of the bill (page 28, line 23, through page 29, line 1) and substitute the following:

SECTION 5.03. (a) Articles 1, 2, 2A, and 5 of this Act take effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, Articles 1, 2, 2A, and 5 take effect September 1, 2011.

(b) Articles 3 and 4 of this Act take effect as provided by Articles 2 and 2A.

#### Floor Amendment No. 4

Amend **CSSB 341** (house committee report) as follows:

(1) In the recital to SECTION 4.01 of the bill (page 22, line 24), between "52," and "53," insert "52B,".

(2) In SECTION 4.01 of the bill, after added Section 52, Chapter 306, Acts of the 49th Legislature, Regular Session, 1945 (page 25, between lines 26 and 27), insert the following:

Sec. 52B. (a) The rural contracts review board consists of three members appointed as follows:

(1) one member appointed by the Commissioners Court of Bexar County;

(2) one member appointed by the Commissioners Court of Medina County;

and

(3) one member appointed by the Commissioners Court of Atascosa County.

(b) The System shall renew a contract with a water supply company, water district, or municipal water utility for emergency water supply or interconnect fees that was transferred or assigned to the System as a result of the dissolution of the District on the same terms as the original contract, unless a change in the terms of the contract is approved by the rural contracts review board. The rural contracts review board may not approve a change in the terms of a renewal contract that is unfair to the water supply company, water district, or municipal water utility.

#### Floor Amendment No. 5

Amend Amendment No. 4 by D. Miller to **CSSB 341** as follows:

(1) In added Section 52B, Chapter 306, Acts of the 49th Legislature, Regular Session, 1945 (page 1, lines 7-14), strike Subsection (a).

(2) In added Section 52B, Chapter 306, Acts of the 49th Legislature, Regular Session, 1945 (page 1, lines 15-23), strike Subsection (b) and substitute the following:

The System shall honor all existing contracts transferred or assigned to the System as a result of the dissolution of the District. The System may not arbitrarily terminate or change the terms of a contract transferred or assigned to the System as a result of the dissolution of the District.

**Floor Amendment No. 6**

Amend **CSSB 341** (house committee report) as follows:

(1) In the recital to SECTION 4.01 of the bill (page 22, line 25), strike "and 55" and substitute "55, and 56".

(2) In SECTION 4.01 of the bill, after added Section 55, Chapter 306, Acts of the 49th Legislature, Regular Session, 1945 (page 27, between lines 25 and 26), insert the following:

Sec. 56. The System shall create a rural infrastructure investment fund with an initial funding equal to 44 percent of the value of District assets as they existed on the effective date of the Act enacting this section, as determined by an entity with no financial ties to the District or a municipality located in the District. The System shall spend the money in the fund in a manner to guarantee continued investment in the areas of the former District not located in the largest municipality in the former District.

**Floor Amendment No. 7**

Amend **CSSB 341** (house committee printing) as follows:

(1) In the recital to SECTION 4.01 of the bill (page 22, line 25), strike "and 55" and substitute "55, and 57".

(2) In ARTICLE 4 of the bill, in Chapter 306, Acts of the 49th Legislature, Regular Session, 1945 (page 27, between lines 25 and 26), insert the following new Section 57:

Sec. 57. (a) Any former ratepayer of the District who resides outside the boundary of the largest municipality served by the former District may petition the commission if the ratepayer does not receive the benefit of adequate infrastructure investment by the System. The commission shall conduct a hearing on the petition and determine if the System has adequately invested in infrastructure improvements in the area affecting the ratepayer.

(b) In a petition under Subsection (a) of this section, each person receiving a separate bill is considered a ratepayer, but one person may not be considered more than one ratepayer regardless of the number of bills the person receives. The petition is considered properly signed if signed by a person, or the spouse of a person, in whose name utility service is received.

(c) If the commission finds that the System has not adequately invested in infrastructure affecting the ratepayer, the commission may impose an administrative penalty against the System under Section 13.4151, Water Code.

(d) Not later than the 30th day after the date of a final decision on a petition under this section, the commission shall provide written notice to each ratepayer eligible to petition. The notice must include the decision on the petition regarding infrastructure and the location where additional information on infrastructure may be obtained.

**Floor Amendment No. 8**

Amend **CSSB 341** (house committee report) as follows:

(1) In SECTION 2.01 of the bill (page 9, line 27, through page 10, line 9), strike Subsections (e) and (f) and substitute the following:

(e) The ballot for an election under this section must be printed to permit voting:

(1) for or against the proposition: "The dissolution of the Bexar Metropolitan Water District."; and

(2) for one of the following propositions:

(A) "In the event the Bexar Metropolitan Water District is dissolved, the district's assets, obligations, and duties shall be transferred to the water utility owned by the municipality with the largest population in the area served by the district."; or

(B) "In the event the Bexar Metropolitan Water District is dissolved, the district's assets, obligations, and duties shall be transferred to a new water district called the Alamo Water District."

(f) The board shall certify:

(1) that a majority of the voters voting in the district have voted under Subsection (e)(1):

(A) in favor of dissolution; or

(B) not in favor of dissolution; and

(2) whether the proposition under Subsection (e)(2)(A) or (B) received the most votes, or if a tie exists.

(f-1) If a tie exists under Subsection (f)(2), the board shall certify the proposition under Subsection (e)(2)(B) as receiving the most votes.

(2) Strike SECTION 2.02 of the bill (page 10, lines 15-27) and substitute the following:

SECTION 2.02. (a) Not later than the 20th day after the date on which the election results are officially declared, the board shall certify the results to the secretary of state.

(b) If the proposition under Section 2.01(e)(1) is approved by a majority of the voters voting in the election, Article 3 of this Act does not take effect and:

(1) if the board certifies the proposition under Section 2.01(e)(2)(A) as receiving the most votes, Article 4 of this Act takes effect on the date the results are certified; or

(2) if the board certifies the proposition under Section 2.01(e)(2)(B) as receiving the most votes, Article 4A of this Act takes effect on the date the results are certified.

(c) If a majority of the voters voting in the election do not approve the proposition under Section 2.01(e)(1):

(1) Article 3 of this Act takes effect on the date the results are certified; and

(2) Article 4 or 4A of this Act does not take effect.

(3) Strike ARTICLE 2A of the bill (page 11, line 1, through page 13, line 25).

(4) In the heading to ARTICLE 4 of the bill (page 22, line 21), between "LIABILITIES" and "IF", insert "TO AN EXISTING WATER UTILITY".

(5) On page 27, between lines 25 and 26, insert ARTICLE 4A to the bill as follows:

ARTICLE 4A. TRANSFER OF DISTRICT ASSETS AND LIABILITIES TO, AND CREATION OF, THE ALAMO WATER DISTRICT IF VOTERS DISSOLVE THE BEXAR METROPOLITAN WATER DISTRICT UNDER ARTICLE 2

SECTION 4A.01. (a) The Bexar Metropolitan Water District is dissolved. The district shall stay in effect to complete the transfer under Section 4A.05 of this article.

(b) The Texas Commission on Environmental Quality shall enter an order dissolving the Bexar Metropolitan Water District.

SECTION 4A.02. Sections 1 and 8, Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, are amended to read as follows:

Sec. 1. ~~Under [in obedience to the provisions of] Article 16, Section 59 of the Constitution of Texas, there is [hereby] created the Alamo Water District. [Bexar Metropolitan Water District, hereinafter in this Act sometimes called the "District."]~~

Sec. 8. (a) ~~[-] The seven [five (5)] members of the Board of Directors are [shall hereafter be] elected to staggered two-year terms in an election held on the uniform election date in November. Directors are elected from numbered single-member districts established by the Board. The Board shall revise each single-member district after each decennial census to reflect population changes and to conform with state law, the federal Voting Rights Act of 1965 (42 U.S.C. Section 1973 et seq.), and any applicable court order [for a term of six (6) years each, provided that an election for two (2) Directors for a term of six (6) years shall be held on the first Tuesday in April, 1954; the terms of three (3) members of the present Board shall be, and are, hereby, extended to the first Tuesday in April, 1957; and the present Directors shall determine such three (3) by lot. Three (3) Directors shall be elected on the first Tuesday in April, 1957, and two (2) Directors and three (3) Directors, alternately, shall be elected each three (3) years thereafter on the first Tuesday in April as the six year terms expire]. At an election of Directors, the candidate from each single-member district who receives [The two (2) or three (3) persons, respectively, receiving] the greatest number of votes is [shall be declared] elected to represent that single-member district. Each Director shall hold office until his successor is [shall have been] elected or appointed and has [shall have] qualified.~~

~~(a-1) A person is not eligible to serve as a Director for more than three terms or for more than a total of seven years of service.[;]~~

~~(b) Such [such] elections shall be called, conducted and canvassed in the manner provided by the Election Code. [Chapter 25, General Laws of the Thirty-ninth Legislature, Regular Session, 1925, and any amendments thereto;]~~

~~(c) The [the] Board of Directors shall fill all vacancies on the Board by appointment and such appointees shall hold office until a successor elected at the next scheduled election date has qualified. [for the unexpired term for which they were appointed;]~~

~~(d) Any four [any three] members of the Board are [shall constitute] a quorum for the adoption or [of] passage of any resolution or order or the transaction of any business of the District.[;]~~

~~(e) A Director must [Directors succeeding the first Board, whether now or hereafter elected, shall] be a qualified voter of the single-member district from which the Director is elected [resident electors of Bexar County, Texas, and owners of taxable property within the area comprising said District, and shall organize in like manner].~~

~~(f) A payment to a Director for fees of office under Section 49.060, Water Code, may not be made for a meeting that occurs in a different fiscal year from the one in which the payment is made.~~

SECTION 4A.03. Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, is amended by adding Sections 1A, 8A, 8B, 8C, 10A, and 10B to read as follows:

Sec. 1A. In this Act:

- (1) "Board" means the District's Board of Directors.
- (2) "Commission" means the Texas Commission on Environmental Quality.
- (3) "Director" means a Board member.
- (4) "District" means the Alamo Water District.

Sec. 8A. (a) To be eligible to be a candidate for or to be elected or appointed as a Director, a person must have:

(1) resided continuously in the single-member district that the person seeks to represent for 12 months immediately preceding the date of the regular filing deadline for the candidate's application for a place on the ballot;

(2) viewed the open government training video provided by the attorney general and provided to the Board a signed affidavit stating that the candidate viewed the video;

(3) obtained 200 signatures from individuals living in the District; and

(4) paid a filing fee of \$250 or filed a petition in lieu of the filing fee that satisfies the requirements prescribed by Section 141.062, Election Code.

(b) In this subsection, "political contribution" and "specific-purpose committee" have the meanings assigned by Section 251.001, Election Code. A Director or a candidate for the office of Director may not knowingly accept political contributions from a person that in the aggregate exceed \$500 in connection with each election in which the person is involved. For purposes of this subsection, a contribution to a specific-purpose committee for the purpose of supporting a candidate for the office of Director, opposing the candidate's opponent, or assisting the candidate as an officeholder is considered to be a contribution to the candidate.

Sec. 8B. (a) A person who is elected or appointed to and qualifies for office as a Director may not vote, deliberate, or be counted as a member in attendance at a meeting of the Board until the person completes a training program on District management issues. The training program must provide information to the person regarding:

(1) the enabling legislation that created the District;

(2) the operation of the District;

(3) the role and functions of the Board;

(4) the rules of the Board;

(5) the current budget for the Board;

(6) the results of the most recent formal audit of the Board;

(7) the requirements of the:

(A) open meetings law, Chapter 551, Government Code;

(B) open records law, Chapter 552, Government Code; and

(C) administrative procedure law, Chapter 2001, Government Code;

(8) the requirements of the conflict of interest laws and other laws relating to public officials; and

(9) any applicable ethics policies adopted by the Board or the Texas Ethics Commission.

(b) The Texas Commission on Environmental Quality may create an advanced training program designed for a person who has previously completed a training program described by Subsection (a) of this section. If the commission creates an advanced training program under this subsection, a person who completes that advanced training program is considered to have met the person's obligation under Subsection (a) of this section.

(c) Each Director who is elected or appointed shall complete a training program described by Subsection (a) or (b) of this section at least once in each term the Director serves.

(d) The Board shall adopt rules regarding the completion of the training program described by Subsection (a) or (b) of this section by a person who is elected or appointed to and qualifies for office as a Director. A Director described by this subsection who does not comply with Board rules is considered incompetent as to the performance of the duties of a Director in any action to remove the Director from office.

(e) A Director may not:

(1) accept or solicit a gift, favor, or service, the value of which exceeds \$25 per gift, favor, or service, that:

(A) might reasonably influence the Director in the discharge of an official duty; or

(B) the Director knows or should know is being offered with the intent to influence the Director's official conduct;

(2) accept other employment or engage in a business or professional activity that the Director might reasonably expect would require or induce the Director to disclose confidential information acquired by reason of the official position;

(3) accept other employment or compensation that could reasonably be expected to impair the Director's independence of judgment in the performance of the Director's official duties;

(4) make personal investments that could reasonably be expected to create a substantial conflict between the Director's private interest and the interest of the District;

(5) intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised the Director's official powers or performed the Director's official duties in favor of another; or

(6) have a personal interest in an agreement executed by the District.

(f) Not later than April 30 each year, a Director shall file with the Bexar County clerk a verified financial statement complying with Sections 572.022, 572.023, 572.024, and 572.0252, Government Code. The District shall keep a copy of a financial statement filed under this section in the main office of the District.

Sec. 8C. (a) A Director may be recalled for:

(1) incompetency or official misconduct as defined by Section 21.022, Local Government Code;

(2) conviction of a felony;

(3) incapacity;

(4) failure to file a financial statement as required by Section 8B(f) of this

Act;



(5) failure to complete a training program described by Section 8B(a) or (b) of this Act; or

(6) failure to maintain residency in the District.

(b) If at least 10 percent of the voters in the District submit a petition to the Board requesting the recall of a Director, the Board, not later than the 10th day after the date the petition is submitted, shall mail a written notice of the petition and the date of its submission to each registered voter in the District.

(c) Not later than the 30th day after the date a petition requesting the recall of a Director is submitted, the Board shall order an election on the question of recalling the Director.

(d) A recall election under this section may be held on any uniform election date.

(e) If a majority of the District voters voting at an election held under this section favor the recall of the Director, the Director is recalled and ceases to be a Director.

Sec. 10A. All Board reimbursements and expenditures must be approved by the Board in a regularly scheduled meeting.

Sec. 10B. The Board may not select the same auditor to conduct an audit required by Section 49.191, Water Code, for more than three consecutive annual audits.

SECTION 4A.04. Sections 7, 27A, 27D, 27F, 27G, and 33A, Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, are repealed.

SECTION 4A.05. Not later than one month after the effective date of this article under Section 2.02 of this Act:

(1) all functions and activities performed immediately before that date by the Bexar Metropolitan Water District are transferred to the Alamo Water District;

(2) a rule, form, policy, procedure, or decision of the Bexar Metropolitan Water District continues in effect as a rule, form, policy, procedure, or decision of the Alamo Water District and remains in effect until amended or replaced by the Alamo Water District;

(3) a reference in law or administrative rule to the Bexar Metropolitan Water District means the Alamo Water District;

(4) all money, contracts, leases, rights, property, records, and bonds and other obligations of the Bexar Metropolitan Water District are transferred to the Alamo Water District;

(5) a court case, administrative proceeding, contract negotiation, or other proceeding involving the Bexar Metropolitan Water District is transferred without change in status to the Alamo Water District, and the Alamo Water District assumes, without a change in status, the position of the Bexar Metropolitan Water District in a negotiation or proceeding relating to an activity transferred by this article to the Alamo Water District to which the Bexar Metropolitan Water District is a party; and

(6) an employee of the Bexar Metropolitan Water District who earns less than \$50,000 per year becomes an employee of the Alamo Water District.

SECTION 4A.06. (a) Not later than the transfer under Section 4A.05 of this article, commissioners courts shall appoint the initial board of the Alamo Water District as follows:

(1) five members appointed by the Commissioners Court of Bexar County;  
(2) one member appointed by the Commissioners Court of Atascosa County; and

(3) one member appointed by the Commissioners Court of Medina County.

(b) The initial board serves until directors are elected as provided by Section 8, Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, as amended by this article, on the first uniform election date in November following the date the district is created that allows compliance with that section.

(c) The initial board may not include a person serving as a director on the day before the effective date of this article.

(d) Sections 8B(a)(1), 8A(a)(3), 8A(a)(4), 8A(b), 8B(a), 8B(c), and 8B(f), Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, as added by this article, do not apply to an initial director.

(e) The initial board shall draw seven single-member voting districts in the district according to Section 8(a), Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, as amended by this article.

SECTION 4A.07. The first members of the board of directors of the Alamo Water District elected under the changes in law made by this article shall agree on, or draw lots to determine, which member's term expires one year from the date the term began, and which member's term expires two years from the date the term began.

SECTION 4A.08. The boundaries of the Alamo Water District are coterminous with the boundaries of the Bexar Metropolitan Water District as they existed immediately before the effective date of this article under Section 2.02 of this Act.

#### **Floor Amendment No. 9**

Amend **CSSB 341** (senate committee report) as follows:

(1) In SECTION 4.01 of the bill in added Section 55, Chapter 306, Acts of the 49th Legislature, Regular Session, 1945 (page 27, line 11) between "System" and "." insert "; after integration described by Section 52 of this Act, the advisory committee shall continue to advise the System on the planning, development and expansion of services and infrastructure in the area outside the corporate boundaries of the largest municipality served by the System."

(2) In SECTION 4.01 of the bill in added Section 55, Chapter 306, Acts of the 49th Legislature, Regular Session, 1945 (page 27, line 16 and 17) strike "Until the integration described by Section 52 of this Act is complete, the" and substitute "The".

#### **Floor Amendment No. 10**

Amend **CSSB 341** (house committee report) as follows:

(1) In SECTION 2.01(e) of the bill (page 10, line 5), after the quotation mark, insert "The ballot proposition must also include a valuation of District assets and liabilities as determined by an entity with no financial ties to the District or a municipality located in the District."

(2) In SECTION 2A.02(e) of the bill (page 12, line 24), after the quotation mark, insert "The ballot proposition must also include a valuation of District assets and liabilities as determined by an entity with no financial ties to the District or a municipality located in the District."

**Floor Amendment No. 11**

Amend **CSSB 341** (house committee report) as follows:

(1) In the recital to SECTION 4.01 of the bill (page 22, line 24), between "52," and "53," insert "52B,".

(2) In SECTION 4.01 of the bill, after added Section 52, Chapter 306, Acts of the 49th Legislature, Regular Session, 1945 (page 25, between lines 26 and 27), insert the following:

Sec. 52B. (a) The rural contracts review board consists of three members appointed as follows:

(1) one member appointed by the Commissioners Court of Bexar County;

(2) one member appointed by the Commissioners Court of Medina County;

and

(3) one member appointed by the Commissioners Court of Atascosa County.

(b) The System shall renew a contract with a water supply company, water district, or municipal water utility for emergency water supply or interconnect fees that was transferred or assigned to the System as a result of the dissolution of the District on the same terms as the original contract, unless a change in the terms of the contract is approved by the rural contracts review board. The rural contracts review board may not approve a change in the terms of a renewal contract that is unfair to the water supply company, water district, or municipal water utility.

The amendments were read.

Senator Uresti moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 341** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Uresti, Chair; Wentworth, Van de Putte, Fraser, and Hegar.

**SENATE BILL 1198 WITH HOUSE AMENDMENT**

Senator Rodriguez called **SB 1198** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

**Committee Amendment No. 1**

Amend **SB 1198** (senate engrossed version) as follows:

(1) Add the following appropriately numbered SECTION to Article 1 of the bill and renumber subsequent SECTIONS of Article 1 as appropriate:

SECTION 1. \_\_\_\_ . Section 83(a), Texas Probate Code, is amended to read as follows:

(a) Where Original Application Has Not Been Heard. If, after an application for the probate of a will or for the appointment of a general personal representative has been filed, and before such application has been heard, an application for the probate of a will of the decedent, not theretofore presented for probate, is filed, the court shall hear both applications together and determine what instrument, if any, should be admitted to probate, or whether the decedent died intestate. The court may not sever or bifurcate the proceeding on the applications.

(2) In SECTION 1.24 of the bill, strike Subdivisions (5) and (6) in amended Section 149C(a), Texas Probate Code (page 42, line 24, through page 43, line 3), and substitute the following:

(5) the independent executor is proved to have been guilty of gross misconduct or gross mismanagement in the performance of the independent executor's duties; [øf]

(6) the independent executor becomes an incapacitated person, or is sentenced to the penitentiary, or from any other cause becomes legally incapacitated from properly performing the independent executor's fiduciary duties; or

(7) the independent executor becomes incapable of properly performing the independent executor's fiduciary duties due to a material conflict of interest.

(3) In SECTION 1.42 of the bill, between Subsections (d) and (e) of that section (page 61, between lines 4 and 5), insert the following:

(d-1) The changes in law made by this article to Section 83(a), Texas Probate Code, apply only to an application for the probate of a will or administration of the estate of a decedent that is pending or filed on or after the effective date of this Act.

(4) Add the following appropriately numbered SECTION to Article 2 of the bill and renumber subsequent SECTIONS of Article 2 as appropriate:

SECTION 2. \_\_\_\_ Section 256.101, Estates Code, as effective January 1, 2014, is amended to read as follows:

Sec. 256.101. PROCEDURE ON FILING OF SECOND APPLICATION WHEN ORIGINAL APPLICATION HAS NOT BEEN HEARD. (a) If, after an application for the probate of a decedent's will or the appointment of a personal representative for the decedent's estate has been filed but before the application is heard, an application is filed for the probate of a will of the same decedent that has not previously been presented for probate, the court shall:

(1) hear both applications together; and

(2) determine:

(A) if both applications are for the probate of a will, which will should be admitted to probate, if either, or whether the decedent died intestate; or

(B) if only one application is for the probate of a will, whether the will should be admitted to probate or whether the decedent died intestate.

(b) The court may not sever or bifurcate the proceeding on the applications described in Subsection (a).

(5) In SECTION 2.52 of the bill, strike added Sections 404.003(a)(5) and (6), Estates Code (page 121, lines 12 through 18), and substitute the following:

(5) the independent executor is proved to have been guilty of gross misconduct or gross mismanagement in the performance of the independent executor's duties;

(6) the independent executor becomes an incapacitated person, or is sentenced to the penitentiary, or from any other cause becomes legally incapacitated from properly performing the independent executor's fiduciary duties; or

(7) the independent executor becomes incapable of properly performing the independent executor's fiduciary duties due to a material conflict of interest.

(6) In SECTION 2.53(b) of the bill, strike Subdivisions (1), (2), and (3) (page 136, lines 18-23) and substitute the following:

(1) Sections 4D, 4H, 48, 49, 59, 64, 67, 83(a), 84, 250, 260, 436, 439, 452, 471, 472, and 473, as amended by Article 1 of this Act; and

(2) Sections 6A, 6B, 6C, 6D, 8A, 8B, 145A, 145B, and 145C, as added by Article 1 of this Act.

The amendment was read.

Senator Rodriguez moved that the Senate do not concur in the House amendment, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 1198** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Rodriguez, Chair; Harris, Carona, Wentworth, and Uresti.

### SENATE BILL 89 WITH HOUSE AMENDMENTS

Senator Lucio called **SB 89** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

#### Floor Amendment No. 1

Amend **SB 89** (house committee printing) as follows:

(1) In SECTION 1 of the bill, in added Section 12.0029(j), Agriculture Code (page 4, line 5), between "legislature" and "a report", insert "by e-mail".

(2) In SECTION 1 of the bill, immediately following added Section 12.0029(j), Agriculture Code (page 4, between lines 18 and 19), insert the following:

(k) The department shall post and maintain on the department's Internet website the most recent report required by Subsection (j).

#### Floor Amendment No. 2

Amend **SB 89** (house committee printing) as follows:

(1) In SECTION 1 of the bill, in added Section 12.0029(f)(1)(A), Agriculture Code (page 2, line 23), strike "department" and substitute "district".

(2) In SECTION 1 of the bill, in added Section 12.0029(f), Agriculture Code (page 2, line 18), strike "may" and substitute "shall".

(3) In SECTION 1 of the bill, in added Section 12.0029(f), Agriculture Code (page 2, line 20), strike "only".

(4) In SECTION 1 of the bill, in added Section 12.0029(f)(1)(A)(ii), Agriculture Code (page 3, line 1), strike "insurmountable".

(5) In SECTION 1 of the bill, in added Section 12.0029(f)(1)(A)(ii), Agriculture Code (page 3, lines 3 and 4), strike "despite consultation by the district with public transit providers".

(6) In SECTION 1 of the bill, in added Section 12.0029(f)(1)(A)(iii), Agriculture Code (page 3, lines 7 and 8), strike "and the unavailability of an appropriate alternate provider or site".

(7) In SECTION 1 of the bill, in added Section 12.0029(f)(2), Agriculture Code (page 3, lines 17-18), strike "the department using the criteria and methodology established under Subsection (g)" and substitute "the district".

(8) In SECTION 1 of the bill, strike added Section 12.0029(g), Agriculture Code (page 3, lines 19-23), and reletter subsequent subsections of added Section 12.0029, Agriculture Code, accordingly.

(9) In SECTION 1 of the bill, in added Section 12.0029(h), Agriculture Code (page 3, line 24), strike "one-year" and substitute "two-year".

(10) In SECTION 1 of the bill, in added Section 12.0029(i), Agriculture Code (page 3, line 27, through page 4, line 1), strike "and has been unable to provide to the department a list of possible providers for the summer nutrition program".

(11) In SECTION 1 of the bill, in added Section 12.0029(i), Agriculture Code (page 4, line 3), immediately following "nutrition program.", insert "Each field office shall compile and maintain a list of possible alternate providers."

(12) In SECTION 1 of the bill, in added Section 12.0029(j)(3), Agriculture Code (page 4, lines 17 and 18), between "profit made" and "through", insert "or loss incurred".

(13) Strike SECTION 3 of the bill (page 4, lines 21-25) and renumber SECTION 4 of the bill as SECTION 3.

The amendments were read.

Senator Lucio moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 89** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Lucio, Chair; Seliger, Deuell, Van de Putte, and Shapiro.

### **SENATE BILL 747 WITH HOUSE AMENDMENTS**

Senator Carona called **SB 747** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

**Amendment**

Amend **SB 747** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to the professions regulated by the Texas Real Estate Commission.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 1101.002, Occupations Code, is amended by amending Subdivision (1) and adding Subdivision (1-a) to read as follows:

(1) "Broker":

(A) means a person who, in exchange for a commission or other valuable consideration or with the expectation of receiving a commission or other valuable consideration, performs for another person one of the following acts:

(i) sells, exchanges, purchases, or leases real estate;

(ii) offers to sell, exchange, purchase, or lease real estate;

(iii) negotiates or attempts to negotiate the listing, sale, exchange, purchase, or lease of real estate;

(iv) lists or offers, attempts, or agrees to list real estate for sale, lease, or exchange;

(v) ~~appraises or offers, attempts, or agrees to appraise real estate;~~

~~(vi) auctions or offers, attempts, or agrees to auction real estate;~~

(vi) ~~(vii)~~ deals in options on real estate, including buying, selling, or offering to buy or sell options on real estate;

(vii) ~~(viii)~~ aids or offers or attempts to aid in locating or obtaining real estate for purchase or lease;

(viii) ~~(ix)~~ procures or assists in procuring a prospect to effect the sale, exchange, or lease of real estate; ~~or~~

(ix) ~~(x)~~ procures or assists in procuring property to effect the sale, exchange, or lease of real estate;

(x) controls the acceptance or deposit of rent from a resident of a single-family residential real property unit; or

(xi) provides a written analysis, opinion, or conclusion relating to the estimated price of real property if the analysis, opinion, or conclusion:

(a) is not referred to as an appraisal;

(b) is provided in the ordinary course of the person's business;

and

(c) is related to the actual or potential management, acquisition, disposition, or encumbrance of an interest in real property; and

(B) includes a person who:

(i) is employed by or for an owner of real estate to sell any portion of the real estate; or

(ii) engages in the business of charging an advance fee or contracting to collect a fee under a contract that requires the person primarily to promote the sale of real estate by:

(a) listing the real estate in a publication primarily used for listing real estate; or

(b) referring information about the real estate to brokers.

(1-a) "Business entity" means a "domestic entity" or "foreign entity" as those terms are defined by Section 1.002, Business Organizations Code.

SECTION 2. Section 1101.005, Occupations Code, is amended to read as follows:

Sec. 1101.005. APPLICABILITY OF CHAPTER. This chapter does not apply to:

- (1) an attorney licensed in this ~~any~~ state;
- (2) an attorney-in-fact authorized under a power of attorney to conduct a real estate transaction;
- (3) a public official while engaged in official duties;
- (4) an auctioneer licensed under Chapter 1802 while conducting the sale of real estate by auction if the auctioneer does not perform another act of a broker or salesperson;
- (5) a person conducting a real estate transaction under a court order or the authority of a will or written trust instrument;
- (6) a person employed by an owner in the sale of structures and land on which structures are located if the structures are erected by the owner in the course of the owner's business;
- (7) an on-site manager of an apartment complex;
- (8) an owner or the owner's employee who leases the owner's improved or unimproved real estate; or
- (9) ~~a partnership or limited liability partnership acting as a broker or salesperson through a partner who is a licensed broker; or~~  
~~(10)~~ a transaction involving:
  - (A) the sale, lease, or transfer of a mineral or mining interest in real property;
  - (B) the sale, lease, or transfer of a cemetery lot;
  - (C) the lease or management of a hotel or motel; or
  - (D) the sale of real property under a power of sale conferred by a deed of trust or other contract lien.

SECTION 3. Subchapter D, Chapter 1101, Occupations Code, is amended by adding Section 1101.161 to read as follows:

Sec. 1101.161. GIFTS, GRANTS, AND DONATIONS. The commission may solicit and accept a gift, grant, donation, or other item of value from any source to pay for any activity under this chapter or Chapter 1102 or 1103.

SECTION 4. Section 1101.301, Occupations Code, is amended by amending Subsection (c) and adding Subsection (d) to read as follows:

(c) In establishing accreditation standards for an educational program under Subsection (a), the commission shall adopt rules setting an examination passage rate benchmark for each category of license issued by the commission under this chapter or Chapter 1102. The benchmark must be based on the average percentage of examinees that pass the licensing exam on the first attempt. A program must meet or exceed the benchmark for each license category ~~[that require a program to establish that at least 55 percent of the program's graduates have passed a licensing exam the first time the exam has been taken by the graduates]~~ before the commission may renew the program's accreditation for the license category.



(d) The commission may deny an application for accreditation if the applicant owns or controls, or has previously owned or controlled, an educational program or course of study for which accreditation was revoked.

SECTION 5. Section 1101.351, Occupations Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) Unless a business entity holds a license issued under this chapter, the business entity may not act as a broker.

SECTION 6. Section 1101.352, Occupations Code, is amended by adding Subsection (d) to read as follows:

(d) At the time an application is submitted under Subsection (a), each applicant shall provide the commission with the applicant's current mailing address and telephone number, and e-mail address if available. The applicant shall notify the commission of any change in the applicant's mailing or e-mail address or telephone number during the time the application is pending.

SECTION 7. Section 1101.355, Occupations Code, is amended to read as follows:

Sec. 1101.355. ADDITIONAL GENERAL ELIGIBILITY REQUIREMENTS FOR ~~[CERTAIN]~~ BUSINESS ENTITIES. (a) To be eligible for a license under this chapter, a business entity must:

(1) ~~[a corporation must]~~ designate one of its managing officers as its agent for purposes of this chapter; and

(2) provide proof that the entity maintains errors and omissions insurance with a minimum annual limit of \$1 million for each occurrence if the designated agent owns less than 10 percent of the business entity ~~[a limited liability company must designate one of its managers as its agent for purposes of this chapter].~~

(b) A business entity ~~[corporation or limited liability company]~~ may not act as a broker unless the entity's designated agent is a licensed broker in active status and good standing according to the commission's records.

(c) A business entity that receives compensation on behalf of a license holder must be licensed as a broker under this chapter.

SECTION 8. Section 1101.356, Occupations Code, is amended by amending Subsection (a) and adding Subsection (b-1) to read as follows:

(a) An applicant for a broker license must provide to the commission satisfactory evidence that the applicant:

(1) has had at least four ~~[two]~~ years of active experience in this state as a license holder during the 60 ~~[36]~~ months preceding the date the application is filed; and

(2) has successfully completed at least 60 semester hours, or equivalent classroom hours, of postsecondary education, including:

(A) at least 18 semester hours or equivalent classroom hours of core real estate courses, two semester hours of which must be real estate brokerage; and

(B) at least 42 hours of core real estate courses or related courses accepted by the commission.

(b-1) The commission by rule shall establish what constitutes active experience for purposes of this section and Section 1101.357.

SECTION 9. Section 1101.357, Occupations Code, is amended to read as follows:

Sec. 1101.357. **BROKER LICENSE: ALTERNATE EXPERIENCE REQUIREMENTS FOR CERTAIN APPLICANTS.** An applicant for a broker license who does not satisfy the experience requirements of Section 1101.356 must provide to the commission satisfactory evidence that:

(1) the applicant:

(A) is a licensed real estate broker in another state;

(B) has had at least four [~~two~~] years of active experience in that state as a licensed real estate broker or salesperson during the 60 [~~36~~] months preceding the date the application is filed; and

(C) has satisfied the educational requirements prescribed by Section 1101.356; or

(2) the applicant was licensed in this state as a broker in the year preceding the date the application is filed.

SECTION 10. Section 1101.358, Occupations Code, is amended to read as follows:

Sec. 1101.358. **SALESPERSON LICENSE: EDUCATION REQUIREMENTS.**

(a) An applicant for a salesperson license must provide to the commission satisfactory evidence that the applicant has completed at least 12 [~~14~~] semester hours, or equivalent classroom hours, of postsecondary education consisting of [~~including~~]:

(1) at least four semester hours of core real estate courses on principles of real estate; and

(2) at least two semester hours of each of the following core real estate courses:

(A) agency law;

(B) contract law; [~~and~~]

(C) contract forms and addendums; and

(D) real estate finance [~~one additional core real estate course; and~~

~~(3) at least four semester hours of core real estate courses or related courses].~~

(b) The commission shall waive the education requirements of Subsection (a) if the applicant has been licensed in this state as a broker or salesperson within the six months [~~year~~] preceding the date the application is filed.

(c) If an applicant for a salesperson license was licensed as a salesperson within the six months [~~year~~] preceding the date the application is filed and the license was issued under the conditions prescribed by Section 1101.454, the commission shall require the applicant to provide the evidence of successful completion of education requirements that would have been required if the license had been maintained without interruption during the preceding six months [~~year~~].

SECTION 11. Section 1101.367(c), Occupations Code, is amended to read as follows:

(c) As a condition of returning to active status, an inactive salesperson whose license is not subject to the ~~[annual]~~ education requirements of Section 1101.454 must provide to the commission proof of attending at least 15 hours of continuing education as specified by Section 1101.455 during the two years preceding the date the application to return to active status is filed.

SECTION 12. Section 1101.401(f), Occupations Code, is amended to read as follows:

(f) An applicant must satisfy the examination requirement not later than one year ~~[six months]~~ after the date the license application is filed.

SECTION 13. Sections 1101.451(e) and (f), Occupations Code, are amended to read as follows:

(e) A person whose license has been expired for 90 days or less may renew the license by paying to the commission a fee equal to 1-1/2 times the required renewal fee. If a license has been expired for more than 90 days but less than six months ~~[one year]~~, the person may renew the license by paying to the commission a fee equal to two times the required renewal fee.

(f) If a person's license has been expired for six months ~~[one year]~~ or longer, the person may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license.

SECTION 14. Section 1101.452(a), Occupations Code, is amended to read as follows:

(a) To renew an active license that is not subject to the ~~[annual]~~ education requirements of Section 1101.454, the license holder must provide to the commission proof of compliance with the continuing education requirements of Section 1101.455.

SECTION 15. Section 1101.453, Occupations Code, is amended to read as follows:

Sec. 1101.453. ADDITIONAL RENEWAL REQUIREMENTS FOR ~~[CERTAIN]~~ BUSINESS ENTITIES. (a) To renew a license under this chapter, a business entity must:

(1) ~~[a corporation must]~~ designate one of its managing officers as its agent for purposes of this chapter; and

(2) provide proof that the entity maintains errors and omissions insurance with a minimum annual limit of \$1 million for each occurrence if the designated agent owns less than 10 percent of the business entity ~~[a limited liability company must designate one of its managers as its agent for purposes of this chapter].~~

(b) A business entity ~~[corporation or limited liability company]~~ may not act as a broker unless the entity's designated agent is a licensed broker in active status and good standing according to the commission's records.

SECTION 16. Section 1101.454(a), Occupations Code, is amended to read as follows:

(a) An applicant applying for the first renewal of a salesperson license must provide to the commission satisfactory evidence of completion of at least 18 semester hours, or equivalent classroom hours, ~~[of postsecondary education, including 14 hours]~~ of core real estate courses.

SECTION 17. Section 1101.455(b), Occupations Code, is amended to read as follows:

(b) A license holder who is not subject to the ~~[annual]~~ education requirements of Section 1101.454 must attend during the term of the current license at least 15 classroom hours of continuing education courses approved by the commission.

SECTION 18. Subchapter J, Chapter 1101, Occupations Code, is amended by adding Section 1101.458 to read as follows:

Sec. 1101.458. ADDITIONAL EDUCATION REQUIREMENTS FOR CERTAIN LICENSE HOLDERS. (a) A broker who sponsors a salesperson, or a license holder who supervises another license holder, must attend during the term of the current license at least six classroom hours of broker responsibility education courses approved by the commission.

(b) The commission by rule shall prescribe the title, content, and duration of broker responsibility education courses required under this section.

(c) Broker responsibility education course hours may be used to satisfy the hours described by Section 1101.455(f).

(d) This section does not apply to a broker who is exempt from continuing education requirements under Section 1101.456.

SECTION 19. Section 1101.502(b), Occupations Code, is amended to read as follows:

(b) To be eligible to receive a certificate of registration or a renewal certificate under this subchapter, a business ~~[corporation, limited liability company, partnership, limited liability partnership, or other]~~ entity must designate as its agent one of its ~~managing officers[, partners, or managers]~~ who is registered under this subchapter.

SECTION 20. Subchapter K, Chapter 1101, Occupations Code, is amended by adding Section 1101.5041 to read as follows:

Sec. 1101.5041. CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR CERTIFICATE. An applicant for an original certificate of registration or renewal of a certificate of registration must comply with the criminal history record check requirements of Section 1101.3521.

SECTION 21. Section 1101.552, Occupations Code, is amended by adding Subsection (e) to read as follows:

(e) A license holder shall provide the commission with the license holder's current mailing address and telephone number, and e-mail address if available. A license holder shall notify the commission of a change in the license holder's mailing or e-mail address or telephone number.

SECTION 22. Section 1101.554, Occupations Code, is amended to read as follows:

Sec. 1101.554. COPY [CUSTODY] OF SALESPERSON LICENSE. ~~[(a)]~~ The commission shall deliver or mail a copy of each salesperson license to the broker with whom the salesperson is associated.

~~[(b) The broker shall keep the license under the broker's custody and control.]~~

SECTION 23. Subchapter N, Chapter 1101, Occupations Code, is amended by adding Section 1101.6561 to read as follows:

Sec. 1101.6561. SUSPENSION OR REVOCATION OF EDUCATIONAL PROGRAM ACCREDITATION. The commission may suspend or revoke an accreditation issued under Subchapter G or take any other disciplinary action authorized by this chapter if the provider of an educational program or course of study violates this chapter or a rule adopted under this chapter.

SECTION 24. Section 1101.356(c), Occupations Code, is repealed.

SECTION 25. (a) Not later than December 1, 2011, the Texas Real Estate Commission shall adopt rules necessary to implement Section 1101.301, Occupations Code, as amended by this Act, and Sections 1101.356(b-1) and 1101.458, Occupations Code, as added by this Act.

(b) Section 1101.552(e), Occupations Code, as added by this Act, applies only to a broker or salesperson license issued or renewed on or after December 1, 2011. A license issued or renewed before that date is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

(c) Section 1101.502(b), Occupations Code, as amended by this Act, and Section 1101.5041, Occupations Code, as added by this Act, apply only to an application for a certificate of registration or renewal of a certificate of registration filed with the Texas Real Estate Commission on or after December 1, 2011. An application filed before that date is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

(d) Section 1101.458, Occupations Code, as added by this Act, applies only to a license issued or renewed on or after September 1, 2012. A license issued or renewed before that date is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

(e) Sections 1101.352, 1101.355, and 1101.401, Occupations Code, as amended by this Act, apply only to an application for a real estate broker or salesperson license submitted to the Texas Real Estate Commission on or after the effective date of this Act. An application for a license submitted before that date is governed by the law in effect on the date the application was submitted, and the former law is continued in effect for that purpose.

(f) Sections 1101.356 and 1101.357, Occupations Code, as amended by this Act, apply only to an application for a real estate broker license submitted to the Texas Real Estate Commission on or after January 1, 2012. An application for a license submitted before that date is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

(g) Section 1101.358, Occupations Code, as amended by this Act, applies only to an application for a real estate salesperson license submitted to the Texas Real Estate Commission on or after September 1, 2012. An application for a license submitted before that date is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

(h) Section 1101.454, Occupations Code, as amended by this Act, applies only to the renewal of a real estate salesperson license that expires on or after September 1, 2012. A license that expires before that date is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

(i) Sections 1101.451 and 1101.453, Occupations Code, as amended by this Act, apply only to the renewal of a real estate broker or salesperson license that expires on or after the effective date of this Act. A license that expires before that date is governed by the law in effect on the date the license expires, and the former law is continued in effect for that purpose.

(j) A person who holds a license as a real estate broker issued before the effective date of this Act may continue to renew that license without complying with the changes in law made by this Act to Sections 1101.356 and 1101.357, Occupations Code.

(k) Sections 1101.002 and 1101.005, Occupations Code, as amended by this Act, apply, with respect to conduct that constitutes acting as a broker or salesperson under Chapter 1101, Occupations Code, only to conduct engaged in on or after the effective date of this Act. Conduct engaged in before the effective date of this Act is governed by the law in effect when the conduct was engaged in, and the former law is continued in effect for that purpose.

SECTION 26. This Act takes effect September 1, 2011.

### **Floor Amendment No. 1**

Amend **CSSB 747** (house committee report), as follows by adding the following, appropriately numbered sections:

SECTION \_\_\_\_\_. Subtitle A, Title 7, Occupations Code, is amended by adding Chapter 1105 to read as follows:

#### CHAPTER 1105. SELF-DIRECTED AND SEMI-INDEPENDENT STATUS OF TEXAS REAL ESTATE COMMISSION

Sec. 1105.001. DEFINITIONS. In this section:

- (1) "Agency" means the commission and the board.
- (2) "Board" means the Texas Appraiser Licensing and Certification Board.
- (3) "Commission" means the Texas Real Estate Commission.

Sec. 1105.002. SELF-DIRECTED AND SEMI-INDEPENDENT STATUS.

(a) Notwithstanding any other provision of law, the agency is self-directed and semi-independent as specified by this chapter. Any Act of the 82nd Legislature that relates to the agency and that is inconsistent with the agency being self-directed and semi-independent may be implemented by the administrator of the agency only on authorization by the agency.

(b) This chapter does not affect the board's status as an independent subdivision of the commission as provided by Section 1103.051.

Sec. 1105.003. BUDGET, REVENUES, AND EXPENSES.

(a) Notwithstanding any other provision of law, including the General Appropriations Act, the commission and the board shall each adopt a separate budget annually using generally accepted accounting principles.

(b) The commission shall be responsible for all direct and indirect costs of the commission's existence and operation. The board shall be responsible for all direct and indirect costs of the board's existence and operation. The agency may not directly or indirectly cause the general revenue fund to incur any cost.

(c) Notwithstanding any other provision of law, the commission and the board may each set the amounts of the respective fees, penalties, charges, and revenues required or permitted by statute or rule as necessary for the purpose of carrying out the separate functions of the commission and the board and funding the respective budgets of the commission and the board adopted and approved under Subsection (a).

(d) Except as provided by Subsection (e), all fees and funds collected by the commission or the board and any funds appropriated to the commission or the board shall be deposited in interest-bearing deposit accounts in the Texas Treasury Safekeeping Trust Company. The comptroller shall contract with the commission and the board for the maintenance of the deposit accounts under terms comparable to a contract between a commercial banking institution and the institution's customers.

(e) A fee collected under:

(1) Section 1101.153(b)(2) shall be deposited in Fund 0193 in the state treasury; and

(2) Section 1101.153(b)(3) shall be deposited in Fund 0001 in the state treasury.

(f) Not later than August 31 of each fiscal year, the agency shall remit \$450,000 to the general revenue fund.

(g) The fiscal year for the agency begins on September 1 and ends on August 31.

Sec. 1105.004. AUDITS. (a) This chapter does not affect the duty of the state auditor to audit the agency. The state auditor shall enter into a contract and schedule with the agency to conduct audits.

(b) Not later than August 31 of each fiscal year, the agency shall remit a nonrefundable retainer to the state auditor in an amount not less than \$10,000. The agency shall reimburse the state auditor for all costs incurred, in excess of the aggregate nonrefundable retainer amounts paid each fiscal year, in performing the audits and shall provide to the governor a copy of any audit performed.

Sec. 1105.005. RECORDS; REPORTING REQUIREMENTS. (a) The agency shall keep financial and statistical information as necessary to disclose completely and accurately the financial condition and results of operations of the agency.

(b) Before the beginning of each regular session of the legislature, the agency shall submit to the legislature and the governor a report describing all of the agency's activities in the previous biennium. The report must include:

(1) an audit as required by Section 1105.004;

(2) a financial report of the previous fiscal year, including reports on the financial condition and results of operations;

(3) a description of all changes in fees imposed on regulated persons;

- (4) a report on changes in the regulatory jurisdiction of the agency; and
- (5) a list of all new rules adopted or repealed.

(c) In addition to the reporting requirements of Subsection (b), not later than November 1 of each year, the agency shall submit to the governor, the committee of each house of the legislature that has jurisdiction over appropriations, and the Legislative Budget Board a report that contains:

(1) the salary for all agency personnel and the total amount of per diem expenses and travel expenses paid for all agency employees;

(2) the total amount of per diem expenses and travel expenses paid for each member of the agency;

(3) the agency's operating plan and the annual budgets of the commission and the board; and

(4) a detailed report of all revenue received and all expenses incurred by the agency in the previous 12 months.

Sec. 1105.006. ABILITY TO CONTRACT. (a) To carry out and promote the objectives of this chapter, the commission or board may enter into contracts and do all other acts incidental to those contracts that are necessary for the administration of the commission's or board's respective affairs and for the attainment of the commission's or board's respective purposes, except as limited by Subsection (b).

(b) Any indebtedness, liability, or obligation of the commission or board incurred under this section may not:

(1) create a debt or other liability of this state or another entity other than the commission or board, as appropriate; or

(2) create any personal liability on the part of the members or employees of the agency.

Sec. 1105.007. PROPERTY. The commission or board may:

(1) acquire by purchase, lease, gift, or any other manner provided by law and maintain, use, and operate any real, personal, or mixed property, or any interest in property, necessary or convenient to the exercise of the respective powers, rights, privileges, or functions of the commission or board;

(2) sell or otherwise dispose of any real, personal, or mixed property, or any interest in property, that the commission or board, as appropriate, determines is not necessary or convenient to the exercise of the commission's or board's respective powers, rights, privileges, or functions;

(3) construct, extend, improve, maintain, and reconstruct, or cause to construct, extend, improve, maintain, and reconstruct, and use and operate all facilities necessary or convenient to the exercise of the respective powers, rights, privileges, or functions of the commission or board; and

(4) borrow money, as may be authorized from time to time by an affirmative vote of a two-thirds majority of the commission or board, as appropriate, for a period not to exceed five years if necessary or convenient to the exercise of the commission's or board's respective powers, rights, privileges, or functions.



Sec. 1105.008. SUITS. (a) The office of the attorney general shall represent the agency in any litigation.

(b) Not later than August 31 of each fiscal year, the agency shall remit a nonrefundable retainer to the office of the attorney general in an amount of not less than \$75,000. The nonrefundable retainer shall be applied to any services provided to the agency. If additional litigation services are required, the attorney general may assess and collect from the agency reasonable attorney's fees, in excess of the aggregate nonrefundable retainer amount paid each fiscal year, associated with any litigation under this section.

Sec. 1105.009. ADMINISTRATIVE HEARINGS. (a) Not later than August 31 of each fiscal year, the agency shall remit a nonrefundable retainer to the State Office of Administrative Hearings in an amount of not less than \$75,000 for hearings conducted by the State Office of Administrative Hearings under a law administered by the commission or the board.

(b) The nonrefundable retainer shall be applied to the costs associated with conducting the hearings. If additional costs are incurred, the State Office of Administrative Hearings may assess and collect from the agency reasonable fees, in excess of the aggregate nonrefundable retainer amount paid each fiscal year, associated with conducting the hearings.

Sec. 1105.010. POST-PARTICIPATION LIABILITY. (a) If the agency no longer has status under this chapter as a self-directed semi-independent agency for any reason, the agency shall be liable for any expenses or debts incurred by the agency during the time the agency was a self-directed semi-independent agency. This state is not liable for any expense or debt covered by this subsection, and money from the general revenue fund may not be used to repay the expense or debt.

(b) If the agency no longer has status under this chapter as a self-directed semi-independent agency for any reason, ownership of any property or other asset acquired by the agency during the time the agency was a self-directed semi-independent agency, including unexpended fees in a deposit account in the Texas Treasury Safekeeping Trust Company, shall be transferred to this state.

Sec. 1105.011. DUE PROCESS; OPEN GOVERNMENT. The commission and the board are governmental bodies for purposes of Chapters 551 and 552, Government Code. The agency is a state agency for purposes of Chapters 2001 and 2005, Government Code.

Sec. 1105.012. MEMBERSHIP IN EMPLOYEES RETIREMENT SYSTEM. Employees of the agency are members of the Employees Retirement System of Texas under Chapter 812, Government Code, and the agency's transition to independent status as provided by this chapter has no effect on their membership or any benefits under that system.

SECTION \_\_\_\_. Section 1101.059(c), Occupations Code, is amended to read as follows:

(c) A person appointed to the commission is entitled to reimbursement~~[, as provided by the General Appropriations Act,]~~ for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

SECTION \_\_\_\_\_. Section 1101.101(d), Occupations Code, is amended to read as follows:

(d) The commission shall determine the salaries of the administrator, officers, and employees of the commission. ~~[The amounts of the salaries may not exceed the amounts specified by the General Appropriations Act.]~~

SECTION \_\_\_\_\_. Section 1103.103(b), Occupations Code, is repealed.

SECTION \_\_\_\_\_. (a) To provide a reasonable period for the Texas Real Estate Commission to establish itself as a self-directed and semi-independent agency under Chapter 1105, Occupations Code, as added by this Act, the following amounts are appropriated out of the general revenue fund:

(1) for the state fiscal year ending August 31, 2012, an amount equal to 50 percent of the amount of general revenue appropriated to the agency for the state fiscal year ending August 31, 2011; and

(2) for the state fiscal year ending August 31, 2013, an amount equal to 50 percent of the amount of general revenue appropriated to the agency for the state fiscal year ending August 31, 2011.

(b) Subject to Chapter 1105, Occupations Code, as added by this Act, the appropriations made by Subsection (a) of this section may be spent by the Texas Real Estate Commission as the commission directs. The Texas Real Estate Commission shall repay to the general revenue fund the appropriation made to the commission for the state fiscal year ending August 31, 2012, not later than that date and as funds become available. The Texas Real Estate Commission shall repay to the general revenue fund the appropriation made to the commission for the state fiscal year ending August 31, 2013, not later than that date and as funds become available.

SECTION \_\_\_\_\_. The transfer of the Texas Real Estate Commission to self-directed and semi-independent status under Chapter 1105, Occupations Code, as added by this Act, and the expiration of self-directed and semi-independent status may not act to cancel, suspend, or prevent:

(1) any debt owed to or by the commission or the Texas Appraiser Licensing and Certification Board;

(2) any fine, tax, penalty, or obligation of any party;

(3) any contract or other obligation of any party; or

(4) any action taken by the commission or the board in the administration or enforcement of the commission's or the board's duties.

SECTION \_\_\_\_\_. The Texas Real Estate Commission and the Texas Appraiser Licensing and Certification Board shall continue to have and exercise the powers and duties allocated to the commission or the board in the commission's or the board's enabling legislation, except as specifically amended by this Act.

SECTION \_\_\_\_\_. Title to or ownership of all supplies, materials, records, equipment, books, papers, and furniture used by the Texas Real Estate Commission or the Texas Appraiser Licensing and Certification Board is transferred to the commission or the board, respectively. This Act does not affect any property owned by the commission or the board on or before the effective date of this Act.

SECTION \_\_\_\_\_. The Texas Real Estate Commission and the Texas Appraiser Licensing and Certification Board shall relocate to state-owned office space not later than September 1, 2011, and shall pay rent to this state in a reasonable amount to be

determined by the Texas Facilities Commission for the use and occupancy of the office space. Aggregate rental payments may not be less than \$550,000 per fiscal year for the state fiscal years ending August 31, 2012, and August 31, 2013. Aggregate rental payments may not be less than \$425,000 per fiscal year for each state fiscal year ending August 31, 2014, August 31, 2015, and August 31, 2016. The Texas Real Estate Commission and the Texas Appraiser Licensing and Certification Board will not be liable for any rent due under any contract with the Texas Facilities Commission for state-owned office space upon revocation of the agency's self-directed, semi-independent status.

The amendments were read.

Senator Carona moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 747** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Carona, Chair; Eltife, Jackson, Lucio, and Watson.

#### **SENATE BILL 144 WITH HOUSE AMENDMENT**

Senator West called **SB 144** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

#### **Floor Amendment No. 1**

Amend **SB 144** (house committee report) as follows:

(1) In SECTION 1 of the bill, in amended Article 48.01, Code of Criminal Procedure (page 1, line 8), between the period and "In", insert "(a)".

(2) In SECTION 1 of the bill, in amended Article 48.01, Code of Criminal Procedure (page 1, between lines 21 and 22), insert the following:

(b) The Board of Pardons and Paroles may recommend that the Governor grant a pardon to a person who:

(1) is placed on deferred adjudication community supervision under Section 5, Article 42.12, and subsequently receives a discharge and dismissal under Section 5(c) of that article;

(2) is not, at any time after the date of discharge and dismissal, convicted of or charged with a criminal offense, other than an offense under the Transportation Code punishable by fine only; and

(3) on or after the 10th anniversary of the date of discharge and dismissal, submits a written request to the board for a recommendation under this subsection.

The amendment was read.

Senator West moved that the Senate do not concur in the House amendment, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 144** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators West, Chair; Hegar, Carona, Ellis, and Huffman.

### **SENATE BILL 563 WITH HOUSE AMENDMENT**

Senator Jackson called **SB 563** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

#### **Floor Amendment No. 1**

Amend **SB 563** by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_ . Subchapter D, Chapter 301, Labor Code, is amended by adding Section 301.068 to read as follows:

Sec. 301.068. EFFICIENCY PILOT PROGRAM. (a) The commission shall establish a pilot program to:

(1) improve the efficiency and quality of commission operations while reducing costs; and

(2) adopt a structured approach for identifying the wasteful use of state resources and improving commission processes.

(b) In implementing the pilot program, the commission shall use:

(1) a methodology that includes a define, measure, analyze, improve, and control structure for reviewing project management;

(2) a continuous improvement technique that:

(A) identifies value and a value stream;

(B) creates a flow for activities;

(C) allows consumers to pull products or services through the process;

and

(D) allows for the process to be perfected over time; and

(3) a measurement system analysis to evaluate data.

(c) The commission shall conduct an internal performance audit to assess the effectiveness of the pilot program implemented under this section.

(d) Not later than August 1, 2012, the commission shall submit a written report of the results of the performance audit to the:

(1) governor;

(2) lieutenant governor;

(3) speaker of the house of representatives;

(4) Senate Committee on Government Organization;

(5) House Government Efficiency and Reform Committee; and

(6) house and senate committees with primary jurisdiction over state affairs.

(e) The commission shall implement the pilot program from available funds that may be used for that purpose.

(f) A state agency, other than the commission, may implement the pilot program established under this section with respect to the agency. An agency that implements the pilot program shall:

(1) conduct the performance audit and submit the written report in the time and manner described by Subsections (c) and (d); and

(2) use available resources to fund the pilot program.

(g) A report required by this section may be submitted electronically.

(h) This section expires September 1, 2013.

The amendment was read.

Senator Jackson moved that the Senate do not concur in the House amendment, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 563** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Jackson, Chair; Eltife, Watson, Fraser, and Harris.

### **SENATE BILL 819 WITH HOUSE AMENDMENT**

Senator Harris called **SB 819** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

#### **Committee Amendment No. 1**

Amend **SB 819** in SECTION 1 of the bill, in added Section 81.010, Family Code (senate engrossment, page 1, between lines 13 and 14), by inserting the following:

(c) A motion for enforcement of a protective order rendered under this title may be filed in:

(1) any court in the county in which the order was rendered with jurisdiction of proceedings arising under this title;

(2) a county in which the movant or respondent resides; or

(3) a county in which an alleged violation of the order occurs.

The amendment was read.

Senator Harris moved to concur in the House amendment to **SB 819**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

### **SENATE BILL 1026 WITH HOUSE AMENDMENT**

Senator Harris called **SB 1026** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

**Amendment**

Amend **SB 1026** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to the powers and duties of an attorney ad litem appointed for a parent or an alleged father in certain suits affecting the parent-child relationship.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Part 1, Subchapter B, Chapter 107, Family Code, is amended by adding Sections 107.0131, 107.0132, and 107.0133 to read as follows:

Sec. 107.0131. POWERS AND DUTIES OF ATTORNEY AD LITEM FOR PARENT. (a) An attorney ad litem appointed under Section 107.013 to represent the interests of a parent:

(1) shall:

(A) subject to Rules 4.02, 4.03, and 4.04, Texas Disciplinary Rules of Professional Conduct, and within a reasonable time after the appointment, interview:

(i) the parent, unless the parent's location is unknown;

(ii) each person who has significant knowledge of the case; and

(iii) the parties to the suit;

(B) investigate the facts of the case;

(C) to ensure competent representation at hearings, mediations, pretrial matters, and the trial on the merits:

(i) obtain and review copies of all court files in the suit during the attorney ad litem's course of representation; and

(ii) when necessary, conduct formal discovery under the Texas Rules of Civil Procedure or the discovery control plan;

(D) take any action consistent with the parent's interests that the attorney ad litem considers necessary to expedite the proceedings;

(E) encourage settlement and the use of alternative forms of dispute resolution;

(F) review and sign, or decline to sign, a proposed or agreed order affecting the parent;

(G) meet before each court hearing with the parent, unless the court:

(i) finds at that hearing that the attorney ad litem has shown good cause why the attorney ad litem's compliance is not feasible; or

(ii) on a showing of good cause, authorizes the attorney ad litem to comply by conferring with the parent, as appropriate, by telephone or video conference;

(H) become familiar with the American Bar Association's standards of practice for attorneys who represent parents in abuse and neglect cases;

(I) complete at least three hours of continuing legal education relating to child protection law as described by Subsection (b) as soon as practicable after the attorney ad litem is appointed, unless the court finds that the attorney ad litem has experience equivalent to that education; and

(J) abide by the parent's objectives of representation;

(2) must be trained in child protection law or have experience determined by the court to be equivalent to that training; and

(3) is entitled to:

(A) request clarification from the court if the role of the attorney ad litem is ambiguous;

(B) request a hearing or trial on the merits;

(C) consent or refuse to consent to an interview of the parent by another attorney;

(D) receive a copy of each pleading or other paper filed with the court;

(E) receive notice of each hearing in the suit;

(F) participate in any case staffing conducted by the Department of Family and Protective Services in which the parent is invited to participate, including, as appropriate, a case staffing to develop a family plan of service, a family group conference, a permanency conference, a mediation, a case staffing to plan for the discharge and return of the child to the parent, and any other case staffing that the department determines would be appropriate for the parent to attend, but excluding any internal department staffing or staffing between the department and the department's legal representative; and

(G) attend all legal proceedings in the suit.

(b) The continuing legal education required by Subsection (a)(1)(I) must:

(1) be low-cost and available to persons throughout this state, including on the Internet provided through the State Bar of Texas; and

(2) focus on the duties of an attorney ad litem in, and the procedures of and best practices for, a proceeding under Chapter 262 or 263.

Sec. 107.0132. POWERS AND DUTIES OF ATTORNEY AD LITEM FOR ALLEGED FATHER. (a) An attorney ad litem appointed under Section 107.013 to represent the interests of an alleged father shall:

(1) conduct an investigation regarding the petitioner's due diligence in locating the alleged father, including by verifying that the petitioner has obtained a certificate of the results of a search of the paternity registry under Chapter 160;

(2) interview any party or other person who has significant knowledge of the case who may have information relating to the identity or location of the alleged father; and

(3) conduct an independent investigation to identify or locate the alleged father, as applicable.

(b) If the attorney ad litem identifies and locates the alleged father, the attorney ad litem shall:

(1) provide to each party and the court the alleged father's name and address and any other locating information; and

(2) if appropriate, request the court's approval for the attorney ad litem to assist the alleged father in establishing paternity.

(c) If the alleged father is adjudicated to be a parent of the child and is determined by the court to be indigent, the court may appoint the attorney ad litem to continue to represent the father's interests as a parent under Section 107.013(a)(1) or (c).

(d) If the attorney ad litem is unable to identify or locate the alleged father, the attorney ad litem shall submit to the court a written summary of the attorney ad litem's efforts to identify or locate the alleged father with a statement that the attorney ad litem was unable to identify or locate the alleged father.

Sec. 107.0133. DISCIPLINE OF ATTORNEY AD LITEM FOR PARENT OR ALLEGED FATHER. An attorney ad litem appointed for a parent or an alleged father who fails to perform the duties required by Section 107.0131 or 107.0132, as applicable, is subject to disciplinary action under Subchapter E, Chapter 81, Government Code.

SECTION 2. Sections 107.0131, 107.0132, and 107.0133, Family Code, as added by this Act, apply only to an attorney ad litem in a suit affecting the parent-child relationship appointed on or after the effective date of this Act. An attorney ad litem appointed before that date is governed by the law in effect on the date the attorney ad litem was appointed, and the former law is continued in effect for that purpose.

SECTION 3. This Act takes effect September 1, 2011.

The amendment was read.

Senator Harris moved to concur in the House amendment to **SB 1026**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

#### **SENATE BILL 789 WITH HOUSE AMENDMENT**

Senator Harris called **SB 789** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

#### **Committee Amendment No. 1**

Amend **SB 789** (senate engrossment) in SECTION 2 of the bill, in amended Section 85.025(b), Family Code (page 2, line 15), between "order." and "After", by inserting the following:

A person who is the subject of a protective order under Subsection (a-1) that is effective for a period that exceeds two years may file a subsequent motion requesting that the court review the protective order and determine whether there is a continuing need for the order not earlier than the first anniversary of the date on which the court rendered an order on a previous motion by the person under this subsection.

The amendment was read.

Senator Harris moved to concur in the House amendment to **SB 789**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

#### **SENATE BILL 17 WITH HOUSE AMENDMENT**

Senator Carona called **SB 17** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.



**Amendment**

Amend **SB 17** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to the regulation of residential mortgage loan servicers; providing an administrative penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle E, Title 3, Finance Code, is amended by adding Chapter 158 to read as follows:

CHAPTER 158. RESIDENTIAL MORTGAGE LOAN SERVICERS  
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 158.001. SHORT TITLE. This chapter may be cited as the Residential Mortgage Loan Servicer Registration Act.

Sec. 158.002. DEFINITIONS. In this chapter:

(1) "Commissioner" means the savings and mortgage lending commissioner.

(2) "Finance commission" means the Finance Commission of Texas.

(3) "Person" means an individual, corporation, company, limited liability company, partnership, or association.

(4) "Registrant" means a person registered under this chapter.

(5) "Residential mortgage loan" means a loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or on residential real estate.

(6) "Residential mortgage loan servicer" means a person who:

(A) receives scheduled payments from a borrower under the terms of a residential mortgage loan, including amounts for escrow accounts; and

(B) makes the payments of principal and interest to the owner of the loan or other third party and makes any other payments with respect to the amounts received from the borrower as may be required under the terms of the servicing loan document or servicing contract.

(7) "Residential real estate" means real property located in this state on which a dwelling designed for occupancy for one to four families is constructed or intended to be constructed.

Sec. 158.003. PURPOSE; RULES. (a) The purpose of this chapter is to provide regulatory authority to ensure that residential mortgage loan servicers registered under this chapter comply with federal and state laws, rules, and regulations.

(b) The finance commission may adopt and enforce rules necessary for the purposes of or to ensure compliance with this chapter.

(c) The finance commission shall consult with the commissioner when proposing and adopting rules under this chapter.

[Sections 158.004-158.050 reserved for expansion]

SUBCHAPTER B. REGISTRATION OF RESIDENTIAL MORTGAGE LOAN  
SERVICERS

Sec. 158.051. REGISTRATION REQUIRED. A person may not act as a residential mortgage loan servicer, directly or indirectly, for a residential mortgage loan secured by a lien on residential real estate in this state unless the person is registered under this chapter or is exempt under Section 158.052.

Sec. 158.052. EXEMPTIONS; APPLICABILITY. (a) This chapter does not require registration by:

(1) a federal or state depository institution, or a subsidiary or affiliate of a federal or state depository institution;

(2) a person registered under Chapter 157;

(3) a person licensed under Chapter 342 or regulated under Chapter 343, if the person does not act as a residential mortgage loan servicer servicing first-lien secured loans; or

(4) a person making a residential mortgage loan with the person's own funds, or to secure all or a portion of the purchase price of real property sold by that person.

(b) This chapter applies only to a residential mortgage loan servicer that services at least one residential mortgage loan.

(c) Nothing in this chapter permits a person who is not otherwise exempt from this chapter to act as a residential mortgage loan originator, as defined by Section 180.002, without obtaining a license under the applicable provisions of law.

Sec. 158.053. APPLICATION FOR REGISTRATION; FEE. (a) To register under this chapter, a residential mortgage loan servicer shall file with the commissioner an application for registration that must:

(1) be in writing;

(2) be under oath;

(3) be in the form prescribed by the commissioner; and

(4) contain:

(A) the name and the address of the principal place of business of the applicant; and

(B) the name, title, and address of the person authorized by the applicant to respond to complaints.

(b) At the time of making application, the applicant shall pay to the commissioner a registration fee in an amount not to exceed \$500 as determined by the finance commission.

(c) An applicant is not required to pay a registration fee under Subsection (b) if the applicant:

(1) collects delinquent consumer debts owed on residential mortgage loans;

(2) does not own the residential mortgage loans for which the applicant acts as a residential mortgage loan servicer; and

(3) is a third-party debt collector that has filed a bond in compliance with Chapter 392.

Sec. 158.054. UPDATE OF REGISTRATION. A registrant shall notify the commissioner of a change in any of the information provided in the registration application not later than the 30th day after the date the information changes.

Sec. 158.055. BOND. (a) Before approval of the registration, an applicant for registration under this chapter shall file with the commissioner, and shall keep in force while the registration remains in effect, a surety bond meeting the requirements of this section or, if a surety bond is not available to the applicant from a surety company authorized to do business in this state, other collateral of like kind as determined by the commissioner.

(b) The bond must be:

(1) in an amount not to exceed \$200,000, except as provided by Subsection

(c); and

(2) payable to the commissioner.

(c) This subsection applies only to an applicant who services only residential mortgage loans secured by unimproved residential real estate or services only residential mortgage loans secured by foreclosed property with a dwelling, or both. If sales of the property described by this subsection do not exceed \$1 million annually, the bond for an applicant described by this section must be in an amount not to exceed \$25,000.

(d) If a registrant fails to comply with a final order of the commissioner, the commissioner may make a claim on the bond to recover and pay a consumer the amount to which the consumer was entitled under the commissioner's order.

(e) When an action is commenced on a registrant's bond, the commissioner may require the filing of a new acceptable bond. Immediately on recovery on any action on the bond, the registrant shall file a new bond.

(f) The bond procedures established by this section are created to specifically exclude the participation of registrants in the recovery fund established under Chapter 156.

(g) The finance commission may adopt rules establishing the terms and conditions of the surety bond and the qualifications of the surety.

(h) A registrant is not required to file a bond under this chapter if the registrant:

(1) collects delinquent consumer debts owed on residential mortgage loans;

(2) does not own the residential mortgage loans for which the registrant acts as a residential mortgage loan servicer; and

(3) is a third-party debt collector that has filed a bond in compliance with Chapter 392.

Sec. 158.056. APPROVAL OF REGISTRATION. The commissioner shall approve an application for registration under this chapter on the applicant's payment of the required fees and the commissioner's approval of the surety bond.

Sec. 158.057. NOTICE OF CHANGE OF REGISTRANT'S CONDITION.

(a) A registrant shall notify the commissioner in writing not later than the 10th day after:

(1) the filing for bankruptcy or reorganization of the registrant;

(2) the filing of a criminal indictment related in any manner to the registrant's activities; or

(3) the receipt of notification of the issuance of a final order to cease and desist, a final order of the suspension or revocation of a license or registration, or another final formal or informal regulatory action taken against the registrant in this or another state.

(b) The notification required by Subsection (a)(3) must include the reasons for a final regulatory action described by that subdivision.

Sec. 158.058. RENEWAL OF REGISTRATION. (a) On or before December 31 of each year, a registrant shall renew its registration for the next calendar year and shall pay to the commissioner a renewal fee in an amount not to exceed \$500 as determined by the finance commission. To renew a registration, a registrant must continue to meet all standards for registration provided by this chapter.

(b) If a registrant fails to file a renewal and pay the renewal fee on or before December 31 of a calendar year, the registrant's registration is considered expired at that time and the registrant:

(1) must reapply for registration as provided by Section 158.053; and

(2) may not conduct business as a residential mortgage loan servicer until the registration is approved.

(c) The commissioner may refuse to renew a registration if the registrant:

(1) has failed to pay any fees or penalties imposed under this chapter;

(2) has failed to provide the surety bond required under this chapter; or

(3) is not in compliance with any final order of the commissioner.

Sec. 158.059. REVOCATION OF REGISTRATION. The commissioner may, after notice and hearing, revoke a registration under this chapter if:

(1) the registrant fails or refuses to comply with the commissioner's written request for a response to a complaint;

(2) the commissioner determines that the registrant has engaged in an intentional course of conduct to violate federal or state law or has engaged in an intentional course of conduct that constitutes fraudulent, deceptive, or dishonest dealings; or

(3) the registrant is not in compliance with any final order of the commissioner.

Sec. 158.060. APPEAL OF CERTAIN COMMISSIONER ACTIONS. The denial, nonrenewal, or revocation by the commissioner of a registration under this chapter and the appeal of that action are governed by Chapter 2001, Government Code.

[Sections 158.061-158.100 reserved for expansion]

SUBCHAPTER C. INVESTIGATIONS, COMPLAINTS, AND ACTIONS  
AGAINST REGISTRANT

Sec. 158.101. DISCLOSURE STATEMENT. A registrant shall provide to the borrower of each residential mortgage loan the following notice not later than the 30th day after the registrant commences servicing the loan:

"COMPLAINTS REGARDING THE SERVICING OF YOUR MORTGAGE SHOULD BE SENT TO THE DEPARTMENT OF SAVINGS AND MORTGAGE LENDING, \_\_\_\_\_ (street address of the Department

of Savings and Mortgage Lending). A TOLL-FREE CONSUMER HOTLINE IS AVAILABLE AT \_\_\_\_\_ (telephone number of the Department of Savings and Mortgage Lending's toll-free consumer hotline)."

Sec. 158.102. INVESTIGATION OF COMPLAINTS AGAINST REGISTRANT; SURCHARGE. (a) On receipt of a signed written complaint concerning a registrant by the Department of Savings and Mortgage Lending, the commissioner or the commissioner's designee:

(1) shall notify the representative designated by the registrant in the registration application in writing of the complaint and provide a copy of the complaint to the representative;

(2) may conduct an investigation with authority to access, receive, and use in the investigation any books, accounts, records, files, documents, information, or other evidence; and

(3) may request that the registrant provide documentary and other evidence considered by the commissioner necessary to effectively evaluate the complaint, including correspondence, loan documents, and disclosures.

(b) A registrant shall promptly provide any evidence requested by the commissioner.

(c) Information obtained by the commissioner during an investigation is confidential unless disclosure of the information is permitted or required by other law or court order. The commissioner may share information gathered during an investigation with any state or federal agency.

(d) In addition to the registration fee, the finance commission by rule may impose a complaint investigation fee on a registrant based on the costs incurred by the Department of Savings and Mortgage Lending resulting from the investigation of complaints against the registrant.

Sec. 158.103. ACTION ON COMPLAINT. (a) If, after conducting an investigation, the commissioner determines that the registrant has violated this chapter or another applicable law, the commissioner may do one or more of the following:

(1) issue an order to the registrant to resolve the complaint by paying to the consumer the damages to which the consumer would be entitled under law; or

(2) order the registrant to cease and desist from the actions found to be in violation of law.

(b) A registrant may appeal an order issued under this section. The appeal is a contested case governed by Chapter 2001, Government Code.

Sec. 158.104. MULTI-STATE EXAMINATION AUTHORITY. To ensure that residential mortgage loan servicers to whom this chapter applies operate in this state in compliance with this chapter and with other law in accordance with this chapter, the commissioner or the commissioner's designee may participate in multi-state mortgage examinations as scheduled by the Conference of State Bank Supervisors Multi-State Mortgage Committee in accordance with the Conference of State Bank Supervisors protocol for such examinations.

Sec. 158.105. CEASE AND DESIST ORDER. (a) If the commissioner has reasonable cause to believe that a person who is not registered or exempt under this chapter has engaged, or is about to engage, in an act or practice for which registration

is required under this chapter, the commissioner may issue without notice and hearing an order to cease and desist from continuing a particular action or an order to take affirmative action, or both, to enforce compliance with this chapter.

(b) An order issued under Subsection (a) must contain a reasonably detailed statement of the facts on which the order is issued.

(c) If, not later than the 30th day after the date an order is issued under this section, the person against whom the order is made requests a hearing, the commissioner shall set and give notice of a hearing before the commissioner or a hearings officer. The hearing shall be governed by Chapter 2001, Government Code.

(d) If a hearing is not requested under Subsection (c) not later than the 30th day after the date the order is issued, the order is considered final and not appealable.

(e) The commissioner, after giving notice, may impose against a person who violates a cease and desist order an administrative penalty in an amount not to exceed \$2,500 for each day of the violation. In addition to any other remedy provided by law, the commissioner may institute in district court a suit for injunctive relief and to collect the administrative penalty. A bond is not required of the commissioner with respect to injunctive relief granted under this subsection.

Sec. 158.106. RESTITUTION. The commissioner may order a residential mortgage loan servicer to pay to a complainant any compensation received by the servicer in a violation cited by the commissioner in a final order.

SECTION 2. Subdivision (4), Section 157.002, Finance Code, is amended to read as follows:

(4) "Mortgage banker" means a person who:

(A) accepts an application for a residential mortgage loan, ~~or~~ makes a residential mortgage loan, or services residential mortgage loans; and

(B) is an approved or authorized:

(i) mortgagee with direct endorsement underwriting authority granted by the United States Department of Housing and Urban Development;

(ii) seller or servicer of the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation; or

(iii) issuer for the Government National Mortgage Association.

SECTION 3. Section 157.003, Finance Code, is amended by adding Subsection (f) to read as follows:

(f) A mortgage banker that services residential mortgage loans must indicate in its registration that it acts as a residential mortgage loan servicer.

SECTION 4. Section 157.007, Finance Code, is amended to read as follows:

Sec. 157.007. DISCLOSURE STATEMENT. (a) A mortgage banker shall include the following notice to a residential mortgage loan applicant with an application for a residential mortgage loan:

"COMPLAINTS REGARDING MORTGAGE BANKERS SHOULD BE SENT TO THE DEPARTMENT OF SAVINGS AND MORTGAGE LENDING, \_\_\_\_\_ (street address of the Department of Savings and Mortgage Lending). A TOLL-FREE CONSUMER HOTLINE IS AVAILABLE AT \_\_\_\_\_ (telephone number of the Department of Savings and Mortgage Lending's toll-free consumer hotline)."

(b) A mortgage banker that indicates in its registration that it acts as a residential mortgage loan servicer shall provide to the borrower of each residential mortgage loan it services the following notice not later than the 30th day after the date the mortgage banker commences servicing the loan:

"COMPLAINTS REGARDING THE SERVICING OF YOUR MORTGAGE SHOULD BE SENT TO THE DEPARTMENT OF SAVINGS AND MORTGAGE LENDING, \_\_\_\_\_ (street address of the Department of Savings and Mortgage Lending). A TOLL-FREE CONSUMER HOTLINE IS AVAILABLE AT \_\_\_\_\_ (telephone number of the Department of Savings and Mortgage Lending's toll-free consumer hotline)."

SECTION 5. Chapter 157, Finance Code, is amended by adding Section 157.0211 to read as follows:

Sec. 157.0211. MULTI-STATE EXAMINATION AUTHORITY OF RESIDENTIAL MORTGAGE LOAN SERVICER. To ensure that mortgage bankers that act as residential mortgage loan servicers operate in this state in compliance with this chapter and with other law in accordance with this chapter, the commissioner or the commissioner's designee may participate in multi-state mortgage examinations as scheduled by the Conference of State Bank Supervisors Multi-State Mortgage Committee in accordance with the Conference of State Bank Supervisors protocol for such examinations.

SECTION 6. This Act takes effect September 1, 2011.

The amendment was read.

Senator Carona moved to concur in the House amendment to **SB 17**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

### **SENATE BILL 1910 WITH HOUSE AMENDMENT**

Senator Rodriguez called **SB 1910** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

#### **Amendment**

Amend **SB 1910** by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to the delay of the transition to competition in the Western Electricity Coordinating Council service area and to net metering and energy efficiency goals and programs for utilities in that area.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 39, Utilities Code, is amended by adding Subchapter L to read as follows:

#### SUBCHAPTER L. TRANSITION TO COMPETITION AND OTHER PROVISIONS FOR CERTAIN AREAS OUTSIDE OF ERCOT

Sec. 39.551. APPLICABILITY. (a) This subchapter applies only to an investor-owned electric utility:

- (1) that is operating solely outside of ERCOT in areas of this state that were included in the Western Electricity Coordinating Council on January 1, 2011;  
(2) that was not affiliated with ERCOT on January 1, 2011; and  
(3) to which Subchapters I, J, and K do not apply.

(b) The legislature finds that an electric utility subject to this subchapter is unable at this time to offer fair competition and reliable service to all retail customer classes in the area served by the utility. As a result, the introduction of retail competition for such an electric utility is delayed until fair competition and reliable service are available to all retail customer classes as determined under this subchapter.

Sec. 39.552. COST-OF-SERVICE REGULATION. (a) Until the date on which an electric utility subject to this subchapter is authorized by the commission under Section 39.553(f) to implement retail customer choice, the rates of the utility are subject to regulation under Chapter 36.

(b) Until the date on which an electric utility subject to this subchapter implements customer choice, the provisions of this chapter, other than this subchapter and Sections 39.904 and 39.905, do not apply to that utility.

Sec. 39.553. TRANSITION TO COMPETITION. (a) The events prescribed by Subsections (b)-(f) shall be followed to introduce retail competition in the service area of an electric utility subject to this subchapter. The commission shall ensure that the listed items in each stage are completed before the next stage is initiated. Unless stated otherwise, the commission shall conduct each activity with the electric utility and other interested parties. The commission may modify the sequence of events required by Subsections (b)-(e), but not the substance of the requirements, if the commission finds good cause to do so. Full retail competition may not begin in the service area of an electric utility subject to this subchapter until all actions prescribed by those subsections are completed.

(b) The first stage for the transition to competition consists of the following activities:

(1) approval of a regional transmission organization by the Federal Energy Regulatory Commission for the power region that includes the electric utility's service area and commencement of independent operation of the transmission network under the approved regional transmission organization;

(2) development of retail market protocols to facilitate retail competition;  
and

(3) completion of an expedited proceeding to develop nonbypassable delivery rates for the customer choice pilot project to be implemented under Subsection (c)(1).

(c) The second stage for the transition to competition consists of the following activities:

(1) initiation of the customer choice pilot project in accordance with Section 39.104;

(2) development of a balancing energy market, a market for ancillary services, and a market-based congestion management system for the wholesale market in the power region in which the regional transmission organization operates; and

(3) implementation of a seams agreement with adjacent power regions to reduce barriers to entry and facilitate competition.



(d) The third stage for the transition to competition consists of the following activities:

(1) the electric utility filing with the commission:

(A) an application for business separation in accordance with Section 39.051;

(B) an application for unbundled transmission and distribution rates in accordance with Section 39.201;

(C) an application for certification of a qualified power region in accordance with Section 39.152; and

(D) an application for price-to-beat rates in accordance with Section 39.202;

(2) the commission:

(A) approving a business separation plan for the utility;

(B) setting unbundled transmission and distribution rates for the utility;

(C) certifying a qualified power region, which includes conducting a formal evaluation of wholesale market power in the region, in accordance with Section 39.152;

(D) setting price-to-beat rates for the utility; and

(E) determining which competitive energy services must be separated from regulated utility activities in accordance with Section 39.051; and

(3) completion of the testing of retail and wholesale systems, including those systems necessary for switching customers to the retail electric provider of their choice and for settlement of wholesale market transactions, by the regional transmission organization, the registration agent, and market participants.

(e) The fourth stage for the transition to competition consists of the following activities:

(1) commission evaluation of the results of the pilot project;

(2) initiation by the electric utility of a capacity auction in accordance with Section 39.153 at a time to be determined by the commission; and

(3) separation by the utility of competitive energy services from its regulated utility activities, in accordance with the commission order approving the separation of competitive energy services.

(f) The fifth stage for the transition to competition consists of the following activities:

(1) evaluation by the commission of whether the electric utility can offer fair competition and reliable service to all retail customer classes in the area served by the utility, and:

(A) if the commission concludes that the electric utility can offer fair competition and reliable service to all retail customer classes in the area served by the utility, the commission issuing an order initiating retail competition for the utility; and

(B) if the commission determines that the electric utility cannot offer fair competition and reliable service to all retail customer classes in the area served by the utility, the commission issuing an order further delaying retail competition for the utility; and

(2) on the issuance of an order from the commission initiating retail competition for the utility, completion by the utility of the business separation and unbundling in accordance with the commission order approving the unbundling.

Sec. 39.554. INTERCONNECTION OF DISTRIBUTED RENEWABLE GENERATION. (a) In this section:

(1) "Distributed renewable generation" has the meaning assigned by Section 39.916.

(2) "Distributed renewable generation owner" means an owner of distributed renewable generation that is a retail electric customer.

(3) "Interconnection" has the meaning assigned by Section 39.916.

(b) A distributed renewable generation owner in the service area of an electric utility subject to this subchapter may request interconnection by filing an application for interconnection with the utility. An application for interconnection is subject to the utility's safety and reliability requirements. The utility's procedures for the submission and processing of an application for interconnection shall be consistent with rules adopted by the commission regarding interconnection.

(c) An electric utility that approves an application of a distributed renewable generation owner under Subsection (b):

(1) shall install, maintain, and retain ownership of the meter and metering equipment; and

(2) may install load research metering equipment on the premises of the owner, at no expense to the owner.

(d) At the request of an electric utility that approves an application of a distributed renewable generation owner under Subsection (b), the owner shall:

(1) provide and install a meter socket, a metering cabinet, or both a socket and cabinet at a location designated by the utility on the premises of the owner; and

(2) provide, at no expense to the utility, a suitable location for the utility to install meters and equipment associated with billing and load research.

(e) An electric utility that approves an application of a distributed renewable generation owner under Subsection (b) shall provide to the owner the metering options described by Section 39.916(f) and an option to interconnect with the utility through a single meter that runs forward and backward if:

(1) the owner:

(A) intends to interconnect the distributed renewable generation at an apartment house, as defined by Section 184.011, occupied by low-income elderly tenants that qualifies for master metering under Section 184.012(b) and the distributed renewable generation is reasonably expected to generate not less than 50 percent of the apartment house's annual electricity use; or

(B) has a qualifying facility with a design capacity of not more than 50 kilowatts; and

(2) the distributed renewable generation or qualifying facility that is the subject of the application is rated to produce an amount of electricity that is less than or equal to:

(A) the owner's estimated annual kilowatt hour consumption for a new apartment house or qualifying facility; or

(B) the amount of electricity the owner consumed in the year before installation of the distributed renewable generation or qualifying facility.

(f) For a distributed renewable generation owner that chooses interconnection through a single meter under Subsection (e):

(1) the amount of electricity the owner generates through distributed renewable generation or a qualifying facility for a given billing period offsets the owner's consumption for that billing period; and

(2) any electricity the owner generates through distributed renewable generation or a qualifying facility that exceeds the owner's consumption for a given billing period shall be credited to the owner under Subsection (g).

(g) An electric utility that purchases surplus electricity under Subsection (f)(2) shall purchase the electricity from the distributed renewable generation owner at the cost of the utility as determined by commission rule. The utility shall take reasonable steps to inform the owner of the amount of surplus electricity purchased from the owner in kilowatt hours during the owner's most recent billing cycle. A credit balance of not more than \$50 on the owner's monthly bill may be carried forward onto the owner's next monthly bill. The utility shall refund to the owner a credit balance that is not carried forward or the portion of a credit balance that exceeds \$50 if the credit balance is carried forward.

(h) In a base rate proceeding or fuel cost recovery proceeding conducted under Chapter 36, the commission shall ensure that any additional cost associated with the metering and payment options described by Subsections (e), (f), and (g) is allocated only to customer classes that include distributed renewable generation owners who have chosen those metering options.

Sec. 39.555. MARKETING OF ENERGY EFFICIENCY AND RENEWABLE ENERGY PROGRAMS. An electric utility subject to this subchapter may market an energy efficiency or renewable energy program directly to a retail electric customer in its service territory and provide rebate or incentive funds directly to a customer to promote or facilitate the success of programs implemented under Section 39.905.

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2011.

The amendment was read.

Senator Rodriguez moved to concur in the House amendment to **SB 1910**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

#### **SENATE BILL 249 WITH HOUSE AMENDMENT**

Senator Estes called **SB 249** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

**Floor Amendment No. 1 on Third Reading**

Amend **SB 249** on third reading as follows:

(1) In the recital to SECTION 2 of the bill, strike "Subsections (b) and (c), Section 11.102, Finance Code, are" and substitute "Subsection (b), Section 11.102, Finance Code, is".

(2) In SECTION 2 of the bill, in amended Section 11.102(b), Finance Code, between "consumer credit executive," and "and one member of", insert "one member of the finance commission must be a motor vehicle seller finance licensee.".

(3) In SECTION 2 of the COMMITTEE SUBSTITUTE 781bill, strike amended Subsection (c), Section 11.102, Finance Code.

(4) Add the following appropriately numbered SECTION to the bill and renumber subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_ Subsection (e), Section 11.102, Finance Code, is amended by adding Subdivision (5) to read as follows:

(5) "Motor vehicle seller finance licensee" means a person who:

(A) holds a license issued under Chapter 348;

(B) has had five years' or more experience as a Texas automobile dealer retailing motor vehicles during the seven-year period preceding the person's appointment; and

(C) is a dealer as defined by Section 503.001, Transportation Code.

The amendment was read.

Senator Estes moved that the Senate do not concur in the House amendment, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 249** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Estes, Chair; Carona, Fraser, Lucio, and Williams.

**SENATE BILL 762 WITH HOUSE AMENDMENTS**

Senator Carona called **SB 762** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

**Amendment**

Amend **SB 762** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED

AN ACT

relating to the transfer of an ad valorem tax lien; providing for the imposition of an administrative penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 32.06, Tax Code, is amended by amending Subsections (a-3), (f-3), and (j) and adding Subsections (e-1) and (e-2) to read as follows:

(a-3) If the property owner has executed an authorization under Subsection (a-2)(2)(B) consenting to a transfer of the tax liens for both the taxes on the property that are not delinquent and taxes on the property that are delinquent, the collector's certification under Subsection (b) may be collector shall certify in one document [the transfer of the liens for all the taxes].

(e-1) A transferee of a tax lien may not charge a fee for any expenses arising after closing, including collection costs, except for:

- (1) interest expressly authorized under this section;
- (2) the fees for filing the release of the tax lien under Subsection (b);
- (3) the fee for providing a payoff statement under Subsection (f-3);
- (4) the fee for providing information regarding the current balance owed by the property owner under Subsection (g); and
- (5) the fees expressly authorized under Section 351.0021, Finance Code.

(e-2) The contract between the property owner and the transferee may provide for interest for default, in addition to the interest permitted under Subsection (e), if any part of the installment remains unpaid after the 10th day after the date the installment is due, including Sundays and holidays. The additional interest may not exceed five cents for each \$1 of a scheduled installment.

(f-3) Notwithstanding any contractual agreement with the property owner, the transferee of a tax lien must provide the payoff information required by this section to the greatest extent permitted by 15 U.S.C. Section 6802 and 12 C.F.R. Part 216. The payoff statement must meet the requirements of a payoff statement defined by Section 12.017, Property Code. A transferee may charge a reasonable fee for a payoff statement that is requested after an initial payoff statement is provided. However, a transferee is not required to release payoff information pursuant to a notice under Subsection (f-1) unless the notice contains the information prescribed by the Finance Commission of Texas.

(j) After one year from the date on which a tax lien transferred as provided by this section is recorded in all counties in which the property is located, the transferee of the lien may foreclose the lien in the manner provided by Subsection (c) unless a contract between the holder of the lien and the owner of the property encumbered by the lien provides otherwise. ~~[If a foreclosure suit results in foreclosure of the lien, the transferee is entitled to recover attorney's fees in an amount not to exceed 10 percent of the judgment.]~~ The proceeds of a sale following a judicial foreclosure as provided by this subsection shall be applied first to the payment of court costs, then to payment of the judgment, including accrued interest, and then to the payment of any attorney's fees fixed in the judgment. Any remaining proceeds shall be paid to other holders of liens on the property in the order of their priority and then to the person whose property was sold at the tax sale.

SECTION 2. Section 33.445(b), Tax Code, is amended to read as follows:

(b) In consideration of the payment by the transferee of those taxes and charges, each joined taxing unit shall transfer its tax lien to the transferee in the form and manner provided by Section 32.06(b) and enter its disclaimer in the suit. The transfer of a tax lien under this subsection does not require authorization by the property owner.

SECTION 3. Subchapter A, Chapter 351, Finance Code, is amended by adding Section 351.0021 to read as follows:

Sec. 351.0021. AUTHORIZED CHARGES. (a) The contract between a property tax lender and a property owner may require the property owner to pay the following costs after closing:

(1) a reasonable fee for filing the release of a tax lien authorized under Section 32.06(b), Tax Code;

(2) a reasonable fee for a payoff statement authorized under Section 32.06(f-3), Tax Code;

(3) a reasonable fee for providing information regarding the current balance owed by the property owner authorized under Section 32.06(g), Tax Code;

(4) reasonable and necessary attorney's fees, recording fees, and court costs for actions that are legally required to perform a foreclosure, including fees required to be paid to an official and fees for an attorney ad litem;

(5) to the extent permitted by the United States Bankruptcy Code, attorney's fees and court costs for services performed after the property owner files a voluntary bankruptcy petition;

(6) a reasonable fee for title examination and preparation of an abstract of title by an attorney, a title company, or a property search company authorized to do business in this state;

(7) a processing fee for insufficient funds, as authorized under Section 3.506, Business & Commerce Code;

(8) a fee for collateral protection insurance, as authorized under Chapter 307;

(9) a prepayment penalty, if the lien transferred is on a property other than one owned and used by the owner for personal, family, or household purposes;

(10) recording expenses incurred in connection with a modification necessary to preserve a borrower's ability to avoid a foreclosure proceeding; and

(11) fees for copies of transaction documents requested by the property owner.

(b) Notwithstanding Subsection (a)(11), a property tax lender shall provide a property owner:

(1) one free copy of the transaction documents at closing; and

(2) an additional free copy of the transaction documents on the property owner's request following closing.

(c) A property tax lender may not charge:

(1) any fee, other than interest, after closing in connection with the transfer of a tax lien against property owned and used by the property owner for personal, family, or household purposes unless the fee is expressly authorized under this section; or

(2) any interest that is not expressly authorized under Section 32.06, Tax Code.

(d) Except for charges authorized under Subsections (a)(1), (2), (3), and (11), any amount charged by a property tax lender after closing must be for services performed by a person that is not an employee of the property tax lender.

(e) The finance commission may adopt rules implementing and interpreting this section.

SECTION 4. Section 351.006, Finance Code, is amended to read as follows:

Sec. 351.006. ENFORCEMENT. (a) In addition to any other applicable enforcement provisions, Subchapters E, F, and G, Chapter 14, apply to a violation of this chapter or Section 32.06 or 32.065, Tax Code, in connection with property tax loans.

(b) Notwithstanding Section 14.251, the commissioner may assess an administrative penalty under Subchapter F, Chapter 14, against a person who violates Section 32.06(b-1), Tax Code, regardless of whether the violation is knowing or wilful.

SECTION 5. Section 351.051(a), Finance Code, is amended to read as follows:

(a) A person must hold a license issued under this chapter to:

(1) engage in the business of making, transacting, or negotiating property tax loans; or

(2) contract for, charge, or receive, directly or indirectly, in connection with a property tax loan subject to this chapter, a charge, including interest, compensation, consideration, or another expense, authorized under this chapter or Chapter 32, Tax Code ~~[that in the aggregate exceeds the charges authorized under other law].~~

SECTION 6. The changes in law made by this Act apply only to the transfer of an ad valorem tax lien that occurs on or after the effective date of this Act. A transfer of an ad valorem tax lien that occurs before the effective date of this Act is governed by the law in effect at the time the transfer occurred, and the former law is continued in effect for that purpose.

SECTION 7. This Act takes effect September 1, 2011.

### Floor Amendment No. 1

Amend **CSSB 762** (house committee printing) as follows:

(1) In the recital to SECTION 1 of the bill, between "(a-3)," and "(f-3)" (page 1, line 6), insert "(d-1),".

(2) In SECTION 1 of the bill, in amended Section 32.06, Tax Code, between amended Subsection (a-3) and added Subsection (e-1) of the section (page 1, between lines 13 and 14), insert the following:

(d-1) A right of rescission described by 12 C.F.R. Section 226.23 applies to a [tax lien] transfer under this section of a tax lien on residential property owned and used by the property owner for personal, family, or household purposes.

(3) In SECTION 1 of the bill, in added Section 32.06(e-2), Tax Code (page 2, lines 7 through 9), strike the last sentence of the subsection and substitute the following:

If the lien transferred is on residential property owned and used by the property owner for personal, family, or household purposes, the additional interest may not exceed five cents for each \$1 of a scheduled installment.

(4) In SECTION 3 of the bill, in added Section 351.0021(a)(4), Finance Code, between "required to" and "perform" (page 4, line 5), insert "respond to a suit filed under Chapter 33, Tax Code, or to".

(5) In SECTION 3 of the bill (page 4, lines 19 through 21), strike added Section 351.0021(a)(9), Finance Code, and substitute the following:

(9) a prepayment penalty, unless the lien transferred is on residential property owned and used by the property owner for personal, family, or household purposes;

(6) In SECTION 3 of the bill, in added Section 351.0021(c)(1), Finance Code (page 5, lines 8 through 10), strike "against property owned and used by the property owner for personal, family, or household purposes".

(7) In SECTION 3 of the bill, in added Section 351.0021(d), Finance Code, between "(3)," and "and" (page 5, line 15), insert "(9)".

### **Floor Amendment No. 2**

Amend **CSSB 762** (house committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering the subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. (a) The Finance Commission of Texas shall conduct a study regarding the fees, costs, interest, and other expenses charged to property owners by property tax lenders in conjunction with the transfer of property tax liens and the payoff of loans secured by property tax liens.

(b) Not later than June 1, 2012, the Finance Commission of Texas shall submit to the legislature a report containing the findings of the study conducted under Subsection (a) of this section and any recommendations for legislative changes.

The amendments were read.

Senator Carona moved to concur in the House amendments to **SB 762**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

### **SENATE BILL 781 WITH HOUSE AMENDMENTS**

Senator Carona called **SB 781** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

### **Floor Amendment No. 1**

Amend **SB 781** (house committee printing), in SECTION 1 of the bill, as follows:

(1) At the end of Subdivision (2), immediately following the semicolon, insert "and".

(2) At the end of Subdivision (3), strike "; and" and substitute ".".

(3) Strike Subdivision (4), repealing Section 3.01, Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993.

### **Floor Amendment No. 1 on Third Reading**

Amend **SB 781** on third reading, as amended on second reading, in SECTION 1 of the bill as follows:



- (1) At the end of Subdivision (2), strike "and".
- (2) At the end of Subdivision (3), strike the period and substitute "; and".
- (3) Immediately following Subdivision (3), insert the following:
  - (4) Section 2059.060, Government Code.

The amendments were read.

Senator Carona moved to concur in the House amendments to **SB 781**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

### **SENATE BILL 1124 WITH HOUSE AMENDMENTS**

Senator Carona called **SB 1124** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

#### **Floor Amendment No. 1**

Amend **SB 1124** (house committee printing) as follows:

(1) In the recital to SECTION 14 of the bill (page 10, line 9), strike "adding Subsection (a-1)" and substitute "adding Subsections (a-1) and (c)".

(2) In SECTION 14 of the bill, following added Section 156.202(a-1), Finance Code (page 13, between lines 20 and 21), insert the following:

(c) The finance commission may grant an exemption from the residential mortgage loan originator licensing requirements of this chapter to a municipality, county, community development corporation, or public or private grant administrator to the extent the entity is administering the Texas HOME Investment Partnerships program if the commission determines that granting the exemption is not inconsistent with the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (Pub. L. No. 110-289).

(3) In SECTION 61 of the bill, following added Section 180.003(b), Finance Code (page 65, after line 27), insert the following:

(c) The finance commission may grant an exemption from the licensing requirements of this chapter to a municipality, county, community development corporation, or public or private grant administrator to the extent the entity is administering the Texas HOME Investment Partnerships program if the commission determines that granting the exemption is not inconsistent with the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (Pub. L. No. 110-289).

#### **Floor Amendment No. 1 on Third Reading**

Amend **SB 1124** on third reading as follows:

(1) Strike the recital to SECTION 14 of the bill, as amended by Amendment No. 1 by Truitt on second reading, and substitute the following:

SECTION 14. Section 156.202, Finance Code, is amended by amending Subsection (a) and adding Subsections (a-1), (a-2), and (c) to read as follows:

(2) In SECTION 14 of the bill, between added Section 156.202(a-1), Finance Code, and added Section 156.202(c), Finance Code, as added by Amendment No. 1 by Truitt on second reading, insert the following:

(a-2) A person is not required to obtain a license or registration under this chapter to originate a loan subject to Chapter 342 or a loan governed by Section 50(a)(6), Article XVI, Texas Constitution, if the person:

- (1) is enrolled in the Nationwide Mortgage Licensing System and Registry;
- (2) is licensed under Chapter 342; and
- (3) makes consumer loans subject to:
  - (A) Subchapter G, Chapter 342; and
  - (B) Subchapter E or F, Chapter 342.

The amendments were read.

Senator Carona moved to concur in the House amendments to **SB 1124**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

### **SENATE BILL 479 WITH HOUSE AMENDMENTS**

Senator Estes called **SB 479** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

#### **Floor Amendment No. 1**

Amend **SB 479** (house committee printing) as follows:

(1) In SECTION 2 of the bill, in the recital (page 1, line 11), strike "Subdivision (2-a)" and substitute "Subdivisions (2-a) and (6-a)".

(2) In SECTION 2 of the bill, in amended Section 87.001(1), Civil Practice and Remedies Code (page 1, line 13), between "riding, handling, training, driving," and "assisting", insert "loading, unloading, transporting,".

(3) In SECTION 2 of the bill, strike added Section 87.001(2-a)(B), Civil Practice and Remedies Code (page 1, line 22), and substitute the following:

(B) a bovine animal;

(4) In SECTION 2 of the bill, in amended Section 87.001(3)(D), Civil Practice and Remedies Code (page 2, line 16), strike "inspecting, or evaluating" and substitute "inspecting, ~~or~~ evaluating, handling, loading, unloading, or transporting".

(5) In SECTION 2 of the bill, in amended Section 87.001(3)(D), Civil Practice and Remedies Code (page 2, line 20), strike "inspect, or evaluate" and substitute "inspect, ~~or~~ evaluate, handle, load, unload, or transport".

(6) In SECTION 2 of the bill, after amended Section 87.001(6), Civil Practice and Remedies Code (page 3, after line 27), insert the following:

(6-a) "Livestock producer" means a person who owns, breeds, raises, or feeds livestock animals.

(7) In SECTION 3 of the bill, in amended Section 87.003, Civil Practice and Remedies Code (page 4, line 15), between "professional," and "livestock", insert "livestock producer".

#### **Floor Amendment No. 1 on Third Reading**

Amend **SB 479** on third reading as follows:

(1) In SECTION 2 of the bill, in amended Section 87.001(1), Civil Practice and Remedies Code, strike "transporting".

(2) In SECTION 2 of the bill, in amended Section 87.001(3)(D), Civil Practice and Remedies Code, strike "unloading, or transporting" and substitute "or unloading".

(3) In SECTION 2 of the bill, in amended Section 87.001(3)(D), Civil Practice and Remedies Code, strike "unload, or transport" and substitute "or unload".

The amendments were read.

Senator Estes moved to concur in the House amendments to **SB 479**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

**SENATE BILL 1169 WITH HOUSE AMENDMENT**

Senator Carona called **SB 1169** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

**Amendment**

Amend **SB 1169** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to the regulation of providers, administrators, and sellers of service contracts and identity recovery service contracts; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. SERVICE CONTRACTS

SECTION 1.01. Section 1304.002, Occupations Code, is amended by adding Subdivision (8-a) to read as follows:

(8-a) "Seller" means a person, other than the provider or administrator of a service contract, who markets, sells, offers to sell, negotiates, or issues a service contract to a consumer on behalf of a provider, but who is not contractually obligated to a service contract holder under the terms of a service contract.

SECTION 1.02. Chapter 1304, Occupations Code, is amended by adding Subchapter B to read as follows:

SUBCHAPTER B. POWERS AND DUTIES OF DEPARTMENT  
AND COMMISSION

Sec. 1304.052. RULES. The commission shall adopt rules necessary to implement and administer this chapter.

SECTION 1.03. Section 1304.007, Occupations Code, is transferred to Subchapter B, Chapter 1304, Occupations Code, as added by this Act, redesignated as Section 1304.051, Occupations Code, and amended to read as follows:

Sec. 1304.051 [~~1304.007~~]. GENERAL INVESTIGATIVE POWER OF EXECUTIVE DIRECTOR. (a) The executive director may investigate a provider, administrator, seller, or other person as necessary to enforce this chapter and protect service contract holders in this state.

(b) On request of the executive director, a provider shall make the records required by Section 1304.155 available to the executive director as necessary to enable the executive director to reasonably determine compliance with this chapter.

SECTION 1.04. Section 1304.101, Occupations Code, is amended to read as follows:

Sec. 1304.101. REGISTRATION REQUIRED; EXEMPTION FROM OTHER LICENSING REQUIREMENTS. (a) A person may not operate as a provider or administrator of service contracts sold or issued in this state unless the person is registered with the department.

(b) Except for the registration requirement of this chapter [~~subchapter~~], a provider, [~~service contract~~] seller, administrator, or other person who markets, sells, issues, or offers to sell service contracts is exempt from any licensing requirement of this state that relates to an activity regulated under this chapter.

(c) A provider or administrator may not contract with or use the services of a person to perform an activity that requires registration with the department as a provider or administrator unless that person is appropriately registered.

SECTION 1.05. Section 1304.102(c), Occupations Code, is amended to read as follows:

(c) The department may refuse to issue or renew a registration, suspend or revoke a registration, or take any other disciplinary action under Subchapter E if the applicant or a controlling person of the applicant:

(1) has violated this chapter or a rule adopted or order issued by the commission or executive director under this chapter;

(2) has made a material misrepresentation or false statement in an application or in any document accompanying an application;

(3) has had a license issued under Title 13, Insurance Code, revoked as provided by that code; or

(4) has had a license or registration as a provider, administrator, or seller revoked in this state or another state.

SECTION 1.06. Section 1304.1025(a), Occupations Code, is amended to read as follows:

(a) In addition to the requirements of Section 1304.102, an applicant for issuance or renewal of a provider registration must file with the application:

(1) the reimbursement insurance policy, if the provider is using a reimbursement insurance policy to meet the financial security requirements of Section 1304.151; ~~and~~

(2) the financial security deposit and the documentation required by the department demonstrating adequate funding of the reserve account, if the provider is using a funded reserve account and financial security deposit to meet the financial security requirements of Section 1304.151;

(3) the proof necessary to demonstrate the applicant or its parent company maintains at least \$100 million net worth, if the applicant is using net worth to meet the financial security requirements of Section 1304.151; and

(4) information about each controlling person of the applicant [~~a biographical affidavit,~~] in a form prescribed by the executive director ~~[, for each controlling person of the provider].~~

SECTION 1.07. Sections 1304.103(a) and (b), Occupations Code, are amended to read as follows:

(a) The executive director shall develop a tiered schedule of registration and renewal fees under which a provider's fee is based on the number of service contracts the provider sold or issued in this state during the preceding 12-month period.

(b) The commission shall set ~~[the amounts of]~~ fees to cover the costs of administering this chapter, including registration and renewal fees for administrators.

SECTION 1.08. Section 1304.104, Occupations Code, is amended to read as follows:

Sec. 1304.104. INFORMATION CONCERNING NUMBER OF SERVICE CONTRACTS SOLD OR ISSUED. Information concerning the number of service contracts sold or issued by a provider that is submitted under Section 1304.103[~~;~~

~~(+) is a trade secret to which Section 552.110, Government Code, applies[; and~~

~~(2) may be used only by the executive director and the department in developing the tiered fee schedule under Section 1304.103].~~

SECTION 1.09. The heading to Subchapter D, Chapter 1304, Occupations Code, is amended to read as follows:

SUBCHAPTER D. PRACTICE BY SERVICE CONTRACT PROVIDERS,  
~~[AND] ADMINISTRATORS, AND SELLERS~~

SECTION 1.10. The heading to Section 1304.151, Occupations Code, is amended to read as follows:

Sec. 1304.151. FINANCIAL SECURITY REQUIREMENTS;  
DISTRIBUTION OF FUNDS HELD IN TRUST.

SECTION 1.11. Section 1304.151, Occupations Code, is amended by amending Subsections (a) and (b) and adding Subsection (f) to read as follows:

(a) To ensure the faithful performance of a provider's obligations to its service contract holders, each provider must:

(1) insure the provider's service contracts under a reimbursement insurance policy issued by an insurer authorized to transact insurance in this state or by a surplus lines insurer eligible to place coverage in this state under Chapter 981, Insurance Code;

(2) maintain a funded reserve account covering the provider's obligations under its service contracts that are issued and outstanding in this state and place in trust with the executive director a financial security deposit consisting of:

(A) ~~[a surety bond issued by an authorized surety;~~

~~[(B) securities of the type eligible for deposit by an authorized insurer in this state;~~

~~[(C) a statutory deposit of cash [or cash equivalents];~~

~~[(D) a letter of credit issued by a qualified financial institution; or~~

~~[(E) a certificate of deposit issued by a qualified financial institution~~

~~[(F) another form of security prescribed by rules adopted by the commission]; or~~

(3) maintain, or have a parent company that maintains, a net worth or stockholders' equity of at least \$100 million.

(b) If the provider ensures its obligations under Subsection (a)(2), the amount maintained in the reserve account may not be less than an amount equal to 40 percent of the gross consideration the provider received from consumers from the sale of all service contracts issued and outstanding in this state, minus any claims paid. The executive director may review and examine the reserve account. The amount of the security deposit may not be less than \$250,000. The provider must submit to the

executive director on request a copy of the provider's financial statements that must be prepared in accordance with generally accepted accounting principles, be without qualification as to the going concern status of the provider, and be audited by an independent certified public accountant. The commission by rule may require the provider to submit additional financial reports [the greater of:

(1) \$25,000; or

(2) an amount equal to five percent of the gross consideration the provider received from consumers from the sale of all service contracts issued and outstanding in this state, minus any claims paid].

(f) In the event of a provider's bankruptcy or a similar event affecting the ability of the provider to faithfully perform its obligations to its service contract holders, the executive director may distribute any funds held in trust as financial security for the provider under this section to eligible service contract holders as payment for claims. The executive director must distribute the funds in an equitable and cost-effective manner as determined by the executive director.

SECTION 1.12. Subchapter D, Chapter 1304, Occupations Code, is amended by adding Sections 1304.1521 and 1304.1531 to read as follows:

Sec. 1304.1521. FINANCIAL SECURITY TRANSITION. (a) In this section, "provider that maintained a funded reserve account" means a provider that, in order to ensure the faithful performance of the provider's obligations to service contract holders, maintained a funded reserve account covering the provider's obligations under service contracts that were issued and outstanding in this state and placed in trust with the executive director a financial security deposit consisting of:

(1) a surety bond issued by an authorized surety;

(2) securities of the type eligible for deposit by an authorized insurer in this

state;

(3) a statutory deposit of cash or cash equivalents;

(4) a letter of credit issued by a qualified financial institution; or

(5) another form of security prescribed by commission rules.

(b) This section applies only to a provider that maintained a funded reserve account on August 31, 2011.

(c) Not later than September 1, 2012, a provider that maintained a funded reserve account shall submit to the executive director documentation that the provider is in compliance with the financial security requirements provided by Section 1304.151 for service contracts sold or issued in this state on or after September 1, 2012. A provider that maintained a funded reserve account may not sell or issue a service contract on or after September 1, 2012, unless the provider is in compliance with this subsection.

(d) A provider that maintained a funded reserve account shall:

(1) continue to maintain the funded reserve account and security deposit at appropriate levels for service contracts that were sold or issued in this state before September 1, 2012, until the contracts are no longer in effect; or

(2) provide financial security for service contracts sold or issued before September 1, 2012, by complying with the financial security requirements of Section 1304.151.

(e) If a provider provides financial security for service contracts sold or issued before September 1, 2012, by complying with the financial security requirements of Section 1304.151, the provider shall give to the executive director satisfactory documentation that the reimbursement insurance policy, funded reserve account and security deposit, or net worth covers all outstanding service contracts issued before September 1, 2012.

(f) A service contract that is sold or issued before September 1, 2012, and is covered under a funded reserve account and security deposit may not be extended or renewed at the end of the service contract term unless the provider provides financial security for those service contracts by complying with the financial security requirements of Section 1304.151 before the extension or renewal.

Sec. 1304.1531. SERVICE CONTRACT SELLERS; RESPONSIBILITIES.

(a) A provider may employ or contract with a seller to be responsible for:

(1) all or any part of the sale or marketing of service contracts for the provider; and

(2) compliance with this chapter in connection with the sale or marketing of service contracts.

(b) The hiring of or contracting with a seller under this section does not affect a provider's responsibility to comply with this chapter.

(c) Unless registered as a provider or administrator, a seller is prohibited from engaging in activities that would require registration as a provider or administrator.

(d) A seller shall process a service contract application and a payment from a consumer in accordance with this chapter and with any sales agreement or contract between the provider and the seller.

SECTION 1.13. Sections 1304.156(a), (b), and (d), Occupations Code, are amended to read as follows:

(a) A service contract marketed, sold, offered for sale, issued, made, proposed to be made, or administered in this state must:

(1) be written, printed, or typed in clear, understandable language that is easy to read;

(2) state the name and address of the provider;

(3) state the purchase price of the contract and the terms under which the contract is sold;

(4) state the terms and restrictions governing cancellation of the contract by the provider or the service contract holder before the expiration date of the contract;

(5) identify:

(A) any administrator and any registration number issued to the administrator under this chapter;

(B) the ~~contract~~ seller; and

(C) the service contract holder, if the service contract holder provides the holder's name;

(6) state the amount of any deductible;

(7) specify the products and services to be provided under the contract and any limitation, exception, or exclusion;

(8) specify any restriction governing the transferability of the contract;

(9) state the duties of the service contract holder, including any duty to protect against any further damage and any requirement to follow the instructions in the owner's manual; and

(10) state whether the contract provides for or excludes consequential damages or preexisting conditions, if applicable.

(b) The identity and, if applicable, registration number issued under this chapter of a person described by Subsection (a)(5) is not required to be preprinted on the service contract and may be added to the contract at the time of sale.

(d) A service contract insured under a reimbursement insurance policy under Section 1304.152 [~~1304.151(a)(1)~~] must:

(1) state the name and address of the insurer;

(2) state that the service contract holder may apply for reimbursement directly to the insurer if:

(A) a covered service is not provided to the service contract holder by the provider before the 61st [~~not later than the 60th~~] day after the date of proof of loss; or

(B) a refund or credit is not paid before the 46th day after the date on which the contract is canceled [~~returned to the provider~~] under Section 1304.1581 [~~1304.158~~]; and

(3) contain a statement substantially similar to the following: "Obligations of the provider under this service contract are insured under a service contract reimbursement insurance policy."

SECTION 1.14. Subchapter D, Chapter 1304, Occupations Code, is amended by adding Section 1304.1581 to read as follows:

Sec. 1304.1581. CANCELLATION BY SERVICE CONTRACT HOLDER; REFUND. (a) A service contract must allow the service contract holder to cancel the service contract at any time.

(b) If a service contract holder cancels a service contract before the 31st day after the date of purchase, the provider:

(1) shall refund to the service contract holder or credit to the account of the service contract holder the full purchase price of the contract, decreased by the amount of any claims paid under the contract; and

(2) may not impose a cancellation fee.

(c) If a service contract holder cancels a service contract on or after the 31st day after the date of purchase, the provider:

(1) shall refund to the service contract holder or credit to the account of the service contract holder the prorated purchase price of the contract reflecting the remaining term of the contract, based on mileage, time, or another reasonably applicable measure of the remaining term that must be disclosed in the contract, decreased by the amount of any claims paid under the contract; and

(2) may impose a reasonable cancellation fee not to exceed \$50.

(d) A provider may allow a service contract holder to cancel a service contract on other terms included in the contract, provided the terms do not conflict with this section.



(e) A provider who does not pay the refund or credit the service contract holder's account before the 46th day after the date notice of cancellation is received by the provider is liable to the service contract holder for a penalty for each month an amount remains outstanding equal to 10 percent of the amount outstanding. The penalty is in addition to the full or prorated purchase price of the contract that is owed to the service contract holder under this section or the terms of the contract.

(f) The right to cancel a service contract is not transferable to a subsequent holder of the contract.

SECTION 1.15. The heading to Section 1304.159, Occupations Code, is amended to read as follows:

Sec. 1304.159. CANCELLATION BY PROVIDER; REFUND [~~CANCELING A SERVICE CONTRACT~~].

SECTION 1.16. Section 1304.159, Occupations Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) The provider is not required to provide prior notice of cancellation if the service contract is canceled because of:

- (1) nonpayment of the consideration for the contract;
- (2) fraud or a material misrepresentation by the service contract holder to the provider or the provider's administrator; or
- (3) a substantial breach of a duty by the service contract holder relating to the covered product or its use.

(c) A service contract holder whose contract is canceled by the provider in accordance with this section is entitled to a prorated refund of the purchase price of the contract reflecting the remaining term of the contract, based on mileage, time, or another reasonably applicable measure of the remaining term that must be disclosed in the contract, decreased by the amount of any claims paid under the contract. A provider who cancels a contract under this section may not impose a cancellation fee.

SECTION 1.17. Section 1304.161, Occupations Code, is amended to read as follows:

Sec. 1304.161. [~~MISLEADING STATEMENTS~~] PROHIBITED ACTS. (a) A provider, administrator, seller, or other [or the provider's] representative of the provider may not, in the provider's service contracts or literature or in any written communication:

(1) make, permit, or cause to be made any false, deceptive, or misleading statement; or

(2) deliberately omit a material statement if the omission would be considered misleading.

(b) A person, including a bank, a savings and loan association, a lending institution, or the manufacturer or seller of a product, may not require the purchase of a service contract as a condition of a loan or the sale of property.

(c) A provider, administrator, seller, or other representative of the provider may not make a telemarketing call to a consumer as provided by Sections 304.002 and 304.003, Business & Commerce Code, unless the provider, administrator, seller, or representative has an established business relationship, as defined by Section 304.002, Business & Commerce Code, with the consumer.

SECTION 1.18. Section 1304.201, Occupations Code, is amended to read as follows:

Sec. 1304.201. DISCIPLINARY ACTION. ~~[(a)]~~ On a finding that a ground for disciplinary action exists under this chapter, the commission or executive director may impose an administrative sanction or ~~[, including an]~~ administrative penalty or seek a civil penalty or any other remedy as provided by this chapter and ~~[Subchapter F,]~~ Chapter 51.

SECTION 1.19. Subchapter E, Chapter 1304, Occupations Code, is amended by adding Section 1304.205 to read as follows:

Sec. 1304.205. REMEDY FOR SERVICE CONTRACT HOLDERS. (a) If the commission by order, including an agreed order, determines that a person has operated as a provider or administrator in this state without holding the appropriate registration under this chapter, the person shall offer to a service contract holder who holds a service contract sold or issued by the person during the period that the person was not registered under this chapter the right to:

(1) cancel the contract and obtain a refund of the full purchase price of the contract; or

(2) retain the contract.

(b) If a seller fails to process a service contract application or a payment from a consumer in accordance with this chapter and any sales agreement or contract between the provider and the seller, the commission or executive director may, by commission order, including an agreed order, require the seller to refund the full purchase price of the contract to the consumer.

(c) The remedies described in this section are in addition to any administrative penalty, administrative sanction, civil penalty, or other disciplinary or enforcement action sought under this chapter or Chapter 51.

SECTION 1.20. (a) On the effective date of this Act, the following provisions of the Occupations Code are repealed:

(1) Section 1304.006; and

(2) Section 1304.102(d).

(b) On January 1, 2012, the following provisions of the Occupations Code are repealed:

(1) Section 1304.157; and

(2) Section 1304.158.

SECTION 1.21. (a) Not later than April 1, 2012, the Texas Commission of Licensing and Regulation shall adopt rules necessary to implement Chapter 1304, Occupations Code, as amended by this Act.

(b) Sections 1304.102 and 1304.1025, Occupations Code, as amended by this Act, apply only to an application for a registration or renewal of a registration filed with the Texas Department of Licensing and Regulation on or after the effective date of this Act. An application filed before that date is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

(c) Sections 1304.156 and 1304.159, Occupations Code, as amended by this Act, and Section 1304.1581, Occupations Code, as added by this Act, apply only to a service contract sold or issued on or after January 1, 2012. A service contract sold or issued before that date is governed by the law in effect on the date the contract was sold or issued, and the former law is continued in effect for that purpose.

(d) Notwithstanding Subsection (c) of this section, a service contract sold or issued before January 1, 2012, may not be extended or renewed at the end of the service contract term unless the contract complies with Sections 1304.156 and 1304.159, Occupations Code, as amended by this Act, and Section 1304.1581, Occupations Code, as added by this Act.

(e) Section 1304.201, Occupations Code, as amended by this Act, applies only to a disciplinary action initiated by the Texas Department of Licensing and Regulation on or after the effective date of this Act. An action initiated before the effective date of this Act is governed by the law in effect on the date the action was initiated, and the former law is continued in effect for that purpose.

(f) Section 1304.205, Occupations Code, as added by this Act, applies only to an act or omission of a person operating as a provider, administrator, or seller of a service contract that occurs on or after the effective date of this Act. An act or omission that occurs before that date is governed by the law in effect on the date the act or omission occurred, and the former law is continued in effect for that purpose.

## ARTICLE 2. IDENTITY RECOVERY SERVICE CONTRACTS

SECTION 2.01. Section 1306.002, Occupations Code, is amended by adding Subdivision (11) to read as follows:

(11) "Seller" means a person, other than the provider or administrator of an identity recovery service contract, who markets, sells, offers to sell, negotiates, or issues an identity recovery service contract to a consumer on behalf of a provider, but who is not contractually obligated to a service contract holder under the terms of an identity recovery service contract.

SECTION 2.02. Chapter 1306, Occupations Code, is amended by adding Subchapter A-1 to read as follows:

### SUBCHAPTER A-1. POWERS AND DUTIES OF DEPARTMENT AND COMMISSION

Sec. 1306.022. RULES. The commission shall adopt rules necessary to implement and administer this chapter.

SECTION 2.03. Section 1306.008, Occupations Code, is transferred to Subchapter A-1, Chapter 1306, Occupations Code, as added by this Act, redesignated as Section 1306.021, Occupations Code, and amended to read as follows:

Sec. 1306.021 [~~1306.008~~]. GENERAL INVESTIGATIVE POWER OF EXECUTIVE DIRECTOR. (a) The executive director may investigate a provider, administrator, seller, or other person as necessary to enforce this chapter and protect identity recovery service contract holders in this state.

(b) On request of the executive director, a provider shall make the records required by Section 1306.105 available to the executive director as necessary to enable the executive director to reasonably determine compliance with this chapter.

SECTION 2.04. Section 1306.051, Occupations Code, is amended by amending Subsections (a) and (b) and adding Subsection (d) to read as follows:

(a) A person may not operate as a provider or administrator of identity recovery service contracts sold or issued in this state unless the person is registered with the department.

(b) Except for the registration requirement of this chapter [~~subchapter~~], a provider, [~~identity recovery service contract~~] seller, administrator, or other person who markets, sells, issues, or offers to sell identity recovery service contracts is exempt from any licensing requirement of this state that relates to an activity regulated under this chapter.

(d) A provider or administrator may not contract with or use the services of a person to perform an activity that requires registration with the department as a provider or administrator unless that person is appropriately registered.

SECTION 2.05. Section 1306.052(c), Occupations Code, is amended to read as follows:

(c) The department may refuse to issue or renew a registration, suspend or revoke a registration, or take any other disciplinary action under Subchapter D if the applicant or a controlling person of the applicant:

(1) has violated this chapter or a rule adopted or order issued by the commission or executive director under this chapter;

(2) has made a material misrepresentation or false statement in an application or in any document accompanying an application;

(3) has had a license issued under Title 13, Insurance Code, revoked as provided by that code; or

(4) has had a license or registration as a provider, administrator, or seller revoked in this state or another state.

SECTION 2.06. Section 1306.053(a), Occupations Code, is amended to read as follows:

(a) In addition to the requirements of Section 1306.052, an applicant for issuance or renewal of a provider registration must file with the application:

(1) the reimbursement insurance policy required by Section 1306.102, if the provider is using a reimbursement insurance policy to meet the financial security requirements of Section 1306.101; [and]

(2) the financial security deposit and the documentation required by the department demonstrating adequate funding of the reserve account, if the provider is using a funded reserve account and financial security deposit to meet the financial security requirements of Section 1306.101;

(3) the proof necessary to demonstrate the applicant or its parent company maintains at least \$100 million net worth, if the applicant is using net worth to meet the financial security requirements of Section 1306.101; and

(4) information about each controlling person of the applicant [a biographical affidavit,] in a form prescribed by the executive director[; for each controlling person of the provider].

SECTION 2.07. Sections 1306.054(b) and (d), Occupations Code, are amended to read as follows:

(b) To register or renew a registration, a provider or administrator must pay the appropriate fee. The commission shall set by rule the [~~amounts of the registration and renewal~~] fees required to cover the costs of administering this chapter.

(d) The information concerning the number of identity recovery service contracts sold or issued by a provider that is submitted under Subsection (c)]:

[~~(4)~~] is a trade secret to which Section 552.110, Government Code, applies];  
and

~~[(2) may be used only by the executive director and the department for the purposes of this section].~~

SECTION 2.08. The heading to Subchapter C, Chapter 1306, Occupations Code, is amended to read as follows:

SUBCHAPTER C. PRACTICE BY IDENTITY RECOVERY SERVICE  
CONTRACT

PROVIDERS, ~~[AND]~~ ADMINISTRATORS, AND SELLERS

SECTION 2.09. The heading to Section 1306.101, Occupations Code, is amended to read as follows:

Sec. 1306.101. FINANCIAL SECURITY REQUIREMENTS;  
DISTRIBUTION OF FUNDS HELD IN TRUST.

SECTION 2.10. Section 1306.101, Occupations Code, is amended by amending Subsections (a) and (b) and adding Subsection (f) to read as follows:

(a) To ensure the faithful performance of a provider's obligations to its identity recovery service contract holders, each provider must:

(1) insure the provider's identity recovery service contracts under a reimbursement insurance policy issued by an insurer authorized to transact insurance in this state or by a surplus lines insurer eligible to place coverage in this state under Chapter 981, Insurance Code;

(2) maintain a funded reserve account covering the provider's obligations under its identity recovery service contracts that are issued and outstanding in this state and place in trust with the executive director a financial security deposit consisting of:

(A) ~~[a surety bond issued by an authorized surety;~~  
~~[(B) securities of the type eligible for deposit by an authorized insurer in this state;~~

~~[(C) a statutory deposit of cash [or cash equivalents];~~  
~~(B) [(D)] a letter of credit issued by a qualified financial institution; or~~  
~~(C) a certificate of deposit issued by a qualified financial institution~~  
~~[(E) another form of security prescribed by rules adopted by the commission]; or~~

(3) maintain, or have a parent company that maintains, a net worth or stockholders' equity of at least \$100 million.

(b) If the provider ensures its obligations under Subsection (a)(2), the amount maintained in the reserve account may not be less than an amount equal to 40 percent of the gross consideration the provider received from consumers from the sale of all identity recovery service contracts issued and outstanding in this state, minus any claims paid. The executive director may review and examine the reserve account. The amount of the security deposit may not be less than \$250,000. The provider must submit to the executive director on request a copy of the provider's financial statements that must be prepared in accordance with generally accepted accounting

principles, be without qualification as to the going concern status of the provider, and be audited by an independent certified public accountant. The commission by rule may require the provider to submit additional financial reports [the greater of:

[(1) \$25,000; or

(2) an amount equal to five percent of the gross consideration the provider received from consumers from the sale of all identity recovery service contracts issued and outstanding in this state, minus any claims paid].

(f) In the event of a provider's bankruptcy or a similar event affecting the ability of the provider to faithfully perform its obligations to its identity recovery service contract holders, the executive director may distribute any funds held in trust as financial security for the provider under this section to eligible identity recovery service contract holders as payment for claims. The executive director must distribute the funds in an equitable and cost-effective manner as determined by the executive director.

SECTION 2.11. Subchapter C, Chapter 1306, Occupations Code, is amended by adding Sections 1306.1021 and 1306.1031 to read as follows:

Sec. 1306.1021. FINANCIAL SECURITY TRANSITION. (a) In this section, "provider that maintained a funded reserve account" means a provider that, in order to ensure the faithful performance of the provider's obligations to identity recovery service contract holders, maintained a funded reserve account covering the provider's obligations under identity recovery service contracts that were issued and outstanding in this state and placed in trust with the executive director a financial security deposit consisting of:

(1) a surety bond issued by an authorized surety;

(2) securities of the type eligible for deposit by an authorized insurer in this state;

(3) a statutory deposit of cash or cash equivalents;

(4) a letter of credit issued by a qualified financial institution; or

(5) another form of security prescribed by commission rules.

(b) This section applies only to a provider that maintained a funded reserve account on August 31, 2011.

(c) Not later than September 1, 2012, a provider that maintained a funded reserve account shall submit to the executive director documentation that the provider is in compliance with the financial security requirements provided by Section 1306.101 for identity recovery service contracts sold or issued in this state on or after September 1, 2012. A provider that maintained a funded reserve account may not sell or issue an identity recovery service contract on or after September 1, 2012, unless the provider is in compliance with this subsection.

(d) A provider that maintained a funded reserve account shall:

(1) continue to maintain the funded reserve account and security deposit at appropriate levels for identity recovery service contracts that were sold or issued in this state before September 1, 2012, until the contracts are no longer in effect; or

(2) provide financial security for identity recovery service contracts sold or issued before September 1, 2012, by complying with the financial security requirements of Section 1306.101.

(e) If a provider provides financial security for identity recovery service contracts sold or issued before September 1, 2012, by complying with the financial security requirements of Section 1306.101, the provider shall give to the executive director satisfactory documentation that the reimbursement insurance policy, funded reserve account and security deposit, or net worth covers all outstanding identity recovery service contracts issued before September 1, 2012.

(f) An identity recovery service contract that is sold or issued before September 1, 2012, and is covered under a funded reserve account and security deposit may not be extended or renewed at the end of the identity recovery service contract term unless the provider provides financial security for those service contracts by complying with the financial security requirements of Section 1306.101 before the extension or renewal.

Sec. 1306.1031. IDENTITY RECOVERY SERVICE CONTRACT SELLERS; RESPONSIBILITIES. (a) A provider may employ or contract with a seller to be responsible for:

(1) all or any part of the sale or marketing of identity recovery service contracts for the provider; and

(2) compliance with this chapter in connection with the sale or marketing of identity recovery service contracts.

(b) The hiring of or contracting with a seller under this section does not affect a provider's responsibility to comply with this chapter.

(c) Unless registered as a provider or administrator, a seller is prohibited from engaging in activities that would require registration as a provider or administrator.

(d) A seller shall process an identity recovery service contract application and a payment from a consumer in accordance with this chapter and with any sales agreement or contract between the provider and the seller.

SECTION 2.12. Sections 1306.106(a), (b), and (d), Occupations Code, are amended to read as follows:

(a) An identity recovery service contract marketed, sold, offered for sale, issued, made, proposed to be made, or administered in this state must:

(1) be written, printed, or typed in clear, understandable language that is easy to read;

(2) state the name and address of the provider;

(3) state the purchase price of the contract and the terms under which the contract is sold;

(4) state the terms and restrictions governing cancellation of the contract by the provider or the identity recovery service contract holder before the expiration date of the contract;

(5) identify:

(A) any administrator and any registration number issued to the administrator under this chapter;

(B) the ~~contract~~ seller; and

(C) the identity recovery service contract holder, if the identity recovery service contract holder provides the holder's name;

(6) state the amount of any deductible;

(7) specify the services to be provided under the contract and any limitation, exception, or exclusion;

(8) specify any restriction governing the transferability of the contract; and

(9) state the duties of the identity recovery service contract holder, including any duty to protect against any further damage and any requirement to follow the instructions in the identity recovery service contract.

(b) The identity and, if applicable, registration number issued under this chapter of a person described by Subsection (a)(5) is not required to be preprinted on the identity recovery service contract and may be added to the contract at the time of sale.

(d) An identity recovery service contract insured under a reimbursement insurance policy under Section 1306.102 must:

(1) state the name and address of the insurer;

(2) state that the identity recovery service contract holder may apply for reimbursement directly to the insurer if:

(A) a covered service is not provided to the identity recovery service contract holder by the provider before the 61st day after the date of proof of loss; or

(B) a refund or credit is not paid before the 46th day after the date on which the contract is canceled [~~returned to the provider~~] under Section 1306.1081 [~~1306.107~~]; and

(3) contain a statement substantially similar to the following: "Obligations of the provider under this identity recovery service contract are insured under an identity recovery service contract reimbursement insurance policy."

SECTION 2.13. Subchapter C, Chapter 1306, Occupations Code, is amended by adding Section 1306.1081 to read as follows:

Sec. 1306.1081. CANCELLATION BY IDENTITY RECOVERY SERVICE CONTRACT HOLDER; REFUND. (a) An identity recovery service contract must allow the identity recovery service contract holder to cancel the identity recovery service contract at any time.

(b) If an identity recovery service contract holder cancels an identity recovery service contract before the 31st day after the date of purchase, the provider:

(1) shall refund to the identity recovery service contract holder or credit to the account of the identity recovery service contract holder the full purchase price of the contract, decreased by the amount of any claims paid under the contract; and

(2) may not impose a cancellation fee.

(c) If an identity recovery service contract holder cancels an identity recovery service contract on or after the 31st day after the date of purchase, the provider:

(1) shall refund to the identity recovery service contract holder or credit to the account of the identity recovery service contract holder the prorated purchase price of the contract reflecting the remaining term of the contract, based on mileage, time, or another reasonably applicable measure of the remaining term that must be disclosed in the contract, decreased by the amount of any claims paid under the contract; and

(2) may impose a reasonable cancellation fee not to exceed \$50.

(d) A provider may allow an identity recovery service contract holder to cancel an identity recovery service contract on other terms included in the contract, provided the terms do not conflict with this section.



(e) A provider who does not pay the refund or credit the identity recovery service contract holder's account before the 46th day after the date notice of cancellation is received by the provider is liable to the identity recovery service contract holder for a penalty for each month an amount remains outstanding equal to 10 percent of the amount outstanding. The penalty is in addition to the full or prorated purchase price of the contract that is owed to the identity recovery service contract holder under this section or the terms of the contract.

(f) The right to cancel an identity recovery service contract is not transferable to a subsequent holder of the contract.

SECTION 2.14. The heading to Section 1306.109, Occupations Code, is amended to read as follows:

Sec. 1306.109. CANCELLATION BY A PROVIDER; REFUND [CANCELING AN IDENTITY RECOVERY SERVICE CONTRACT].

SECTION 2.15. Section 1306.109, Occupations Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) The provider is not required to provide prior notice of cancellation if the identity recovery service contract is canceled because of:

- (1) nonpayment of the consideration for the contract;
- (2) fraud or a material misrepresentation by the identity recovery service contract holder to the provider or the provider's administrator; or
- (3) a substantial breach of a duty by the identity recovery service contract holder.

(c) An identity recovery service contract holder whose contract is canceled by the provider in accordance with this section is entitled to a prorated refund of the purchase price of the contract reflecting the remaining term of the contract, based on mileage, time, or another reasonably applicable measure of the remaining term that must be disclosed in the contract, decreased by the amount of any claims paid under the contract. A provider who cancels a contract under this section may not impose a cancellation fee.

SECTION 2.16. Section 1306.111, Occupations Code, is amended to read as follows:

Sec. 1306.111. ~~[MISLEADING STATEMENTS]~~ PROHIBITED ACTS. (a) A provider, administrator, seller, or other ~~[or the provider's]~~ representative of the provider may not, in the provider's identity recovery service contracts or literature or in any written communication:

- (1) make, permit, or cause to be made any false, deceptive, or misleading statement; or
- (2) deliberately omit a material statement if the omission would be considered misleading.

(b) A person regulated by Chapter 2301 may not require the purchase of an identity recovery service contract as a condition of a loan or the sale of a vehicle.

(c) A provider, administrator, seller, or other representative of the provider may not make a telemarketing call to a consumer as provided by Sections 304.002 and 304.003, Business & Commerce Code, unless the provider, administrator, seller, or representative has an established business relationship, as defined by Section 304.002, Business & Commerce Code, with the consumer.

SECTION 2.17. Section 1306.151, Occupations Code, is amended to read as follows:

Sec. 1306.151. DISCIPLINARY ACTION. On a finding that a ground for disciplinary action exists under this chapter, the commission or executive director may impose an administrative sanction or ~~[, including an]~~ administrative penalty or seek a civil penalty or any other remedy as provided by this chapter and [Subchapter F,] Chapter 51.

SECTION 2.18. Subchapter D, Chapter 1306, Occupations Code, is amended by adding Section 1306.155 to read as follows:

Sec. 1306.155. REMEDY FOR IDENTITY RECOVERY SERVICE CONTRACT HOLDERS. (a) If the commission by order, including an agreed order, determines that a person has operated as a provider or administrator in this state without holding the appropriate registration under this chapter, the person shall offer to an identity recovery service contract holder who holds an identity recovery service contract sold or issued by the person during the period that the person was not registered under this chapter the right to:

(1) cancel the contract and obtain a refund of the full purchase price of the contract; or

(2) retain the contract.

(b) If a seller fails to process an identity recovery service contract application or a payment from a consumer in accordance with this chapter and any sales agreement or contract between the provider and the seller, the commission or executive director may, by commission order, including an agreed order, require the seller to refund the full purchase price of the contract to the consumer.

(c) The remedies described in this section are in addition to any administrative penalty, administrative sanction, civil penalty, or other disciplinary or enforcement action sought under this chapter or Chapter 51.

SECTION 2.19. (a) On the effective date of this Act, the following provisions of the Occupations Code are repealed:

(1) Section 1306.007; and

(2) Section 1306.052(d).

(b) On January 1, 2012, the following provisions of the Occupations Code are repealed:

(1) Section 1306.107; and

(2) Section 1306.108.

SECTION 2.20. (a) Not later than April 1, 2012, the Texas Commission of Licensing and Regulation shall adopt rules necessary to implement Chapter 1306, Occupations Code, as amended by this Act.

(b) Sections 1306.052 and 1306.053, Occupations Code, as amended by this Act, apply only to an application for a registration or renewal of a registration filed with the Texas Department of Licensing and Regulation on or after the effective date of this Act. An application filed before that date is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

(c) Sections 1306.106 and 1306.109, Occupations Code, as amended by this Act, and Section 1306.1081, Occupations Code, as added by this Act, apply only to an identity recovery service contract sold or issued on or after January 1, 2012. An identity recovery service contract sold or issued before that date is governed by the law in effect on the date the contract was sold or issued, and the former law is continued in effect for that purpose.

(d) Notwithstanding Subsection (c) of this section, an identity recovery service contract sold or issued before January 1, 2012, may not be extended or renewed at the end of the contract term unless the contract complies with Sections 1306.106 and 1306.109, Occupations Code, as amended by this Act, and Section 1306.1081, Occupations Code, as added by this Act.

(e) Section 1306.151, Occupations Code, as amended by this Act, applies only to a disciplinary action initiated by the Texas Department of Licensing and Regulation on or after the effective date of this Act. An action initiated before the effective date of this Act is governed by the law in effect on the date the action was initiated, and the former law is continued in effect for that purpose.

(f) Section 1306.155, Occupations Code, as added by this Act, applies only to an act or omission of a person operating as a provider, administrator, or seller of an identity recovery service contract that occurs on or after the effective date of this Act. An act or omission that occurs before that date is governed by the law in effect on the date the act or omission occurred, and the former law is continued in effect for that purpose.

### ARTICLE 3. EFFECTIVE DATE

SECTION 3.01. This Act takes effect September 1, 2011.

The amendment was read.

Senator Carona moved to concur in the House amendment to **SB 1169**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

### SENATE BILL 773 WITH HOUSE AMENDMENTS

Senator Zaffirini called **SB 773** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

#### Floor Amendment No. 1

Amend **SB 773** (house committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Subchapter C, Chapter 2054, Government Code, is amended by adding Section 2054.064 to read as follows:

Sec. 2054.064. ADVERTISING ON STATE ELECTRONIC INTERNET PORTALS. (a) In this section:

(1) "Department" means the Department of Information Resources or a successor agency.

(2) "State agency" means any department, board, commission, or other agency in the executive branch of state government, including the office of the governor. The term does not include an institution of higher education, as defined by Section 61.003, Education Code.

(b) In accordance with rules adopted by the department and to the extent allowed under federal law:

(1) a state agency shall contract with a private entity to lease advertising space on the agency's official electronic Internet portal; and

(2) the department shall contract with a private entity by awarding a 10-year license to the entity to lease advertising space on the official electronic Internet portal for the State of Texas.

(c) The department shall develop a standard contract for the lease of advertising space on an electronic Internet portal under this section. The standard contract developed by the department must include terms that:

(1) provide for the payment of a fee by the person leasing the advertising space in an amount set by department rule; and

(2) require the advertisements to comply with the rules adopted by the department relating to content and composition.

(d) The department shall adopt rules to implement this section. The rules must establish:

(1) guidelines relating to the content and composition of advertisements that may be placed on an electronic Internet portal;

(2) procedures for procuring advertisements that relate, to the greatest extent practicable, to the stated purpose of the state agency;

(3) policies that require:

(A) each advertisement to be clearly labeled on the electronic Internet portal as an advertisement; and

(B) a disclaimer on each electronic Internet portal that clearly states that the State of Texas does not endorse the products or services advertised on the state agency electronic Internet portal;

(4) a schedule of fees to be charged for the lease of advertising space under this section; and

(5) the amount of the lease payment that a private entity may retain for administering the lease contract.

(e) A private entity administering a lease under this section shall collect the fees due from the leasing entity. After deduction of the private entity's fees, the remainder of the fees collected under this section shall be forwarded to the comptroller to be deposited to the credit of the general revenue fund.

(f) Before entering into a contract under this section, a state agency or the department must evaluate:

(1) the effect of the contract on the bandwidth that the agency or the department requires to perform its official duties; and

(2) whether the contract increases vulnerability to malware or other potential threats to the security of the electronic Internet portal or computer network.

(g) Except as provided by Subsection (h), using the results of the evaluation required under Subsection (f), a state agency or the department shall develop and implement a plan to ensure that state electronic Internet portals and computer networks are secure and that sufficient bandwidth is available to host the advertising required under the contract and to allow for performance of official duties. The plan must include provisions to:

(1) prevent inappropriate content on electronic Internet portals and computer networks associated with this state;

(2) efficiently route data used by the agency or the department to perform its official duties;

(3) manage and reduce the quantity of bandwidth used by the agency or the department; and

(4) ensure the continued security and integrity of electronic Internet portals, computer networks, and confidential and sensitive data associated with this state.

(h) A state agency or the department may accept free or discounted services to assist in performing the evaluation and planning requirements under Subsections (f) and (g) from a provider designated as qualified by the department. The department shall maintain a list of qualified providers on the department's electronic Internet portal.

(i) A state agency or the department is not required to implement a plan developed under Subsection (g) if:

(1) money appropriated to the agency or the department may not be lawfully spent for the purposes of this section; or

(2) the agency or the department determines that the cost of implementing the plan will exceed the income received from a contract under this section.

## **Floor Amendment No. 2**

Amend Amendment No. 1 by Brown to **SB 773** (house committee printing) on page 3 of the amendment, line 28, by striking "deposited" and substituting "allocated as follows:

(1) 50 percent to the credit of the foundation school fund; and

(2) the remainder".

The amendments were read.

Senator Zaffirini moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 773** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Zaffirini, Chair; Carona, Eltife, Van de Putte, and Deuell.

**HOUSE CONCURRENT RESOLUTION 84  
ON SECOND READING**

On motion of Senator Estes and by unanimous consent, the regular order of business was suspended to take up for consideration **HCR 84** at this time on its second reading:

**HCR 84**, Designating 42 as the official State Domino Game of Texas.

The resolution was read second time.

Senator Uresti offered the following amendment to the resolution:

**Floor Amendment No. 1**

Amend **HCR 84** (Senate Committee Printing page 1, line 40) by striking "Table" and substituting "Domino".

The amendment to **HCR 84** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1.

**HCR 84** as amended was adopted by the following vote: Yeas 31, Nays 0.

**RECESS**

On motion of Senator Whitmire, the Senate at 6:27 p.m. recessed until 7:15 p.m. today.

**AFTER RECESS**

The Senate met at 7:28 p.m. and was called to order by Senator Eltife.

**MESSAGE FROM THE HOUSE**

HOUSE CHAMBER

Austin, Texas

Wednesday, May 25, 2011 - 3

The Honorable President of the Senate  
Senate Chamber  
Austin, Texas

Mr. President:

I am directed by the House to inform the Senate that the House has taken the following action:

**THE HOUSE HAS PASSED THE FOLLOWING MEASURES:**

**SB 76** Nelson Sponsor: Morrison  
Relating to certain providers of subsidized child care.  
(Committee Substitute/Amended)

**SB 100** Van de Putte Sponsor: Taylor, Van  
Relating to the adoption of voting procedures necessary to implement the federal Military and Overseas Voter Empowerment Act.  
(Amended)

- SB 364** Ogden Sponsor: Brown  
Relating to statistical information on the prosecution of certain offenses relating to the operating of a motor vehicle while intoxicated.
- SB 407** Watson Sponsor: Craddick  
Relating to the creation of the offense of electronic transmission of certain visual material depicting a minor and to certain educational programs concerning the prevention and awareness of that offense.  
(Amended)
- SB 460** Seliger Sponsor: Hunter  
Relating to regulation of the import, export, and management of mule deer; providing penalties.
- SB 472** West Sponsor: Giddings  
Relating to voting practices and elections of property owners' associations.  
(Amended)
- SB 498** Jackson Sponsor: Phillips  
Relating to the trapping and transport of surplus white-tailed deer.  
(Amended)
- SB 516** Patrick Sponsor: Fletcher  
Relating to the exemption from ad valorem taxation of all or part of the appraised value of the residence homestead of the surviving spouse of a 100 percent or totally disabled veteran.  
(Amended)
- SB 717** Harris Sponsor: Truitt  
Relating to the purpose and duties of the Council on Children and Families.
- SB 766** Estes Sponsor: Isaac  
Relating to the liability of a sport shooting range and the regulation of firearms, ammunition, firearm supplies, and sport shooting ranges.
- SB 809** Seliger Sponsor: Giddings  
Relating to judicial review in district court of certain workers' compensation disputes.  
(Amended)
- SB 875** Fraser Sponsor: Hancock  
Relating to compliance with state and federal environmental permits as a defense to certain actions for nuisance or trespass.  
(Amended)
- SB 975** Hinojosa Sponsor: Munoz, Jr.  
Relating to the operation of dropout recovery programs by certain public junior colleges in partnership with school districts.
- SB 978** Hinojosa Sponsor: Gonzales,  
Veronica  
Relating to procedures for the dissolution of the Hidalgo County Water Improvement District No. 3.  
(Committee Substitute)

**SB 1009** Huffman Sponsor: Sheffield  
 Relating to requiring public institutions of higher education to notify the federal Student and Exchange Visitor Information System (SEVIS) regarding the withdrawal or nonattendance of certain foreign students.

**SB 1130** Hegar Sponsor: Kleinschmidt  
 Relating to the exception from required public disclosure of certain records of an appraisal district.  
 (Amended)

**SB 1360** Harris Sponsor: Hunter  
 Relating to continuing education for physicians and nurses regarding the treatment of tick-borne diseases.

**SB 1560** Ellis Sponsor: Taylor, Larry  
 Relating to liability of certain local emergency management or homeland security organizations.

**SB 1617** Harris Sponsor: Aliseda  
 Relating to the discretionary transfer from a juvenile court to a criminal court of certain alleged offenses arising out of a single criminal transaction.

**SB 1810** Carona Sponsor: Truitt  
 Relating to the exemption of certain retirement accounts from access by creditors.  
 (Committee Substitute)

**SCR 2** Uresti Sponsor: Gallego  
 Urging Congress to reauthorize the Water Resources Development Act of 2007, Section 5056, and to appropriate sufficient funds so that efforts to solve the salt problem in the Amistad International Reservoir can continue.

Respectfully,

/s/Robert Haney, Chief Clerk  
 House of Representatives

## MESSAGE FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

Wednesday, May 25, 2011 - 4

The Honorable President of the Senate  
 Senate Chamber  
 Austin, Texas

Mr. President:

I am directed by the House to inform the Senate that the House has taken the following action:

THE HOUSE HAS PASSED THE FOLLOWING MEASURES:

**SB 8** Nelson Sponsor: Kolkhorst  
 Relating to improving the quality and efficiency of health care.  
 (Amended)



**SB 635** Nichols Sponsor: Larson  
Relating to the authority of the Texas Commission on Environmental Quality.  
(Amended)

THE HOUSE HAS ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

**HB 275** (123 Yeas, 21 Nays, 2 Present, not voting)

Respectfully,  
/s/Robert Haney, Chief Clerk  
House of Representatives

**SENATE RULE 7.12(a) SUSPENDED  
(Printing of Bills)**

On motion of Senator Ogden and by unanimous consent, Senate Rule 7.12(a) was suspended and the conference committee report for **HB 275** was ordered not printed.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 275 ADOPTED**

Senator Ogden called from the President's table the Conference Committee Report on **HB 275**. The Conference Committee Report was filed with the Senate on Monday, May 23, 2011.

On motion of Senator Ogden, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 4 ON SECOND READING**

On motion of Senator Ogden and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 4** at this time on its second reading:

**CSHB 4**, Relating to making supplemental appropriations and giving direction and adjustment authority regarding appropriations.

The bill was read second time.

Senator Ogden offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 4** (senate committee printing) as follows:

- (1) In SECTION 1(a) of the bill (page 1, line 21), strike "\$1,059,070,326" and substitute "\$1,065,962,443".
- (2) In SECTION 1(a)(5) of the bill (page 1, line 34), strike "\$1,291,970" and substitute "\$2,791,970".
- (3) In SECTION 1(a)(29) of the bill (page 2, line 19), strike "\$7,979,094" and substitute "\$12,979,094".
- (4) In SECTION 1(a)(74) of the bill (page 3, line 41), strike "\$19,408,079" and substitute "\$20,408,079".

(5) In SECTION 1(a)(117) of the bill (page 4, line 57), strike "\$65,874,494" and substitute "\$67,874,494".

(6) In SECTION 1(a)(121) of the bill (page 4, line 65), strike "\$6,045,065" and substitute "\$2,245,065".

(7) In SECTION 1(a)(129) of the bill (page 5, line 12), strike "\$1,690,749" and substitute "\$2,790,749".

(8) In SECTION 1(a)(136) of the bill (page 5, line 26), strike "\$20,000,000" and substitute "\$20,092,117".

(9) In SECTION 1(d) of the bill (page 7, line 41), strike "\$137,092,585" and substitute "\$160,092,585".

(10) In SECTION 1(d) of the bill, between Subdivisions (20) and (21) (page 8, between lines 36 and 37), insert the following:

(20-a) Higher Education Coordinating Board: \$23,000,000 from general revenue dedicated account number 5103, Texas B-On-Time Student Loan Account;

(11) Strike SECTION 7 of the bill (page 11, line 58, through page 12, line 2) and substitute the following appropriately numbered SECTION:

SECTION \_\_\_\_\_. OFFICE OF THE ATTORNEY GENERAL: CONTINGENCY FEE PAYMENT. In addition to amounts previously appropriated for the state fiscal biennium ending August 31, 2011, the amount of \$17,311,326 is appropriated out of the suspense account established by the comptroller of public accounts and the attorney general in General Revenue Fund 0001 for the payment of itemized claims and judgments, plus interest, if any, against the state of Texas, to the Office of the Attorney General, for the fiscal year ending August 31, 2011, for a contingency fee payment payable under the outside counsel contract OCC No. 2007-302-0012 to Wright and Greenhill, P.C., for work performed in reaching the final judgments in State of Texas ex rel. Ven-a-Care of Florida v. Mylan Pharmaceuticals USA et al., Cause No. D-1-GV-07-001259, District Court of Travis County, 201st Judicial District, and State of Texas ex rel. Ven-A-Care of the Florida Keys, Inc. v. TEVA, et al., Cause No. D-1-GV-07-001259, District Court of Travis County, 201st Judicial District.

(12) In SECTION 8 of the bill (page 12, line 6), strike "\$600,000,000" and substitute "\$550,000,000".

(13) In SECTION 11 of the bill, between "APPROPRIATIONS." and "\$184,000,000", insert "(a)".

(14) Between the end of SECTION 11 of the bill and SECTION 12 of the bill (page 12, between lines 36 and 37), insert the following:

(b) Notwithstanding Subsection (a) of this section and contingent on H.B. 6, Acts of the 82nd Legislature, Regular Session, 2011, or a similar Act of that legislative session relating to the establishment of an instructional materials allotment, being enacted by the vote necessary for the Act to take effect immediately and the Act immediately becoming law, Subsection (a) of this section has no effect and the \$184,000,000 described by that subsection is allocated to fund the instructional materials allotment in accordance with the provisions of H.B. 6 or the similar Act, as applicable.

(15) In SECTION 15 of the bill (page 12, line 65), strike "\$39,800,000" and substitute "\$81,000,000".

(16) In SECTION 15 of the bill (page 12, lines 66 through 67), strike "two-year period beginning on the effective date of this Act" and substitute "state fiscal biennium ending August 31, 2013,".

(17) Strike SECTION 16 of the bill (page 12, line 69, through page 13, line 7).

(18) Strike SECTION 19 of the bill (page 13, lines 30 through 43).

(19) Strike SECTION 21 of the bill (page 13, lines 57 through 65).

(20) Add the following appropriately numbered SECTIONS to the bill:

SECTION \_\_\_\_\_. FACILITIES COMMISSION: UTILITY COSTS. (a) In addition to amounts previously appropriated for the state fiscal biennium ending August 31, 2011, the amount of \$1,500,000 is appropriated out of General Revenue Fund 0001 to the Facilities Commission under Strategy B.2.1., Facilities Operation, for the two-year period beginning on the effective date of this Act for the purpose of providing for payment of increased utility costs as a result of an increase in utility rates.

(b) Notwithstanding Section 14.01, Part 14, Article IX, Appropriation Transfers, or similar provisions of Chapter 1424 (S.B. 1), Acts of the 81st Legislature, Regular Session, 2009 (the General Appropriations Act), money appropriated by this section may not be transferred by the Facilities Commission to another appropriation item or be used by the commission for a purpose other than payment of utility expenses without the prior written approval of the Legislative Budget Board.

SECTION \_\_\_\_\_. SUPREME COURT OF TEXAS: CERTAIN EXPENDITURES. In addition to amounts previously appropriated for the state fiscal biennium ending August 31, 2011, the Supreme Court of Texas is appropriated \$71,535 from Judicial Fund 0573 for personnel costs, security expenses, unemployment reimbursements, and travel expenses.

SECTION \_\_\_\_\_. DEPARTMENT OF AGRICULTURE: RURAL LAND EVALUATION. The Department of Agriculture may use appropriations made to the department from General Revenue Fund 0001 for the state fiscal year ending August 31, 2011, by Chapter 1424 (S.B. 1), Acts of the 81st Legislature, Regular Session, 2009 (the General Appropriations Act), for the state fiscal year ending August 31, 2011, for the additional purposes of funding an assessment of the impact of illegal activity along the Texas-Mexico border on rural landowners and the agriculture industry and working in conjunction with other appropriate entities to develop recommendations to enhance border security.

SECTION \_\_\_\_\_. TEXAS AGRILIFE RESEARCH: VEGETABLE AND FRUIT RESEARCH. Contingent on the comptroller of public accounts certifying at least \$1,000,000 in general revenue receipts in excess of the estimated general revenue receipts for that state fiscal biennium stated in the comptroller's Biennial Revenue Estimate for 2012-2013, as revised on March 13, 2011, and as further revised by any subsequent revision occurring before the effective date of this Act, the following amounts are appropriated to Texas AgriLife Research from General Revenue Fund 0001 for the Vegetable and Fruit Improvement Center:

(1) \$500,000 for the state fiscal year ending August 31, 2012; and

(2) \$500,000 for the state fiscal year ending August 31, 2013.

SECTION \_\_\_\_\_. TRUSTEED PROGRAMS WITHIN THE OFFICE OF THE GOVERNOR. The following appropriations are made to the Trusteed Programs within the Office of the Governor from general revenue dedicated account number 5003, Hotel Occupancy Tax for Economic Development Account, for purposes of economic development and tourism:

- (1) \$15,262,735 for the state fiscal year ending August 31, 2012; and
- (2) \$15,262,735 for the state fiscal year ending August 31, 2013.

SECTION \_\_\_\_\_. UNIVERSITY OF TEXAS MEDICAL BRANCH AT GALVESTON: UNEXPENDED BALANCE AUTHORITY. The unexpended and unencumbered balances of the amounts appropriated by Section 55, Chapter 1409 (H.B. 4586), Acts of the 81st Legislature, Regular Session, 2009, are appropriated for the two-year period beginning on the effective date of this Act to The University of Texas Medical Branch at Galveston for the same purposes as and with the same limitations as prescribed by that Act.

SECTION \_\_\_\_\_. TEXAS EDUCATION AGENCY: CERTAIN POSITIONS. The amount of \$18,000,000 is appropriated from Permanent School Fund 0044 to the Texas Education Agency for each fiscal year of the state fiscal biennium ending August 31, 2013, for agency operations related to the management and administration of the Permanent School Fund. The agency's cap on full-time equivalent positions is increased by 31.0 in each of those fiscal years.

SECTION \_\_\_\_\_. TEXAS EDUCATION AGENCY: SUPPLEMENTAL EDUCATION AND ACADEMIC READINESS SERVICES. (a) The amount of \$8,750,000 is appropriated from General Revenue Fund 0001 to the Texas Education Agency for each fiscal year of the state fiscal biennium ending August 31, 2013, for the purposes of:

(1) providing supplemental education services to students who failed to perform satisfactorily on reading or mathematics assessment instruments administered under Section 39.023, Education Code; and

(2) funding programs targeting the prevention of academic failure, including algebra readiness programs, literacy academies, mathematics academies, professional development programs, middle grades initiatives, and other assistance initiatives and programs that focus on improving student performance on state assessment instruments.

(b) It is the intent of the legislature that the commissioner of education establish a list of qualified providers to provide remedial and tutorial services for students described by Subsection (a)(1) of this section.

SECTION \_\_\_\_\_. THE UNIVERSITY OF TEXAS AT ARLINGTON: REGIONAL NURSING EDUCATION CENTER. The amount of \$5,000,000 is appropriated from General Revenue Fund 0001 to The University of Texas at Arlington for the state fiscal biennium ending August 31, 2013, for the Regional Nursing Education Center.

SECTION \_\_\_\_\_. THE UNIVERSITY OF TEXAS AT DALLAS: MIDDLE SCHOOL BRAIN YEARS. The amount of \$3,000,000 is appropriated from General Revenue Fund 0001 to The University of Texas at Dallas for the state fiscal biennium ending August 31, 2013, for the Middle School Brain Years program.

SECTION \_\_\_\_\_. THE UNIVERSITY OF TEXAS OF THE PERMIAN BASIN: COLLEGE OF ENGINEERING. The amount of \$1,700,000 is appropriated from General Revenue Fund 0001 to The University of Texas of the Permian Basin for the state fiscal biennium ending August 31, 2013, for the College of Engineering.

SECTION \_\_\_\_\_. TEXAS A&M UNIVERSITY - CORPUS CHRISTI: ENGINEERING PROGRAM. The amount of \$500,000 is appropriated from General Revenue Fund 0001 to Texas A&M University - Corpus Christi for the state fiscal biennium ending August 31, 2013, for the engineering program.

SECTION \_\_\_\_\_. TEXAS ENGINEERING EXPERIMENT STATION: NUCLEAR POWER INSTITUTE. The amount of \$2,000,000 is appropriated from General Revenue Fund 0001 to the Texas Engineering Experiment Station for the state fiscal biennium ending August 31, 2013, for the Nuclear Power Institute.

SECTION \_\_\_\_\_. THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT SAN ANTONIO: UMBILICAL CORD BLOOD BANK. The amount of \$2,000,000 is appropriated from General Revenue Fund 0001 to The University of Texas Health Science Center at San Antonio for the state fiscal biennium ending August 31, 2013, for the umbilical cord blood bank.

SECTION \_\_\_\_\_. SUL ROSS STATE UNIVERSITY: CAMPUS UTILITY INFRASTRUCTURE. The amount of \$7,000,000 is appropriated from General Revenue Fund 0001 to Sul Ross State University for the state fiscal biennium ending August 31, 2013, for the purpose of providing for campus utility infrastructure. The legislature finds there is a demonstrated need for funding this infrastructure.

SECTION \_\_\_\_\_. LAMAR INSTITUTE OF TECHNOLOGY: TECHNICAL ARTS BUILDING. The amount of \$5,000,000 is appropriated from General Revenue Fund 0001 to the Lamar Institute of Technology for the state fiscal biennium ending August 31, 2013, for the purpose of making repairs to the Technical Arts buildings. The legislature finds there is a demonstrated need for funding this infrastructure.

SECTION \_\_\_\_\_. UNIVERSITY OF NORTH TEXAS SYSTEM: COLLEGE OF PHARMACY. From amounts appropriated for the state fiscal biennium ending August 31, 2013, to the University of North Texas, the University of North Texas at Dallas, and the University of North Texas Health Science Center at Fort Worth by H.B. 1, Acts of the 82nd Legislature, Regular Session, 2011 (the General Appropriations Act), an amount not to exceed \$300,000 may be spent to establish the College of Pharmacy offering the standard pharmacy curriculum leading to a doctor of Pharmacy (Pharm. D) degree on the campuses of the University of North Texas, the University of North Texas at Dallas, and the University of North Texas Health Science Center at Fort Worth. The appropriated funds may not be spent on costs associated with constructing or maintaining the pharmacy school buildings.

SECTION \_\_\_\_\_. SAM HOUSTON STATE UNIVERSITY: UNEXPENDED BALANCE AUTHORITY. The unexpended and unencumbered balances of the amounts appropriated by Chapter 1424 (S.B. 1), Acts of the 81st Legislature, Regular Session, 2009 (the General Appropriations Act), in Riders 3 and 4 to the bill pattern for Sam Houston State University (page III-147) are appropriated to Sam Houston State University for the same purposes for the state fiscal biennium ending August 31, 2013.

SECTION \_\_\_\_\_. WATER DEVELOPMENT BOARD: LAKE COLUMBIA WATER SUPPLY PROJECT. (a) It is the intent of the legislature that the Water Development Board allocate an amount of general revenue, not to exceed \$1,400,000, out of funds appropriated to the board by H.B. 1, Acts of the 82nd Legislature, Regular Session, 2011 (the General Appropriations Act), for purposes of developing a draft environmental impact statement for the Lake Columbia water supply project.

(b) In the event that the amount of \$1,400,000 of general revenue funds is not available from funds appropriated to the Water Development Board by H.B. 1, Acts of the 82nd Legislature, Regular Session, 2011 (the General Appropriations Act), it is the intent of the legislature that the board, to the extent permissible under that chapter, provide for a loan in accordance with Chapter 15, Water Code, for purposes of developing a draft environmental impact statement for the Lake Columbia water supply project.

SECTION \_\_\_\_\_. THE UNIVERSITY OF TEXAS M.D. ANDERSON CANCER CENTER: INSTITUTIONAL OPERATIONS. The amount of \$17,383,894 is appropriated from General Revenue Fund 0001 to The University of Texas M.D. Anderson Cancer Center for the state fiscal biennium ending August 31, 2013, for institutional operations.

SECTION \_\_\_\_\_. THE UNIVERSITY OF TEXAS SOUTHWESTERN MEDICAL CENTER AT DALLAS: INSTITUTIONAL OPERATIONS. The amount of \$12,587,647 is appropriated from General Revenue Fund 0001 to The University of Texas Southwestern Medical Center at Dallas for the state fiscal biennium ending August 31, 2013, for institutional operations.

SECTION \_\_\_\_\_. THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT HOUSTON: INSTITUTIONAL OPERATIONS. (a) The amount of \$24,145,091 is appropriated from General Revenue Fund 0001 to The University of Texas Health Science Center at Houston for the state fiscal biennium ending August 31, 2013, for institutional operations.

(b) Out of the funds appropriated in Subsection (a) of this section, the University of Texas Health Science Center at Houston shall allocate:

- (1) \$2,000,000 to the Texas Heart Institute; and
- (2) \$1,000,000 to provide trauma care.

SECTION \_\_\_\_\_. THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT SAN ANTONIO: INSTITUTIONAL OPERATIONS. (a) The amount of \$16,818,235 is appropriated from General Revenue Fund 0001 to The University of Texas Health Science Center at San Antonio for the state fiscal biennium ending August 31, 2013, for institutional operations.

(b) Money appropriated by this section may be spent only with the prior written approval of the Legislative Budget Board.

SECTION \_\_\_\_\_. THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT TYLER: INSTITUTIONAL OPERATIONS. The amount of \$8,752,408 is appropriated from General Revenue Fund 0001 to The University of Texas Health Science Center at Tyler for the state fiscal biennium ending August 31, 2013, for institutional operations.

SECTION \_\_\_\_\_. THE UNIVERSITY OF TEXAS MEDICAL BRANCH AT GALVESTON: TUITION REVENUE BOND DEBT SERVICE AND INSTITUTIONAL OPERATIONS. The amount of \$19,863,510 is appropriated from General Revenue Fund 0001 to The University of Texas Medical Branch at Galveston for the state fiscal biennium ending August 31, 2013, for tuition revenue bond debt service and institutional operations.

SECTION \_\_\_\_\_. TEXAS A&M UNIVERSITY SYSTEM HEALTH SCIENCE CENTER: INSTITUTIONAL OPERATIONS. The amount of \$13,040,271 is appropriated from General Revenue Fund 0001 to the Texas A&M University System Health Science Center for the state fiscal biennium ending August 31, 2013, for institutional operations.

SECTION \_\_\_\_\_. UNIVERSITY OF NORTH TEXAS HEALTH SCIENCE CENTER AT FORT WORTH: INSTITUTIONAL OPERATIONS. The amount of \$5,273,298 is appropriated from General Revenue Fund 0001 to the University of North Texas Health Science Center at Fort Worth for the state fiscal biennium ending August 31, 2013, for institutional operations.

SECTION \_\_\_\_\_. TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER: INSTITUTIONAL OPERATIONS. The amount of \$20,078,384 is appropriated from General Revenue Fund 0001 to the Texas Tech University Health Sciences Center for the state fiscal biennium ending August 31, 2013, for institutional operations.

SECTION \_\_\_\_\_. THE UNIVERSITY OF TEXAS SOUTHWESTERN MEDICAL CENTER AT DALLAS: INSTITUTIONAL OPERATIONS. The amount of \$8,000,000 is appropriated from General Revenue Fund 0001 to the University of Texas Southwestern Medical Center at Dallas for the two-year period beginning on the effective date of this Act for institutional operations.

SECTION \_\_\_\_\_. THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT SAN ANTONIO: INSTITUTIONAL OPERATIONS. The amount of \$8,000,000 is appropriated from General Revenue Fund 0001 to The University of Texas Health Science Center at San Antonio for the two-year period beginning on the effective date of this Act for institutional operations.

SECTION \_\_\_\_\_. THE UNIVERSITY OF TEXAS M.D. ANDERSON CANCER CENTER: INSTITUTIONAL OPERATIONS. The amount of \$8,000,000 is appropriated from General Revenue Fund 0001 to The University of Texas M.D. Anderson Cancer Center for the two-year period beginning on the effective date of this Act for institutional operations.

SECTION \_\_\_\_\_. TEXAS A&M UNIVERSITY SYSTEM HEALTH SCIENCE CENTER: INSTITUTIONAL OPERATIONS. The amount of \$8,000,000 is appropriated from General Revenue Fund 0001 to the Texas A&M University System Health Science Center for the two-year period beginning on the effective date of this Act for institutional operations.

SECTION \_\_\_\_\_. UNIVERSITY OF NORTH TEXAS HEALTH SCIENCE CENTER AT FORT WORTH: INSTITUTIONAL OPERATIONS. The amount of \$5,000,000 is appropriated from General Revenue Fund 0001 to the University of North Texas Health Science Center at Fort Worth for the two-year period beginning on the effective date of this Act for institutional operations.

SECTION \_\_\_\_\_. TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER: INSTITUTIONAL OPERATIONS. The amount \$8,000,000 is appropriated from General Revenue Fund 0001 to Texas Tech University Health Sciences Center for the two-year period beginning on the effective date of this Act for institutional operations.

SECTION \_\_\_\_\_. DEPARTMENT OF PUBLIC SAFETY: CERTAIN UNEXPENDED BALANCE AUTHORITY. The unexpended and unencumbered balances of the amounts of general revenue appropriated by Chapter 1424 (S.B. 1), Acts of the 81st Legislature, Regular Session, 2009 (the General Appropriations Act), are appropriated to the Department of Public Safety for the state fiscal biennium ending August 31, 2013, in a total amount not to exceed \$3,800,000, for the same purposes as prescribed by that Act.

SECTION \_\_\_\_\_. This Act takes effect immediately.

(21) Renumber the SECTIONS of the bill appropriately.

The amendment to **CSHB 4** was read.

Senator Ogden offered the following amendment to Floor Amendment No. 1:

#### **Floor Amendment No. 2**

Amend Floor Amendment No. 1 to **CSHB 4** as follows:

Add a new Section \_\_\_\_\_. Office of Court Administration, Texas Judicial Council: Court Collection Improvement Program. The amount of \$337,500 is appropriated from General Revenue Fund 0001 to the Office of Court Administration for each fiscal year of the state fiscal biennium ending August 31, 2013, for the purposes of auditing the Court Collection Improvement Program. The agency's cap on full-time equivalent positions is increased by 8.0 in each of those fiscal years.

The amendment to Floor Amendment No. 1 to **CSHB 4** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 2.

Senator Ogden offered the following amendment to Floor Amendment No. 1:

#### **Floor Amendment No. 3**

Amend Floor Amendment No. 1 to **CSHB 4** as follows:

1) On page 12, line 18 add the following appropriately numbered SECTION to the bill:

SECTION \_\_\_\_\_. HIGHER EDUCATION COORDINATING BOARD: Baylor College of Medicine. The amount of \$4,100,000 is appropriated from General Revenue Fund 0001 to the Higher Education Coordinating Board for the state fiscal biennium ending August 31, 2013, for Baylor College of Medicine.

The amendment to Floor Amendment No. 1 to **CSHB 4** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 3.



Question recurring on the adoption of Floor Amendment No. 1 to **CSHB 4**, the amendment as amended was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1 as amended.

Senator Estes offered the following amendment to the bill:

**Floor Amendment No. 4**

Amend **CSHB 4** as follows:

(1) On page 13, between line 56 and line 57 insert:

SECTION 21. Texas Department of Agriculture: Rural Land Evaluation. Out of the appropriations previously made to the Texas Department of Agriculture for the fiscal year ending on August 31, 2011, the department may fund an assessment of the impact of illegal activity along the Texas-Mexico border on rural landowners and the agriculture industry. The department may work in conjunction with other appropriate entities to develop recommendations to enhance border security.

(2) Renumber the subsequent sections appropriately.

ESTES  
LUCIO

The amendment to **CSHB 4** was read.

Senator Estes withdrew Floor Amendment No. 4.

Senator West offered the following amendment to the bill:

**Floor Amendment No. 5**

Amend **CSHB 4** (senate committee printing) by adding the following appropriately numbered SECTION and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. TEXAS EDUCATION AGENCY: INCREASED BASIC ALLOTMENT UNDER FOUNDATION SCHOOL PROGRAM. Contingent on this Act being approved by a vote of two-thirds of the members present in each house of the legislature, as provided by Section 49-g(m), Article III, Texas Constitution, in addition to amounts previously appropriated for the state fiscal biennium ending August 31, 2011, the amount of \$1,100,000,000 is appropriated from Economic Stabilization Fund 0599 to the Texas Education Agency, Strategy A.1.1, FSP - Equalized Operations, for the two-year period beginning on the effective date of this Act to increase the basic allotment under Section 42.101, Education Code, to \$4,905 for the fiscal years beginning September 1, 2011, and September 1, 2012.

The amendment to **CSHB 4** was read.

On motion of Senator Ogden, Floor Amendment No. 5 was tabled by the following vote: Yeas 17, Nays 14.

Yeas: Birdwell, Carona, Deuell, Duncan, Eltife, Estes, Fraser, Harris, Hegar, Huffman, Jackson, Nelson, Nichols, Ogden, Patrick, Shapiro, Williams.

Nays: Davis, Ellis, Gallegos, Hinojosa, Lucio, Rodriguez, Seliger, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Zaffirini.

Senator Patrick offered the following amendment to the bill:

**Floor Amendment No. 6**

Amend **CSHB 4** (senate committee printing) as follows:

1. Strike SECTION 12 of the bill on page 12, lines 37-49; and substitute the following:

SECTION 12. The unobligated and unexpended balance of the Major Events Trust Fund 0869, not to exceed \$10,000,000 is hereby transferred to General Revenue Fund 0001, notwithstanding the provisions of Section 5A, Chapter 1507 (S.B. 456), Acts of the 76th Legislature, Regular Session, 1999 (Article 5190.14, Vernon's Texas Civil Statutes).

2. Insert the following appropriately numbered SECTION and renumber the subsequent SECTIONS appropriately:

    . The appropriations to the Fiscal Programs - Comptroller of Public Accounts for the state fiscal year ending August 31, 2011, made by Rider 17.58, page IX-81, Chapter 1424 (S.B. 1), Acts of the 81st Legislature, Regular Session, 2009 (the General Appropriations Act), for deposit into Major Events Trust Fund 0869, are reduced by \$25,000,000.

The amendment to **CSHB 4** was read.

On motion of Senator Ogden, Floor Amendment No. 6 was tabled by the following vote: Yeas 17, Nays 13.

Yeas: Carona, Duncan, Ellis, Estes, Fraser, Gallegos, Harris, Hinojosa, Nelson, Ogden, Rodriguez, Uresti, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Birdwell, Davis, Eltife, Hegar, Huffman, Jackson, Lucio, Nichols, Patrick, Seliger, Shapiro, Van de Putte, Watson.

Absent: Deuell.

On motion of Senator Ogden and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**CSHB 4** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 4 ON THIRD READING**

Senator Ogden moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 4** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

### REMARKS ORDERED PRINTED

On motion of Senator Lucio and by unanimous consent, the exchange between Senators Ogden and Lucio regarding **CSHB 4** was ordered reduced to writing and printed in the *Senate Journal* as follows:

**Senator Lucio:** Senator Ogden, on page 4 of your floor amendment, there is a new section calling for a rural land evaluation by the Texas Department of Agriculture for "an assessment of the impact of illegal activity along the Texas-Mexico border on rural landowners and the agriculture industry . . . to develop recommendations to enhance border security." My question is to the term "impact" in order to establish legislative intent. Is it your intent that the term "impact" include the economic consequences and detrimental financial effect and results of illegal activities on rural landowners and the agriculture industry?

**Senator Ogden:** Yes.

**Senator Lucio:** Thank you.

### HOUSE BILL 2853 ON SECOND READING

Senator Jackson moved to suspend the regular order of business to take up for consideration **HB 2853** at this time on its second reading:

**HB 2853**, Relating to tax increment financing.

The motion prevailed.

Senator Ogden asked to be recorded as voting "Nay" on suspension of the regular order of business.

The bill was read second time.

Senator Jackson offered the following amendment to the bill:

#### Floor Amendment No. 1

Amend **HB 2853** (senate committee printing) as follows:

(1) In SECTION 1 of the bill, in amended Section 311.002(1), Tax Code (page 1, lines 58 and 59), strike Paragraph (K).

(2) In SECTION 1 of the bill, in amended Section 311.002(1), Tax Code (page 1, line 60), strike "(L)" and substitute "(K)".

(3) In SECTION 1 of the bill, in amended Section 311.002(1), Tax Code (page 1, line 64), strike "(M)" and substitute "(L)".

(4) In SECTION 3 of the bill, in amended Section 311.005(a), Tax Code (page 2, lines 40 and 41), strike "open, undeveloped, or underdeveloped" and substitute "open or undeveloped".

(5) In SECTION 10 of the bill, in amended Section 311.010(h), Tax Code (page 5, lines 23-25), strike "[~~from the tax increment fund of the zone in an aggregate amount not to exceed the amount of the tax increment produced by the municipality and paid into the tax increment fund for the zone~~]" and substitute "from the tax increment fund of the zone in an aggregate amount not to exceed the amount of the tax increment produced by the municipality and paid into the tax increment fund for the zone".

(6) In SECTION 11 of the bill, in amended Section 311.011, Tax Code (page 5, lines 45-55), strike Subsection (b) and substitute the following:

(b) The project plan must include:

(1) a description and map showing existing uses and conditions of real property in the zone and [~~a map showing~~] proposed [~~improvements to and proposed~~] uses of that property;

(2) proposed changes of zoning ordinances, the master plan of the municipality, building codes, other municipal ordinances, and subdivision rules and regulations, if any, of the county, if applicable;

(3) a list of estimated nonproject costs; and

(4) a statement of a method of relocating persons to be displaced, if any, as a result of implementing the plan.

(7) In SECTION 11 of the bill, in amended Section 311.011(c)(3), Tax Code (page 5, line 63), strike "[~~an economic feasibility study~~];" and substitute "and an economic feasibility study";".

(8) In SECTION 11 of the bill, in added Section 311.011(h), Tax Code (page 6, line 37), between "items" and the period, insert ", but the amounts contained in the project plan or reinvestment zone financing plan may not vary materially from the estimates".

(9) Strike SECTION 14 of the bill, amending Section 311.014(b), Tax Code (page 7, lines 29-36).

(10) In SECTION 15 of the bill, in amended Section 311.015(a), Tax Code (page 7, lines 42 and 43), strike "311.010(b), to make payments pursuant to programs under Section 311.010(h)" and substitute "311.010(b)".

(11) In SECTION 19 of the bill, in proposed Section 311.021(a)(1), Tax Code (page 8, line 33), strike "second" and substitute "third".

(12) Renumber the SECTIONS of the bill accordingly.

The amendment to **HB 2853** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1.

Senator Jackson offered the following amendment to the bill:

### **Floor Amendment No. 2**

Amend **HB 2853** (senate committee printing) by striking SECTION 17 of the bill (page 8, lines 3-10) and substituting the following:

SECTION 17. Section 311.016(b), Tax Code, as amended by Chapters 977 (H.B. 1820) and 1094 (H.B. 2120), Acts of the 79th Legislature, Regular Session, 2005, is reenacted and amended to read as follows:

(b) The municipality or county shall send a copy of a report made under this section to[~~;~~

[~~(1) the attorney general; and~~

[~~(2) the comptroller.~~

The amendment to **HB 2853** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 2.

On motion of Senator Jackson and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**HB 2853** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading except as follows:

Nays: Ogden.

#### HOUSE BILL 2853 ON THIRD READING

Senator Jackson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2853** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Ogden.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 1. (Same as previous roll call)

#### MESSAGE FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

Wednesday, May 25, 2011 - 5

The Honorable President of the Senate  
Senate Chamber  
Austin, Texas

Mr. President:

I am directed by the House to inform the Senate that the House has taken the following action:

THE HOUSE HAS PASSED THE FOLLOWING MEASURES:

**HCR 169** Phillips

Instructing the enrolling clerk of the house to make corrections in H.B. No. 3833.

**SCR 58** Watson

Instructing the enrolling clerk of the senate to make corrections in S.B. No. 768.

THE HOUSE HAS CONCURRED IN THE SENATE AMENDMENTS TO THE FOLLOWING MEASURES:

**HB 174** (144 Yeas, 0 Nays, 2 Present, not voting)

**HB 274** (130 Yeas, 13 Nays, 2 Present, not voting)

**HB 308** (145 Yeas, 0 Nays, 2 Present, not voting)

**HB 326** (102 Yeas, 44 Nays, 2 Present, not voting)

**HB 336** (140 Yeas, 2 Nays, 2 Present, not voting)

**HB 359** (80 Yeas, 64 Nays, 3 Present, not voting)

**HB 360** (141 Yeas, 0 Nays, 2 Present, not voting)  
**HB 590** (142 Yeas, 0 Nays, 2 Present, not voting)  
**HB 630** (139 Yeas, 0 Nays, 3 Present, not voting)  
**HB 788** (143 Yeas, 0 Nays, 2 Present, not voting)  
**HB 805** (146 Yeas, 0 Nays, 2 Present, not voting)  
**HB 1040** (140 Yeas, 0 Nays, 2 Present, not voting)  
**HB 1090** (143 Yeas, 0 Nays, 2 Present, not voting)  
**HB 1301** (145 Yeas, 0 Nays, 2 Present, not voting)  
**HB 1334** (143 Yeas, 0 Nays, 2 Present, not voting)  
**HB 1371** (82 Yeas, 64 Nays, 2 Present, not voting)  
**HB 1451** (103 Yeas, 40 Nays, 2 Present, not voting)  
**HB 1495** (143 Yeas, 0 Nays, 2 Present, not voting)  
**HB 1504** (142 Yeas, 0 Nays, 2 Present, not voting)  
**HB 1568** (143 Yeas, 1 Nays, 2 Present, not voting)  
**HB 1658** (143 Yeas, 0 Nays, 2 Present, not voting)  
**HB 1756** (142 Yeas, 0 Nays, 2 Present, not voting)  
**HB 1757** (137 Yeas, 4 Nays, 2 Present, not voting)  
**HB 1758** (133 Yeas, 7 Nays, 2 Present, not voting)  
**HB 1797** (146 Yeas, 0 Nays, 2 Present, not voting)  
**HB 1821** (139 Yeas, 4 Nays, 2 Present, not voting)  
**HB 1887** (92 Yeas, 52 Nays, 2 Present, not voting)  
**HB 1904** (144 Yeas, 0 Nays, 3 Present, not voting)  
**HB 1907** (143 Yeas, 0 Nays, 2 Present, not voting)  
**HB 1969** (143 Yeas, 0 Nays, 2 Present, not voting)  
**HB 1981** (145 Yeas, 0 Nays, 2 Present, not voting)  
**HB 2015** (143 Yeas, 0 Nays, 2 Present, not voting)  
**HB 2017** (138 Yeas, 1 Nays, 2 Present, not voting)  
**HB 2136** (139 Yeas, 0 Nays, 3 Present, not voting)  
**HB 2169** (142 Yeas, 0 Nays, 2 Present, not voting)  
**HB 2172** (143 Yeas, 2 Nays, 2 Present, not voting)  
**HB 2284** (143 Yeas, 0 Nays, 2 Present, not voting)  
**HB 2313** (145 Yeas, 0 Nays, 2 Present, not voting)  
**HB 2330** (141 Yeas, 0 Nays, 2 Present, not voting)  
**HB 2396** (97 Yeas, 45 Nays, 2 Present, not voting)

- HB 2408** (143 Yeas, 0 Nays, 3 Present, not voting)  
**HB 2469** (144 Yeas, 0 Nays, 2 Present, not voting)  
**HB 2477** (144 Yeas, 0 Nays, 2 Present, not voting)  
**HB 2636** (143 Yeas, 0 Nays, 2 Present, not voting)  
**HB 2717** (145 Yeas, 1 Nays, 2 Present, not voting)  
**HB 2784** (144 Yeas, 0 Nays, 2 Present, not voting)  
**HB 2869** (145 Yeas, 0 Nays, 3 Present, not voting)  
**HB 2903** (145 Yeas, 0 Nays, 2 Present, not voting)  
**HB 2999** (139 Yeas, 0 Nays, 2 Present, not voting)  
**HB 3002** (144 Yeas, 0 Nays, 2 Present, not voting)  
**HB 3033** (130 Yeas, 15 Nays, 2 Present, not voting)  
**HB 3109** (140 Yeas, 2 Nays, 2 Present, not voting)  
**HB 3111** (140 Yeas, 3 Nays, 2 Present, not voting)  
**HB 3133** (107 Yeas, 38 Nays, 2 Present, not voting)  
**HB 3161** (142 Yeas, 0 Nays, 2 Present, not voting)  
**HB 3278** (143 Yeas, 0 Nays, 2 Present, not voting)  
**HB 3324** (144 Yeas, 0 Nays, 2 Present, not voting)  
**HB 3333** (142 Yeas, 3 Nays, 2 Present, not voting)  
**HB 3831** (146 Yeas, 0 Nays, 2 Present, not voting)

THE HOUSE HAS REFUSED TO CONCUR IN THE SENATE AMENDMENTS TO THE FOLLOWING MEASURES AND REQUESTS THE APPOINTMENT OF A CONFERENCE COMMITTEE TO ADJUST THE DIFFERENCES BETWEEN THE TWO HOUSES:

**HB 90** (non-record vote)

House Conferees: Cook - Chair/Hartnett/Lavender/Miller, Sid/Phillips

**HB 725** (non-record vote)

House Conferees: Callegari - Chair/Hardcastle/Hopson/King, Tracy O./Ritter

**HB 753** (non-record vote)

House Conferees: Raymond - Chair/Gonzalez, Naomi/Hopson/Hunter/Morrison

**HB 1178** (non-record vote)

House Conferees: Flynn - Chair/Berman/Guillen/Pena/Zedler

**HB 1335** (non-record vote)

House Conferees: Allen - Chair/Mallory Caraway/Nash/Reynolds/Thompson

**HB 1732** (non-record vote)

House Conferees: Ritter - Chair/Keffer/King, Tracy O./Larson/Price

**HB 2048** (non-record vote)

House Conferees: Lyne - Chair/Flynn/Gonzalez, Naomi/Murphy/Thompson

**HB 2173** (non-record vote)

House Conferees: Torres - Chair/Burkett/Hernandez Luna/King, Phil/Taylor, Larry

**HB 2226** (non-record vote)

House Conferees: Truitt - Chair/Anderson, Charles "Doc"/Hernandez Luna/Legler/Veasey

**HB 2490** (non-record vote)

House Conferees: Solomons - Chair/Aliseda/Chisum/Legler/Smith, Wayne

**HB 2560** (non-record vote)

House Conferees: Sheffield - Chair/Fletcher/Lavender/Legler/Lozano

**HB 2605** (non-record vote)

House Conferees: Taylor, Larry - Chair/Cook/Harper-Brown/Menendez/Solomons

**HB 2608** (non-record vote)

House Conferees: Harper-Brown - Chair/Davis, John/King, Phil/Taylor, Larry/Turner

**HB 2729** (non-record vote)

House Conferees: Callegari - Chair/Cain/Hunter/Lozano/Parker

**HB 2734** (non-record vote)

House Conferees: Madden - Chair/Allen/Cain/Hunter/Parker

**HB 2900** (non-record vote)

House Conferees: Hartnett - Chair/Lewis/Madden/Raymond/Thompson

**HB 3275** (non-record vote)

House Conferees: Coleman - Chair/Davis, John/Davis, Yvonne/Huberty/Murphy

THE HOUSE HAS GRANTED THE REQUEST OF THE SENATE FOR THE APPOINTMENT OF A CONFERENCE COMMITTEE ON THE FOLLOWING MEASURES:

**SB 652** (non-record vote)

House Conferees: Bonnen - Chair/Anchia/Cook/Harper-Brown/Taylor, Larry

**SB 655** (non-record vote)

House Conferees: Keffer - Chair/Carter/Crownover/Lewis/Oliveira

**SB 1338** (non-record vote)

House Conferees: Geren - Chair/Hamilton/Howard, Donna/Marquez/Ritter

**SB 1489** (non-record vote)

House Conferees: Madden - Chair/Allen/Hunter/Perry/Workman

**SB 1534** (non-record vote)

House Conferees: Davis, John - Chair/Anderson, Rodney/Murphy/Reynolds/Vo



**SB 1816** (non-record vote)

House Conferees: Raymond - Chair/Guillen/Hilderbran/Margo/Pena

Respectfully,

/s/Robert Haney, Chief Clerk

House of Representatives

**HOUSE BILL 550 ON SECOND READING**

Senator Jackson moved to suspend the regular order of business to take up for consideration **HB 550** at this time on its second reading:

**HB 550**, Relating to an exemption to the requirement for a fishing license for residents of a certain age.

The motion prevailed.

Senator Hegar asked to be recorded as voting "Nay" on suspension of the regular order of business.

The bill was read second time.

Senator Estes offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 550** (Senate Committee Printing page 1, lines 15-16) by striking Subdivision (1) and substituting the following:

(1) who is a resident and whose birth date is before January 1, 1931 [~~September 1, 1930~~];

The amendment to **HB 550** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1 except as follows:

Absent: Williams.

On motion of Senator Estes and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**HB 550** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading except as follows:

Nays: Hegar.

Absent: Williams.

**HOUSE BILL 550 ON THIRD READING**

Senator Jackson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 550** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent: Williams.

The bill was read third time and was passed by the following vote: Yeas 29, Nays 1.

Nays: Hegar.

Absent: Williams.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1199 ON SECOND READING**

On motion of Senator Davis and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 1199** at this time on its second reading:

**CSHB 1199**, Relating to the penalty for certain intoxication offenses.

The bill was read second time.

Senator Davis offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 1199** (Senate Committee Printing) by adding the following SECTION to the bill and renumbering subsequent SECTIONS of the bill appropriately:

SECTION 1. This Act shall be known as the Abdallah Khader Act.

The amendment to **CSHB 1199** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1 except as follows:

Nays: Birdwell, Fraser, Huffman, Nelson.

On motion of Senator Davis and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**CSHB 1199** as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading except as follows:

Nays: Hegar.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1199 ON THIRD READING**

Senator Davis moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 1199** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 1.

Nays: Hegar.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 2857 ON SECOND READING**

Senator Uresti moved to suspend the regular order of business to take up for consideration **CSHB 2857** at this time on its second reading:

**CSHB 2857**, Relating to regulation of outdoor lighting in certain areas; providing a criminal penalty and for injunctive relief.

The motion prevailed.

Senators Birdwell, Fraser, Harris, Nichols, Patrick, and Shapiro asked to be recorded as voting "Nay" on suspension of the regular order of business.

The bill was read second time and was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading except as follows:

Nays: Birdwell, Fraser, Harris, Nichols, Patrick, Shapiro.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 2857 ON THIRD READING**

Senator Uresti moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 2857** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 25, Nays 6.

Yeas: Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Gallegos, Hegar, Hinojosa, Huffman, Jackson, Lucio, Nelson, Ogden, Rodriguez, Seliger, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Birdwell, Fraser, Harris, Nichols, Patrick, Shapiro.

The bill was read third time and was passed by the following vote: Yeas 25, Nays 6. (Same as previous roll call)

**(President Pro Tempore Ogden in Chair)  
HOUSE BILL 1960 ON SECOND READING**

Senator Jackson moved to suspend the regular order of business to take up for consideration **HB 1960** at this time on its second reading:

**HB 1960**, Relating to the regulation of boat manufacturers, distributors, and dealers; providing a civil penalty.

The motion prevailed.

Senators Birdwell, Eltife, Fraser, Nelson, Nichols, Patrick, Rodriguez, Seliger, Shapiro, and Williams asked to be recorded as voting "Nay" on suspension of the regular order of business.

The bill was read second time and was passed to third reading by the following vote: Yeas 20, Nays 11.

Yeas: Carona, Davis, Deuell, Duncan, Ellis, Estes, Gallegos, Harris, Hegar, Hinojosa, Jackson, Lucio, Ogden, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Zaffirini.

Nays: Birdwell, Eltife, Fraser, Huffman, Nelson, Nichols, Patrick, Rodriguez, Seliger, Shapiro, Williams.

**VOTES RECONSIDERED ON  
HOUSE BILL 242**

On motion of Senator Hegar and by unanimous consent, the vote by which **HB 242** was finally passed was reconsidered:

**HB 242**, Relating to the authority of certain retired peace officers to carry certain firearms.

Question — Shall **HB 242** be finally passed?

On motion of Senator Hegar and by unanimous consent, the vote by which **HB 242** was passed to third reading was reconsidered.

Question — Shall **HB 242** be passed to third reading?

Senator Williams offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 242** (senate committee printing) by adding the following new SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly.

SECTION \_\_\_\_\_. Section 411.023, Government Code, is amended by amending Subsection (b) and adding Subsection (g) to read as follows:

(b) A special ranger is subject to the orders of the commission and the governor for special duty to the same extent as other law enforcement officers provided for by this chapter, except that a special ranger may not enforce a law [~~except one designed to protect life and property and may not enforce a law~~] regulating the use of a state highway by a motor vehicle. A special ranger is not connected with a ranger company or uniformed unit of the department.

(g) The commission may call special rangers into service to:

- (1) preserve the peace and protect life and property;
- (2) conduct background investigations;
- (3) monitor sex offenders;
- (4) serve as part of two-officer units on patrol in high threat areas; and
- (5) provide assistance to the department during disasters.

SECTION \_\_\_\_\_. Section 411.024, Government Code, is amended by amending Subsection (b) and adding Subsection (g) to read as follows:

(b) A special Texas Ranger is subject to the orders of the commission and the governor for special duty to the same extent as other law enforcement officers provided for by this chapter, except that a special Texas Ranger may not enforce a law [~~except one designed to protect life and property and may not enforce a law~~] regulating the use of a state highway by a motor vehicle. A special Texas Ranger is not connected with a ranger company or uniformed unit of the department.

(g) The commission may call special Texas Rangers into service to:

- (1) preserve the peace and protect life and property;
- (2) conduct background investigations;

- (3) monitor sex offenders;
- (4) serve as part of two-officer units on patrol in high threat areas; and
- (5) provide assistance to the department during disasters.

The amendment to **HB 242** was read.

Senator Wentworth offered the following amendment to Floor Amendment No. 1:

**Floor Amendment No. 2**

Amend Amendment No. 1 by Williams to **HB 242** (senate committee printing) as follows:

(1) In added Section 411.023(g), Government Code (page 1, lines 20-23), strike Subdivisions (4) and (5), and substitute the following:

- (4) serve as part of two-officer units on patrol in high threat areas;
- (5) provide assistance to the department during disasters; and
- (6) investigate instances of reckless driving.

(2) In added Section 411.024(g), Government Code (page 2, lines 11-14), strike Subdivisions (4) and (5), and substitute the following:

- (4) serve as part of two-officer units on patrol in high threat areas;
- (5) provide assistance to the department during disasters; and
- (6) investigate instances of reckless driving.

(3) Add the following SECTIONS to the amendment (page 2, after line 14):

SECTION \_\_\_\_\_. Section 545.401, Transportation Code, is amended by amending Subsection (b) and adding Subsections (e), (f), (g), and (h) to read as follows:

(b) Except as provided by Subsection (e), an [Am] offense under this section is a misdemeanor punishable by:

- (1) a fine not to exceed \$200;
- (2) confinement in county jail for not more than 30 days; or
- (3) both the fine and the confinement.

(e) If an offense under this section results in the serious bodily injury or death of an operator or passenger of another motor vehicle, the offense is a Class B misdemeanor.

(f) The court may:

(1) order that the driver's license of a person convicted of an offense under Subsection (e) be suspended for not less than 30 days beginning on the date of conviction; and

(2) require the person to attend and present proof that the person successfully completed a driving safety course approved under Chapter 1001, Education Code, before the person's driver's license may be reinstated.

(g) A judge, acting under Article 42.12, Code of Criminal Procedure, who elects to place a defendant charged with an offense under this section on community supervision under that article may require the defendant to attend and present proof that the defendant successfully completed a driving safety course approved under Chapter 1001, Education Code.

(h) A person who is subject to prosecution under both this section and another section of this or any other code may be prosecuted under either or both sections.

SECTION \_\_\_\_. The change in law made by this Act to Section 545.401, Transportation Code, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense was committed before that date.

The amendment to Floor Amendment No. 1 to **HB 242** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 2.

Question recurring on the adoption of Floor Amendment No. 1 to **HB 242**, the amendment as amended was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1 as amended.

Senator Zaffirini offered the following amendment to the bill:

### **Floor Amendment No. 3**

Amend **HB 242** by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_. Section 545.425(a), Transportation Code, is amended by adding Subdivision (1-a) to read as follows:

(1-a) "Text-based communication" means a communication that is designed or intended to be transmitted between wireless communication devices for the purpose of manually communicating in a nonspoken manner with another person in a written medium. The term includes:

- (A) a text message;
- (B) an instant message; and
- (C) e-mail.

SECTION \_\_. Section 545.425, Transportation Code, is amended by amending Subsection (b-1) and adding Subsections (c-1) and (c-2) to read as follows:

(b-1) A municipality, county, or other political subdivision that enforces Subsection (b) [~~this section~~] shall post a sign that complies with the standards described by this subsection at the entrance to each school crossing zone in the municipality, county, or other political subdivision. The department shall adopt standards that:

- (1) allow for a sign required to be posted under this subsection to be attached to an existing sign at a minimal cost; and
- (2) require that a sign required to be posted under this subsection inform an operator that:

(A) the use of a wireless communication device is prohibited in the school crossing zone; and

(B) the operator is subject to a fine if the operator uses a wireless communication device in the school crossing zone.

(c-1) An operator may not use a hand-held wireless communication device to read, write, or send a text-based communication while operating a motor vehicle unless the vehicle is stopped.

(c-2) An operator is not subject to prosecution under Subsection (c-1) if:

(1) the operator uses a hand-held wireless communication device:

(A) to read, select, or enter a telephone number or name for the purpose of making a telephone call;

(B) in conjunction with voice-operated technology or a hands-free device; or

(C) to navigate using a global positioning system; or

(2) the hand-held wireless communication device:

(A) is used by the operator to relay information between the operator and a dispatcher in the course of the operator's occupational duties; and

(B) is affixed to the vehicle.

The amendment to **HB 242** was read.

Senator Hegar moved to table Floor Amendment No. 3.

The motion to table was lost by the following vote: Yeas 10, Nays 19.

Yeas: Birdwell, Fraser, Harris, Hegar, Huffman, Nelson, Nichols, Patrick, Shapiro, Whitmire.

Nays: Carona, Davis, Ellis, Eltife, Estes, Gallegos, Hinojosa, Jackson, Lucio, Ogden, Rodriguez, Seliger, Uresti, Van de Putte, Watson, Wentworth, West, Williams, Zaffirini.

Absent: Deuell, Duncan.

Question recurring on the adoption of Floor Amendment No. 3 to **HB 242**, the amendment was adopted by the following vote: Yeas 19, Nays 10.

Yeas: Carona, Davis, Ellis, Eltife, Estes, Gallegos, Hinojosa, Jackson, Lucio, Ogden, Rodriguez, Seliger, Uresti, Van de Putte, Watson, Wentworth, West, Williams, Zaffirini.

Nays: Birdwell, Fraser, Harris, Hegar, Huffman, Nelson, Nichols, Patrick, Shapiro, Whitmire.

Absent: Deuell, Duncan.

**(Senator Eltife in Chair)**

Senator Ogden offered the following amendment to the bill:

**Floor Amendment No. 4**

Amend **HB 242** (senate committee report) as follows:

(1) Strike SECTION 1 of the bill, amending Section 1701.357(b), Occupations Code (page 1, lines 11 through 31), and substitute the following:

SECTION 1. Section 1701.357, Occupations Code, is amended by amending Subsections (a), (b), (c), and (d) and adding Subsections (b-1), (c-1), and (j) to read as follows:

(a) This section applies only to:

(1) a peace officer;

(2) a federal criminal investigator designated as a special investigator under Article 2.122, Code of Criminal Procedure; ~~and~~

(3) a qualified retired law enforcement officer who is entitled to carry a concealed firearm under 18 U.S.C. Section 926C and is not otherwise described by Subdivision (1) or (2); and

(4) a former reserve law enforcement officer who served in that capacity not less than a total of 15 years with a state or local law enforcement agency.

(b) The head of a state or local law enforcement agency may allow an honorably retired peace officer an opportunity to demonstrate weapons proficiency if the retired officer provides to the agency a sworn affidavit stating that:

(1) the officer:

(A) honorably retired after not less than a total of 15 years of service as a commissioned officer with one or more state or local law enforcement agencies; or

(B) before completing 15 years of service as a commissioned officer with one or more state or local law enforcement agencies, separated from employment with the agency or agencies and is a qualified retired law enforcement officer, as defined by 18 U.S.C. Section 926C;

(2) the officer's license as a commissioned officer was not revoked or suspended for any period during the officer's term of service as a commissioned officer; and

(3) the officer has no psychological or physical disability that would interfere with the officer's proper handling of a handgun.

(b-1) The head of a state or local law enforcement agency may allow a person who served as a reserve law enforcement officer as described by Subsection (a)(4) an opportunity to demonstrate weapons proficiency if the person provides to the agency a sworn affidavit stating that:

(1) the person served not less than a total of 15 years as a reserve law enforcement officer with a state or local law enforcement agency;

(2) the person's appointment as a reserve law enforcement officer was not revoked or suspended for any period during the person's term of service; and

(3) the person has no psychological or physical disability that would interfere with the person's proper handling of a handgun.

(c) The agency shall establish written procedures for the issuance or denial of a certificate of proficiency under this section. The agency shall issue the certificate to a retired officer who satisfactorily demonstrates weapons proficiency under Subsection (b), provides proof that the officer is entitled to receive a pension or annuity for service with a state or local law enforcement agency or is not entitled to receive a pension or annuity only because the law enforcement agency that employed the retired officer does not offer a pension or annuity to its retired employees, and satisfies the written procedures established by the agency. The agency shall issue the certificate



to a person described by Subsection (a)(4) who satisfactorily demonstrates weapons proficiency under Subsection (b-1). The agency shall maintain records of any person ~~retired officer~~ who holds a certificate issued under this section.

(c-1) For purposes of Subsection (c) ~~[this subsection]~~, proof that a retired officer is entitled to receive a pension or annuity or is not entitled to receive a pension or annuity only because the agency that last employed the retired officer does not offer a pension or annuity may include a retired peace officer identification card issued under Subchapter H, Chapter 614, Government Code.

(d) A certificate issued under this section expires on the second anniversary of the date the certificate was issued. A person ~~retired officer~~ to whom this section applies may request an annual evaluation of weapons proficiency and issuance of a certificate of proficiency as needed to comply with applicable federal or other laws.

(j) On request of a person described by Subsection (a)(4) who holds a certificate of proficiency under this section, the head of the state or local law enforcement agency at which the person last served as a reserve law enforcement officer shall issue to the person identification that indicates the person's status. An identification under this subsection must include a photograph of the person.

(2) In SECTION 2 of the bill, strike amended Section 46.15(a)(5), Penal Code (page 1, line 63, through page 2, line 12), and substitute the following:

(5) an honorably retired peace officer, qualified retired law enforcement officer, ~~or~~ federal criminal investigator, or former reserve law enforcement officer who holds a certificate of proficiency issued under Section 1701.357, Occupations Code, and is carrying a photo identification that is issued by a federal, state, or local law enforcement agency, as applicable, and that[:

~~[(A)]~~ verifies that the officer is:

(A) an honorably retired peace officer;

(B) a qualified retired law enforcement officer;

(C) a federal criminal investigator; or

(D) a former reserve law enforcement officer who has served in that capacity not less than a total of 15 years with a state or local law enforcement agency ~~after not less than 15 years of service as a commissioned officer; and~~

~~[(D)] is issued by a state or local law enforcement agency];~~

(3) Add the following appropriately numbered SECTIONS to the bill and renumber the remaining SECTIONS of the bill accordingly:

SECTION \_\_\_\_ Subchapter H, Chapter 411, Government Code, is amended by adding Section 411.1992 to read as follows:

Sec. 411.1992. FORMER RESERVE LAW ENFORCEMENT OFFICERS. (a) A person who served as a reserve law enforcement officer, as defined by Section 1701.001, Occupations Code, not less than a total of 15 years with a state or local law enforcement agency may apply for a license under this subchapter at any time.

(b) The applicant shall submit to the department two complete sets of legible and classifiable fingerprints and a sworn statement from the head of the law enforcement agency at which the applicant last served as a reserve law enforcement officer. A head of a law enforcement agency may not refuse to issue a statement under this subsection. If the applicant alleges that the statement is untrue, the department shall investigate the validity of the statement. The statement must include:

- (1) the name and rank of the applicant;
- (2) the status of the applicant;
- (3) whether the applicant was accused of misconduct at any time during the applicant's term of service and the disposition of that accusation;
- (4) a description of the physical and mental condition of the applicant;
- (5) a list of the types of weapons the applicant demonstrated proficiency with during the applicant's term of service; and
- (6) a recommendation from the agency head regarding the issuance of a license under this subchapter.

(c) The department may issue a license under this subchapter to an applicant under this section if the applicant was a reserve law enforcement officer for not less than a total of 15 years with a state or local law enforcement agency and is physically and emotionally fit to possess a handgun.

(d) An applicant under this section must pay a fee of \$25 for a license issued under this subchapter.

(e) A former reserve law enforcement officer who obtains a license as provided by this section must maintain, for the category of weapon licensed, the proficiency required for the person under Section 1701.357, Occupations Code. The department or the local law enforcement agency at which the person last served as a reserve law enforcement officer shall allow the person an opportunity to annually demonstrate the required proficiency. The proficiency shall be reported to the department on application and renewal.

(f) A license issued under this section expires as provided by Section 411.183.

SECTION \_\_\_\_\_. The heading to Section 1701.357, Occupations Code, is amended to read as follows:

Sec. 1701.357. WEAPONS PROFICIENCY FOR CERTAIN RETIRED PEACE OFFICERS AND FEDERAL LAW ENFORCEMENT OFFICERS AND FOR FORMER RESERVE LAW ENFORCEMENT OFFICERS.

The amendment to **HB 242** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 4.

**(President Pro Tempore Ogden in Chair)**

Senator Hegar temporarily postponed further consideration of **HB 242**.

Question — Shall **HB 242** as amended be passed to third reading?

**HOUSE BILL 1960 ON THIRD READING**

Senator Jackson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1960** be placed on its third reading and final passage:

**HB 1960**, Relating to the regulation of boat manufacturers, distributors, and dealers; providing a civil penalty.

The motion prevailed by the following vote: Yeas 26, Nays 5.

Yeas: Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Harris, Hegar, Hinojosa, Huffman, Jackson, Lucio, Ogden, Patrick, Rodriguez, Seliger, Shapiro, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Birdwell, Fraser, Gallegos, Nelson, Nichols.

The bill was read third time and was passed by the following vote: Yeas 19, Nays 12.

Yeas: Carona, Davis, Deuell, Duncan, Ellis, Estes, Harris, Hegar, Hinojosa, Jackson, Lucio, Ogden, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Zaffirini.

Nays: Birdwell, Eltife, Fraser, Gallegos, Huffman, Nelson, Nichols, Patrick, Rodriguez, Seliger, Shapiro, Williams.

### **HOUSE BILL 242 ON SECOND READING**

The President Pro Tempore laid before the Senate **HB 242** sponsored by Senator Hegar on its second reading. The bill had been reconsidered, amended, and further consideration postponed:

**HB 242**, Relating to the authority of certain retired peace officers to carry certain firearms.

Question — Shall **HB 242** as amended be passed to third reading?

On motion of Senator Hegar and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**HB 242** as amended was again passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading except as follows:

Nays: Birdwell, Nichols, Patrick.

### **HOUSE BILL 242 ON THIRD READING**

Senator Hegar again moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 242** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 3.

Yeas: Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hegar, Hinojosa, Huffman, Jackson, Lucio, Nelson, Ogden, Rodriguez, Seliger, Shapiro, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Birdwell, Nichols, Patrick.

**HB 242** was again passed by the following vote: Yeas 28, Nays 3. (Same as previous roll call)

### **SENATE BILL 1331 WITH HOUSE AMENDMENT**

Senator Watson called **SB 1331** from the President's table for consideration of the House amendment to the bill.

The President Pro Tempore laid the bill and the House amendment before the Senate.

### Committee Amendment No. 1

SECTION \_\_\_\_\_. Amend **SB 1331** (engrossed) to read as follows:

Page 1, line 8, after "It is an" and before "to the application" strike "exception" and replace it with "does not apply to".

The amendment was read.

Senator Watson moved that the Senate do not concur in the House amendment, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **SB 1331** before appointment.

There were no motions offered.

The President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Watson, Chair; Whitmire, Ellis, Huffman, and Carona.

### SENATE BILL 1543 WITH HOUSE AMENDMENTS

Senator Wentworth called **SB 1543** from the President's table for consideration of the House amendments to the bill.

The President Pro Tempore laid the bill and the House amendments before the Senate.

### Floor Amendment No. 2

Amend **SB 1543** (house committee printing) in SECTION 1 of the bill as follows:

(1) In added Section 2256.0204(a), Government Code (page 1, line 9), strike "senior secured".

(2) In added Section 2256.0204(a)(1), Government Code (page 1, line 15), after the semicolon, add "or".

(3) In added Section 2256.0204(a), Government Code, strike Subdivisions (2) and (3) (page 1, lines 16-20).

(4) In added Section 2256.0204(a), Government Code (page 1, line 21), strike "(4)" and substitute "(2)".

(5) In added Section 2256.0204, Government Code, strike Subsection (c) (page 2, lines 1-11) and substitute the following:

(c) In addition to authorized investments permitted by this subchapter, an independent school district subject to this section may purchase, sell, and invest its funds and funds under its control in corporate bonds that, at the time of purchase, are rated by a nationally recognized investment rating firm "AA-" or the equivalent and have a stated final maturity that is not later than the third anniversary of the date the corporate bonds were purchased.

(6) In added Section 2256.0204(d)(1), Government Code (page 2, line 17), after the semicolon, add "or".

(7) In added Section 2256.0204(d)(2), Government Code (page 2, line 20), strike "; or" and substitute ".".

(8) In added Section 2256.0204(d), Government Code, strike Subdivision (3) (page 2, lines 21-22).

(9) In added Section 2256.0204(e)(1), Government Code (page 2, line 27), after the semicolon, add "and".

(10) In added Section 2256.0204(e)(2), Government Code (page 3, line 5), strike "; and" and substitute ".".

(11) In added Section 2256.0204(e), Government Code, strike Subdivision (3) (page 3, lines 6-8).

(12) In added Section 2256.0204(f)(1), Government Code (page 3, line 17), strike "AA" and substitute "AA-".

(13) In added Section 2256.0204, Government Code, strike Subsection (g) (page 3, lines 20-21).

### Floor Amendment No. 3

Amend **SB 1543** (house committee printing) as follows:

On page 2, line 14, between "than" and "percent" strike "20" and insert "15".

The amendments were read.

Senator Wentworth moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **SB 1543** before appointment.

There were no motions offered.

The President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Wentworth, Chair; Davis, Carona, Seliger, and Shapiro.

### CONFERENCE COMMITTEE ON HOUSE BILL 414

Senator Hegar called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 414** and moved that the request be granted.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **HB 414** before appointment.

There were no motions offered.

Accordingly, the President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Hegar, Chair; Estes, Seliger, Jackson, and Hinojosa.

**SENATE BILL 220 WITH HOUSE AMENDMENT**

Senator Nelson called **SB 220** from the President's table for consideration of the House amendment to the bill.

The President Pro Tempore laid the bill and the House amendment before the Senate.

**Amendment**

Amend **SB 220** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to guardianships, including the assessment of prospective wards for, and the provision of, guardianship services by the Department of Aging and Disability Services.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsection (a), Section 111.042, Government Code, is amended to read as follows:

(a) To provide guardianship services in this state, the following individuals must hold a certificate issued under this section:

- (1) an individual who is a private professional guardian;
- (2) an individual who will provide those services to a ward of a private professional guardian [~~or the Department of Aging and Disability Services~~] on the guardian's [~~or department's~~] behalf; and
- (3) an individual, other than a volunteer, who will provide those services or other services under Section 161.114, Human Resources Code, to a ward of a guardianship program or the Department of Aging and Disability Services on the program's or department's behalf.

SECTION 2. Section 32.02451, Human Resources Code, is amended to read as follows:

Sec. 32.02451. ADDITIONAL PERSONAL NEEDS ALLOWANCE [REIMBURSEMENT] FOR GUARDIANSHIP EXPENSES OF CERTAIN RECIPIENTS. (a) In this section, "applied income" has the meaning assigned by Section 670, Texas Probate Code.

(b) To the extent allowed by federal law, the department, in computing the applied income of a recipient of medical assistance, shall deduct in the manner provided by this section an additional personal needs allowance from the earned and unearned income of the recipient or, if applicable, the recipient and the recipient's spouse, [provide medical assistance reimbursement] for compensation and costs ordered to be deducted under Section 670, Texas Probate Code. Subject to Subsection (f), a deduction ordered by the court under Section 670, Texas Probate Code, is effective beginning on the later of:

- (1) the month in which the order is signed; or
- (2) the first month of medical assistance eligibility for which the recipient is subject to a copayment[~~, in a guardianship established for a medical assistance recipient~~].

(c) The department shall compute the applied income of a recipient of medical assistance as follows:

(1) the department shall deduct from the earned and unearned income the personal needs allowance authorized by Section 32.024(w) before making any other deduction;

(2) if after the deduction under Subdivision (1) the recipient has remaining income, the department shall deduct the lesser of the following:

(A) the amount of the remaining income; or

(B) the amount of the additional personal needs allowance for compensation and costs ordered to be deducted under Section 670, Texas Probate Code; and

(3) if after the deductions under Subdivisions (1) and (2) the recipient has remaining income, the department shall deduct any other authorized allowances.

(d) The amount of income remaining, if any, after the department makes the deductions as provided by Subsection (c) is the amount of the applied income of the recipient of medical assistance.

(e) The executive commissioner of the Health and Human Services Commission shall adopt rules providing a procedure by which a recipient of medical assistance for ~~person to~~ whom amounts are ordered deducted ~~paid~~ under Section 670, Texas Probate Code, ~~that section~~ may submit to the department a copy of the court order issued under that section to receive a deduction of those amounts from the recipient's income as provided by this section ~~[a claim to and receive reimbursement from the medical assistance program].~~

(f) The department may not allow a deduction for the additional personal needs allowance for compensation and costs ordered to be deducted under Section 670, Texas Probate Code, if the order is issued after the recipient of medical assistance dies.

SECTION 3. Subsections (a) and (b), Section 161.109, Human Resources Code, are amended to read as follows:

(a) The department shall have access to all of the records and documents concerning an individual who is referred for guardianship services or to whom guardianship services are provided under this subchapter that are necessary to the performance of the department's duties under this subchapter, including:

(1) client-identifying information; and

(2) medical, psychological, educational, financial, and ~~of~~ residential information.

(b) The department is exempt from the payment of a fee otherwise required or authorized by law to obtain a financial or medical record, including a mental health record, from any source ~~[a hospital or health care provider]~~ if the request for a record is related to made in the course of an assessment for guardianship services conducted by the department or the provision of guardianship services by the department.

SECTION 4. Section 161.111, Human Resources Code, is amended by adding Subsections (e) and (f) to read as follows:

(e) To the extent consistent with department policies and procedures, the department on request may release confidential information in the record of an individual who is assessed by the department or is a former ward of the department to:

- (1) the individual;
- (2) the individual's guardian; or
- (3) an executor or administrator of the individual's estate.

(f) Before releasing confidential information under Subsection (e), the department shall edit the information to protect the identity of the reporter to the Department of Family and Protective Services and to protect any other individual whose life or safety may be endangered by the release. A release of information under Subsection (e) does not constitute a release for purposes of waiving the confidentiality of the information released.

SECTION 5. Subchapter E, Chapter 161, Human Resources Code, is amended by adding Section 161.114 to read as follows:

Sec. 161.114. USE OF VOLUNTEERS. (a) In this section, "volunteer" has the meaning assigned by Section 161.113.

(b) The department shall encourage the involvement of volunteers in guardianships in which the department serves as guardian of the person or estate, or both. To encourage that involvement, the department shall identify issues and tasks with which a volunteer could assist the department in a guardianship, subject to Subsection (c).

(c) A volunteer may provide life enrichment activities, companionship, transportation services, and other services to or for the ward in a guardianship, except the volunteer may not provide services that would require the volunteer to be certified under Section 111.042, Government Code.

SECTION 6. Section 633, Texas Probate Code, is amended by amending Subsections (b) and (d) and adding Subsection (c-1) to read as follows:

(b) The court clerk shall issue a citation stating that the application for guardianship was filed, the name of the proposed ward, the name of the applicant, and the name of the person to be appointed guardian as provided in the application, if that person is not the applicant. The citation must cite all persons interested in the welfare of the proposed ward to appear at the time and place stated in the notice if they wish to contest the application and must contain a clear and conspicuous statement informing those interested persons of the right provided under Section 632(j) of this code to be notified of any or all motions, applications, or pleadings relating to the application for the guardianship or any subsequent guardianship proceeding involving the ward after the guardianship is created, if any. The citation shall be posted.

(c-1) The citation served as provided by Subsection (c) of this section must contain the statement regarding the right provided under Section 632(j) of this code that is required in the citation issued under Subsection (b) of this section.

(d) The applicant shall mail a copy of the application for guardianship and a notice containing the information required in the citation issued under Subsection (b) of this section by registered or certified mail, return receipt requested, or by any other form of mail that provides proof of delivery, to the following persons, if their whereabouts are known or can be reasonably ascertained:

- (1) all adult children of a proposed ward;



- (2) all adult siblings of a proposed ward;
- (3) the administrator of a nursing home facility or similar facility in which the proposed ward resides;
- (4) the operator of a residential facility in which the proposed ward resides;
- (5) a person whom the applicant knows to hold a power of attorney signed by the proposed ward;
- (6) a person designated to serve as guardian of the proposed ward by a written declaration under Section 679 of this code, if the applicant knows of the existence of the declaration;
- (7) a person designated to serve as guardian of the proposed ward in the probated will of the last surviving parent of the ward;
- (8) a person designated to serve as guardian of the proposed ward by a written declaration of the proposed ward's last surviving parent, if the declarant is deceased and the applicant knows of the existence of the declaration; and
- (9) each person named as another relative within the third degree by consanguinity [next of kin] in the application for guardianship as required by Section 682(10) or (12) of this code if the proposed ward's spouse and each of the proposed ward's parents, adult siblings, and adult children are deceased or there is no spouse, parent, adult sibling, or adult child.

SECTION 7. Subpart E, Part 2, Chapter XIII, Texas Probate Code, is amended by adding Section 646A to read as follows:

Sec. 646A. REPRESENTATION OF WARD OR PROPOSED WARD BY ATTORNEY. (a) The following persons may at any time retain an attorney who holds a certificate required by Section 647A of this code to represent the person's interests in a guardianship matter instead of having those interests represented by an attorney ad litem appointed under Section 646 of this code or another provision of this chapter:

- (1) a ward who retains the power to enter into a contract under the terms of the guardianship, subject to Section 694K of this code; and
- (2) a proposed ward for purposes of a proceeding for the appointment of a guardian as long as the proposed ward has capacity to contract.

(b) If the court finds that the ward or the proposed ward has capacity to contract, the court may remove an attorney ad litem appointed under Section 646 of this code or any other provision of this chapter that requires the court to appoint an attorney ad litem to represent the interests of a ward or proposed ward and appoint a ward or a proposed ward's retained counsel.

SECTION 8. Section 670, Texas Probate Code, is amended to read as follows:

Sec. 670. COMPENSATION OF CERTAIN GUARDIANS; CERTAIN OTHER GUARDIANSHIP COSTS. (a) In this section:

(1) "Applied income" means the portion of the earned and unearned income of a recipient of medical assistance or, if applicable, the recipient and the recipient's spouse, that is paid under the medical assistance program to an institution or long-term care facility [a nursing home] in which the recipient resides.

(2) "Medical assistance" has the meaning assigned by Section 32.003, Human Resources Code.

(b) Notwithstanding any other provision of this chapter and to the extent permitted by federal law, a court that appoints a guardian for a recipient of medical assistance who has applied income may order the following to be deducted as an additional personal needs allowance in the computation of the recipient's applied income in accordance with Section 32.02451, Human Resources Code [paid under the medical assistance program]:

(1) compensation to the guardian in an amount not to exceed \$175 per month;

(2) costs directly related to establishing or terminating the guardianship, not to exceed \$1,000 except as provided by Subsection (c) of this section; and

(3) other administrative costs related to the guardianship, not to exceed \$1,000 during any three-year period.

(c) Costs ordered to be deducted ~~paid~~ under Subsection (b)(2) of this section may include compensation and expenses for an attorney ad litem or guardian ad litem and reasonable attorney's fees for an attorney representing the guardian. The costs ordered to be paid may exceed \$1,000 if the costs in excess of that amount are supported by documentation acceptable to the court and the costs are approved by the court.

(d) A court may not order:

(1) that the deduction for compensation and costs under Subsection (b) of this section take effect before the later of:

(A) the month in which the court order issued under that subsection is signed; or

(B) the first month of medical assistance eligibility for which the recipient is subject to a copayment; or

(2) a deduction for services provided before the effective date of the deduction as provided by Subdivision (1) of this subsection.

SECTION 9. Section 682, Texas Probate Code, is amended to read as follows:

Sec. 682. APPLICATION; CONTENTS. Any person may commence a proceeding for the appointment of a guardian by filing a written application in a court having jurisdiction and venue. The application must be sworn to by the applicant and state:

(1) the name, sex, date of birth, and address of the proposed ward;

(2) the name, relationship, and address of the person the applicant desires to have appointed as guardian;

(3) whether guardianship of the person or estate, or both, is sought;

(4) the nature and degree of the alleged incapacity, the specific areas of protection and assistance requested, and the limitation or termination of rights requested to be included in the court's order of appointment, including a termination of:

(A) the right of a proposed ward who is 18 years of age or older to vote in a public election; and

(B) the proposed ward's eligibility to hold or obtain a license to operate a motor vehicle under Chapter 521, Transportation Code;

(5) the facts requiring that a guardian be appointed and the interest of the applicant in the appointment;

(6) the nature and description of any guardianship of any kind existing for the proposed ward in any other state;

(7) the name and address of any person or institution having the care and custody of the proposed ward;

(8) the approximate value and description of the proposed ward's property, including any compensation, pension, insurance, or allowance to which the proposed ward may be entitled;

(9) the name and address of any person whom the applicant knows to hold a power of attorney signed by the proposed ward and a description of the type of power of attorney;

(10) if the proposed ward is a minor and if known by the applicant:

(A) the name of each parent of the proposed ward and state the parent's address or that the parent is deceased;

(B) the name and age of each sibling, if any, of the proposed ward and state the sibling's address or that the sibling is deceased; and

(C) if each of the proposed ward's parents and adult siblings are deceased, the names and addresses of the proposed ward's other living relatives who are related to the proposed ward within the third degree by consanguinity and [next of kin] who are adults;

(11) if the proposed ward is a minor, whether the minor was the subject of a legal or conservatorship proceeding within the preceding two-year period and, if so, the court involved, the nature of the proceeding, and the final disposition, if any, of the proceeding;

(12) if the proposed ward is an adult and if known by the applicant:

(A) the name of the proposed ward's spouse, if any, and state the spouse's address or that the spouse is deceased;

(B) the name of each of the proposed ward's parents and state the parent's address or that the parent is deceased;

(C) the name and age of each of the proposed ward's siblings, if any, and state the sibling's address or that the sibling is deceased;

(D) the name and age of each of the proposed ward's children, if any, and state the child's address or that the child is deceased; and

(E) if the proposed ward's spouse and each of the proposed ward's parents, adult siblings, and adult children are deceased, or, if there is no spouse, parent, adult sibling, or adult child, the names and addresses of the proposed ward's other living relatives who are related to the proposed ward within the third degree by consanguinity and [next of kin] who are adults;

(13) facts showing that the court has venue over the proceeding; and

(14) if applicable, that the person whom the applicant desires to have appointed as a guardian is a private professional guardian who is certified under Subchapter C, Chapter 111, Government Code, and has complied with the requirements of Section 697 of this code.

SECTION 10. Subsection (d), Section 697B, Texas Probate Code, is amended to read as follows:

(d) An individual volunteering with a guardianship program or with the Department of Aging and Disability Services is not required to be certified as provided by this section to provide guardianship services or other services under Section 161.114, Human Resources Code, on the program's or the department's behalf.

SECTION 11. Section 761, Texas Probate Code, is amended by amending Subsections (a), (c), and (f) and adding Subsections (a-1), (h), and (i) to read as follows:

(a) The court, on its own motion or on motion of any interested person, including the ward, and without notice, may remove any guardian[;] appointed under this chapter[;] who:

(1) neglects to qualify in the manner and time required by law;

(2) fails to return within 30 days after qualification, unless the time is extended by order of the court, an inventory of the property of the guardianship estate and list of claims that have come to the guardian's knowledge;

(3) having been required to give a new bond, fails to do so within the time prescribed;

(4) absents himself or herself from the state for a period of three months at one time without permission of the court, or removes from the state;

(5) cannot be served with notices or other processes because of the fact that:

(A) the guardian's whereabouts are unknown;

(B) the guardian is eluding service; or

(C) the guardian is a nonresident of this state who does not have a resident agent to accept service of process in any guardianship proceeding or other matter relating to the guardianship;

(6) has misapplied, embezzled, or removed from the state, or is about to misapply, embezzle, or remove from the state, all or any part of the property committed to the guardian's care;

(7) has engaged in conduct with respect to the ward that would be considered to be abuse, neglect, or exploitation, as those terms are defined by Section 48.002, Human Resources Code, if engaged in with respect to an elderly or disabled person, as defined by that section [~~neglected or cruelly treated a ward~~]; or

(8) has neglected to educate or maintain the ward as liberally as the means of the ward and the condition of the ward's estate permit.

(a-1) In a proceeding to remove a guardian under Subsection (a)(6), (7), or (8) of this section, the court shall appoint a guardian ad litem as provided by Section 645 of this code and an attorney ad litem. The attorney ad litem has the duties prescribed by Section 647 of this code. In the interest of judicial economy, the court may appoint the same person as guardian ad litem and attorney ad litem unless a conflict exists between the interests to be represented by the guardian ad litem and attorney ad litem.

(c) The court may remove a guardian on its own motion, or on the complaint of an interested person, after the guardian has been cited by personal service to answer at a time and place set in the notice, when:

(1) sufficient grounds appear to support belief that the guardian has misapplied, embezzled, or removed from the state, or that the guardian is about to misapply, embezzle, or remove from the state, all or any part of the property committed to the care of the guardian;

(2) the guardian fails to return any account or report that is required by law to be made;

(3) the guardian fails to obey any proper order of the court having jurisdiction with respect to the performance of the guardian's duties;

(4) the guardian is proved to have been guilty of gross misconduct or mismanagement in the performance of the duties of the guardian;

(5) the guardian becomes incapacitated, or is sentenced to the penitentiary, or from any other cause becomes incapable of properly performing the duties of the guardian's trust;

(6) the guardian has engaged in conduct with respect to the ward that would be considered to be abuse, neglect, or exploitation, as those terms are defined by Section 48.002, Human Resources Code, if engaged in with respect to an elderly or disabled person, as defined by that section [~~neglects or cruelly treats the ward~~];

(6-a) the guardian neglects to educate or maintain the ward as liberally as the means of the ward's estate and the ward's ability or condition permit;

(7) the guardian interferes with the ward's progress or participation in programs in the community;

(8) the guardian fails to comply with the requirements of Section 697 of this code;

(9) the court determines that, because of the dissolution of the joint guardians' marriage, the termination of the guardians' joint appointment and the continuation of only one of the joint guardians as the sole guardian is in the best interest of the ward; or

(10) the guardian would be ineligible for appointment as a guardian under Section 681 of this code.

(f) If the necessity exists, the court may immediately appoint a successor guardian without citation or notice but may not discharge the person removed as guardian of the estate or release the person or the sureties on the person's bond until final order or judgment is rendered on the final account of the guardian. Subject to an order of the court, a successor guardian has the rights and powers of the removed guardian.

(h) The appointment of a successor guardian under Subsection (f) of this section does not preclude an interested person from filing an application to be appointed guardian of the ward for whom the successor guardian was appointed. The court shall hold a hearing on an application filed under the circumstances described by this subsection. At the conclusion of the hearing, the court may set aside the appointment of the successor guardian and appoint the applicant as the ward's guardian if the applicant is not disqualified and after considering the requirements of Section 676 or 677 of this code, as applicable.

(i) If the court sets aside the appointment of the successor guardian under this section, the court may require the successor guardian to prepare and file, under oath, an accounting of the estate and to detail the disposition the successor has made of the estate property.

SECTION 12. The Department of Aging and Disability Services and the adult protective services division of the Department of Family and Protective Services shall identify and implement modifications to investigations of abuse, neglect, and exploitation conducted under Chapter 48, Human Resources Code, and the provision of protective and guardianship services under Chapters 48 and 161, Human Resources Code, to ensure that the agencies prevent any unnecessary duplication of efforts in performing their respective responsibilities under those chapters.

SECTION 13. (a) Except as otherwise provided by this section, the changes in law made by this Act apply to a guardianship created before, on, or after the effective date of this Act.

(b) Section 32.02451, Human Resources Code, as amended by this Act, and Section 670, Texas Probate Code, as amended by this Act, apply to a recipient of medical assistance under Chapter 32, Human Resources Code, regardless of whether the recipient was determined eligible for medical assistance before, on, or after the effective date of this Act, and regardless of whether a guardianship was created for the recipient before, on, or after the effective date of this Act.

(c) Sections 633 and 682, Texas Probate Code, as amended by this Act, apply only to an application for a guardianship filed on or after the effective date of this Act. An application for a guardianship filed before the effective date of this Act is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

(d) Section 761, Texas Probate Code, as amended by this Act, applies only to a proceeding to remove a guardian commenced on or after the effective date of this Act. A proceeding to remove a guardian commenced before the effective date of this Act is governed by the law in effect on the date the proceeding was commenced, and the former law is continued in effect for that purpose.

SECTION 14. If before implementing any provision of this Act a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

SECTION 15. This Act takes effect September 1, 2011.

The amendment was read.

Senator Nelson moved to concur in the House amendment to **SB 220**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

#### **SENATE BILL 229 WITH HOUSE AMENDMENT**

Senator Nelson called **SB 229** from the President's table for consideration of the House amendment to the bill.

The President Pro Tempore laid the bill and the House amendment before the Senate.

**Amendment**

Amend **SB 229** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to newborn hearing screenings and hearing services for certain children.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subdivision (2), Section 47.001, Health and Safety Code, is amended to read as follows:

(2) "Birthing facility" means:

- (A) a hospital licensed under Chapter 241 that offers obstetrical services [~~and is located in a county with a population of more than 50,000~~]; ~~[or]~~
- (B) a birthing center licensed under Chapter 244;
- (C) a children's hospital; or
- (D) a facility, maintained or operated by this state or an agency of this state, that provides obstetrical services [that is located in a county with a population of more than 50,000 and that has 100 or more births per year].

SECTION 2. Chapter 47, Health and Safety Code, is amended by adding Section 47.0035 to read as follows:

Sec. 47.0035. REFERRAL TO PROGRAM BY MIDWIFE. (a) In this section, "midwife" has the meaning assigned by Section 203.002, Occupations Code.

(b) A midwife who attends the birth of a newborn:

(1) is not required to offer the parents of a newborn a hearing screening for the newborn for the identification of hearing loss; and

(2) shall refer the parents of the newborn to a birthing facility or a provider that participates in the program.

SECTION 3. Section 47.007, Health and Safety Code, is amended by amending Subsections (a) and (c) and adding Subsections (d) through (g) to read as follows:

(a) The department shall provide each birthing facility that provides newborn hearing screening under the state's medical assistance program provided under Chapter 32, Human Resources Code, with access to the appropriate information management, reporting, and tracking system ~~[software]~~ for the program. The information management, reporting, and tracking system must be capable of providing the department with information and data necessary to plan, monitor, and evaluate the program, including the program's screening, follow-up, diagnostic, and intervention components.

(c) A birthing facility described by Subsection (a) shall report the resulting information in the format and within the time frame specified by the department.

(d) A qualified hearing screening provider, audiologist, intervention specialist, educator, or other person who receives a referral from a program under this chapter shall:

(1) provide the services needed by the child or refer the child to a person who provides the services needed by the child; and

(2) provide, with the consent of the child's parent, the following information to the department or the department's designee:

(A) results of follow-up care;

(B) results of audiologic testing of infants identified with hearing loss;  
and

(C) reports on the initiation of intervention services.

(e) A qualified hearing screening provider, audiologist, intervention specialist, educator, or other person who provides services to infants who are diagnosed with hearing loss shall provide, with the consent of the infant's parent, the following information to the department or the department's designee:

(1) results of follow-up services;

(2) results of audiologic testing of infants identified with hearing loss; and

(3) reports on the initiation of intervention services.

(f) A hospital that provides services under this chapter shall use the information management, reporting, and tracking system, which the department has provided the hospital with access to, to report, with the consent of the infant's parent, the following information to the department or the department's designee:

(1) results of all follow-up services for infants who do not pass the birth admission screening if the hospital provides the follow-up services; or

(2) the name of the provider or facility where the hospital refers an infant who does not pass the birth admission screening for follow-up services.

(g) The department shall ensure that the written consent of a parent is obtained before any information individually identifying the newborn or infant is released through the information management, reporting, and tracking system.

SECTION 4. Section 47.002, Health and Safety Code, is repealed.

SECTION 5. Notwithstanding Subdivision (2), Section 47.001, Health and Safety Code, as amended by this Act, the change in law made by this Act applies only to a birth admission at a birthing facility on or after September 1, 2012.

SECTION 6. This Act takes effect September 1, 2011.

The amendment was read.

Senator Nelson moved to concur in the House amendment to **SB 229**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

### **SENATE BILL 218 WITH HOUSE AMENDMENTS**

Senator Nelson called **SB 218** from the President's table for consideration of the House amendments to the bill.

The President Pro Tempore laid the bill and the House amendments before the Senate.

#### **Amendment**

Amend **SB 218** by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to procedures in certain suits affecting the parent-child relationship and the operation of the child protective services and foster care systems.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter D, Chapter 261, Family Code, is amended by adding Section 261.3013 to read as follows:



Sec. 261.3013. CASE CLOSURE AGREEMENTS PROHIBITED. (a) Except as provided by Subsection (b), on closing a case, the department may not enter into a written agreement with a child's parent or another adult with whom the child resides that requires the parent or other adult to take certain actions after the case is closed to ensure the child's safety.

(b) This section does not apply to an agreement that is entered into by a parent or other adult:

(1) following the removal of a child and that is subject to the approval of a court with continuing jurisdiction over the child;

(2) as a result of the person's participation in family group conferencing; or

(3) as part of a formal case closure plan agreed to by the person who will continue to care for a child as a result of a parental child safety placement.

(c) The department shall develop policies to guide caseworkers in the development of case closure agreements authorized under Subsections (b)(2) and (3).

SECTION 2. Subchapter A, Chapter 262, Family Code, is amended by adding Section 262.010 to read as follows:

Sec. 262.010. CHILD WITH SEXUALLY TRANSMITTED DISEASE. (a) If during an investigation by the Department of Family and Protective Services the department discovers that a child younger than 11 years of age has a sexually transmitted disease, the department shall:

(1) appoint a special investigator to assist in the investigation of the case;  
and

(2) file an original suit requesting an emergency order under this chapter for possession of the child unless the department determines, after taking the following actions, that removing the child from the child's home is not necessary for the protection of the child:

(A) reviewing the medical evidence to determine whether the medical evidence supports a finding that abuse likely occurred;

(B) interviewing the child and other persons residing in the child's home;

(C) conferring with law enforcement;

(D) determining whether any other child in the home has a sexually transmitted disease and, if so, referring the child for a sexual abuse examination;

(E) if the department determines a forensic interview is appropriate based on the child's age and development, ensuring that each child alleged to have been abused undergoes a forensic interview by a children's advocacy center established under Section 264.402 or another professional with specialized training in conducting forensic interviews if a children's advocacy center is not available in the county in which the child resides;

(F) consulting with a department staff nurse or other medical expert to obtain additional information regarding the nature of the sexually transmitted disease and the ways the disease is transmitted and an opinion as to whether abuse occurred based on the facts of the case;

(G) contacting any additional witness who may have information relevant to the investigation, including other individuals who had access to the child;  
and

(H) if the department determines after taking the actions described by Paragraphs (A)-(G) that a finding of sexual abuse is not supported, obtaining an opinion from the Forensic Assessment Center Network as to whether the evidence in the case supports a finding that abuse likely occurred.

(b) If the department determines that abuse likely occurred, the department shall work with law enforcement to obtain a search warrant to require an individual the department reasonably believes may have sexually abused the child to undergo medically appropriate diagnostic testing for sexually transmitted diseases.

SECTION 3. Section 262.1015, Family Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) Notwithstanding Subsection (a), if the Department of Family and Protective Services determines that a protective order issued under Title 4 provides a reasonable alternative to obtaining an order under that subsection, the department may:

(1) file an application for a protective order on behalf of the child instead of or in addition to obtaining a temporary restraining order under this section; or

(2) assist a parent or other adult with whom a child resides in obtaining a protective order.

SECTION 4. Section 263.103, Family Code, is amended to read as follows:

Sec. 263.103. ORIGINAL SERVICE PLAN: SIGNING AND TAKING EFFECT. (a) The original service plan shall be developed jointly by the child's parents and a representative of the department or other authorized agency, including informing the parents of their rights in connection with the service plan process. If a parent is not able or willing to participate in the development of the service plan, it should be so noted in the plan.

(a-1) Before the original service plan is signed, the child's parents and the representative of the department or other authorized agency shall discuss each term and condition of the plan.

(b) The child's parents and the person preparing the original service plan shall sign the plan, and the department shall give each parent a copy of the service plan.

(c) If the department or other authorized agency determines that the child's parents are unable or unwilling to participate in the development of the original service plan or sign the [service] plan, the department may file the plan without the parents' signatures.

(d) The original service plan takes effect when:

(1) the child's parents and the appropriate representative of the department or other authorized agency sign the plan; or

(2) the court issues an order giving effect to the plan [~~department or other authorized agency files the plan~~] without the parents' signatures.

(e) The original service plan is in effect until amended by the court or as provided under Section 263.104.

SECTION 5. Section 263.104, Family Code, is amended to read as follows:

Sec. 263.104. AMENDED SERVICE PLAN. (a) The service plan may be amended at any time. The department shall work with the parents to jointly develop any amendment to the service plan, including informing the parents of their rights in connection with the amended service plan process.

(b) The amended service plan supersedes the previously filed service plan and takes effect when:

(1) the child's parents and the appropriate representative of the department or other authorized agency sign the plan; or

(2) the department or other authorized agency determines that the child's parents are unable or unwilling to sign the amended plan and files it without the parents' signatures.

(c) A parent may file a motion with the court at any time to request a review and modification of the amended service plan ~~[The amended service plan remains in effect until amended by the court].~~

(d) An amended service plan remains in effect until:

(1) superseded by a later-amended service plan that goes into effect as provided by Subsection (b); or

(2) modified by the court.

SECTION 6. Section 263.106, Family Code, is amended to read as follows:

Sec. 263.106. COURT IMPLEMENTATION OF SERVICE PLAN. After reviewing the original or any amended service plan and making any changes or modifications it deems necessary, the [The] court shall incorporate the original and any amended service plan into the orders of the court and may render additional appropriate orders to implement or require compliance with an original or amended service plan.

SECTION 7. Subsection (a), Section 264.118, Family Code, is amended to read as follows:

(a) The department shall collect and report service and outcome information for certain current and former foster care youth for use in the National Youth in Transition Database as required by 42 U.S.C. Section 677(f) and 45 C.F.R. Section 1356.80 et seq ~~[conduct an annual random survey of a sample of children from each region of the state who are at least 14 years of age and who receive substitute care services. The survey must include questions regarding:~~

~~[(1) the quality of the substitute care services provided to the child;~~

~~[(2) any improvements that could be made to better support the child; and~~

~~[(3) any other factor that the department considers relevant to enable the department to identify potential program enhancements].~~

SECTION 8. Subdivision (3), Subsection (a), Section 411.114, Government Code, is amended to read as follows:

(3) The Department of Family and Protective ~~[and Regulatory]~~ Services is entitled to obtain from the department criminal history record information maintained by the department that relates to a person who is:

(A) a volunteer or applicant volunteer with a local affiliate in this state of Big Brothers/Big Sisters of America;

(B) a volunteer or applicant volunteer with the "I Have a Dream/Houston" program;

(C) a volunteer or applicant volunteer with an organization that provides court-appointed special advocates for abused or neglected children;

(D) a person providing, at the request of the child's parent, in-home care for a child who is the subject of a report alleging the child has been abused or neglected;

(E) a volunteer or applicant volunteer with a Texas chapter of the Make-a-Wish Foundation of America;

(F) a person providing, at the request of the child's parent, in-home care for a child only if the person gives written consent to the release and disclosure of the information;

(G) a child who is related to the caretaker, as determined under Section 42.002, Human Resources Code, and who resides in or is present in a child-care facility, family home, or maternity home, other than a child described by Subdivision (2)(C), or any other person who has unsupervised access to a child in the care of a child-care facility, family home, or maternity home;

(H) an applicant for a position with the Department of Family and Protective [~~and Regulatory~~] Services, other than a position described by Subdivision (2)(D), regardless of the duties of the position;

(I) a volunteer or applicant volunteer with the Department of Family and Protective [~~and Regulatory~~] Services, other than a registered volunteer, regardless of the duties to be performed;

(J) a person providing or applying to provide in-home, adoptive, or foster care for children to the extent necessary to comply with Subchapter B, Chapter 162, Family Code;

(K) a Department of Family and Protective [~~and Regulatory~~] Services employee, other than an employee described by Subdivision (2)(H), regardless of the duties of the employee's position;

(L) a relative of a child in the care of the Department of Family and Protective [~~and Regulatory~~] Services, to the extent necessary to comply with Section 162.007, Family Code;

(M) a person, other than the subject of a report described in Subdivision (2)(I), living in the residence in which the alleged victim of the report resides;

(N) a contractor or an employee of a contractor who delivers services to a ward of the Department of Family and Protective [~~and Regulatory~~] Services under a contract with the estate of the ward;

(O) a person who seeks unsupervised visits with a ward of the Department of Family and Protective [~~and Regulatory~~] Services, including a relative of the ward; ~~or~~

(P) an employee, volunteer, or applicant volunteer of a children's advocacy center under Subchapter E, Chapter 264, Family Code, including a member of the governing board of a center;

(Q) an employee of or volunteer at, or an applicant for employment with or to be a volunteer at, an entity that provides supervised independent living services to a young adult receiving extended foster care services from the Department of Family and Protective Services; or

(R) a person 14 years of age or older who will be regularly or frequently working or staying in a host home that is providing supervised independent living services to a young adult receiving extended foster care services from the Department of Family and Protective Services.

SECTION 9. Section 40.036, Human Resources Code, is amended to read as follows:

Sec. 40.036. ENHANCED TRAINING OF CHILD PROTECTIVE SERVICES CASEWORKERS. To improve the quality and consistency of training provided to child protective services caseworkers, the department shall:

(1) augment classroom-based training with a blended learning environment using computer-based modules, structured field experience, and simulation for skills development;

(2) use a core curriculum for all new department caseworkers and specialized training for specific jobs;

(3) require that department caseworkers transferring from one specialty to another must complete the core curriculum and advanced training for the new specialty before assuming their new responsibilities; ~~and~~

(4) centralize accountability and oversight of all department training in order to ensure statewide consistency; and

(5) require department caseworkers to receive training relating to the benefits of using a protective order under Title 4, Family Code, to protect a child as an alternative to removing the child from the child's home.

SECTION 10. Subchapter I, Chapter 521, Transportation Code, is amended by adding Section 521.1811 to read as follows:

Sec. 521.1811. WAIVER OF FEES FOR FOSTER CARE YOUTH. A person is exempt from the payment of any fee for the issuance of a driver's license, as provided under this chapter, if that person is:

(1) younger than 18 years of age and in the managing conservatorship of the Department of Family and Protective Services; or

(2) at least 18 years of age, but younger than 21 years of age, and resides in a foster care placement, the cost of which is paid by the Department of Family and Protective Services.

SECTION 11. (a) The Department of Family and Protective Services shall implement a redesign of the foster care system in accordance with the recommendations contained in the department's December 2010 Foster Care Redesign report submitted to the legislature.

(b) The redesign of the foster care system shall be implemented with the understanding that the individual needs of a child are paramount and that not all indicators are appropriate for every child and shall include as goals for the redesign a system that ensures:

(1) children are safe in their placements;

(2) children are placed in their home communities;

(3) children are appropriately served in the least restrictive environment that supports minimal moves for the child;

(4) connections to family and other persons important to the child are maintained;

- (5) children are placed with siblings;
- (6) services respect the child's culture;
- (7) children and youth are fully prepared for successful adulthood through being provided opportunities, experiences, and activities similar to those experienced by children and youth who are not in foster care; and
- (8) children and youth are provided opportunities to participate in decisions that impact their lives.

(c) The Health and Human Services Commission may use payment rates for foster care under the redesigned system that are different from those used on the effective date of this Act for 24-hour residential child care. Payment rates for foster care under the redesigned system may include incentive payments for superior performance, as well as funding for additional services provided to families historically included in 24-hour residential child-care rates. Final implementation of the foster care redesign must include a payment system based on performance targets. Payment rates under foster care redesign may not result in total expenditures for any fiscal year during the 2012-2013 fiscal biennium that exceed the amounts appropriated by the 82nd Legislature for foster care and other purchased services, except to the extent that any increase in total foster care expenditures is the direct result of caseload growth.

SECTION 12. This Act takes effect September 1, 2011.

#### **Floor Amendment No. 1**

Amend **CSSB 218** (house committee printing) as follows:

(1) In SECTION 2 of the bill, strike amended Section 262.010(a)(2), Family Code (page 2, lines 12 through 16), and substitute the following:

(2) file an original suit requesting an emergency order under this chapter for possession of the child unless the department determines, after taking the following actions, that emergency removal is not necessary for the protection of the child:

The amendments were read.

Senator Nelson moved to concur in the House amendments to **SB 218**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

#### **SENATE BILL 438 WITH HOUSE AMENDMENT**

Senator Nelson called **SB 438** from the President's table for consideration of the House amendment to the bill.

The President Pro Tempore laid the bill and the House amendment before the Senate.

#### **Amendment**

Amend **SB 438** by substituting in lieu thereof the following:

#### **A BILL TO BE ENTITLED**

relating to the number of days a winery may sell wine under a winery festival permit.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:**

SECTION 1. Section 17.01(b), Alcoholic Beverage Code, is amended to read as follows:

(b) The holder of a winery festival permit may not offer wine for sale under this chapter[=

~~[(1) for more than five days within any 30-day period; or~~

~~[(2)] on more than four [three] consecutive days at the same location.~~

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2011.

The amendment was read.

Senator Nelson moved to concur in the House amendment to **SB 438**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

### SENATE BILL 1504 WITH HOUSE AMENDMENTS

Senator Seliger called **SB 1504** from the President's table for consideration of the House amendments to the bill.

The President Pro Tempore laid the bill and the House amendments before the Senate.

#### Amendment

Amend **SB 1504** by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to the disposal of waste at the Texas Low-Level Radioactive Waste Disposal Compact waste disposal facility.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 401.2005, Health and Safety Code, is amended by amending Subdivision (1) and adding Subdivisions (1-a), (1-b), (6-a), (8), and (9) to read as follows:

(1) "Compact" means the Texas Low-Level Radioactive Waste Disposal Compact established under Section 403.006.

(1-a) "Compact waste" means low-level radioactive waste that:

(A) is originally generated onsite in a host state or a party state; or

(B) is not generated in a host state or a party state but has been approved for importation to this state by the compact commission under Section 3.05 of the compact [~~established under Section 403.006~~].

(1-b) "Curie capacity" means the amount of the radioactivity of the waste that may be accepted by the compact waste disposal facility as determined by the commission in the compact waste disposal facility license.

(6-a) "Nonparty compact waste" means low-level radioactive waste imported from a state other than a party state as authorized under Section 3.05(6) of the compact.

(8) "Party state compact waste" means low-level radioactive waste generated in a party state.

(9) "Waste of international origin" means low-level radioactive waste that originates outside of the United States or a territory of the United States, including waste subsequently stored or processed in the United States.

SECTION 2. Section 401.207, Health and Safety Code, is amended to read as follows:

Sec. 401.207. OUT-OF-STATE WASTE; NONPARTY COMPACT WASTE.

(a) The compact waste disposal facility license holder may not accept low-level radioactive waste generated in another state for disposal under a license issued by the commission unless the waste is:

(1) accepted under a compact to which the state is a contracting party;

(2) federal facility waste that the license holder is licensed to dispose of under Section 401.216; or

(3) generated from manufactured sources or devices originating in this state.

(b) The compact waste disposal facility license holder may accept for disposal at the compact waste disposal facility approved nonparty compact waste that is classified as Class A, Class B, or Class C low-level radioactive waste in accordance with the compact waste disposal facility license to the extent the acceptance does not diminish the disposal volume or curie capacity available to party states.

(c) The compact waste disposal facility license holder may not accept waste of international origin for disposal at the facility.

(d) The compact waste disposal facility license holder may not accept for disposal at the compact waste disposal facility nonparty compact waste that does not meet the waste characteristics and waste forms for disposal applicable to compact waste as set forth by the commission in the compact waste disposal facility license. Before the license holder may accept nonparty compact waste for disposal, the commission must certify through a written evaluation that the waste is authorized for disposal under the license. If the disposal is not authorized under the license, the commission must inform the license holder of the license amendments necessary to authorize the disposal.

(e) The compact waste disposal facility license holder may not accept more than 50,000 total cubic feet of nonparty compact waste annually. The compact waste disposal facility license holder may not accept an average of more than 120,000 curies of nonparty compact waste annually over the first 10 years of disposal operations, with an annual limit of not more than 220,000 curies. The legislature by general law may establish revised limits after considering the results of the study under Section 401.208.

(e-1) The commission's executive director, on completion of the study under Section 401.208, may prohibit the license holder from accepting any additional nonparty compact waste if the commission determines from the study that the capacity of the facility will be limited, regardless of whether the limit under Subsection (f) has been reached.

(f) The compact waste disposal facility license holder may not accept a volume of nonparty compact waste that would exceed 30 percent of the total volume and radioactivity established for the facility by the commission in the compact waste disposal facility license. Of the remaining amount of total capacity, the host state is entitled to 80 percent of that capacity and Vermont is entitled to 20 percent.



(g) The commission shall assess a surcharge for the disposal of nonparty compact waste at the compact waste disposal facility. The surcharge must be assessed in addition to the total contracted rate under Section 401.2457 and is:

(1) 10 percent of that rate before the fifth anniversary of the date disposal operations begin; and

(2) 20 percent of that rate on or after the fifth anniversary of the date disposal operations begin.

(h) A surcharge collected under Subsection (g) shall be deposited to the credit of the low-level radioactive waste fund.

(i) The Texas Low-Level Radioactive Waste Disposal Compact Commission by rule shall adopt procedures and forms for the approval of the importation of nonparty compact waste.

(j) An application for the approval of the importation of nonparty compact waste may be submitted to the Texas Low-Level Radioactive Waste Disposal Compact Commission only by:

(1) the generator of the waste;

(2) the compact waste disposal facility license holder; or

(3) a party contracted by the generator to dispose of the waste.

(k) The compact waste disposal facility license holder may accept for disposal at the compact waste disposal facility nonparty compact waste that is incidentally commingled, as defined by commission rule or policy, with party state compact waste at a commercial processing facility.

SECTION 3. Subchapter F, Chapter 401, Health and Safety Code, is amended by adding Sections 401.208 and 401.2085 to read as follows:

Sec. 401.208. STUDY OF CAPACITY. (a) The commission shall conduct a study on the available volume and curie capacity of the compact waste disposal facility for the disposal of party state compact waste and nonparty compact waste.

(b) The commission shall consider and make recommendations regarding:

(1) the future volume and curie capacity needs of party state and nonparty state generators and any additional reserved capacity necessary to meet those needs;

(2) the result of using decay factors in revising curie capacity limits;

(3) the necessity of containerization of the waste; and

(4) the effects of the projected volume and radioactivity of the waste on the health and safety of the public.

(c) Not later than December 1, 2012, the commission shall submit a final report of the results of the study to the standing committees of the senate and the house of representatives with jurisdiction over the disposal of low-level radioactive waste.

(d) The Texas Low-Level Radioactive Waste Disposal Compact Commission shall use the study to anticipate the future capacity needs of the compact waste disposal facility.

(e) This section expires August 31, 2013.

Sec. 401.2085. REVIEW OF FINANCIAL ASSURANCE. (a) The commission shall conduct a review of the adequacy of the financial assurance mechanisms of the compact waste disposal facility license holder that were approved by the commission before January 1, 2011, against projected post-closure costs, including a review of the adequacy of funds for unplanned events. The review shall consider:

- (1) the segregation of financial assurance funds from other funds;  
(2) the degree of risk that the financial instruments are subject to financial reversal;  
(3) potential post-closure risks associated with the compact waste disposal facility; and  
(4) the adequacy of the financial instruments to cover the state's liabilities.

(b) Not later than December 1, 2012, the commission shall submit a final report of the results of the review to the standing committees of the senate and the house of representatives with jurisdiction over the disposal of low-level radioactive waste.

(c) This section expires August 31, 2013.

SECTION 4. Section 401.218, Health and Safety Code, is amended by adding Subsection (d) to read as follows:

(d) The compact waste disposal facility license holder may not accept for disposal at the compact waste disposal facility elemental mercury the disposal of which is regulated under Chapter 361.

SECTION 5. The heading to Section 401.245, Health and Safety Code, is amended to read as follows:

Sec. 401.245. PARTY STATE COMPACT WASTE DISPOSAL FEES.

SECTION 6. Section 401.245, Health and Safety Code, is amended by amending Subsections (a) and (b) and adding Subsections (g) and (h) to read as follows:

(a) A compact waste disposal facility license holder who receives party state compact [low-level radioactive] waste for disposal pursuant to the compact [Texas Low-Level Radioactive Waste Disposal Compact established under Chapter 403] shall have collected a waste disposal fee to be paid by each person who delivers party state compact [low-level radioactive] waste to the compact waste disposal facility for disposal.

(b) The commission by rule shall adopt and periodically revise party state compact waste disposal fees under this section according to a schedule that is based on the projected annual volume of low-level radioactive waste received, the relative hazard presented by each type of low-level radioactive waste that is generated by the users of radioactive materials, and the costs identified in Section 401.246.

(g) For the purposes of a contested case involving the adoption of fees under this section, only a party state generator of low-level radioactive waste may be considered a person affected.

(h) The administrative law judge assigned to the contested case involving the adoption of fees under this section shall issue a proposal for decision on fees proposed by the commission not later than the first anniversary of the date the case is referred by the commission.

SECTION 7. Subchapter F, Chapter 401, Health and Safety Code, is amended by adding Sections 401.2455, 401.2456, 401.2457, 401.2458, and 401.2459 to read as follows:

Sec. 401.2455. MAXIMUM DISPOSAL RATES. (a) The commission by rule shall set maximum disposal rates.

(b) Maximum disposal rates do not apply to generators of nonparty compact waste.

(c) In establishing the maximum disposal rates for generators in the host state and party states, the commission:

(1) shall assume that nonparty compact waste will be accepted for disposal at the compact waste disposal facility at the maximum disposal rate; and

(2) may not consider the historical operating losses incurred by the compact waste disposal facility license holder before beginning operations.

Sec. 401.2456. RECOVERY OF HISTORICAL OPERATING LOSSES. (a) Historical operating losses incurred by the compact waste disposal facility license holder before beginning operations may be recovered by the license holder solely through revenues from the disposal of nonparty compact waste.

(b) The commission shall determine the amount of historical operating losses by the compact waste disposal facility license holder that have been incurred before the license holder begins operations at the compact waste disposal facility. In determining the amount of historical operating losses, the commission:

(1) may only consider the costs, expenses, and expenditures established as true and accurate by the license holder;

(2) shall include:

(A) any cost, expense, or expenditure incurred or paid by the license holder before September 1, 2003, except for costs, expenses, or expenditures associated with real property used for the compact waste disposal facility site;

(B) losses relating to the development and operation of any facility other than the compact waste disposal facility;

(C) any other losses or factors that the commission determines are appropriate; and

(D) a reasonable rate of return on the items described by Paragraphs (A), (B), and (C); and

(3) may not include reasonable and necessary expenditures by the license holder for the compact waste disposal facility incurred on or after September 1, 2003, for:

(A) any asset related to plant, property, equipment, or working capital;  
or

(B) permitting or licensing.

(c) In determining the amount of historical operating losses under Subsection (b), the commission shall request and the compact waste disposal facility license holder shall file in response to the request a proposed amount of historical operating losses based on verifiable financial statements, supporting information, and analysis. The commission shall solicit and consider comments from party state compact waste generators regarding the license holder's proposed historical operating losses, and shall determine the amount of historical operating losses not later than the 90th day after the date the commission receives the proposed amount of the historical operating losses from the license holder.

Sec. 401.2457. CONTRACTS FOR WASTE DISPOSAL. (a) At any time before the adoption by the commission of party state compact waste disposal fees or maximum disposal rates, the compact waste disposal facility license holder may contract with a generator for the disposal of low-level radioactive waste at the

compact waste disposal facility at fees and rates established under the contract and may dispose of waste under the contract. A contract under this subsection is subject to authorization by the compact commission under Section 3.05(6) of the compact.

(b) Party state compact waste generators located in the compact states of Texas and Vermont are not required to enter into any contract with the compact waste disposal facility license holder before the adoption by the commission of party state compact waste disposal fees or maximum disposal rates.

(c) Regardless of whether the commission approves or disapproves a contract authorized under this section, after the adoption of final party state compact waste disposal fees under Section 401.245 or final maximum disposal rates under Section 401.2455, the parties to the contract are not entitled to any refund or surcharge not contained in the contract.

(d) A contract under this section must:

- (1) be negotiated in good faith;
- (2) conform to applicable antitrust statutes and regulations; and
- (3) be nondiscriminatory.

Sec. 401.2458. INTERIM FEES AND RATES. (a) Before the commission adopts final disposal fees under Section 401.245 and final maximum disposal rates under Section 401.2455, the commission's executive director may set interim disposal fees and interim maximum disposal rates according to commission rules.

(b) The compact waste disposal facility license holder shall charge generators in the host state and party states fees and rates consistent with the interim fees and rates while the interim fees or rates are in effect. A generator is not entitled to a refund, and may not be charged a surcharge, for the disposal of waste under interim fees or rates once the final fees or rates have been adopted.

Sec. 401.2459. CONSIDERATIONS IN CONTRACT APPROVAL. After the commission adopts party state compact waste disposal fees under Section 401.245 and maximum disposal rates under Section 401.2455, in approving contracts between the compact waste disposal facility license holder and a party state compact waste generator, the commission may consider, subject to reasonable rules of confidentiality, the net revenues recovered by the compact waste disposal facility license holder from the disposal of nonparty compact waste.

SECTION 8. Section 401.246(a), Health and Safety Code, is amended to read as follows:

(a) Party state compact [~~Compact~~] waste disposal fees adopted by the commission under Section 401.245 must be sufficient to:

(1) allow the compact waste facility license holder to recover costs of operating and maintaining the compact waste disposal facility and a reasonable profit on the operation of that facility;

(2) provide an amount necessary to meet future costs of decommissioning, closing, and postclosure maintenance and surveillance of the compact waste disposal facility and the compact waste disposal facility portion of the disposal facility site;

(3) provide an amount to fund local public projects under Section 401.244;

(4) provide a reasonable rate of return on capital investment in the facilities used for management or disposal of compact waste at the compact waste disposal facility; and

(5) provide an amount necessary to pay compact waste disposal facility licensing fees, to pay compact waste disposal facility fees set by rule or statute, and to provide security for the compact waste disposal facility as required by the commission under law and commission rules.

SECTION 9. Section 401.248(b), Health and Safety Code, is amended to read as follows:

(b) The state may enter into compacts with another state or several states for the disposal in this state of low-level radioactive waste only if the compact:

(1) limits the total volume of all low-level radioactive waste to be disposed of in this state from the other party state or party states to 20 percent of the annual average of low-level radioactive waste projected to be disposed of [~~that the governor projects will be produced~~] in this state from [~~the years~~] 1995 through 2045;

(2) gives this state full administrative control over management and operation of the compact waste disposal facility;

(3) requires the other state or states to join this state in any legal action necessary to prevent states that are not members of the compact from disposing of low-level radioactive waste at the compact waste disposal facility;

(4) allows this state to charge a fee for the disposal of low-level radioactive waste at the compact waste disposal facility;

(5) requires the other state or states to join in any legal action involving liability from the compact waste disposal facility;

(6) requires the other state or states to share the full cost of constructing the compact waste disposal facility;

(7) allows this state to regulate, in accordance with federal law, the means and routes of transportation of the low-level radioactive waste in this state;

(8) requires the other state or states to pay for community assistance projects selected by the host county in an amount not less than \$1 million or 10 percent of the amount contributed by the other state or states;

(9) is agreed to by the Texas Legislature, the legislature of the other state or states, and the United States Congress; and

(10) complies with all applicable federal law.

SECTION 10. Section 401.250, Health and Safety Code, is amended to read as follows:

Sec. 401.250. PAYMENTS BY PARTY STATES. (a) Notwithstanding any other provision of law, Act of the legislature or the executive branch, or any other agreement, the initial payment of \$12.5 million due from each nonhost party state under Section 5.01 of the compact established under Section 403.006 is due not later than November 1, 2003. In accordance with Section 7.01 of the compact, the host state establishes the following terms and conditions for a state to become a party state to the compact after January 1, 2011:

(1) the state must make an initial payment of half of the total amount due to the host state under Subsection (b) on the later of September 1, 2011, or the date the state becomes a party state; and

(2) the state must pay the remainder of the amount owed under Subsection (b) on the later of the date of the opening of the compact waste disposal facility or the date the facility first accepts waste from the state.

(b) Each state that becomes a party state:

(1) after January 1, 2011, and before September 1, 2018, shall contribute a total of \$30 million to the host state, including the initial payment under Subsection (a)(1); and

(2) on or after September 1, 2018, and before September 1, 2023, shall contribute \$50 million to the host state, including the initial payment under Subsection (a)(1).

(c) The requirements of this section apply to a state that becomes a party state after January 1, 2011, regardless of whether the state had previously been a party to the compact. A state that has withdrawn as a party state shall pay the previously committed fee of \$25 million in addition to the fees set in Subsection (b).

(d) A payment made under this section may not be refunded, even if a party state withdraws from the compact.

(e) The host county, as defined by Section 2.01 of the compact, is entitled to receive 10 percent of a payment under Subsection (b).

(f) This section prevails over any other law or agreement in conflict or inconsistent with this section.

SECTION 11. Section 401.248(d), Health and Safety Code, is repealed.

SECTION 12. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2011.

### Floor Amendment No. 1

Amend **CSSB 1504** (house committee printing) as follows:

(1) In SECTION 2 of the bill, in added Section 401.207(e), Health and Safety Code (page 3, line 17), strike "an average of".

(2) In SECTION 2 of the bill, in added Section 401.207(e), Health and Safety Code (page 3, lines 18-19), strike "annually over the first 10 years of disposal operations, with an annual limit of not more than 220,000 curies" and substitute "annually, except that in the first year the license holder may accept 220,000 curies".

(3) In SECTION 2 of the bill, strike added Sections 401.207(f) and (g), Health and Safety Code (page 4, lines 1-15), and substitute:

(f) Of the total initial licensed capacity of the compact waste disposal facility:

(1) not more than 30 percent of the volume and curie capacity shall be for nonparty compact waste; and

(2) of the remaining capacity, not less than 80 percent of the volume and curie capacity shall be for compact waste generated in the host state and 20 percent of the volume and curie capacity shall be for compact waste generated in Vermont.

(g) The commission shall assess a surcharge for the disposal of nonparty compact waste at the compact waste disposal facility. The surcharge is 20 percent of the total contracted rate under Section 401.2456 and must be assessed in addition to the total contracted rate under that section.

(4) In SECTION 2 of the bill, in amended Section 401.207, Health and Safety Code, between Subsections (h) and (i) of the section (page 4, between lines 17 and 18), insert:

(h-1) The commission shall conduct a study of the surcharge described by Subsection (g) and, not later than December 1, 2016, shall issue the results of the review to the legislature. The commission shall review the operations and expenses of the compact waste disposal facility license holder and shall require the compact waste disposal facility license holder to provide justification of disposal expenses and historical costs associated with the facility through appropriate evidentiary and empirical records, studies, and other applicable methodologies. The commission shall consider the impact of the surcharge on the overall revenue generated for the state and may request the assistance of the comptroller in conducting the analysis of the impact of the surcharge.

(5) In SECTION 2 of the bill, strike added Sections 401.207(j) and (k), Health and Safety Code (page 4, line 21, through page 5, line 6), and substitute:

(j) An application for the approval of the importation of nonparty compact waste may be submitted to the Texas Low-Level Radioactive Waste Disposal Compact Commission only by the generator of the waste.

(k) The commission, in coordination with the Texas Low-Level Radioactive Waste Disposal Compact Commission, shall adopt rules establishing criteria and thresholds by which incidental commingling of party state compact waste and waste from other sources at a commercial processing facility is considered and reasonably limited. The criteria and thresholds for commingling under this subsection established by commission rule are binding on any criteria and thresholds that may be established by the Texas Low-Level Radioactive Waste Disposal Compact Commission.

(6) In SECTION 3 of the bill, in added Section 401.208(b)(2), Health and Safety Code (page 5, lines 19-20), strike "the result of using decay factors in revising curie capacity limits" and substitute "the calculation of radioactive decay related to the compact waste disposal facility and radiation dose assessments based on the curie capacity".

(7) In SECTION 3 of the bill, in added Section 401.208(b)(3), Health and Safety Code (page 5, line 22), strike "and".

(8) In SECTION 3 of the bill, in added Section 401.208(b)(4), Health and Safety Code (page 5, line 24), between "public" and the underlined period, insert:

; and

(5) the costs and benefits of volume reduction and stabilized waste forms

(9) In SECTION 3 of the bill, strike added Section 401.208(e), Health and Safety Code (page 6, line 5), and substitute:

(e) The commission may conduct a study described by Subsection (a) at any time after December 1, 2012, if the commission determines that a study is necessary.

(10) In SECTION 3 of the bill, strike added Section 401.2085(c), Health and Safety Code (page 6, line 24).

(11) Strike SECTION 4 of the bill (page 6, line 25 through page 7, line 3).

(12) In SECTION 6 of the bill, in added Section 401.245(h), Health and Safety Code (page 8, lines 3-4), strike "case is referred by the commission" and substitute "State Office of Administrative Hearings assumes jurisdiction of the case".

(13) Strike SECTION 7 of the bill (page 8, line 5, through page 11, line 27) and substitute:

SECTION 7. Subchapter F, Chapter 401, Health and Safety Code, is amended by adding Sections 401.2455 and 401.2456 to read as follows:

Sec. 401.2455. INTERIM PARTY STATE COMPACT WASTE DISPOSAL FEES. (a) The commission's executive director may establish interim party state compact waste disposal fees effective only for the period beginning on the date the compact waste disposal facility license holder is approved to accept waste at the disposal facility and ending on the effective date of the rules establishing the fees under Section 401.245.

(b) An extension of the period during which interim rates apply may not be granted. If the State Office of Administrative Hearings has not issued a proposal for decision before the expiration of the period under Section 401.245(h), all disposal at the compact waste disposal facility must cease until the fees are adopted.

Sec. 401.2456. CONTRACTS FOR NONPARTY COMPACT WASTE DISPOSAL. (a) At any time after the commission has granted approval to begin operating the compact waste disposal facility, the compact waste disposal facility license holder may contract rates with nonparty compact waste generators for the disposal of nonparty compact waste at the facility in accordance with the compact waste disposal facility license.

(b) Rates and contract terms negotiated under this section are subject to review and approval by the commission's executive director to ensure they meet all of the requirements of this section.

(c) Rates negotiated under this section must be set both by a price per curie and a price per cubic foot. Fees resulting from the negotiated rates must be greater than, as applicable:

(1) the compact waste disposal fees under Section 401.245 as set by the commission that are in effect at the time the rates are negotiated; or

(2) the interim compact waste disposal fees under Section 401.2455 as set by the commission's executive director that are in effect at the time the rates are negotiated.

(d) A contract under this section must:

(1) be negotiated in good faith;

(2) conform to applicable antitrust statutes and regulations; and

(3) be nondiscriminatory.

(e) Rates set under this section must generate fees sufficient to meet the criteria for party state compact waste under Sections 401.246(a) and (c).

(14) In the recital to SECTION 8 of the bill (page 12, lines 1-2), strike "401.246(a), Health and Safety Code, is amended" and substitute "401.246, Health and Safety Code, is amended by amending Subsection (a) and adding Subsection (c)".

(15) In SECTION 8 of the bill, following amended Section 401.246(a), Health and Safety Code (page 12, between lines 23 and 24), insert:

(c) In determining compact waste disposal fees, the commission shall only consider capital investment in property by the compact waste disposal facility license holder that is used and useful to the compact waste disposal facility as authorized under this chapter. The commission may not consider the capital investment costs or related costs incurred before September 1, 2003, in determining disposal fees.



(16) In SECTION 10 of the bill, strike added Section 401.250(e), Health and Safety Code (page 15, lines 12-14), and substitute:

(e) For the purposes of calculating the amount of a payment required under Section 4.05(5) of the compact, the amount of a payment under this section is considered to be a payment under Article V of the compact.

(17) Add the following appropriately numbered SECTION to the bill:

SECTION \_\_\_\_ Section 401.271, Health and Safety Code, is amended by adding Subsection (c) to read as follows:

(c) A holder of a license or permit issued by the commission under this chapter or Chapter 361 that authorizes the storage, other than disposal, of a radioactive waste or elemental mercury from other persons shall remit each quarter to the commission for deposit into the general revenue fund an amount equal to 20 percent of the license or permit holder's gross receipts received from the storage of the substance for any period after the first anniversary of the date the waste or mercury was initially stored. This subsection applies only to the storage of radioactive waste or elemental mercury at or adjacent to the compact waste disposal facility.

(18) Renumber the SECTIONS of the bill appropriately.

### Floor Amendment No. 2

Amend Amendment No. 1 by Lewis to **CSSB 1504** as follows:

(1) On page 1 of the amendment, between lines 2 and 3, insert the following subdivision and renumber subsequent subdivisions accordingly:

In SECTION 2 of the bill, at the end of added Section 401.207(b), Health and Safety Code (page 2, line 26), add "The license holder may not accept any nonparty compact waste for disposal at the facility until the license has been modified by the commission to specifically authorize the disposal of nonparty compact waste."

(2) On page 4, line 7 of the amendment, after the period insert the following: "A generator is not entitled to a refund, and may not be charged a surcharge, for the disposal of waste under interim fees once the final fees have been adopted."

(3) On page 4, line 12 of the amendment, strike "fees" and substitute "rates".

(4) On page 6, lines 11-12, strike "after the first anniversary of the date the waste or mercury was initially stored" and substitute "exceeding one year. This subsection applies only to the storage of the substance for any period exceeding one year".

The amendments were read.

Senator Seliger moved to concur in the House amendments to **SB 1504**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

### SENATE BILL 1386 WITH HOUSE AMENDMENT

Senator Lucio called **SB 1386** from the President's table for consideration of the House amendment to the bill.

The President Pro Tempore laid the bill and the House amendment before the Senate.

### Floor Amendment No. 1

Amend **SB 1386** (house committee printing) as follows:

(1) On page 1, line 6, strike "(a), (b)," and substitute "(a)".

(2) On page 1, lines 13-14, strike "complaint or citation relating to a county fine, fee, or tax" and substitute "complaint, citation, information, or indictment in a court in the county in which a criminal proceeding is pending against the owner".

(3) Strike page 1, lines 15-18.

(4) On page 1, lines 19-20, strike "shall [~~may~~]" and substitute "may".

(5) Strike page 2, line 1 and substitute "complaint, citation, information, or indictment in a court in the county in which a criminal proceeding is pending against the owner".

(6) On page 2, line 4, between "contract" and the period, insert ", or another county department for expenses related to services under the contract".

(7) On page 2, lines 8-9, strike "the assessor-collector for the [a]" and substitute "a".

(8) On page 2, lines 25, strike "shall" and substitute "may".

(9) On page 3, line 3, between "contract" and the period, insert ", or another county department for expenses related to services under the contract".

(10) On page 3, lines 7 and 9, strike "complaint or citation" and substitute "complaint, citation, information, or indictment".

The amendment was read.

Senator Lucio moved to concur in the House amendment to **SB 1386**.

The motion prevailed by the following vote: Yeas 28, Nays 3.

Yeas: Birdwell, Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hinojosa, Huffman, Lucio, Nichols, Ogden, Patrick, Rodriguez, Seliger, Shapiro, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Hegar, Jackson, Nelson.

### **SENATE BILL 802 WITH HOUSE AMENDMENT**

Senator Hegar called **SB 802** from the President's table for consideration of the House amendment to the bill.

The President Pro Tempore laid the bill and the House amendment before the Senate.

#### **Floor Amendment No. 1**

Amend **SB 802** in SECTION 2 of the bill by striking added Section 253.008(d), Transportation Code (page 1, lines 16-17, house committee printing), and substituting the following:

(d) Beginning on the second anniversary of the date of an assessment, the Commissioners Court of Aransas County by order may require the payment of interest on the assessment at the rate determined under Section 304.003, Finance Code.

The amendment was read.

Senator Hegar moved to concur in the House amendment to **SB 802**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

**SENATE BILL 804 WITH HOUSE AMENDMENT**

Senator Hegar called **SB 804** from the President's table for consideration of the House amendment to the bill.

The President Pro Tempore laid the bill and the House amendment before the Senate.

**Amendment**

Amend **SB 804** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to the use of revenue from the hotel occupancy tax by certain counties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 352.1033, Tax Code, is amended by amending Subsection (a) and adding Subsections (c) and (d) to read as follows:

(a) Subject to Subsection (c), the [The] revenue from a tax imposed under this chapter by a county that borders the Gulf of Mexico authorized to impose the tax by Section 352.002(a)(6) may be used only to:

- (1) clean public beaches;
- (2) acquire, furnish, or maintain facilities, including parks, that enhance public access to beaches;
- (3) provide and maintain public restrooms on or adjacent to beaches or beach access facilities;
- (4) provide and maintain litter containers on or adjacent to beaches or beach access facilities;
- (5) create, renovate, promote, and maintain parks adjacent to bays, rivers, and other navigable waterways if the county does not operate a public beach on the Gulf of Mexico; and

(6) advertise and conduct solicitations and promotional programs to attract tourists and convention delegates or registrants to the county or its vicinity, any of which may be conducted by the county or through contracts with persons or organizations selected by the county.

(c) In addition to the uses allowed by Subsection (a), a county authorized to impose a tax under this chapter by Section 352.002(a)(6) that has a population of 50,000 or less and in which there is located at least one state park and one national wildlife refuge may use the revenue from the tax to:

- (1) acquire, construct, furnish, or maintain facilities, such as aquariums, birding centers and viewing sites, history and art centers, and nature centers and trails;
- (2) advertise and conduct solicitations and promotional programs to attract conventions and visitors; and
- (3) provide and maintain public restrooms and litter containers on public land in an area that is a tourism venue.

(d) The limitation prescribed by Subsection (b) does not apply to the use of revenue from a tax imposed under this chapter by a county to which Subsection (c) applies.

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2011.

The amendment was read.

Senator Hegar moved to concur in the House amendment to **SB 804**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

### **SENATE BILL 1477 WITH HOUSE AMENDMENT**

Senator Hegar called **SB 1477** from the President's table for consideration of the House amendment to the bill.

The President Pro Tempore laid the bill and the House amendment before the Senate.

#### **Amendment**

Amend **SB 1477** by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to differential pay and benefits for certain employees of emergency services districts who are members of the armed forces.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter C, Chapter 775, Health and Safety Code, is amended by adding Section 775.039 to read as follows:

Sec. 775.039. DIFFERENTIAL PAY AND BENEFITS FOR EMPLOYEES OF EMERGENCY SERVICES DISTRICTS. (a) A board may provide differential pay to a district employee who is a member of the state military forces or a reserve component of the United States armed forces who is called to active duty if:

(1) the board adopts a policy providing for differential pay for all similarly situated employees; and

(2) the employee's military pay is less than the employee's gross pay from the district.

(b) The combination of differential pay and military pay may not exceed the employee's actual gross pay from the district.

(c) For purposes of this section, military pay does not include money the employee receives:

(1) for service in a combat zone;

(2) as hardship pay; or

(3) for being separated from the employee's family.

(d) The differential pay provided by Subsection (a) begins when the benefits allowed under Section 431.005, Government Code, are exhausted and continues until the employee's active military duty terminates.

(e) The board may extend the insurance benefits provided by the district to a district employee who is a member of the state military forces or a reserve component of the United States armed forces who is called to active duty and to the employee's

dependents. The extension period begins when the benefits allowed under Section 431.005, Government Code, are exhausted and continues until the employee's active military duty terminates.

SECTION 2. This Act takes effect September 1, 2011.

The amendment was read.

Senator Hegar moved to concur in the House amendment to **SB 1477**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

### SENATE BILL 917 WITH HOUSE AMENDMENT

Senator Wentworth called **SB 917** from the President's table for consideration of the House amendment to the bill.

The President Pro Tempore laid the bill and the House amendment before the Senate.

#### Amendment

Amend **SB 917** by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to emergency service districts.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 775.018, Health and Safety Code, is amended by adding Subsections (f) and (g) to read as follows:

(f) If the territory of a district proposed under this chapter overlaps with the boundaries of another district created under this chapter, the commissioners court of each county in which the proposed district is located shall send to the board of the existing district a copy of the petition for creation of the proposed district. This subsection does not apply to a proposed district located wholly in a county with a population of more than three million.

(g) The board of the existing district shall adopt a statement before the date of the election required by this section that specifies the types of emergency services the existing district will provide or continue to provide in the overlapping territory if the proposed district is created. This subsection does not apply to a proposed district located wholly in a county with a population of more than three million.

SECTION 2. Section 775.0205, Health and Safety Code, is amended by amending Subsection (a) and adding Subsections (d-1), (d-2), and (d-3) to read as follows:

(a) If the territory in a district created under this chapter overlaps with the boundaries of another district created under this chapter [or a district created under Chapter 776], the most recently created district may not provide services in the overlapping territory that duplicate the services described in the statement required by Section 775.018(g) [provided by the other district at the time the overlapping district was created].

(d-1) The legislature finds that the performance of non-duplicative emergency services in the overlapping territory of emergency service districts is complementary to and not in conflict with the powers and duties of the respective districts.

(d-2) A person may serve as an emergency services commissioner of a district created under this chapter at the same time that the person serves as an emergency services commissioner of another district with overlapping territory created under this chapter.

(d-3) A person serving as a commissioner of more than one district under this section:

(1) may receive compensation for serving on only one board; and

(2) is entitled to reimbursement for reasonable and necessary expenses incurred in performing official duties for both boards.

SECTION 3. Section 775.024, Health and Safety Code, is amended to read as follows:

Sec. 775.024. CONSOLIDATION [MERGER] OF EMERGENCY SERVICES DISTRICTS. (a) Two or more emergency services districts may consolidate [merge] into a single emergency services district as provided by this section. Before consolidating, [if:

(1) the board of each district must:

(1) determine that consolidation would allow the districts to provide services more economically and efficiently [of the districts votes in favor of the merger]; and

(2) adopt a joint order of consolidation that includes:

(A) the name and proposed territory of the consolidated district;

(B) the proposed date on which the existing districts dissolve and the consolidated district is created and will start offering services;

(C) if the maximum ad valorem tax rates in the districts are different, a statement that the districts will consolidate only if voters approve an equalized ad valorem tax rate at the election required by Section 775.0241; and

(D) a statement that the district will be consolidated only if the residents of the district and the residents of at least one other district approve the consolidation [the residents of each district approve the merger] in an election held for that purpose.

(b) The boards shall agree on a name for the proposed consolidated [merged] district and choose five commissioners from among the membership of the boards to serve on the initial board for the proposed district. The boards shall agree to stagger the terms appropriately.

(c) If the boards do not make the appointments before the 31st day after the date the boards adopted the joint order:

(1) for a consolidated district to which Section 775.0345 or 775.035 does not apply, the commissioners court shall appoint five commissioners to the board of the consolidated district; or

(2) for a consolidated district to which Section 775.0345 or 775.035 does apply, the board of the consolidated district is initially composed of the two commissioners from each existing board who have served the longest terms.

(c-1) The number of initial emergency services commissioners on a board described by Subsection (c)(2) is not required to be five.

(d) The ballot for the election to approve a consolidation [merger] shall be printed to permit voting for or against the proposition: "The consolidation [merger] of the \_\_\_\_\_ (insert district names) to create the \_\_\_\_\_ (insert name of

proposed district), which assumes all outstanding debts of the existing [merged] districts." The ballot shall include a proposition for an election required under Section 775.0241, if applicable.

(e) [(d)] If a majority of the voters voting in at least two of the districts proposed to be consolidated [each district] favor the consolidation [merger], the consolidated [merged] district is created and is composed of the districts that favored the consolidation. If less than a majority of the voters voting in any of the districts are in favor of the consolidation [merger], that district is not part of any consolidated district [the vote fails and the districts are not merged].

(f) The consolidated district is created on the latest of:

(1) the date stated in the joint order;

(2) the date the consolidation is approved in an election described by

Subsection (d); or

(3) the date the maximum ad valorem tax rate the consolidated district may impose under Section 775.0241 is established, if necessary.

(g) [(e)] ~~The maximum tax rate that may be imposed by the merged district may not exceed the maximum tax rate authorized for any of the previous districts.~~

[(f)] The consolidated [merged] district assumes all powers, rights, duties, assets, and liabilities of the former districts without a change in status. The consolidation [merger] does not diminish or impair the rights of the holders of any outstanding and unpaid bonds, warrants, or obligations of the district.

(h) For a consolidated district to which Section 775.0345 or 775.035 applies, the initial commissioners of the consolidated district serve until the next available uniform election date after the date the joint order is adopted and that allows sufficient time to comply with other requirements of law. After an election is held under Section 775.0345 or 775.035:

(1) the two commissioners who receive the fewest votes of the elected commissioners serve terms ending on December 31 of the second year following the year in which the election is held; and

(2) the remaining elected commissioners serve terms ending on December 31 of the fourth year following the year in which the election is held.

SECTION 4. Subchapter B, Chapter 775, Health and Safety Code, is amended by adding Section 775.0241 to read as follows:

Sec. 775.0241. TAXES FOR CONSOLIDATED DISTRICT. (a) If two districts that want to consolidate under Section 775.024 have different maximum ad valorem tax rates, the board of the district with the lower maximum ad valorem tax rate shall order an election in its district under Section 775.0745 to authorize the imposition of taxes in the territory of that district at a maximum rate that equals the maximum rate authorized in the district with the higher maximum rate.

(b) If a majority of the voters do not favor the increase in the maximum ad valorem tax rate under Subsection (a), the districts may not proceed with the consolidation.

(c) If the districts have different sales and use tax rates, the board of the consolidated district shall:

(1) designate the territory of the former districts as subdistricts;

(2) continue to impose the sales and use tax in each subdistrict at the rate the tax was imposed by the former district; and

(3) send to the comptroller by registered or certified mail:

(A) a copy of the joint order described by Section 775.024(a)(2); and

(B) a map of the consolidated district that clearly shows the territory of each subdistrict.

(d) Subsection (c) does not limit the authority of the board of the consolidated district to order an election under Section 775.0752 in a subdistrict or in the entire district.

SECTION 5. Subchapter C, Chapter 775, Health and Safety Code, is amended by adding Sections 775.0362 and 775.0363 to read as follows:

Sec. 775.0362. LIMIT ON REGULATION OF FIREWORKS. Except as provided by Section 775.0363, the district may not regulate the sale, use, or transportation of fireworks.

Sec. 775.0363. REGULATION OF FIREWORKS. The district may adopt a rule relating to fireworks that is the same as or less stringent than a rule adopted or enforced by the commissioner of insurance and the state fire marshal under Chapter 2154, Occupations Code, relating to retail fireworks stands, fireworks bulk manufacturing and storage facilities, fireworks sales buildings, or any other structure used in public pyrotechnic displays to which the rules adopted under Chapter 2154, Occupations Code, apply.

SECTION 6. Subchapter C, Chapter 775, Health and Safety Code, is amended by adding Sections 775.0365 and 775.0366 to read as follows:

Sec. 775.0365. BOARD TRAINING. (a) An emergency services commissioner shall complete at least six hours of continuing education relating to the performance of the duties of an emergency services commissioner at least once in a two-year period.

(b) Continuing education instruction required by Subsection (a) must be certified by an institution of higher education as defined by Section 61.003, Education Code.

(c) For purposes of Subsection (a), an emergency services commissioner may carry forward from one two-year period to the next two-year period not more than three continuing education hours that the commissioner completes in excess of the required six hours.

(d) For purposes of removal under Section 775.0422 or 775.0423, "incompetency" includes the failure of an emergency services commissioner to comply with Subsection (a).

Sec. 775.0366. SERVICE CONTRACTS. (a) In this section, "local government" has the meaning assigned by Section 791.003, Government Code.

(b) The board may contract with a local government, including another district, to provide staff, facilities, equipment, programs, or services the board considers necessary to provide or obtain emergency services that the district or the local government is authorized to provide.

(c) A person acting under a contract under this section, including an emergency services commissioner, does not, because of that action, hold more than one civil office of emolument or more than one office of honor, trust, or profit.



(d) Except as provided by Subsection (e), if a district contracts with a local government under this section to provide or obtain emergency services, the district is responsible for any civil liability that arises from furnishing those services if the district would have been responsible for furnishing the services in the absence of the contract.

(e) The parties to a contract between governmental entities under this section may agree to assign responsibility for civil liability that arises from services provided under the contract in any manner agreed to by the parties. The parties must assign that responsibility in a written provision of the contract that specifically refers to this subsection and states that the assignment of liability is intended to be different from liability otherwise assigned under Subsection (d).

(f) This section does not change the liability limits and immunities for a governmental unit under Chapter 101, Civil Practice and Remedies Code, or other law.

(g) A contract under this section is not a joint enterprise for liability purposes.

SECTION 7. The heading to Section 775.0422, Health and Safety Code, is amended to read as follows:

Sec. 775.0422. REMOVAL OF APPOINTED BOARD MEMBER BY COMMISSIONERS COURT [~~FOR FAILURE TO GIVE REPORT~~].

SECTION 8. Section 775.0422, Health and Safety Code, is amended by amending Subsections (a), (b), and (c) and adding Subsections (a-1) and (b-1) to read as follows:

(a) This section does not apply to a district unless the commissioners court of the county in which the district is located adopts this section by resolution.

(a-1) This section applies only to an appointed board member. This section does not apply to a board member who:

(1) is elected; or

(2) is appointed to fill a vacancy in an elected board member position.

(b) The commissioners court of the county in which a district is located, by an order adopted by a majority vote after a hearing, may remove a [~~one or more~~] board member for:

(1) incompetency, as defined by Section 87.011, Local Government Code;

(2) official misconduct, as defined by Section 87.011, Local Government Code; or

(3) misconduct, as defined by Section 178.001, Local Government Code [~~members if the board failed to give the report required by Section 775.036(a)(4) to the commissioners court before the 91st day after the date on which the report was due under that section~~].

(b-1) Section 551.0745, Government Code, applies to a deliberation regarding a removal of a board member in the same manner as that section applies to a deliberation regarding a dismissal of a member of an advisory body.

(c) Not later than [~~Before~~] the 30th [~~60th~~] day before [~~after~~] the date on which the hearing is held, a [~~report was due, each~~] commissioners court seeking removal under this section must:

(1) notify the board members that it is considering that action; and

(2) provide the board member with an opportunity to show cause why the board member should not be removed.

SECTION 9. Subchapter C, Chapter 775, Health and Safety Code, is amended by adding Section 775.0423 to read as follows:

Sec. 775.0423. REMOVAL OF ELECTED BOARD MEMBER. (a) This section applies only to a board member who:

(1) is elected; or

(2) is appointed to fill a vacancy in an elected board member position.

(b) A board member may be removed using the procedures provided by Chapter 87, Local Government Code, for:

(1) incompetency, as defined by Section 87.011, Local Government Code;

(2) official misconduct, as defined by Section 87.011, Local Government Code;

(3) intoxication, as described by Section 87.013, Local Government Code;

or

(4) misconduct, as defined by Section 178.001, Local Government Code.

(c) The validity of a board action is not affected because it is taken when a ground for removal of a board member exists.

SECTION 10. Section 775.056(a), Health and Safety Code, is amended to read as follows:

(a) After a hearing, a district may make mutually agreeable changes in boundaries with another district, [~~or a district created under Chapter 776,~~] provided that the maximum tax rate authorized for such a district does not exceed the maximum tax rate previously authorized for any territory added to that district. The districts shall agree on an effective date for the changes in boundaries.

SECTION 11. Section 775.074, Health and Safety Code, is amended by adding Subsection (d-1) to read as follows:

(d-1) The board may not set the tax rate for a fiscal year before the date the board adopts a budget for that fiscal year.

SECTION 12. Section 775.082, Health and Safety Code, is amended by adding Subsection (e-1) to read as follows:

(e-1) When a district located wholly in one county fails to complete and file the audit report by September 1 of each year and a county auditor is not ordered to prepare the report, the president and treasurer of the board are removed from the board and the commissioners court shall fill the vacancies as provided by Section 775.034.

SECTION 13. Section 775.085, Health and Safety Code, is amended by adding Subsection (d) to read as follows:

(d) Section 775.077 does not apply to a loan secured under this section, including a loan made before the effective date of this subsection.

SECTION 14. Section 344.051(c), Local Government Code, is amended to read as follows:

(c) Except as provided by Subsection (f), a district may be created inside the boundaries of an emergency services district operating under Chapter 775 [~~or 776~~], Health and Safety Code, only if the governing body of the emergency services district gives its written consent by order or resolution not later than the 60th day after the date the governing body receives a request for its consent.

SECTION 15. Section 323.101(f), Tax Code, is amended to read as follows:

(f) The provisions of this chapter govern the application, collection, and administration of a sales and use tax imposed under Chapter 285 or [5] 775, [~~or 776,~~] Health and Safety Code, to the extent not inconsistent with the provisions of those chapters. Provided, however, that Subsection (b) shall not apply to a tax authorized under those chapters.

SECTION 16. Chapter 776, Health and Safety Code, is repealed.

SECTION 17. (a) On the effective date of this Act, a district created under Chapter 776, Health and Safety Code, is converted into a district operated under Chapter 775, Health and Safety Code. A district converted under this section continues in existence and is subject to Chapter 775, Health and Safety Code.

(b) An emergency commissioner of a district created under Chapter 776, Health and Safety Code, is an emergency services commissioner of the converted district under Chapter 775, Health and Safety Code, and shall serve on the board of the converted district as an emergency services commissioner until the term for which the commissioner was appointed or elected expires.

SECTION 18. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2011.

The amendment was read.

Senator Wentworth moved to concur in the House amendment to **SB 917**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

### **SENATE BILL 548 WITH HOUSE AMENDMENT**

Senator Nichols called **SB 548** from the President's table for consideration of the House amendment to the bill.

The President Pro Tempore laid the bill and the House amendment before the Senate.

#### **Floor Amendment No. 1**

Amend **SB 548** (house committee printing) as follows:

(1) In SECTION 2 of the bill, following added Section 201.752(d), Transportation Code (page 4, between lines 7 and 8), insert:

(e) For highway projects described in Section 201.753(a), the standards may provide a process and criteria for the prioritization of environmental review documents in the event the department makes a finding that it lacks adequate resources to timely process all documents it receives. Standards established pursuant to this subsection must provide for notification to a local government sponsor if processing of an environmental review document is to be delayed due to prioritization, and must ensure that the environmental review document for each highway project will be completed no later than one year prior to the date planned for publishing notice to let the construction contract for the project, as indicated in a document identifying the project under Section 201.753(a)(1) or a commission order under Section 201.753(a)(2).

(2) In SECTION 2(c) of the bill (page 10, line 20), strike "the effective date of this Act" and substitute "September 1, 2011".

(3) In SECTION 2(c) of the bill (page 10, line 22), strike "the effective date of this Act" and substitute "September 1, 2011,".

(4) In SECTION 5 of the bill (page 12, lines 18-19), strike "the effective date of this Act" and substitute "September 1, 2011".

(5) Strike SECTION 6 of the bill (page 12, line 24) and substitute:

SECTION 6. (a) Section 222.005, Transportation Code, as added by this Act, takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, Section 222.005 takes effect September 1, 2011.

(b) Except as provided by Subsection (a) of this section, this Act takes effect September 1, 2011.

The amendment was read.

Senator Nichols moved to concur in the House amendment to **SB 548**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

#### **SENATE BILL 349 WITH HOUSE AMENDMENT**

Senator Eltife called **SB 349** from the President's table for consideration of the House amendment to the bill.

The President Pro Tempore laid the bill and the House amendment before the Senate.

#### **Amendment**

Amend **SB 349** by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to the hotel occupancy tax rate in certain municipalities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 351.003, Tax Code, is amended by adding Subsections (e) and (f) to read as follows:

(e) The rate in a municipality that has a population of more than 95,000 and is in a county that borders Lake Palestine and has a population of more than 200,000 may not exceed nine percent of the price paid for a room. The municipality shall allocate for the construction, expansion, maintenance, or operation of convention center facilities all revenue received by the municipality that is derived from the application of the tax at a rate of more than seven percent of the price paid for a room in a hotel.

(f) The rate in a municipality that has a population of at least 80,000 and is partly located in a county that borders the State of Louisiana and has a population of at least 60,000 may not exceed nine percent of the price paid for a room. The municipality shall allocate for the construction, expansion, maintenance, or operation of convention center facilities all revenue received by the municipality that is derived from the application of the tax at a rate of more than seven percent of the price paid for a room in a hotel.

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2011.

The amendment was read.

Senator Eltife moved to concur in the House amendment to **SB 349**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

**SENATE BILL 701 WITH HOUSE AMENDMENT**

Senator Watson called **SB 701** from the President's table for consideration of the House amendment to the bill.

The President Pro Tempore laid the bill and the House amendment before the Senate.

**Amendment**

Amend **SB 701** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to high-value data sets of state agencies posted on the Internet.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter F, Chapter 2054, Government Code, is amended by adding Section 2054.1265 to read as follows:

Sec. 2054.1265. POSTING HIGH-VALUE DATA SETS ON INTERNET.

(a) In this section:

(1) "High-value data set" means information that can be used to increase state agency accountability and responsiveness, improve public knowledge of the agency and its operations, further the core mission of the agency, create economic opportunity, or respond to need and demand as identified through public consultation. The term does not include information that is confidential or protected from disclosure under state or federal law.

(2) "State agency" means a board, commission, office, department, or other agency in the executive, judicial, or legislative branch of state government. The term includes an institution of higher education as defined by Section 61.003, Education Code.

(b) Each state agency shall post on a generally accessible Internet website maintained by or for the agency each high-value data set created or maintained by the agency, if the agency:

(1) determines that, using existing resources, the agency can post the data set on the Internet website at no additional cost to the state;

(2) enters into a contract advantageous to the state under which the contractor posts the data set on the Internet website at no additional cost to the state;

or

(3) receives a gift or grant specifically for the purpose of posting one or more of the agency's high-value data sets on the Internet website.

(c) A high-value data set posted by a state agency under this section must be raw data in open standard format that allows the public to search, extract, organize, and analyze the information.

(d) The web page on which a state agency's high-value data set is posted must:

(1) use the agency's Internet website home page address and include the uniform resource locator suffix "data"; and

(2) have a conspicuously displayed link on either the agency's Internet website home page or another intuitive location accessible from the agency's Internet website home page.

(e) A state agency may accept a gift or grant for the purpose of posting one or more of the agency's high-value data sets on an Internet website.

SECTION 2. This Act takes effect September 1, 2011.

The amendment was read.

Senator Watson moved to concur in the House amendment to **SB 701**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

#### CONFERENCE COMMITTEE ON HOUSE BILL 871

Senator Zaffirini called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 871** and moved that the request be granted.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **HB 871** before appointment.

There were no motions offered.

Accordingly, the President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Zaffirini, Chair; Deuell, Rodriguez, Carona, and Eltife.

#### BILLS AND RESOLUTIONS SIGNED

The President Pro Tempore announced the signing of the following enrolled bills and resolutions in the presence of the Senate after the captions had been read:

**SB 19, SB 29, SB 43, SB 166, SB 233, SB 234, SB 266, SB 267, SB 304, SB 350, SB 367, SB 422, SB 449, SB 461, SB 471, SB 481, SB 489, SB 554, SB 577, SB 578, SB 609, SB 627, SB 650, SB 682, SB 735, SB 791, SB 792, SB 799, SB 864, SB 889, SB 898, SB 900, SB 901, SB 959, SB 966, SB 987, SB 1020, SB 1030, SB 1044, SB 1046, SB 1106, SB 1133, SB 1167, SB 1176, SB 1220, SB 1231, SB 1273, SB 1308, SB 1322, SB 1330, SB 1342, SB 1368, SB 1438, SB 1441, SB 1480, SB 1484, SB 1493, SB 1521, SB 1522, SB 1557, SB 1596, SB 1681, SB 1737, SB 1787, SB 1789, SB 1807, SB 1812, SB 1857, SB 1875, SB 1880, SB 1915, SB 1928, SCR 35, SCR 51, HB 33, HB 92, HB 109, HB 257, HB 260, HB 268, HB 378, HB 397, HB 530, HB 592, HB 826, HB 970, HB 1010, HB 1168, HB 1179, HB 1201, HB 1241, HB 1278, HB 1341, HB 1353, HB 1456, HB 1523, HB 1555, HB 1593, HB 1608, HB 1812, HB 1818, HB 1839, HB 1932, HB 1959, HB 2006, HB 2077, HB 2103, HB 2109, HB 2127, HB 2132, HB 2135,**

**HB 2139, HB 2382, HB 2387, HB 2422, HB 2471, HB 2510, HB 2579, HB 2603, HB 2610, HB 2649, HB 2703, HB 2707, HB 2735, HB 2758, HB 2826, HB 2889, HB 2904, HB 2911, HB 2940, HB 2971, HB 3017, HB 3199, HB 3309, HB 3314, HB 3329, HB 3337, HB 3352, HB 3391, HB 3579, HB 3616, HB 3722, HB 3808, HB 3815, HB 3821, HB 3852, HCR 42, HCR 163, HJR 63, HJR 130.**

**(President in Chair)**

**SENATE BILL 176 WITH HOUSE AMENDMENT**

Senator Huffman called **SB 176** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

**Amendment**

Amend **SB 176** by substituting in lieu thereof the following:

**A BILL TO BE ENTITLED  
AN ACT**

relating to student eligibility for tuition rebates offered by general academic teaching institutions.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:**

**SECTION 1.** Section 54.0065(a), Education Code, is amended to read as follows:

(a) A qualified student is eligible for a rebate of a portion of the undergraduate tuition the student has paid if the student:

(1) is awarded a baccalaureate degree from a general academic teaching institution within the period prescribed by Section 56.462(1)(A) or (B), as applicable, to qualify for forgiveness of a Texas B-On-time loan; and

(2) has attempted no more than three hours in excess of the minimum number of semester credit hours required to complete the degree program:

(A) including:

(i) transfer credits; and

(ii) course credit earned exclusively by examination, except that, for purposes of this subsection, only the number of semester credit hours earned exclusively by examination in excess of nine semester credit hours is treated as hours attempted; and

(B) excluding:

(i) course credit that is earned to satisfy requirements for a Reserve Officers' Training Corps (ROTC) program but that is not required to complete the degree program; and

(ii) course credit, other than course credit earned exclusively by examination, that is earned before graduating from high school.

**SECTION 2.** The change in law made by this Act applies only to a student who is awarded a baccalaureate degree from a general academic teaching institution on or after the effective date of this Act.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2011.

The amendment was read.

Senator Huffman moved to concur in the House amendment to **SB 176**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

### **SENATE BILL 812 WITH HOUSE AMENDMENT**

Senator Zaffirini called **SB 812** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

#### **Amendment**

Amend **SB 812** by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to the resumption of employment by certain retirees within the Texas Municipal Retirement System.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 852.108, Government Code, is amended by amending Subsections (c), (e), and (f) and adding Subsection (j) to read as follows:

(c) The retirement system shall discontinue and suspend payments of each service retirement annuity that is allowed because of the person's previous service with the reemploying municipality beginning with the month the retirement system determines that the person has again become an employee of the reemploying municipality. After the suspension and except as provided by Subsection (j), the retirement system may not make payments of the annuity for any month during which the person remains an employee of the reemploying municipality. The suspension of a benefit under this section does not suspend payment of a benefit to an alternate payee under a qualified domestic relations order.

(e) After termination of employment with the reemploying municipality and after filing of an application for resumption of retirement with the board of trustees, a person described by Subsection (b) is entitled to receive future payments of the suspended annuity, as provided by Subsection (f), and to the additional benefits as provided by Subsections (g), (h), ~~and~~ (i), and (j).

(f) Monthly payments of a suspended annuity shall be resumed in the month following the month in which employment is terminated with the reemploying municipality, without change in the amount except for any increase allowed under Section 854.203 or the duration of or another condition pertaining to the suspended benefit. Except as provided by Subsection (j), payment [Payment] of the resumed benefit may not be made for any month during which the payment was suspended under this section.



(j) A person to whom this section applies shall receive a lump-sum payment in an amount equal to the sum of the service retirement annuity payments the person would have received had the person's annuity payments not been discontinued and suspended under this section if the person:

(1) initially retired based on a bona fide termination of employment; and

(2) resumed employment with the person's reemploying municipality at least eight years after the effective date of the person's retirement.

SECTION 2. The change in law made by this Act applies only to a member of the Texas Municipal Retirement System who terminates employment with the person's reemploying municipality and files an application for resumption of retirement with the board of trustees of the Texas Municipal Retirement System under Section 852.108(e), Government Code, as amended by this Act, on or after the effective date of this Act. A member who terminates employment with the person's reemploying municipality and files an application for resumption of retirement with the board under Section 852.108(e), Government Code, before the effective date of this Act is governed by the law as it existed immediately before that date, and the former law is continued in effect for that purpose.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2011.

The amendment was read.

Senator Zaffirini moved to concur in the House amendment to **SB 812**.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Nelson.

### **SENATE BILL 377 WITH HOUSE AMENDMENT**

Senator Huffman called **SB 377** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

#### **Floor Amendment No. 1**

Amend **SB 377** (house committee printing) in SECTION 1 of the bill, in amended Subsection (a), Section 19.03, Penal Code, as follows:

(1) On page 2, line 15, strike "or" and substitute "[~~or~~]".

(2) On page 2, line 21, between "court" and the period, insert the following:

; or

(10) the person murders a disabled person, as defined by Section 29.03(c), who is under 18 years of age

The amendment was read.

Senator Huffman moved that the Senate do not concur in the House amendment, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed without objection.

The President asked if there were any motions to instruct the conference committee on **SB 377** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate: Senators Huffman, Chair; Whitmire, Eltife, Patrick, and Nelson.

### SENATE BILL 1010 WITH HOUSE AMENDMENTS

Senator Huffman called **SB 1010** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

#### Floor Amendment No. 1

Amend **SB 1010** (house committee report) as follows:

(1) In SECTION 1 of the bill, strike the recital (page 1, lines 6-7) and substitute "Article 26.13, Code of Criminal Procedure, is amended by amending Subsections (a) and (e) and adding Subsection (e-1) to read as follows:"

(2) In SECTION 1 of the bill, strike amended Article 26.13(e), Code of Criminal Procedure (page 2, lines 14 through 23), and substitute the following:

(e) Before accepting a plea of guilty or a plea of nolo contendere, the court shall, as applicable in the case:

(1) inquire as to whether a victim impact statement has been returned to the attorney representing the state;

(2) if a victim impact statement has been returned, [and] ask for a copy of the statement and, on a request by the victim, guardian of a victim, or close relative of a deceased victim, read the statement aloud and in the presence of the defendant; and

(3) inquire as to whether the attorney representing the state has given notice of the existence and terms of any plea bargain agreement to the victim, guardian, or relative [if one has been returned].

(e-1) For purposes of Subsection (e), "victim," "guardian of a victim," and "close relative of a deceased victim" have the meanings assigned by Article 56.01.

(3) In SECTION 2 of the bill, strike amended Article 56.08(e)(2), Code of Criminal Procedure (page 3, lines 17 through 26), and substitute the following:

(2) the judge before accepting the plea bargain agreement is required under Article [Section] 26.13(e) to [ask]:

(A) inquire as to whether a victim impact statement has been returned to the attorney representing the state; [and]

(B) if a victim impact statement has been returned, ask for a copy of the statement and, if requested by the victim, guardian of a victim, or close relative of a deceased victim, read the statement aloud and in the presence of the defendant; and

(C) inquire as to whether the attorney representing the state has given the victim, guardian, or relative notice of the existence and terms of the plea bargain agreement.

(4) Strike SECTION 3 of the bill (page 3, line 27, through page 4, line 6) and substitute the following:

SECTION 3. (a) The change in law made by this Act applies only to a victim impact statement or plea bargain agreement that is presented to a court on or after the effective date of this Act.

(b) A victim impact statement or plea bargain agreement that is presented to a court before the effective date of this Act is covered by the law in effect when the statement or agreement was presented, and the former law is continued in effect for that purpose.

### Floor Amendment No. 2

Amend **SB 1010** (house committee printing) as follows:

(1) In SECTION 3(a) of the bill (page 3, line 27), strike "this Act" and substitute "Articles 26.13 and 56.08, Code of Criminal Procedure, as amended by this Act,".

(2) Add the following appropriately numbered SECTIONS to the bill and renumber subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Chapter 26, Code of Criminal Procedure, is amended by adding Article 26.131 to read as follows:

Art. 26.131. ORAL STATEMENT REGARDING TERMS OF PLEA BARGAIN AGREEMENT. (a) One immediate family member of a peace officer who dies as the result of alleged criminal conduct for which a defendant has been indicted or for which an information has been returned is entitled to make an oral statement to the court regarding the terms of any plea bargain agreement in the case and regarding whether the peace officer's family supports or opposes the terms of that agreement. The family member who makes the statement must be designated by the peace officer's immediate family.

(b) In a case in which a peace officer dies as a result of the alleged criminal conduct of the defendant, the attorney representing the state shall notify the immediate family members of the deceased peace officer of the existence and terms of any plea bargain agreement and the right of one immediate family member to make an oral statement to the court as described by Subsection (a).

(c) The court shall:

(1) consider an oral statement under Subsection (a) before sentencing the defendant; and

(2) permit the defendant or the defendant's counsel an opportunity to:

(A) cross-examine the person making the oral statement;

(B) comment on the oral statement; and

(C) with the approval of the court, introduce testimony or other information alleging a factual inaccuracy in the oral statement.

(d) Before the immediate family member makes an oral statement under Subsection (a), the court shall inform the family member of the defendant's rights under Subsection (c)(2).

(e) The presentation and consideration of an oral statement under this article is in addition to the consideration of a written victim impact statement under Article 56.03 and does not preclude the presentation of a statement after sentence is pronounced under Article 42.03.

(f) In this article:

(1) "Immediate family member of a peace officer" means an individual who is related to a peace officer within the second degree by affinity or consanguinity.

(2) "Peace officer" has the meaning assigned by Section 1.07, Penal Code.

SECTION \_\_\_\_\_. The change in law made by Article 26.131, Code of Criminal Procedure, as added by this Act, applies only to a plea of guilty or nolo contendere entered on or after the effective date of this Act, regardless of whether the offense with reference to which the plea is entered is committed before, on, or after that date.

The amendments were read.

Senator Huffman moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed without objection.

The President asked if there were any motions to instruct the conference committee on **SB 1010** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate: Senators Huffman, Chair; Hegar, Nelson, Patrick, and Whitmire.

#### CONFERENCE COMMITTEE ON HOUSE BILL 1619

Senator Patrick called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 1619** and moved that the request be granted.

The motion prevailed without objection.

The President asked if there were any motions to instruct the conference committee on **HB 1619** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate: Senators Patrick, Chair; Nichols, Hegar, Huffman, and Eltife.

#### CONFERENCE COMMITTEE ON HOUSE BILL 200

Senator Whitmire called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 200** and moved that the request be granted.

The motion prevailed without objection.

The President asked if there were any motions to instruct the conference committee on **HB 200** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate: Senators Whitmire, Chair; Hegar, Huffman, Ellis, and Patrick.

**SENATE BILL 1600 WITH HOUSE AMENDMENT**

Senator Whitmire called **SB 1600** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

**Amendment**

Amend **SB 1600** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to the registration of peace officers as private security officers.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 1702.322, Occupations Code, is amended to read as follows:

Sec. 1702.322. LAW ENFORCEMENT PERSONNEL. This chapter does not apply to:

(1) a person who is a chief of police, sheriff, constable, or other chief administrator of a law enforcement agency in this state or is appointed or employed by the chief administrator of a law enforcement agency [~~has full-time employment~~] as a peace officer, as defined by Section 1701.001, in accordance with the licensing requirements provided for by the rules of the Commission on Law Enforcement Officer Standards and Education and who receives compensation for private employment on an individual or an independent contractor basis as a patrolman, guard, extra job coordinator, or watchman if [~~the officer~~]:

(A) the peace officer is employed by the private employer in an employee-employer relationship or [employed] on an individual contractual basis:

- (i) directly by the recipient of the services; or
- (ii) by a company licensed under this chapter;

(B) the private employment does not require the peace officer to be [is not] in the employ of another peace officer;

(C) the peace officer is not a reserve peace officer; and

(D) the peace officer works for the law enforcement agency that appointed or employs the [as a] peace officer on the average of at least 32 hours a week, is compensated by the state or a political subdivision of the state at least at the minimum wage, and is entitled to all employee benefits offered to a peace officer by the state or political subdivision;

(2) a reserve peace officer while the reserve officer is performing guard, patrolman, or watchman duties for a county and is being compensated solely by that county;

(3) a peace officer acting in an official capacity in responding to a burglar alarm or detection device; or

(4) a person engaged in the business of electronic monitoring of an individual as a condition of that individual's community supervision, parole, mandatory supervision, or release on bail, if the person does not perform any other service that requires a license under this chapter.

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas

Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2011.

The amendment was read.

Senator Whitmire moved that the Senate do not concur in the House amendment, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed without objection.

The President asked if there were any motions to instruct the conference committee on **SB 1600** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate: Senators Whitmire, Chair; Hinojosa, Huffman, Gallegos, and Nelson.

#### **HOUSE BILL 1844 ON SECOND READING**

The President laid before the Senate **HB 1844** by Senator Watson at this time on its second reading:

**HB 1844**, Relating to storage of local government records by the Texas State Library and Archives Commission.

The bill was read second time and was passed to third reading by a viva voce vote.

All members are deemed to have voted "Yea" on the passage to third reading.

#### **HOUSE BILL 1844 ON THIRD READING**

Senator Watson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1844** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

#### **CONFERENCE COMMITTEE REPORT ON HOUSE BILL 3726**

Senator Van de Putte submitted the following Conference Committee Report:

Austin, Texas  
May 25, 2011

Honorable David Dewhurst  
President of the Senate

Honorable Joe Straus  
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 3726** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

VAN DE PUTTE  
WENTWORTH  
ZAFFIRINI  
URESTI  
ELTIFE

On the part of the Senate

GUILLEN  
LARSON  
PRICE  
DESHOTEL  
KUEMPEL

On the part of the House

The Conference Committee Report on **HB 3726** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 602**

Senator Rodriguez submitted the following Conference Committee Report:

Austin, Texas  
May 23, 2011

Honorable David Dewhurst  
President of the Senate

Honorable Joe Straus  
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 602** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

RODRIGUEZ  
ELTIFE  
GALLEGOS  
URESTI  
WENTWORTH

On the part of the Senate

MARQUEZ  
BROWN  
S. DAVIS  
GALLEGO  
SOLOMONS

On the part of the House

**A BILL TO BE ENTITLED  
AN ACT**

relating to confidential information under the public information law and to procedures and deadlines under the public information law in relation to the redaction of certain confidential information by a governmental body.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:**

**SECTION 1.** Section 51.217, Education Code, is amended by adding Subsection (g) to read as follows:

(g) The personal information of an individual maintained in an institution's emergency notification system is confidential and is not subject to disclosure under Chapter 552, Government Code. In this subsection, "personal information" includes an e-mail address or telephone number maintained in order to notify an individual of an emergency.

**SECTION 2.** Section 552.022, Government Code, is amended to read as follows:

Sec. 552.022. CATEGORIES OF PUBLIC INFORMATION; EXAMPLES. (a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or [unless they are expressly confidential under] other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108;

(2) the name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of a governmental body;

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body;

(4) the name of each official and the final record of voting on all proceedings in a governmental body;

(5) all working papers, research material, and information used to estimate the need for or expenditure of public funds or taxes by a governmental body, on completion of the estimate;

(6) the name, place of business, and the name of the municipality to which local sales and use taxes are credited, if any, for the named person, of a person reporting or paying sales and use taxes under Chapter 151, Tax Code;

(7) a description of an agency's central and field organizations, including:

(A) the established places at which the public may obtain information, submit information or requests, or obtain decisions;

(B) the employees from whom the public may obtain information, submit information or requests, or obtain decisions;

(C) in the case of a uniformed service, the members from whom the public may obtain information, submit information or requests, or obtain decisions; and

(D) the methods by which the public may obtain information, submit information or requests, or obtain decisions;

(8) a statement of the general course and method by which an agency's functions are channeled and determined, including the nature and requirements of all formal and informal policies and procedures;

(9) a rule of procedure, a description of forms available or the places at which forms may be obtained, and instructions relating to the scope and content of all papers, reports, or examinations;

(10) a substantive rule of general applicability adopted or issued by an agency as authorized by law, and a statement of general policy or interpretation of general applicability formulated and adopted by an agency;

(11) each amendment, revision, or repeal of information described by Subdivisions (7)-(10);

(12) final opinions, including concurring and dissenting opinions, and orders issued in the adjudication of cases;

(13) a policy statement or interpretation that has been adopted or issued by an agency;

(14) administrative staff manuals and instructions to staff that affect a member of the public;



- (15) information regarded as open to the public under an agency's policies;
- (16) information that is in a bill for attorney's fees and that is not privileged under the attorney-client privilege;
- (17) information that is also contained in a public court record; and
- (18) a settlement agreement to which a governmental body is a party.

(b) A court in this state may not order a governmental body or an officer for public information to withhold from public inspection any category of public information described by Subsection (a) or to not produce the category of public information for inspection or duplication, unless the category of information is [~~expressly made~~] confidential under this chapter or other law.

SECTION 3. The heading to Section 552.102, Government Code, is amended to read as follows:

Sec. 552.102. EXCEPTION: CONFIDENTIALITY OF CERTAIN PERSONNEL INFORMATION.

SECTION 4. The heading to Section 552.109, Government Code, is amended to read as follows:

Sec. 552.109. EXCEPTION: CONFIDENTIALITY OF CERTAIN PRIVATE COMMUNICATIONS OF AN ELECTED OFFICE HOLDER.

SECTION 5. The heading to Section 552.110, Government Code, is amended to read as follows:

Sec. 552.110. EXCEPTION: CONFIDENTIALITY OF TRADE SECRETS; CONFIDENTIALITY OF CERTAIN COMMERCIAL OR FINANCIAL INFORMATION.

SECTION 6. The heading to Section 552.113, Government Code, is amended to read as follows:

Sec. 552.113. EXCEPTION: CONFIDENTIALITY OF GEOLOGICAL OR GEOPHYSICAL INFORMATION.

SECTION 7. The heading to Section 552.114, Government Code, is amended to read as follows:

Sec. 552.114. EXCEPTION: CONFIDENTIALITY OF STUDENT RECORDS.

SECTION 8. The heading to Section 552.115, Government Code, is amended to read as follows:

Sec. 552.115. EXCEPTION: CONFIDENTIALITY OF BIRTH AND DEATH RECORDS.

SECTION 9. The heading to Section 552.117, Government Code, is amended to read as follows:

Sec. 552.117. EXCEPTION: CONFIDENTIALITY OF CERTAIN ADDRESSES, TELEPHONE NUMBERS, SOCIAL SECURITY NUMBERS, AND PERSONAL FAMILY INFORMATION.

SECTION 10. The heading to Section 552.118, Government Code, is amended to read as follows:

Sec. 552.118. EXCEPTION: CONFIDENTIALITY OF OFFICIAL PRESCRIPTION FORM.

SECTION 11. The heading to Section 552.119, Government Code, is amended to read as follows:

Sec. 552.119. EXCEPTION: CONFIDENTIALITY OF CERTAIN PHOTOGRAPHS [PHOTOGRAPH] OF PEACE OFFICERS [OFFICER].

SECTION 12. The heading to Section 552.120, Government Code, is amended to read as follows:

Sec. 552.120. EXCEPTION: CONFIDENTIALITY OF CERTAIN RARE BOOKS AND ORIGINAL MANUSCRIPTS.

SECTION 13. The heading to Section 552.121, Government Code, is amended to read as follows:

Sec. 552.121. EXCEPTION: CONFIDENTIALITY OF CERTAIN DOCUMENTS HELD FOR HISTORICAL RESEARCH.

SECTION 14. The heading to Section 552.123, Government Code, is amended to read as follows:

Sec. 552.123. EXCEPTION: CONFIDENTIALITY OF NAME OF APPLICANT FOR CHIEF EXECUTIVE OFFICER OF INSTITUTION OF HIGHER EDUCATION.

SECTION 15. The heading to Section 552.1235, Government Code, is amended to read as follows:

Sec. 552.1235. EXCEPTION: CONFIDENTIALITY OF IDENTITY OF PRIVATE DONOR TO INSTITUTION OF HIGHER EDUCATION.

SECTION 16. The heading to Section 552.124, Government Code, is amended to read as follows:

Sec. 552.124. EXCEPTION: CONFIDENTIALITY OF RECORDS OF LIBRARY OR LIBRARY SYSTEM.

SECTION 17. The heading to Section 552.126, Government Code, is amended to read as follows:

Sec. 552.126. EXCEPTION: CONFIDENTIALITY OF NAME OF APPLICANT FOR SUPERINTENDENT OF PUBLIC SCHOOL DISTRICT.

SECTION 18. The heading to Section 552.127, Government Code, is amended to read as follows:

Sec. 552.127. EXCEPTION: CONFIDENTIALITY OF PERSONAL INFORMATION RELATING TO PARTICIPANTS IN NEIGHBORHOOD CRIME WATCH ORGANIZATION.

SECTION 19. The heading to Section 552.128, Government Code, is amended to read as follows:

Sec. 552.128. EXCEPTION: CONFIDENTIALITY OF CERTAIN INFORMATION SUBMITTED BY POTENTIAL VENDOR OR CONTRACTOR.

SECTION 20. The heading to Section 552.129, Government Code, is amended to read as follows:

Sec. 552.129. CONFIDENTIALITY OF CERTAIN MOTOR VEHICLE INSPECTION INFORMATION.

SECTION 21. The heading to Section 552.130, Government Code, is amended to read as follows:

Sec. 552.130. EXCEPTION: CONFIDENTIALITY OF CERTAIN MOTOR VEHICLE RECORDS.

SECTION 22. Section 552.130, Government Code, is amended by adding Subsections (c), (d), and (e) to read as follows:

(c) Subject to Chapter 730, Transportation Code, a governmental body may redact information described by Subsections (a)(1) and (3) from any information the governmental body discloses under Section 552.021 without the necessity of requesting a decision from the attorney general under Subchapter G.

(d) If, under Subsection (c), a governmental body redacts or withholds information without requesting a decision from the attorney general about whether the information may be redacted or withheld, the requestor is entitled to seek a decision from the attorney general about the matter. The attorney general by rule shall establish procedures and deadlines for receiving information necessary to decide the matter and briefs from the requestor, the governmental body, and any other interested person. The attorney general shall promptly render a decision requested under this subsection, determining whether the redacted or withheld information was excepted from required disclosure to the requestor, not later than the 45th business day after the date the attorney general received the request for a decision under this subsection. The attorney general shall issue a written decision on the matter and provide a copy of the decision to the requestor, the governmental body, and any interested person who submitted necessary information or a brief to the attorney general about the matter. The requestor or the governmental body may appeal a decision of the attorney general under this subsection to a Travis County district court.

(e) A governmental body that redacts or withholds information under Subsection (c) shall provide the following information to the requestor on a form prescribed by the attorney general:

(1) a description of the redacted or withheld information;

(2) a citation to this section; and

(3) instructions regarding how the requestor may seek a decision from the attorney general regarding whether the redacted or withheld information is excepted from required disclosure.

SECTION 23. The heading to Section 552.131, Government Code, is amended to read as follows:

Sec. 552.131. EXCEPTION: CONFIDENTIALITY OF CERTAIN ECONOMIC DEVELOPMENT INFORMATION.

SECTION 24. The heading to Section 552.133, Government Code, is amended to read as follows:

Sec. 552.133. EXCEPTION: CONFIDENTIALITY OF PUBLIC POWER UTILITY COMPETITIVE MATTERS.

SECTION 25. The heading to Section 552.134, Government Code, is amended to read as follows:

Sec. 552.134. EXCEPTION: CONFIDENTIALITY OF CERTAIN INFORMATION RELATING TO INMATE OF DEPARTMENT OF CRIMINAL JUSTICE.

SECTION 26. The heading to Section 552.135, Government Code, is amended to read as follows:

Sec. 552.135. EXCEPTION: CONFIDENTIALITY OF CERTAIN INFORMATION HELD BY SCHOOL DISTRICT.

SECTION 27. Section 552.136, Government Code, is amended by adding Subsections (c), (d), and (e) to read as follows:

(c) A governmental body may redact information that must be withheld under Subsection (b) from any information the governmental body discloses under Section 552.021 without the necessity of requesting a decision from the attorney general under Subchapter G.

(d) If, under Subsection (c), a governmental body redacts or withholds information without requesting a decision from the attorney general about whether the information may be redacted or withheld, the requestor is entitled to seek a decision from the attorney general about the matter. The attorney general by rule shall establish procedures and deadlines for receiving information necessary to decide the matter and briefs from the requestor, the governmental body, and any other interested person. The attorney general shall promptly render a decision requested under this subsection, determining whether the redacted or withheld information was excepted from required disclosure to the requestor, not later than the 45th business day after the date the attorney general received the request for a decision under this subsection. The attorney general shall issue a written decision on the matter and provide a copy of the decision to the requestor, the governmental body, and any interested person who submitted necessary information or a brief to the attorney general about the matter. The requestor or the governmental body may appeal a decision of the attorney general under this subsection to a Travis County district court.

(e) A governmental body that redacts or withholds information under Subsection (c) shall provide the following information to the requestor on a form prescribed by the attorney general:

- (1) a description of the redacted or withheld information;
- (2) a citation to this section; and
- (3) instructions regarding how the requestor may seek a decision from the attorney general regarding whether the redacted or withheld information is excepted from required disclosure.

SECTION 28. The heading to Section 552.138, Government Code, is amended to read as follows:

Sec. 552.138. EXCEPTION: CONFIDENTIALITY OF FAMILY VIOLENCE SHELTER CENTER AND SEXUAL ASSAULT PROGRAM INFORMATION.

SECTION 29. The heading to Section 552.139, Government Code, is amended to read as follows:

Sec. 552.139. EXCEPTION: CONFIDENTIALITY OF GOVERNMENT INFORMATION RELATED TO SECURITY OR INFRASTRUCTURE ISSUES FOR COMPUTERS.

SECTION 30. The heading to Section 552.140, Government Code, is amended to read as follows:

Sec. 552.140. EXCEPTION: CONFIDENTIALITY OF MILITARY DISCHARGE RECORDS.

SECTION 31. The heading to Section 552.142, Government Code, is amended to read as follows:

Sec. 552.142. EXCEPTION: CONFIDENTIALITY OF RECORDS OF CERTAIN DEFERRED ADJUDICATIONS AND CERTAIN MISDEMEANORS PUNISHABLE BY FINE ONLY.

SECTION 32. The heading to Section 552.145, Government Code, is amended to read as follows:

Sec. 552.145. EXCEPTION: CONFIDENTIALITY OF TEXAS NO-CALL LIST.

SECTION 33. The heading to Section 552.148, Government Code, is amended to read as follows:

Sec. 552.148. EXCEPTION: CONFIDENTIALITY OF CERTAIN PERSONAL INFORMATION MAINTAINED BY MUNICIPALITY PERTAINING TO A MINOR.

SECTION 34. The heading to Section 552.149, Government Code, is amended to read as follows:

Sec. 552.149. EXCEPTION: CONFIDENTIALITY OF RECORDS OF COMPTROLLER OR APPRAISAL DISTRICT RECEIVED FROM PRIVATE ENTITY.

SECTION 35. The heading to Section 552.150, Government Code, is amended to read as follows:

Sec. 552.150. EXCEPTION: CONFIDENTIALITY OF INFORMATION THAT COULD COMPROMISE SAFETY OF OFFICER OR EMPLOYEE OF HOSPITAL DISTRICT.

SECTION 36. The heading to Section 552.151, Government Code, as added by Chapter 1377 (S.B. 1182), Acts of the 81st Legislature, Regular Session, 2009, is amended to read as follows:

Sec. 552.151. EXCEPTION: CONFIDENTIALITY OF INFORMATION REGARDING SELECT AGENTS.

SECTION 37. The heading to Section 552.151, Government Code, as added by Chapter 283 (S.B. 1068), Acts of the 81st Legislature, Regular Session, 2009, is amended to read as follows:

Sec. 552.151. EXCEPTION: CONFIDENTIALITY OF INFORMATION CONCERNING PUBLIC EMPLOYEE OR OFFICER PERSONAL SAFETY.

SECTION 38. Section 552.263, Government Code, is amended by adding Subsection (e-1) to read as follows:

(e-1) If a requestor modifies the request in response to the requirement of a deposit or bond authorized by this section, the modified request is considered a separate request for the purposes of this chapter and is considered received on the date the governmental body receives the written modified request.

SECTION 39. Section 552.301, Government Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) For the purposes of this subchapter, if a governmental body receives a written request by United States mail and cannot adequately establish the actual date on which the governmental body received the request, the written request is considered to have been received by the governmental body on the third business day after the date of the postmark on a properly addressed request.

SECTION 40. The changes in law made by this Act to Sections 552.022, 552.263, and 552.301, Government Code, apply only to a request for information that is received by a governmental body or an officer for public information on or after the

effective date of this Act. A request for information that was received before the effective date of this Act is governed by the law in effect on the date the request was received, and the former law is continued in effect for that purpose.

SECTION 41. This Act takes effect September 1, 2011.

The Conference Committee Report on **SB 602** was filed with the Secretary of the Senate on Wednesday, May 25, 2011.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 1087**

Senator Carona submitted the following Conference Committee Report:

Austin, Texas  
May 25, 2011

Honorable David Dewhurst  
President of the Senate

Honorable Joe Straus  
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 1087** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

CARONA  
ELTIFE  
LUCIO  
WATSON  
VAN DE PUTTE  
On the part of the Senate

HILDERBRAN  
FRULLO  
GOODEN  
GALLEGO  
T. KING  
On the part of the House

A BILL TO BE ENTITLED  
AN ACT

relating to state-issued certificates of franchise authority to provide cable service and video service.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 66.003(a), Utilities Code, is amended to read as follows:

(a) An entity or person seeking to provide cable service or video service in this state [~~after September 1, 2005,~~] shall file an application for a state-issued certificate of franchise authority with the commission as required by this section. An entity providing cable service or video service under a franchise agreement with a municipality is not subject to this subsection with respect to such municipality until the franchise agreement is terminated under Section 66.004 or until the franchise agreement expires [~~, except as provided by Section 66.004.~~].

SECTION 2. Section 66.004, Utilities Code, is amended by amending Subsections (a), (c), and (f) and adding Subsections (b-1), (b-2), and (b-3) to read as follows:

(a) A cable service provider or a video service provider that currently has or had previously received a franchise to provide cable service or video service with respect to such municipalities is not eligible to seek a state-issued certificate of franchise authority under this chapter as to those municipalities until the expiration date of the existing franchise agreement, except as provided by Subsections (b), (b-1), (b-2), (b-3), and (c).

(b-1) Beginning September 1, 2011, a cable service provider or video service provider in a municipality with a population of less than 215,000 that was not allowed to or did not terminate a municipal franchise under Subsection (b) may elect to terminate not less than all unexpired franchises in municipalities with a population of less than 215,000 and seek a state-issued certificate of franchise authority for each area served under a terminated municipal franchise by providing written notice to the commission and each affected municipality before January 1, 2012. A municipal franchise is terminated on the date the commission issues a state-issued certificate of franchise authority to the provider for the area served under that terminated franchise.

(b-2) A cable service provider or video service provider in a municipality with a population of at least 215,000 may terminate a municipal franchise in that municipality in the manner described by Subsection (b-1) if:

(1) the cable service provider or video service provider is not the incumbent cable service provider in that municipality; and

(2) the incumbent cable service provider received a state-issued certificate of franchise authority from the commission before September 1, 2011.

(b-3) A municipality with a population of at least 215,000 may enter into an agreement with any cable service provider in the municipality to terminate a municipal cable franchise before the expiration of the franchise. To the extent that the mutually agreed on terms and conditions for early termination of the unexpired municipal cable franchise conflict with a provision of this chapter, the agreed on terms and conditions control.

(c) A cable service provider [~~that serves fewer than 40 percent of the total cable customers in a municipal franchise area and~~] that elects under Subsection (b), (b-1), or (b-2) to terminate an existing municipal franchise is responsible for remitting to the affected municipality before the 91st day after the date the municipal franchise is terminated any accrued but unpaid franchise fees due under the terminated franchise. If the cable service provider has credit remaining from prepaid franchise fees, the provider may deduct the amount of the remaining credit from any future fees or taxes it must pay to the municipality, either directly or through the comptroller.

(f) Except as provided in this chapter, nothing in this chapter is intended to abrogate, nullify, or adversely affect in any way the contractual rights, duties, and obligations existing and incurred by a cable service provider or a video service provider before the date a franchise expires or the date a provider terminates a franchise under Subsection (b-1) or (b-2), as applicable, [~~enactment of this chapter,~~] and owed or owing to any private person, firm, partnership, corporation, or other entity including without limitation those obligations measured by and related to the gross revenue hereafter received by the holder of a state-issued certificate of franchise authority for services provided in the geographic area to which such prior franchise or permit applies. All liens, security interests, royalties, and other contracts, rights, and

interests in effect on September 1, 2005, or the date a franchise is terminated under Subsection (b-1) or (b-2) shall continue in full force and effect, without the necessity for renewal, extension, or continuance, and shall be paid and performed by the holder of a state-issued certificate of franchise authority, and shall apply as though the revenue generated by the holder of a state-issued certificate of franchise authority continued to be generated pursuant to the permit or franchise issued by the prior local franchising authority or municipality within the geographic area to which the prior permit or franchise applies. It shall be a condition to the issuance and continuance of a state-issued certificate of franchise authority that the private contractual rights and obligations herein described continue to be honored, paid, or performed to the same extent as though the cable service provider continued to operate under its prior franchise or permit, for the duration of such state-issued certificate of franchise authority and any renewals or extensions thereof, and that the applicant so agrees. Any person, firm, partnership, corporation, or other entity holding or claiming rights herein reserved may enforce same by an action brought in a court of competent jurisdiction.

SECTION 3. Section 66.005(b), Utilities Code, is amended to read as follows:

(b) The franchise fee payable under this section is to be paid quarterly, within 45 days after the end of the quarter for the preceding calendar quarter. Each payment shall be accompanied by a summary explaining the basis for the calculation of the fee. A municipality may review the business records of the cable service provider or video service provider to the extent necessary to ensure compensation in accordance with Subsection (a), provided that the municipality may only review records that relate to the 48-month period preceding the date of the last franchise fee payment. Each party shall bear the party's own costs of the examination. A municipality may, in the event of a dispute concerning compensation under this section, bring an action in a court of competent jurisdiction.

SECTION 4. Section 66.006, Utilities Code, is amended to read as follows:

Sec. 66.006. IN-KIND CONTRIBUTIONS TO MUNICIPALITY. (a) Until the expiration or termination of the incumbent cable service provider's agreement, the holder of a state-issued certificate of franchise authority shall pay a municipality in which it is offering cable service or video service the same cash payments on a per subscriber basis as required by the incumbent cable service provider's franchise agreement. All cable service providers and all video service providers shall report quarterly to the municipality the total number of subscribers served within the municipality. The amount paid by the holder of a state-issued certificate of franchise authority shall be calculated quarterly by the municipality by multiplying the amount of cash payment under the incumbent cable service provider's franchise agreement by a number derived by dividing the number of subscribers served by a video service provider or cable service provider by the total number of video or cable service subscribers in the municipality. Such pro rata payments are to be paid quarterly to the municipality within 45 days after the end of the quarter for the preceding calendar quarter.

(b) On the expiration or termination of the incumbent cable service provider's agreement, the holder of a state-issued certificate of franchise authority shall pay a municipality in which it is offering cable service or video service one percent of the



provider's gross revenues, as defined by this chapter, or at the municipality's election, the per subscriber fee that was paid to the municipality under the expired or terminated incumbent cable service provider's agreement, in lieu of in-kind compensation and grants. Payments under this subsection shall be paid in the same manner as outlined in Section 66.005(b).

(c) All fees paid to municipalities under this section are paid in accordance with 47 U.S.C. Sections 531 and 541(a)(4)(B) and may be used by the municipality as allowed by federal law; further, these payments are not chargeable as a credit against the franchise fee payments authorized under this chapter.

(c-1) The holder of a state-issued certificate of franchise authority shall include with a fee paid to a municipality under this section a statement identifying the fee.

(c-2) A municipality that receives fees under this section:

(1) shall maintain revenue from the fees in a separate account established for that purpose;

(2) may not commingle revenue from the fees with any other money;

(3) shall maintain a record of each deposit to and disbursement from the separate account, including a record of the payee and purpose of each disbursement; and

(4) may not spend revenue from the fees except directly from the separate account.

(d) The following services shall continue to be provided by the cable provider that was furnishing services pursuant to its municipal cable franchise [~~until January 1, 2008, or~~] until the expiration or termination [~~term~~] of the franchise [~~was to expire, whichever is later,~~] and thereafter as provided in Subdivisions (1) and (2) below:

(1) institutional network capacity, however defined or referred to in the municipal cable franchise but generally referring to a private line data network capacity for use by the municipality for noncommercial purposes, shall continue to be provided at the same capacity as was provided to the municipality prior to the date of expiration or [the] termination, provided that the municipality will compensate the provider for the actual incremental cost of the capacity; and

(2) cable services to community public buildings, such as municipal buildings and public schools, shall continue to be provided to the same extent provided immediately prior to the date of the termination. On [Beginning on January 1, 2008, or] the expiration or termination of the franchise agreement, [whichever is later, a provider that provides the services may deduct from the franchise fee to be paid to the municipality an amount equal to the actual incremental cost of the services if the municipality requires the services after that date. Such cable service generally refers to the existing cable drop connections to such facilities and the tier of cable service provided pursuant to the franchise at the time of the expiration or termination.

SECTION 5. Sections 66.009(c) and (h), Utilities Code, are amended to read as follows:

(c) If a municipality did not have the maximum number of PEG access channels as of September 1, 2005, as provided by Subdivisions (1) and (2) based on the municipality's population on that date, the cable service provider or video service provider shall furnish at the request of the municipality:

- (1) up to three PEG channels for a municipality with a population of at least 50,000; and
- (2) up to two PEG channels for a municipality with a population of less than 50,000.

(h) Where technically feasible, the holder of a state-issued certificate of franchise authority that is not an incumbent cable service provider and an incumbent cable service provider, including an incumbent cable service provider that holds a state-issued certificate of franchise authority issued under Section 66.004(b-1), shall use reasonable efforts to interconnect their cable or video systems for the purpose of providing PEG programming. Interconnection may be accomplished by direct cable, microwave link, satellite, or other reasonable method of connection. The holder [~~Holder~~] of a state-issued certificate of franchise authority and the incumbent cable service provider [~~providers~~] shall negotiate in good faith, and the incumbent cable service provider [~~providers~~] may not withhold interconnection of PEG channels.

SECTION 6. (a) A municipality that received fees described by Section 66.006(c), Utilities Code, before September 1, 2011, shall, on September 1, 2011, transfer any fees that have not been disbursed to a separate account as required by Section 66.006(c-2), Utilities Code, as added by this Act.

(b) The change in law made by this Act in adding Section 66.006(c-2)(3), Utilities Code, applies only to transfers, deposits, and disbursements made on or after the effective date of this Act. A transfer, deposit, or disbursement made before the effective date of this Act is governed by the law in effect on the date the transfer, deposit, or disbursement was made, and the former law is continued in effect for that purpose.

SECTION 7. This Act takes effect September 1, 2011.

The Conference Committee Report on **SB 1087** was filed with the Secretary of the Senate.

#### **CO-AUTHOR OF SENATE BILL 773**

On motion of Senator Zaffirini, Senator Van de Putte will be shown as Co-author of **SB 773**.

#### **CO-SPONSOR OF HOUSE BILL 602**

On motion of Senator Lucio, Senator Davis will be shown as Co-sponsor of **HB 602**.

#### **RESOLUTIONS OF RECOGNITION**

The following resolutions were adopted by the Senate:

##### **Memorial Resolutions**

**SR 1173** by Hinojosa, In memory of Edward H. Harte of Corpus Christi.

**SR 1178** by Davis, In memory of Cornell Dupree, Jr., of Fort Worth.

**SR 1179** by Estes, In memory of Alexis Vicente Maldonado.

**SR 1191** by Watson, In memory of Angelina G. Garcia.

**SR 1192** by Watson, In memory of Mitchell George Attal of Austin.

**SR 1194** by Estes, In memory of Austin Garrett Staggs.

**SR 1196** by Hinojosa, In memory of Humberto Lozano Lopez of Robstown.

**SR 1197** by Hinojosa, In memory of Oscar Raul Cárdenas of McAllen.

### **Congratulatory Resolutions**

**SR 1174** by Jackson, Recognizing Jimmy and Peggy Burke on the occasion of their 50th wedding anniversary.

**SR 1175** by Van de Putte, Recognizing Saint Mary's University for earning the President's Higher Education Community Service Award.

**SR 1180** by West, Recognizing the members of the Barton and Elder families on the occasion of their family reunion.

**SR 1181** by West, Recognizing New Hope Baptist Church in Dallas on the occasion of its 138th anniversary.

**SR 1182** by West, Recognizing the members of the Williams-Livingston family on the occasion of their family reunion.

**SR 1187** by Ellis, Recognizing Saba Abashawl for her accomplishments in promoting international trade and travel in the City of Houston.

**SR 1188** by Ellis, Recognizing J. J. Jackson III for his contributions to his church and community.

**SR 1189** by Ellis, Recognizing Henry M. Williamson, Sr., for his service as the 52nd bishop of the Christian Methodist Episcopal Church.

**SR 1190** by Ellis, Recognizing Gertrude Jack Lewis on the occasion of her 100th birthday.

**SR 1193** by Watson, Recognizing Alehie "Lila" Valencia for receiving her doctorate from the College of Public Policy at The University of Texas at San Antonio.

**SR 1195** by Hinojosa, Recognizing Rachelle Grace for receiving an H-E-B Excellence in Education Award in the Leadership category for secondary schools.

**SR 1198** by Nichols, Recognizing the First United Methodist Church of Palestine on the occasion of its 175th anniversary.

**SR 1199** by Van de Putte, Recognizing Hector and Maria Morales on the occasion of their 50th anniversary.

**SR 1200** by Van de Putte, Recognizing Robert L. Comeaux on the occasion of his retirement from the Texas Federation of Teachers.

**SR 1201** by Carona, Recognizing Eddie Wayne Crawford on the occasion of his retirement from the Dallas Police Department.

**HCR 142** (Jackson), Congratulating Clear Lake High School junior Cameron Blizzard on overcoming cancer.

**HCR 162** (Jackson), Congratulating the Space Center Intermediate Band in Houston on its receipt of a 2010 Sudler Cup.

**ADJOURNMENT**

On motion of Senator Whitmire, the Senate at 11:05 p.m. adjourned, in memory of Robert C. Thornell, Sr., and James Wyatt Edwards, until 1:30 p.m. tomorrow.

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**APPENDIX**

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**BILL ENGROSSED**May 24, 2011**SB 1460****BILLS AND RESOLUTIONS ENROLLED**May 24, 2011

**SB 201, SB 271, SB 329, SB 370, SB 1726, SB 1799, SJR 9, SJR 14, SJR 26, SJR 37, SJR 50, SR 1144, SR 1145, SR 1146, SR 1148, SR 1149, SR 1150, SR 1151, SR 1152, SR 1153, SR 1154, SR 1155, SR 1156, SR 1157, SR 1158, SR 1159, SR 1160, SR 1161, SR 1162, SR 1163, SR 1164, SR 1165, SR 1166, SR 1167, SR 1168, SR 1169, SR 1170, SR 1171**

**SENT TO SECRETARY OF STATE**May 25, 2011**SJR 16****SENT TO GOVERNOR**May 25, 2011

**SB 32, SB 54, SB 61, SB 77, SB 86, SB 116, SB 141, SB 149, SB 150, SB 162, SB 187, SB 189, SB 192, SB 193, SB 226, SB 260, SB 290, SB 335, SB 482, SB 494, SB 496, SB 512, SB 519, SB 530, SB 544, SB 626, SB 639, SB 690, SB 743, SB 796, SB 811, SB 851, SB 855, SB 867, SB 886, SB 899, SB 957, SB 1002, SB 1043, SB 1103, SB 1159, SB 1228, SB 1292, SB 1361, SB 1404, SB 1421, SB 1431, SB 1610, SB 1613, SB 1638, SB 1662, SB 1698, SB 1751, SB 1887, SB 1907, SB 1914, SB 1927, SCR 11, SCR 16**

**In Memory**  
**of**  
**Robert C. Thornell, Sr.**  
**Senate Resolution 1176**

WHEREAS, The Senate of the State of Texas honors and commemorates the life of Robert C. Thornell, Sr., who died April 16, 2011, at the age of 61; and

WHEREAS, Mr. Thornell was a beloved and respected member of his community; fiercely loyal, steadfast, and generous, he set an example for all who knew him and left a legacy of honor and selfless dedication; throughout his life, he served as an inspiration to countless friends, colleagues, and fellow members of the armed forces; and

WHEREAS, Robert Thornell was born October 9, 1949; he joined the United States Marine Corps when he was 18 years old and served in Vietnam from November of 1968 to December of 1969 with Mike Company, 3rd Battalion, 7th Marine Regiment, 1st Marine Division; and

WHEREAS, The Vietnam War had a profound effect on him; while in a relentless battle with the enemy in Quang Nam Province in February of 1969, he was wounded while trying to save the life of his best friend; he carried the memory of his friend with him for the rest of his life; and

WHEREAS, The Marine Corps is noted for the loyalty that Marines share with one another and their devotion to their country; Robert Thornell exemplified that ideal and lived his life faithful to the Marine Corps motto, "Semper Fidelis"; he was awarded the Purple Heart, the National Defense Service Medal, the Vietnam Campaign Medal, the Vietnam Service Medal, and the Combat Action Ribbon; and

WHEREAS, A patriotic American, a great Texan, a loving husband, and a devoted father and grandfather, Robert Thornell leaves behind memories that will be treasured forever by his family and his many friends; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 82nd Legislature, hereby pay tribute to the life of Robert C. Thornell, Sr., and extend sincere condolences to his bereaved family: his wife, Sheridan; his children, Melissa, Carrie, Stacey, and Robert Thornell, Jr.; and his eight grandchildren; and, be it further

RESOLVED, That a copy of this Resolution be prepared for his family as an expression of deepest sympathy from the Texas Senate, and that when the Senate adjourns this day, it do so in memory of Robert C. Thornell, Sr.

RODRIGUEZ

**In Memory**  
**of**  
**James Wyatt Edwards**  
**Senate Resolution 1052**

WHEREAS, The Senate of the State of Texas honors and commemorates the life of James Wyatt Edwards, who died May 13, 2011, at the age of 73; and

WHEREAS, James Wyatt "Jim" Edwards was born September 6, 1937; he served the North Texas community with honor and distinction over the course of a varied career that saw him serve as mayor of Plano for two terms and hold leading roles at several colleges and universities; he is credited with drawing a number of large corporations to the area and spurring development of major roadways, public transportation, retail centers, and educational institutions in Collin County; and

WHEREAS, Mr. Edwards was active in Republican Party politics, serving as a coordinator for Mike Huckabee's 2008 presidential campaign in Texas and working with the George W. Bush campaign in Palm Beach County, Florida, in 2000; and

WHEREAS, A passionate advocate for the education of at-risk young people, he worked with the nonprofit organization Heart of a Champion; his most recent initiative was the Changing Hearts Project, which is dedicated to aiding the children of veterans of combat in Iraq and Afghanistan; and

WHEREAS, He was a devoted husband, father, and grandfather, and although he will be deeply missed by his family and countless friends, he will continue to live in their hearts and minds for years to come; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 82nd Legislature, hereby extend sincere condolences to the bereaved family of James Wyatt Edwards; and, be it further

RESOLVED, That a copy of this Resolution be prepared for his family as an expression of deepest sympathy from the Texas Senate, and that when the Senate adjourns this day, it do so in memory of James Wyatt Edwards.

SHAPIRO

# SENATE JOURNAL

EIGHTY-SECOND LEGISLATURE — REGULAR SESSION

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AUSTIN, TEXAS

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PROCEEDINGS

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**SIXTY-EIGHTH DAY**

(Thursday, May 26, 2011)

The Senate met at 1:40 p.m. pursuant to adjournment and was called to order by President Pro Tempore Ogden.

The roll was called and the following Senators were present: Birdwell, Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hegar, Hinojosa, Huffman, Jackson, Lucio, Nelson, Nichols, Ogden, Patrick, Rodriguez, Seliger, Shapiro, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

The President Pro Tempore announced that a quorum of the Senate was present.

Pastor Danny Green, Covenant Family Church, College Station, was introduced by Senator Eltife, on behalf of Senator Ogden, and offered the invocation as follows:

Merciful God, we humbly yet confidently stand before You today giving honor and all glory to You for Your overwhelming love and grace. We come before You realizing how much we need Your guidance and Your almighty hand upon us as we exercise wisdom and courage to uphold this our Constitution which established a republic based on Your absolute truth and laws. Heavenly Father, it is You who gives us the strength to represent those who have trusted us to be in this place to make the decisions for a better, safer, and healthier community. I ask that each of us here today will understand and follow the principles written in Your word. May we realize that all authority comes from You and that one day we will give account of how we used that authority. Teach us to ever be aware of those we've been called to serve. May we not forget the sacredness of our vow, the power of our promise, and the purpose of our position. Remind us to protect those who need it most, to love those who are neglected, and to empower those who will make a positive difference for all. Bless each of us who have been sent here to direct this great State of Texas to the center of Your will. I thank You for sending Your son, Jesus, to be our Lord and Savior. Search us, O God, and know our hearts; cleanse us from every sin and make us free. We sincerely ask these things in His name, Jesus Christ our Lord. Amen.

Senator Whitmire moved that the reading of the Journal of the proceedings of the previous day be dispensed with and the Journal be approved as printed.

The motion prevailed without objection.

**MESSAGE FROM THE HOUSE**

HOUSE CHAMBER

Austin, Texas

Thursday, May 26, 2011 - 1

The Honorable President of the Senate  
Senate Chamber  
Austin, Texas

Mr. President:

I am directed by the House to inform the Senate that the House has taken the following action:

THE HOUSE HAS PASSED THE FOLLOWING MEASURES:

**SCR 56** Fraser Sponsor: Miller, Sid  
Honoring John Cowan on the occasion of his retirement from the Texas Association of Dairymen.

THE HOUSE HAS CONCURRED IN THE SENATE AMENDMENTS TO THE FOLLOWING MEASURES:

**HB 968** (143 Yeas, 0 Nays, 2 Present, not voting)  
**HB 1768** (140 Yeas, 1 Nays, 2 Present, not voting)  
**HB 2277** (134 Yeas, 7 Nays, 2 Present, not voting)  
**HB 2449** (140 Yeas, 1 Nays, 2 Present, not voting)  
**HB 2466** (140 Yeas, 0 Nays, 2 Present, not voting)  
**HB 2592** (117 Yeas, 28 Nays, 2 Present, not voting)  
**HB 2663** (144 Yeas, 0 Nays, 2 Present, not voting)  
**HB 2779** (146 Yeas, 0 Nays, 2 Present, not voting)  
**HB 3647** (139 Yeas, 1 Nays, 2 Present, not voting)  
**HB 3819** (146 Yeas, 0 Nays, 1 Present, not voting)  
**HB 3828** (137 Yeas, 2 Nays, 2 Present, not voting)

THE HOUSE HAS REFUSED TO CONCUR IN THE SENATE AMENDMENTS TO THE FOLLOWING MEASURES AND REQUESTS THE APPOINTMENT OF A CONFERENCE COMMITTEE TO ADJUST THE DIFFERENCES BETWEEN THE TWO HOUSES:

**HB 628** (non-record vote)  
House Conferees: Callegari - Chair/Hunter/King, Phil/Lucio III/Smith, Wayne

**HB 2357** (non-record vote)  
House Conferees: Pickett - Chair/Bonnen/Hunter/Lavender/Phillips

**HB 2380** (non-record vote)  
House Conferees: Shelton - Chair/Frullo/Patrick, Diane/Reynolds/Villarreal



**HB 3268** (non-record vote)

House Conferees: Lyne - Chair/Geren/Hancock/Hardcastle/King, Tracy O.

THE HOUSE HAS GRANTED THE REQUEST OF THE SENATE FOR THE APPOINTMENT OF A CONFERENCE COMMITTEE ON THE FOLLOWING MEASURES:

**SB 89** (non-record vote)

House Conferees: Rodriguez, Eddie - Chair/Hughes/Isaac/Lozano/Miles

**SB 249** (non-record vote)

House Conferees: Orr - Chair/Anchia/Flynn/Legler/Truitt

**SB 958** (non-record vote)

House Conferees: Larson - Chair/Guillen/Kuempel/Price/Rodriguez, Eddie

Respectfully,

/s/Robert Haney, Chief Clerk  
House of Representatives

**GUESTS PRESENTED**

Senator Ellis was recognized and introduced to the Senate Gary Elkins and winners of the African American National Spelling Bee Championships: Mary Bello (First Place); Ashley Williams (Second Place); Niah Dyson (Third Place); accompanied by Robert Garner, Jr., founder; Jacqueline Terrell, Executive Director; and Brenda Upton, teacher.

The Senate welcomed its guests.

**MESSAGE FROM THE HOUSE**

## HOUSE CHAMBER

Austin, Texas

Thursday, May 26, 2011 - 2

The Honorable President of the Senate

Senate Chamber

Austin, Texas

Mr. President:

I am directed by the House to inform the Senate that the House has taken the following action:

THE HOUSE HAS RECOMMENDED THE FOLLOWING MEASURES TO CONFERENCE COMMITTEE:

**SB 316** (146 Yeas, 0 Nays, 1 Present, not voting)

Respectfully,

/s/Robert Haney, Chief Clerk  
House of Representatives

### PHYSICIAN OF THE DAY

Senator Hegar was recognized and presented Dr. Jorge Duchicela of Weimar as the Physician of the Day.

The Senate welcomed Dr. Duchicela and thanked him for his participation in the Physician of the Day program sponsored by the Texas Academy of Family Physicians.

### CONFERENCE COMMITTEE ON HOUSE BILL 2605

Senator Huffman called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2605** and moved that the request be granted.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **HB 2605** before appointment.

There were no motions offered.

Accordingly, the President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Huffman, Chair; Hegar, Hinojosa, Nelson, and Whitmire.

### CONFERENCE COMMITTEE ON HOUSE BILL 90

Senator Birdwell called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 90** and moved that the request be granted.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **HB 90** before appointment.

There were no motions offered.

Accordingly, the President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Birdwell, Chair; Williams, Nichols, Watson, and Patrick.

### CONFERENCE COMMITTEE ON HOUSE BILL 1178

Senator Birdwell called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 1178** and moved that the request be granted.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **HB 1178** before appointment.

There were no motions offered.

Accordingly, the President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Birdwell, Chair; Van de Putte, Seliger, Estes, and Harris.

**SENATE BILL 1588 WITH HOUSE AMENDMENTS  
(Motion In Writing)**

Senator Ogden called **SB 1588** from the President's table for consideration of the House amendments to the bill.

The President Pro Tempore laid the bill and the House amendments before the Senate.

**Amendment**

Amend **SB 1588** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to the creation and re-creation of funds and accounts, the dedication and rededication of revenue, and the exemption of unappropriated money from use for general governmental purposes.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. DEFINITION. In any provision of this Act that does not amend current law, "state agency" means an office, institution, or other agency that is in the executive branch or judicial branch of state government, has authority that is not limited to a geographical portion of the state, and was created by the constitution or a statute of this state. The term does not include an institution of higher education as defined by Section 61.003, Education Code.

SECTION 2. ABOLITION OF FUNDS, ACCOUNTS, AND DEDICATIONS. Except as otherwise specifically provided by this Act, all funds and accounts created or re-created by an Act of the 82nd Legislature, Regular Session, 2011, that becomes law and all dedications or rededications of revenue or otherwise collected by a state agency for a particular purpose by an Act of the 82nd Legislature, Regular Session, 2011, that becomes law are abolished on the later of August 31, 2011, or the date the Act creating or re-creating the fund or account or dedicating or rededicating revenue takes effect.

SECTION 3. PREVIOUSLY EXEMPT DEDICATIONS, FUNDS, AND ACCOUNTS. Section 2 of this Act does not apply to:

(1) statutory dedications, funds, and accounts that were enacted before the 82nd Legislature convened to comply with requirements of state constitutional or federal law;

(2) dedications, funds, or accounts that remained exempt from former Subsection (h), Section 403.094, Government Code, at the time dedications, accounts, and funds were abolished under that provision;

(3) increases in fees or in other revenue dedicated as described by this section; or

(4) increases in fees or in other revenue required to be deposited in a fund or account described by this section.

SECTION 4. FEDERAL FUNDS. Section 2 of this Act does not apply to funds created pursuant to an Act of the 82nd Legislature, Regular Session, 2011, for which separate accounting is required by federal law, except that the funds shall be deposited in accounts in the general revenue fund unless otherwise required by federal law.

SECTION 5. TRUST FUNDS. Section 2 of this Act does not apply to trust funds or dedicated revenue deposited to trust funds created under an Act of the 82nd Legislature, Regular Session, 2011, except that the trust funds shall be held in the state treasury, with the comptroller of public accounts in trust, or outside the state treasury with the comptroller's approval.

SECTION 6. BOND FUNDS. Section 2 of this Act does not apply to bond funds and pledged funds created or affected by an Act of the 82nd Legislature, Regular Session, 2011, except that the funds shall be held in the state treasury, with the comptroller of public accounts in trust, or outside the state treasury with the comptroller's approval.

SECTION 7. CONSTITUTIONAL FUNDS. Section 2 of this Act does not apply to funds or accounts that would be created or re-created by the Texas Constitution or revenue that would be dedicated or rededicated by the Texas Constitution under a constitutional amendment proposed by the 82nd Legislature, Regular Session, 2011, or to dedicated revenue deposited to funds or accounts that would be so created or re-created, if the constitutional amendment is approved by the voters.

SECTION 8. CREATION OF NEW ACCOUNTS FOR LICENSE PLATE FEES. Section 2 of this Act does not apply to a new account created in the general revenue fund for receipt of fees for special license plates or for receipt of related revenue, gifts, or grants as provided by an Act of the 82nd Legislature, Regular Session, 2011, or to the dedication of revenue to or contained in the new account.

SECTION 9. ADDITIONAL USES FOR DEDICATED FUNDS, ACCOUNTS, OR REVENUES. Section 2 of this Act does not apply to a newly authorized dedication of or use of a dedicated fund, a dedicated account, or dedicated revenues as provided by an Act of the 82nd Legislature, Regular Session, 2011, to the extent that Act affects a fund, an account, or revenues that were exempted from funds consolidation before January 1, 2011. A dedicated fund, a dedicated account, or dedicated revenues that were exempted from funds consolidation before January 1, 2011, may be used as an Act of the 82nd Legislature, Regular Session, 2011, provides, and a change in the name or authorized use of a previously exempted dedicated fund or account does not affect the fund's or account's dedicated nature.

SECTION 10. ACCOUNTS IN GENERAL REVENUE FUND. Effective on the later of the effective date of the Act creating or re-creating the account or August 31, 2011, the following accounts and the revenue deposited to the credit of the accounts are exempt from Section 2 of this Act and are created in the general revenue fund, if created or re-created by an Act of the 82nd Legislature, Regular Session, 2011, that becomes law:

(1) the driver's license system improvement account created as a dedicated account in the general revenue fund by Senate Bill No. 9, Senate Bill No. 1583, or similar legislation;

(2) the judicial and court personnel training fund created as a dedicated account in the general revenue fund by Senate Bill No. 1582, Senate Bill No. 1811, House Bill No. 3648, or similar legislation;

(3) the oil and gas regulation and cleanup fund created by Senate Bill No. 655, Senate Bill No. 1584, House Bill No. 3106, or similar legislation, except that, regardless of any provision of that legislation, the oil and gas regulation and cleanup fund is created as a dedicated account in the general revenue fund;

(4) the fund for veterans' assistance re-created as a special fund in the state treasury outside the general revenue fund by Senate Bill No. 1635, Senate Bill No. 1739, House Bill No. 1172, House Bill No. 3179, or similar legislation; and

(5) the judicial access and improvement account created as a dedicated account in the general revenue fund by Senate Bill No. 1811, House Bill No. 2174, or similar legislation.

SECTION 11. REVENUE DEDICATION. Effective on the later of the effective date of the Act dedicating or rededicating the revenue or August 31, 2011, the following dedications or rededications of revenue collected by a state agency for a particular purpose are exempt from Section 2 of this Act, if dedicated or rededicated by an Act of the 82nd Legislature, Regular Session, 2011, that becomes law:

(1) the dedication of all fees to be deposited to the credit of the driver's license system improvement account as provided by Senate Bill No. 9, Senate Bill No. 1583, or similar legislation;

(2) the dedication of amounts to be deposited to the credit of the charter district bond guarantee reserve fund as provided by Senate Bill No. 597, House Bill No. 1437, or similar legislation;

(3) the dedication of charges collected under Subsection (g), Section 151.158, Tax Code, as provided by Senate Bill No. 776, Senate Bill No. 1811, or similar legislation;

(4) the dedication of the additional annual fee to be deposited to the credit of the scholarship trust fund for fifth-year accounting students as provided by Senate Bill No. 777, House Bill No. 1521, or similar legislation;

(5) the dedication of fees imposed under Subsection (a), Section 2054.380, Government Code, as provided by Senate Bill No. 1579, House Bill No. 3665, or similar legislation;

(6) the dedication of fees to be charged for process server certification and renewal of certification as provided by Senate Bill No. 1582, Senate Bill No. 1811, House Bill No. 1614, House Bill No. 3648, or similar legislation;

(7) all dedications of revenue for deposit to the credit of the oil and gas regulation and cleanup fund as provided by Senate Bill No. 655, Senate Bill No. 1584, House Bill No. 3106, or similar legislation;

(8) the dedication of the enrollment fees to be deposited to the credit of the employees life, accident, and health insurance and benefits fund under Section 1551.3076, Insurance Code, as provided by Senate Bill No. 1664, Senate Bill No. 1811, or similar legislation;

(9) the dedication of contributions made under Section 502.1746, Transportation Code, as provided by Senate Bill No. 1635, House Bill No. 3179, or similar legislation;

(10) the dedication of contributions, gifts, grants, and promotional campaign proceeds received by the Parks and Wildlife Department under Subchapter J-1, Chapter 11, Parks and Wildlife Code, as provided by Senate Bill No. 1584, House Bill No. 1300, House Bill No. 3418, or similar legislation;

(11) the dedication of licensing fees received under Section 13.0155, Parks and Wildlife Code, as provided by Senate Bill No. 1584, House Bill No. 1300, House Bill No. 3418, or similar legislation;

(12) the dedication of contributions received under Section 502.1747, Transportation Code, as provided by Senate Bill No. 1584, House Bill No. 1301, House Bill No. 3418, or similar legislation;

(13) the dedication of all fees to be deposited to the credit of the sexual assault program fund as provided by Senate Bill No. 23 or similar legislation;

(14) the dedication of fees imposed under Subsection (b), Section 1104.052, Occupations Code, as provided by House Bill 1146, or similar legislation;

(15) all dedications or rededications of revenue to an account of a Self-Directed, Semi-Independent Agency with the Texas Safekeeping Trust Company by any Act of the 82nd Legislature, Regular Session, 2011;

(16) all dedications or rededications of revenue to the Texas Department of Insurance Operating Account by any Act of the 82nd Legislature, Regular Session, 2011;

(17) all dedications or rededications of revenue to the State Highway Fund by any Act of the 82nd Legislature, Regular Session, 2011; and

(18) all dedications or rededications of revenue to the Game, Fish, and Water Safety Account by any Act of the 82nd Legislature, Regular Session, 2011.

**SECTION 12. SEPARATE FUNDS IN THE TREASURY.** Effective September 1, 2011, the following funds in the state treasury and the revenue deposited to the credit of the funds, if created by an Act of the 82nd Legislature, Regular Session, 2011, are exempt from Section 2 of this Act and the funds are created as separate funds in the state treasury:

(1) the charter district bond guarantee reserve fund, created as a special fund in the state treasury outside the general revenue fund by Senate Bill No. 597, House Bill No. 1437, or similar legislation; and

(2) the Internet crimes against children account created as a special fund by Senate Bill No. 1843, House Bill No. 3746, or similar legislation.

**SECTION 13. SCHOLARSHIP TRUST FUND FOR FIFTH-YEAR ACCOUNTING STUDENTS.** (a) Section 2 of this Act does not apply to the scholarship trust fund for fifth-year accounting students re-created as a trust fund outside the state treasury by Senate Bill No. 777, House Bill No. 1521, or similar legislation.

(b) The scholarship trust fund for fifth-year accounting students described by Subsection (a) of this section is subject to Section 5 of this Act.

**SECTION 14. CIVIL JUSTICE DATA REPOSITORY FUND.** Effective on the later of August 31, 2011, or the date the Act creating or re-creating the fund takes effect, the Civil Justice Data Repository fund and the revenue deposited to the credit

of the fund are exempt from Section 2 of this Act and that fund is created as an account in the general revenue fund, if created or re-created by an Act of the 82nd Legislature, Regular Session, 2011, that becomes law.

SECTION 15. AMENDMENT OF SECTION 403.095, GOVERNMENT CODE. Effective September 1, 2011, Subsections (b), (d), and (e), Section 403.095, Government Code, are amended to read as follows:

(b) Notwithstanding any law dedicating or setting aside revenue for a particular purpose or entity, dedicated revenues that, on August 31, 2013 [~~2011~~], are estimated to exceed the amount appropriated by the General Appropriations Act or other laws enacted by the 82nd [~~81st~~] Legislature are available for general governmental purposes and are considered available for the purpose of certification under Section 403.121.

(d) Following certification of the General Appropriations Act and other appropriations measures enacted by the 82nd [~~81st~~] Legislature, the comptroller shall reduce each dedicated account as directed by the legislature by an amount that may not exceed the amount by which estimated revenues and unobligated balances exceed appropriations. The reductions may be made in the amounts and at the times necessary for cash flow considerations to allow all the dedicated accounts to maintain adequate cash balances to transact routine business. The legislature may authorize, in the General Appropriations Act, the temporary delay of the excess balance reduction required under this subsection. This subsection does not apply to revenues or balances in:

(1) funds outside the treasury;

(2) trust funds, which for purposes of this section include funds that may or are required to be used in whole or in part for the acquisition, development, construction, or maintenance of state and local government infrastructures, recreational facilities, or natural resource conservation facilities;

(3) funds created by the constitution or a court; or

(4) funds for which separate accounting is required by federal law.

(e) This section expires on September 1, 2013 [~~2011~~].

SECTION 16. EFFECT OF ACT. (a) This Act prevails over any other Act of the 82nd Legislature, Regular Session, 2011, regardless of the relative dates of enactment, that purports to create or re-create a special fund or account or to dedicate or rededicate revenue to a particular purpose, including any fund, account, or revenue dedication abolished under former Section 403.094, Government Code.

(b) An exemption from the application of Section 403.095, Government Code, contained in another Act of the 82nd Legislature, Regular Session, 2011, that is exempted from the application of Section 2 of this Act has no effect.

(c) Revenues that, under the terms of another Act of the 82nd Legislature, Regular Session, 2011, would be deposited to the credit of a special account or fund shall be deposited to the credit of the undedicated portion of the general revenue fund unless the fund, account, or dedication is exempted under this Act.

SECTION 17. EFFECTIVE DATE. Except as otherwise provided by this Act:

(1) this Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution; and

(2) if this Act does not receive the vote necessary for immediate effect, this Act takes effect on the 91st day after the last day of the legislative session.

### Floor Amendment No. 1

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.

### Floor Amendment No. 2

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.

### Floor Amendment No. 3

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.

**Floor Amendment No. 4**

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.

**Floor Amendment No. 1 on Third Reading**

Amend **CSSB 1588** (house committee report) on third reading to add SECTION \_\_\_\_ of the bill as follows and renumber the remaining sections accordingly:

SECTION \_\_\_\_ . CERTAIN OTHER FUNDS HELD OUTSIDE THE TREASURY. Each of the following funds, if created as a fund held outside the treasury by an Act of the 82nd Legislature, Regular Session, 2011, that becomes law, and revenue deposited to the credit of the funds are exempt from this Act:

The Department of Insurance examination local account created in the Texas Treasury Safekeeping Trust Company by **SB 1291** or similar legislation.

**Floor Amendment No. 2 on Third Reading**

Amend **CSSB 1588** on third reading as follows:

(1) In the SECTION of the bill adding Section 2054.064, Government Code, at the end of added Subsection (e)(1), strike "and".

(2) In the SECTION of the bill adding Section 2054.064, Government Code, strike added Subsection (e)(2), and substitute the following:

(2) \_\_\_\_ percent to the credit of the optometry career program account in the general revenue fund to be used by the University of Houston for the purpose of establishing a summer optometry career program; and

(3) the remainder deposited to the credit of the general revenue fund.

(3) Add the following appropriately numbered SECTION to the bill and renumber the remaining SECTIONS of the bill accordingly:

SECTION \_\_\_\_ . Subchapter C, Chapter 111, Education Code, is amended by adding Section 111.43 to read as follows:

Sec. 111.43. OPTIONAL SUMMER OPTOMETRY CAREER PROGRAM.

(a) The university may operate a summer program that prepares highly qualified, economically disadvantaged junior-level, senior-level, and postbaccalaureate students from any public or private institution of higher education for advanced studies and a career in the field of optometry.

The amendments were read.

Senator Ogden moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **SB 1588** before appointment.

There were no motions offered.

The President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Ogden, Chair; Estes, Hinojosa, Lucio, and Seliger.

**SENATE BILL 810 WITH HOUSE AMENDMENT**

Senator Hinojosa called **SB 810** from the President's table for consideration of the House amendment to the bill.

The President Pro Tempore laid the bill and the House amendment before the Senate.

**Amendment**

Amend **SB 810** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to the boundaries of the Ingleside Cove Wildlife Sanctuary.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 82.501, Parks and Wildlife Code, is amended to read as follows:

Sec. 82.501. CREATION. The Ingleside Cove Wildlife Sanctuary is composed of an area in San Patricio and Nueces counties described as follows:

BEGINNING at Kinney Bayou on the east shoreline of Ingleside Cove, also known as North Shore Channel (N 27 50.791, W 97 13.577);

THENCE, in a northwesterly direction along the shoreline to the channel marker at the location commonly known as Donnel Point (N 27 51.593, W 97 14.505);

THENCE, due northwest crossing the Reynolds Channel to the east side of a spoil bank (N 27 51.668, W 97 14.715);

THENCE, following the eastern edge of this spoil bank in a southeasterly direction to its southernmost point (N 27 50.328, W 97 14.302), continuing southeast crossing Ingleside Cut to the north shore of Ingleside Point (N 27 50.231, W 97 14.197);

THENCE, in an easterly and southeasterly direction along the east shoreline following the Reynolds Channel through Ingleside Point to the southernmost portion of this cut (N 27 49.782, W 97 13.782);

THENCE, due east across the Reynolds Channel to the west shoreline of the mainland known as the southernmost portion of Ingleside Cove (N 27 49.834, W 97 13.641);

THENCE, following the shoreline in a northerly direction being the east shoreline of Ingleside Cove to the point of beginning.

~~[BEGINNING at Kinney Bayou on the east shoreline of Ingleside Cove, also known as North Shore Channel;~~

~~[THENCE, in a northwesterly direction along the shoreline to channel marker number "22" with a flashing red light every 4 seconds known as Donnel Point;~~

~~[THENCE, due west crossing the Reynolds Channel to the east side of a spoil bank;~~

~~[THENCE, following the eastern edge of this spoil bank in a southeasterly direction to its southern most point, continuing southeast crossing Ingleside cut to the north shore of Ingleside Point;~~

~~[THENCE, in an easterly and southeasterly direction along the east shoreline following the Reynolds Channel through Ingleside Point to the southern most portion of this cut;~~

~~[THENCE, due east across the Reynolds Channel to the west shoreline of the mainland known as the southern most portion of Ingleside Cove;~~

~~[THENCE, following the shoreline in a northerly direction being the east shoreline of Ingleside Cove to the point of beginning.]~~

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2011.

The amendment was read.

Senator Hinojosa moved to concur in the House amendment to **SB 810**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

### **SENATE BILL 20 WITH HOUSE AMENDMENTS**

Senator Jackson, on behalf of Senator Williams, called **SB 20** from the President's table for consideration of the House amendments to the bill.

The President Pro Tempore laid the bill and the House amendments before the Senate.

#### **Floor Amendment No. 1**

Amend **SB 20** (house committee report) as follows:

(1) In SECTION 1 of the bill, in added Section 386.252(a)(1)(E), Health and Safety Code (page 1, line 24), strike "and".

(2) In SECTION 1 of the bill, in added Section 386.252(a)(1)(F), Health and Safety Code (page 2, line 3), strike "393.010;" and substitute the following:  
393.010; and

(G) two percent may be used for the Texas alternative fueling facilities program;

(3) Add the following appropriately numbered SECTIONS to the bill and renumber subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 386.252, Health and Safety Code, is amended by adding Subsection (e) to read as follows:

(e) The commission may allocate unexpended money designated for the Texas alternative fueling facilities program to other programs described under Subsection (a) after the commission allocates money to recipients under the alternative fueling facilities program.

SECTION \_\_\_\_\_. Subtitle C, Title 5, Health and Safety Code, is amended by adding Chapter 394 to read as follows:

#### CHAPTER 394. ALTERNATIVE FUELING FACILITIES PROGRAM

Sec. 394.001. DEFINITIONS. In this chapter:

(1) "Alternative fuel" means a fuel other than gasoline or diesel fuel, other than biodiesel fuel, including electricity, compressed natural gas, liquefied natural gas, hydrogen, propane, or a mixture of fuels containing at least 85 percent methanol by volume.

(2) "Commission" means the Texas Commission on Environmental Quality.

(3) "Program" means the Texas alternative fueling facilities program established under this chapter.

Sec. 394.002. PROGRAM. (a) The commission shall establish and administer the Texas alternative fueling facilities program to provide fueling facilities for alternative fuel in nonattainment areas. Under the program, the commission shall provide a grant for each eligible facility to offset the cost of those facilities.

(b) An entity that constructs, reconstructs, or acquires an alternative fueling facility is eligible to participate in the program.

Sec. 394.003. APPLICATION FOR GRANT. (a) An entity operating in this state that constructs, reconstructs, or acquires a facility to store, compress, or dispense alternative fuels may apply for and receive a grant under the program.

(b) The commission may adopt guidelines to allow a regional planning commission, council of governments, or similar regional planning agency created under Chapter 391, Local Government Code, or a private nonprofit organization to apply for and receive a grant to improve the ability of the program to achieve its goals.

(c) An application for a grant under this chapter must be made on a form provided by the commission and must contain the information required by the commission.

Sec. 394.004. ELIGIBILITY OF FACILITIES FOR GRANTS. (a) The commission by rule shall establish criteria for prioritizing facilities eligible to receive grants under this chapter. The commission shall review and revise the criteria as appropriate.

(b) To be eligible for a grant under the program, the entity receiving the grant must agree to make the alternative fueling facility available to persons not associated with the entity at times designated by the grant agreement.

(c) A recipient of a grant under this chapter is not eligible to receive a second grant under this chapter for the same facility.

Sec. 394.005. RESTRICTION ON USE OF GRANT. A recipient of a grant under this chapter shall use the grant only to pay the costs of the facility for which the grant is made. The recipient may not use the grant to pay the recipient's administrative expenses.

Sec. 394.006. AMOUNT OF GRANT. For each eligible facility for which a recipient is awarded a grant under the program, the commission shall award the grant in an amount equal to the lesser of:

(1) 50 percent of the sum of the actual eligible costs incurred by the grant recipient within deadlines established by the commission to construct, reconstruct, or acquire the facility; or

(2) \$500,000.

Sec. 394.007. EXPIRATION. This chapter expires August 31, 2018.

SECTION \_\_\_\_\_. The Texas Commission on Environmental Quality shall adopt rules under Section 394.004, Health and Safety Code, as added by this Act, as soon as practicable after the effective date of this Act.

**Floor Amendment No. 2**

Amend **SB 20** (house committee report) as follows:

(1) In SECTION 2 of the bill, strike added Section 393.001(5), Health and Safety Code (page 3, lines 20 and 21), and substitute the following:

(5) "Incremental cost" means the difference between the manufacturer's suggested retail price of a baseline vehicle, the documented dealer price of a baseline vehicle, cost to lease or otherwise commercially finance a baseline vehicle, cost to repower with a baseline engine, or other appropriate baseline cost established by the commission, and the actual cost of the natural gas vehicle purchase, lease, or other commercial financing, or repower.

(2) In SECTION 2 of the bill, between added Sections 393.001(5) and (6), Health and Safety Code (page 3, between lines 21 and 22), insert the following new subdivision, numbered appropriately, and renumber subsequent subdivisions of added Section 393.001, Health and Safety Code, accordingly:

( ) "Medium-duty motor vehicle" means a motor vehicle with a gross vehicle weight rating of more than 8,500 pounds that:

(A) is certified to the United States Environmental Protection Agency's light-duty emissions standard; or

(B) has an engine certified to the United States Environmental Protection Agency's light-duty emissions standard.

(3) In SECTION 2 of the bill, in added Section 393.002, Health and Safety Code (page 4, line 4), between "heavy-duty" and "motor vehicle", insert "or medium-duty".

(4) In SECTION 2 of the bill, in added Section 393.002, Health and Safety Code (page 4, line 7), between "heavy-duty" and "motor vehicles", insert "motor vehicles and medium-duty".

(5) In SECTION 2 of the bill, in added Section 393.002, Health and Safety Code (page 4, line 8), between "heavy-duty" and "motor vehicle", insert "or medium-duty".

(6) In SECTION 2 of the bill, in added Section 393.003(a)(1), Health and Safety Code (page 4, line 14), between "heavy-duty" and "motor vehicle", insert "or medium-duty".

(7) In SECTION 2 of the bill, in added Section 393.003(a)(1)(C), Health and Safety Code (page 4, line 19), between "heavy-duty" and "motor vehicle", insert "or medium-duty".

(8) In SECTION 2 of the bill, strike added Sections 393.003(a)(1)(D) and (a)(2), Health and Safety Code (page 4, line 21, through page 5, line 1), and substitute the following:

(D) is powered by an engine certified to:

(i) emit not more than 0.2 grams of nitrogen oxides per brake horsepower hour; or

(ii) meet or exceed the United States Environmental Protection Agency's Bin 5 standard for light-duty engines when powering the vehicle; or

(2) repowered the on-road motor vehicle to a natural gas vehicle powered by a natural gas engine that:

(A) is certified to current federal emissions standards; and

(B) is:

(i) a heavy-duty engine that is certified to emit not more than 0.2 grams of nitrogen oxides per brake horsepower hour; or

(ii) certified to meet or exceed the United States Environmental Protection Agency's Bin 5 standard for light-duty engines when powering the vehicle.

(9) In SECTION 2 of the bill, in added Section 393.003(b), Health and Safety Code (page 5, line 2), between "heavy-duty" and "motor vehicle", insert "or medium-duty".

(10) In SECTION 2 of the bill, in added Section 393.003(b)(1), Health and Safety Code (page 5, line 5), strike "or by another entity".

(11) In SECTION 2 of the bill, in added Section 393.004(a), Health and Safety Code (page 5, line 10), between "heavy-duty" and "motor vehicle", insert "or medium-duty".

(12) In SECTION 2 of the bill, in added Section 393.005(b)(1), Health and Safety Code (page 5, line 27), strike "heavy-duty".

(13) In SECTION 2 of the bill, in added Section 393.005(b)(2)(A), Health and Safety Code (page 6, line 7), between "heavy-duty" and "motor vehicle", insert "or medium-duty".

(14) In SECTION 2 of the bill, in added Section 393.005(b)(2)(B), Health and Safety Code (page 6, line 19), between "heavy-duty" and "motor vehicle", insert "or medium-duty".

(15) In SECTION 2 of the bill, in added Section 393.005(f), Health and Safety Code (page 8, line 4), between "heavy-duty" and "motor vehicle", insert "or medium-duty".

(16) In SECTION 2 of the bill, in added Section 393.005(g), Health and Safety Code (page 8, line 13), between "heavy-duty" and "motor vehicles", insert "motor vehicles and medium-duty".

(17) In SECTION 2 of the bill, strike added Section 393.007(a)(2), Health and Safety Code (page 9, lines 14 through 20), and substitute the following:

(2) is based on:

(A) the certified emission level of nitrogen oxides, or other pollutants as determined by the commission, of the engine powering the natural gas vehicle; and

(B) the usage of the natural gas vehicle; and

(3) may take into account the overall emissions reduction achieved by the natural gas vehicle.

(18) In SECTION 2 of the bill, after added Section 393.007(b), Health and Safety Code (page 10, between lines 1 and 2), insert the following:

(c) A person may not receive a grant under this chapter that, when combined with any other grant, tax credit, or other governmental incentive, exceeds the incremental cost of the vehicle for which the grant is awarded. A person shall return to the commission the amount of a grant awarded under this chapter that, when combined with any other grant, tax credit, or other governmental incentive, exceeds the incremental cost of the vehicle for which the grant is awarded.



(d) The commission shall reduce the amount of a grant awarded under this chapter as necessary to keep the combined incentive total at or below the incremental cost of the vehicle for which the grant is awarded if the grant recipient is eligible to receive an automatic incentive at or before the time a grant is awarded under this chapter.

(19) In SECTION 2 of the bill, strike added Section 393.008(b)(1), Health and Safety Code (page 10, lines 10 through 13), and substitute the following:

(1) provide for the commission to compile and regularly update a listing of preapproved natural gas vehicles:

(A) powered by natural gas engines certified to emit not more than 0.2 grams of nitrogen oxides per brake horsepower hour; or

(B) certified to the United States Environmental Protection Agency's light-duty Bin 5 standard or better;

(20) In SECTION 2 of the bill, in added Section 393.009(a)(1), Health and Safety Code (page 11, line 20), between "on-road heavy-duty" and "natural gas", insert "or medium-duty".

(21) In SECTION 2 of the bill, in added Section 393.009(a)(1), Health and Safety Code (page 11, line 20), between "or heavy-duty" and "natural gas", insert "or medium-duty".

(22) In SECTION 2 of the bill, in added Section 393.009(e)(2), Health and Safety Code (page 12, line 14), between "heavy-duty" and "natural gas", insert "or medium-duty".

(23) In SECTION 2 of the bill, in added Section 393.009(e)(2), Health and Safety Code (page 12, line 15), before "natural gas engines.", insert "heavy-duty or medium-duty".

(24) In SECTION 2 of the bill, strike added Section 393.010(b), Health and Safety Code (page 13, lines 12 and 13), and substitute the following:

(b) The commission may not award more than:

(1) three station grants to any entity; or

(2) one grant for each station.

(25) In SECTION 2 of the bill, between added Sections 393.010(b) and (c), Health and Safety Code (page 13, between lines 13 and 14), insert the following new subsection, designated appropriately, and redesignate subsequent subsections of added Section 393.010, Health and Safety Code, accordingly:

( ) Grants awarded under this section may not exceed:

(1) \$100,000 for a compressed natural gas station;

(2) \$250,000 for a liquefied natural gas station; or

(3) \$400,000 for a station providing both liquefied and compressed natural gas.

(26) In SECTION 2 of the bill, strike added Section 393.011, Health and Safety Code (page 14, lines 6-10) and renumber subsequent Sections of the SECTION accordingly.

(27) Add the following appropriately numbered SECTION to the bill and renumber subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 386.252, Health and Safety Code, is amended by adding Subsections (e) and (f) to read as follows:

(e) Notwithstanding Subsection (a), the commission may reallocate money in the fund if:

(1) the commission, in consultation with the governor and the advisory board, determines that the use of the money in the fund for the program established under Chapter 393 will cause the state to be in noncompliance with the state implementation plan to the extent that federal action is likely; and

(2) the commission finds that the reallocation of some or all of the funding for the program established under Chapter 393 would resolve the noncompliance.

(f) Under Subsection (e), the commission may not reallocate more than the minimum amount of money necessary to resolve the noncompliance.

The amendments were read.

Senator Jackson, on behalf of Senator Williams, moved to concur in the House amendments to **SB 20**.

The motion prevailed by the following vote: Yeas 29, Nays 2.

Yeas: Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hegar, Hinojosa, Huffman, Jackson, Lucio, Nelson, Nichols, Ogden, Rodriguez, Seliger, Shapiro, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Birdwell, Patrick.

#### **SENATE BILL 1686 WITH HOUSE AMENDMENT**

Senator Ellis called **SB 1686** from the President's table for consideration of the House amendment to the bill.

The President Pro Tempore laid the bill and the House amendment before the Senate.

#### **Floor Amendment No. 1**

Amend **SB 1686** (house committee printing), in SECTION 6 of the bill, on page 3, line 8, by striking "2012" and substituting "2011".

The amendment was read.

Senator Ellis moved to concur in the House amendment to **SB 1686**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

#### **SENATE BILL 1714 WITH HOUSE AMENDMENTS**

Senator Jackson, on behalf of Senator Duncan, called **SB 1714** from the President's table for consideration of the House amendments to the bill.

The President Pro Tempore laid the bill and the House amendments before the Senate.

**Amendment**

Amend **SB 1714** by substituting in lieu thereof the following:

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.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 406.033(a) and (d), Labor Code, are amended to read as follows:

(a) In an action against an employer by or on behalf of an employee who is not covered by [who does not have] workers' compensation insurance obtained in the manner authorized by Section 406.003 [coverage] to recover damages for personal injuries or death sustained by an employee in the course and scope of the employment, it is not a defense that:

- (1) the employee was guilty of contributory negligence;
- (2) the employee assumed the risk of injury or death; or
- (3) the injury or death was caused by the negligence of a fellow employee.

(d) In an action described by Subsection (a) [against an employer who does not have workers' compensation insurance coverage], the plaintiff must prove negligence of the employer or of an agent or servant of the employer acting within the general scope of the agent's or servant's employment.

SECTION 2. Section 406.034(d), Labor Code, is amended to read as follows:

(d) An employee who elects to retain the right of action or a legal beneficiary of that employee may bring a cause of action for damages for injuries sustained in the course and scope of the employment under common law or under a statute of this state. Notwithstanding Section 406.033, the cause of action is subject to all defenses available under common law and the statutes of this state unless the employee has waived coverage under an agreement with the employer.

SECTION 3. (a) Sections 406.033 and 406.034, Labor Code, as amended by this Act, do not apply to a cause of action by an employee if:

- (1) the employee is subject to a valid and enforceable contract with the employee's employer relating to benefits for occupational injury or death; and
- (2) the employer, since January 1, 2011, has continuously:
  - (A) had workers' compensation insurance coverage; and
  - (B) offered its employees a program providing benefits for occupational injury or death that is not governed by Subtitle A, Title 5, Labor Code.

(b) Except as provided by Subsection (a) of this section, Sections 406.033 and 406.034, Labor Code, as amended by this Act, apply only to a cause of action that accrues on or after the effective date of this Act. A cause of action that accrues before that date is governed by the law in effect on the date the action is filed, and the former law is continued in effect for that purpose.

SECTION 4. This Act takes effect September 1, 2011.

**Floor Amendment No. 1**

Amend **CSSB 1714** (house committee printing) as follows:

(1) In SECTION 2 of the bill, in amended Section 406.034(d), Labor Code (page 2, line 8), strike "under" and substitute "in connection with".

(2) In SECTION 3 of the bill, in Subsection (b) of that section (page 2, lines 25 and 26), strike "accrues" each time that word appears and substitute "is filed".

The amendments were read.

Senator Jackson, on behalf of Senator Duncan, moved to concur in the House amendments to **SB 1714**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

**SENATE BILL 167 WITH HOUSE AMENDMENT**

Senator West called **SB 167** from the President's table for consideration of the House amendment to the bill.

The President Pro Tempore laid the bill and the House amendment before the Senate.

**Committee Amendment No. 1**

SECTION \_\_\_\_\_. Amend **SB 167** (engrossed) to read as follows:

Page 2, line 23 and 24, after "convicted and subsequently" strike "~~pardoned or otherwise subsequently granted relief~~" and insert "granted relief or pardoned".

The amendment was read.

Senator West moved to concur in the House amendment to **SB 167**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE ON HOUSE BILL 1335**

Senator Van de Putte called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 1335** and moved that the request be granted.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **HB 1335** before appointment.

There were no motions offered.

Accordingly, the President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Van de Putte, Chair; Carona, Lucio, Shapiro, and Zaffirini.

**SENATE BILL 761 WITH HOUSE AMENDMENT**

Senator West called **SB 761** from the President's table for consideration of the House amendment to the bill.

The President Pro Tempore laid the bill and the House amendment before the Senate.

**Amendment**

Amend **SB 761** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to the employment of physicians by certain hospitals associated with nonprofit fraternal organizations.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 311, Health and Safety Code, is amended by adding Subchapter E to read as follows:

SUBCHAPTER E. EMPLOYMENT OF PHYSICIANS BY CERTAIN HOSPITALS  
ASSOCIATED WITH NONPROFIT FRATERNAL ORGANIZATIONS

Sec. 311.061. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a hospital that employs or seeks to employ a physician, that primarily provides medical care to children younger than 18 years of age, and that:

(1) is owned or operated by a nonprofit fraternal organization; or

(2) has a governing body the majority of members of which belong to a nonprofit fraternal organization.

Sec. 311.062. EMPLOYMENT OF PHYSICIANS PERMITTED. (a) A hospital may employ a physician and retain all or part of the professional income generated by the physician for medical services provided at the hospital if the hospital satisfies the requirements of this subchapter.

(b) The billing and receipt of third-party reimbursement for medical care at a hospital does not affect the authority granted to the hospital under this section.

Sec. 311.063. DUTIES AND HOSPITAL POLICIES. (a) A hospital that employs physicians under this subchapter shall:

(1) appoint a chief medical officer, who may be a member of the hospital's medical staff;

(2) adopt, maintain, and enforce policies to ensure that a physician employed by the hospital exercises the physician's independent medical judgment in providing care to patients at the hospital; and

(3) designate the chief medical officer as the contact for the Texas Medical Board for all matters relating to complaints regarding interference or attempted interference with a physician's independent medical judgment or any other matter under this section.

(b) The person appointed as chief medical officer shall report the person's appointment to the Texas Medical Board.

(c) The policies adopted under this section must include:

(1) policies relating to:

(A) credentialing;

(B) quality assurance;

(C) utilization review;

(D) peer review; and

(E) medical decision-making; and

(2) the implementation of a complaint mechanism to process and resolve complaints regarding interference or attempted interference with a physician's independent medical judgment.

(d) The policies adopted under this section must be approved by the chief medical officer.

(e) In the event of a conflict between a policy approved by the chief medical officer and any other policy of the hospital, a conflict management process shall be jointly developed and implemented to resolve the conflict.

(f) For all matters relating to the practice of medicine, each physician employed by a hospital under this subchapter shall ultimately report to the chief medical officer.

(g) The chief medical officer shall immediately report to the Texas Medical Board any action or event that the chief medical officer reasonably and in good faith believes constitutes a compromise of the independent medical judgment of a physician in caring for a patient.

Sec. 311.064. CONSTRUCTION OF SUBCHAPTER. This subchapter may not be construed as authorizing the governing body of a hospital to supervise or control the practice of medicine as prohibited under Subtitle B, Title 3, Occupations Code.

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2011.

The amendment was read.

Senator West moved to concur in the House amendment to **SB 761**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

### **SENATE BILL 694 WITH HOUSE AMENDMENTS**

Senator West called **SB 694** from the President's table for consideration of the House amendments to the bill.

The President Pro Tempore laid the bill and the House amendments before the Senate.

#### **Amendment**

Amend **SB 694** by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to the regulation of metal recycling entities; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 1956.001, Occupations Code, is amended by amending Subdivisions (1), (4), and (10) and adding Subdivision (1-a) to read as follows:

(1) "Air conditioning and refrigeration contracting company" has the meaning assigned by Section 1302.002.

(1-a) "Aluminum material" means a product made from aluminum, an aluminum alloy, or an aluminum by-product. The term includes aluminum wiring and an aluminum beer keg but does not include another type of aluminum can used to contain a food or beverage.

(4) "Copper or brass material" means:

(A) insulated or noninsulated copper wire or cable of the type used by a public utility or common carrier that contains copper or an alloy of copper or zinc; or

(B) a copper or brass item of a type commonly used in construction or by a public utility[; ~~or~~

~~[(C) copper pipe or copper tubing].~~

(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 wholly or partly to remove the insulation;

(T) backflow valves;

(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;

(V) copper pipe or tubing; and

(W) any metal item readily identifiable as being used in an aircraft engine.

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), and (g) to read as follows:

(a-1) A county, municipality, or other political subdivision may require the record of purchase described under Section 1956.033 to contain a clear and legible thumbprint of a seller of regulated material.

(a-2) A county, municipality, or other political subdivision that, as authorized under Subsection (a), requires a metal recycling entity to report to the county, municipality, or political subdivision information relating to a sale of regulated material shall include in any contract entered into by the county, municipality, or political subdivision relating to the reporting of the information a provision that:

(1) 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 the information received; and

(2) 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 Subdivision (1).

(f) A person commits an offense if the person operates a metal recycling entity and does not hold a valid 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) A county, municipality, or other political subdivision shall provide a written notice to a metal recycling entity issued a citation for an offense described by Subsection (f). The notice must state that the metal recycling entity must cease operation until the person holds the appropriate license or permit issued by a county, municipality, or other political subdivision as authorized under Subsection (b).

SECTION 4. Section 1956.015, Occupations Code, is amended by amending Subsection (d) and adding Subsection (e) to read as follows:

(d) Information provided under this section is not subject to disclosure under Chapter 552, Government Code. The department shall maintain the confidentiality of information provided under this section [~~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 the information provided under this section; 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).

SECTION 5. Subchapter A-1, Chapter 1956, Occupations Code, is amended by adding Section 1956.016 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.

SECTION 6. Section 1956.032, Occupations Code, is amended to read as follows:

Sec. 1956.032. INFORMATION PROVIDED BY SELLER. (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:

(A) the make, model, color, and license plate number, and the state of issuance, of the motor vehicle used to transport the regulated material; and

(B) a description and any license plate number of any trailer used to transport the regulated material; ~~and~~

(3) if the regulated material includes condensing or evaporator coils, tubing, or pipes 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 heating or air conditioning unit components the seller is attempting to sell; or

(D) a receipt, bill of sale, or other documentation showing that the seller has purchased a replacement heating or air conditioning unit;

(4) if the regulated material includes insulated utility, communications, or electrical wire that has been burned wholly or partly to remove the insulation, display to the metal recycling entity documentation from the fire department of a county, municipality, or other political subdivision stating that the material was salvaged from a fire in that county, municipality, or political subdivision; and

(5) 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.

(b) A person required by a municipality to prepare a signed statement consisting of the information required by Subsection (a)(5) ~~[(a)(3)]~~ may use the statement required by the municipality to comply with Subsection (a)(5) ~~[(a)(3)]~~.

(c) The metal recycling entity ~~[or the entity's agent]~~ shall visually verify the accuracy of the personal identification document presented by the seller at the time of the purchase of regulated material and make a copy of the document ~~[identification]~~ to be maintained by the entity in the entity's records, except as otherwise provided by Subsection (f).

(d) Unless exempt as provided by Section 1956.0335, the [The] metal recycling entity shall obtain a digital or video [or the entity's agent for recordkeeping purposes may] photograph that accurately depicts the seller's entire face, not including any hat, and obtain the name of the seller's employer.

(e) Unless exempt as provided by Section 1956.0335, the [The] metal recycling entity shall obtain a digital or video [or the entity's agent for recordkeeping purposes may take a] photograph that accurately depicts:

(1) [of] the motor vehicle of the seller in which the make, model, color, and license plate number of the motor vehicle are identifiable; and

(2) the model and any license plate number of any trailer attached to the seller's motor vehicle [in lieu of the information required under Subsection (a)(3)].

(f) The metal recycling entity is not required to make a copy of the identification as required under Subsection (c) or collect the information required under Subsection (a)(5) [(a)(3)] if:

(1) the seller signs the written statement as required under Subsection (a)(5) [(a)(3)];

(2) the seller has previously provided the information required under Subsections [Subsection] (a) and (c); and

(3) the previously provided information has not changed.

(g) Notwithstanding Section 1956.002, a person attempting to sell regulated material who represents that the person is a metal recycling entity shall provide a copy of the certificate of registration issued under Section 1956.022 in addition to the information required under Subsection (a).

SECTION 7. 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 name and address of the metal recycling entity;

(2) the [place and] date of the purchase;

(3) [(2)] the name, [and] address, and [of each individual from whom the regulated material is purchased or obtained;

[(3) the] identifying number displayed on [of] the seller's personal identification document and a copy of the seller's personal identification document as required under Section 1956.032;

(4) as applicable:

(A) the identifying number of the seller's air conditioning and refrigeration contractor license displayed under Section 1956.032(a)(3)(A);

(B) a copy of the seller's air conditioning and refrigeration technician registration displayed under Section 1956.032(a)(3)(B);

(C) a copy of the documentation described by Section 1956.032(a)(3)(C);

(D) a copy of the documentation described by Section 1956.032(a)(3)(D); or

(E) a copy of the documentation described by Section 1956.032(a)(4);

(5) a digital or video photograph that accurately depicts each item of regulated material purchased unless the metal recycling entity is exempt as provided by Section 1956.0335;

(6) a description made in accordance with the custom of the trade of the type and quantity of regulated material purchased;

(7) copies of the photographs described by Sections 1956.032(d) and (e) unless the metal recycling entity is exempt as provided by Section 1956.0335;

(8) a copy of the seller's thumbprint if required by a county, municipality, or other political subdivision as provided by Section 1956.003(a-1); and

(9) [~~(5)~~] the information required by Section 1956.032(a)(5) [~~1956.032(a)(3)~~].

SECTION 8. Subchapter A-3, Chapter 1956, Occupations Code, is amended by adding Section 1956.0335 to read as follows:

Sec. 1956.0335. EXEMPTION FROM PHOTOGRAPH REQUIREMENT. A metal recycling entity is exempt from the requirements of Sections 1956.032(d) and (e) and 1956.033(b)(5) and (7) if:

(1) the entity annually submits to the department:

(A) an application requesting an exception to the requirements; and

(B) an affidavit stating that the entity does not have an available means of obtaining a digital or video photograph; and

(2) the department approves the entity's application under this section.

SECTION 9. Section 1956.034, Occupations Code, is amended to read as follows:

Sec. 1956.034. PRESERVATION OF RECORDS; UNAUTHORIZED USE OF INFORMATION. (a) A metal recycling entity shall preserve each record required by Sections 1956.032 and 1956.033 until the third anniversary of the date the record was made.

(b) The records may be maintained in an electronic medium or through other recordkeeping technology. If a record is not maintained in a hard copy format, the metal recycling entity must provide a legible hard copy of the record on request of a peace officer under Section 1956.035.

(c) The records must be kept in the office or place of business where the purchase was made until the first anniversary of the date of purchase.

(d) Except as authorized by this chapter, a person commits an offense if the person knowingly releases or discloses information regarding a seller of regulated material that is contained in a record required by Section 1956.032 or 1956.033.

(e) An offense under Subsection (d) is a Class A misdemeanor unless it is shown on trial of the offense that the person has previously been convicted under Subsection (d), in which event the offense is a state jail felony.

SECTION 10. Section 1956.036, Occupations Code, is amended by amending Subsections (a) and (b) and adding Subsection (d) to read as follows:

(a) Except as provided by Subsections ~~[Subsection]~~ (b) and (d), not later than 48 hours ~~[the seventh day]~~ after the ~~[date of the]~~ purchase or other acquisition of material for which a record is required under Section 1956.033, 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, other than the photographs described by Sections 1956.033(b)(5) and (7) ~~[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:

(A) by telephone[;] notify the department of the purchase; or

(B) submit to the department electronically via the department's Internet website or file with the department a report containing the information required to be recorded under Section 1956.033, other than the photographs described by Sections 1956.033(b)(5) and (7); and

(2) if not already submitted or filed under Subdivision (1)(B), not later than 48 hours ~~[the fifth day]~~ after the purchase ~~[date]~~, submit to the department electronically via the department's Internet website ~~[mail to]~~ or file with the department a report containing the information required to be recorded under Section 1956.033, other than the photographs described by Sections 1956.033(b)(5) and (7).

(d) A metal recycling entity may submit the transaction report required under Subsection (a) by facsimile if:

(1) the entity annually submits to the department:

(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.

SECTION 11. Section 1956.037(a), Occupations Code, is amended to read as follows:

(a) A metal recycling entity may not dispose of, process, sell, or remove from the premises an item of regulated metal unless:

(1) the entity acquired the item more than:

(A) 30 days, excluding weekends and holidays, before the disposal, processing, sale, or removal, if the item is a cemetery vase, receptacle, or memorial made from a regulated material other than aluminum material; or

(B) five days ~~[72 hours]~~, excluding weekends and holidays, before the disposal, processing, sale, or removal, if the item is not an item described by Paragraph (A); or

(2) the entity purchased the item from a manufacturing, industrial, commercial, retail, or other seller that sells regulated material in the ordinary course of its business.

SECTION 12. 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)(5) [~~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 pay for a purchase of regulated metal only as follows:

(1) by check issued to the seller not earlier than the fifth day after the date of the purchase; or

(2) by cash not earlier than the 10th day after the date of the purchase.

(c) A metal recycling entity may not pay cash for a purchase of regulated material unless the metal recycling entity is registered under Subchapter A-2.

(d) Notwithstanding Section 1956.003(a) or any other law, a county, municipality, or other political subdivision may not adopt 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 Subsections (b) and (c).

(e) A metal recycling entity that purchases regulated material with cash in violation of Subsection (c) may not pay cash for a purchase of regulated material before the second anniversary of the date the entity registers under Subchapter A-2.

SECTION 13. Section 1956.040, Occupations Code, is amended by adding Subsections (a-1), (a-2), (a-3), and (b-1) and amending Subsection (b) to read as follows:

(a-1) A person commits an offense if the person knowingly violates Section 1956.021, 1956.023(d), 1956.036(a), or 1956.039. An offense under this subsection 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 this subsection, in which event the offense is a state jail felony.

(a-2) 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-3) A municipality or county may retain 10 percent of the money collected from a fine for a conviction of an offense under Subsection (a-1) as a service fee for that collection and the clerk of the court shall remit the remainder of the fine collected for conviction of an offense under Subsection (a-1) to the comptroller in the manner

provided for the remission of fees to the comptroller under Subchapter B, Chapter 133, Local Government Code. The comptroller shall deposit proceeds received under this subsection to the credit of an account in the general revenue fund, and those proceeds may be appropriated only to the department and used to:

(1) finance the department's administration of Subchapters A, A-1, A-2, and A-3; and

(2) fund grants distributed under the prevention of scrap metal theft grant program established under Subchapter N, Chapter 411, Government Code.

(b) A person commits an offense if the person knowingly buys:

(1) stolen regulated material;

(2) insulated utility, communications, or electrical wire that has been burned wholly or partly to remove the insulation, unless the wire is accompanied by documentation from the fire department of a county, municipality, or other political subdivision stating that the material was salvaged from a fire in that county, municipality, or political subdivision; or

(3) condensing or evaporator coils, tubing, rods, or other components of a central air conditioning unit that have been altered to resemble components of a portable or self-contained ductless air conditioning product that has a cooling capacity of three tons or less.

(b-1) An offense under Subsection (b) [~~this subsection~~] is a Class A misdemeanor unless it is shown on trial of the offense that the person has previously been convicted under Subsection (b) [~~this subsection~~], in which event the offense is a state jail felony.

SECTION 14. Section 1956.103(a), 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 15. 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 16. Section 1956.202(d), 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 17. 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-1) and (a-3), 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 18. Section 31.03(e), 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 19. Sections 1956.015(b) and (c), Occupations Code, are repealed.

SECTION 20. (a) The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect when the offense was



committed, and the former law is continued in effect for that purpose. For purposes of this subsection, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

(b) The enhancement of the punishment of an offense provided under Section 1956.003(f) or 1956.040(a-1), Occupations Code, as added by this Act, applies only to an offense committed on or after January 1, 2012. An offense committed before January 1, 2012, is governed by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this subsection, an offense was committed before January 1, 2012, if any element of the offense occurred before that date.

SECTION 21. This Act takes effect September 1, 2011.

### Floor Amendment No. 1

Amend **CSSB 694** (house committee report) as follows:

(1) In SECTION 9 of the bill, in added Section 1956.034(b), Occupations Code (page 11, lines 18 and 19), strike "request of a peace officer" and substitute "receipt of a request".

(2) Add the following appropriately numbered SECTION to the bill and renumber the remaining SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. 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) 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.

### Floor Amendment No. 2 on Third Reading

Amend **CSSB 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.

The amendments were read.

Senator West moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **SB 694** before appointment.

There were no motions offered.

The President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators West, Chair; Fraser, Duncan, Uresti, and Harris.

**SENATE BILL 1717 WITH HOUSE AMENDMENTS**  
**(Motion In Writing)**

Senator Duncan called **SB 1717** from the President's table for consideration of the House amendments to the bill.

The President Pro Tempore laid the bill and the House amendments before the Senate.

**Amendment**

Amend **SB 1717** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to the operation and administration of the judicial branch of state government.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. APPELLATE COURT PROVISIONS

SECTION 1.01. Section 22.002(b), Government Code, is amended to read as follows:

(b) The supreme court or, in vacation, a justice of the supreme court may issue a writ of mandamus to compel a statutory county court judge, a statutory probate court judge, or a district judge to proceed to trial and judgment in a case ~~agreeable to the principles and usages of law, returnable to the supreme court on or before the first day of the term, or during the session of the term, or before any justice of the supreme court as the nature of the case requires~~.

SECTION 1.02. (a) Section 24.007, Property Code, is amended to read as follows:

Sec. 24.007. APPEAL. (a) ~~[A final judgment of a county court in an eviction suit may not be appealed on the issue of possession unless the premises in question are being used for residential purposes only.]~~ A judgment of a county court in an eviction suit may not under any circumstances be stayed pending appeal unless, within 10 days of the signing of the judgment, the appellant files a supersedeas bond in an amount set by the county court. In setting the supersedeas bond the county court shall provide protection for the appellee to the same extent as in any other appeal, taking into consideration the value of rents likely to accrue during appeal, damages which may occur as a result of the stay during appeal, and other damages or amounts as the court may deem appropriate.

(b) Notwithstanding any other law, an appeal may be taken from a final judgment of a county court, statutory county court, statutory probate court, or district court in an eviction suit.

(b) The change in law made by this section applies to an appeal of a final judgment rendered on or after the effective date of this section. An appeal of a final judgment rendered before the effective date of this section is governed by the law in effect on the date the judgment was rendered, and the former law is continued in effect for that purpose.

## ARTICLE 2. GENERAL PROVISIONS FOR DISTRICT COURTS

SECTION 2.01. Section 24.002, Government Code, is amended to read as follows:

Sec. 24.002. ASSIGNMENT OF JUDGE OR TRANSFER OF CASE ON RECUSAL ~~[SUBSTITUTE JUDGES]~~. If a district judge determines on the judge's own motion that the judge should not sit in a case pending in the judge's court because the judge is disqualified or otherwise should recuse himself or herself, the judge shall enter a recusal order, request the presiding judge of that administrative judicial region to assign another judge to sit, and take no further action in the case except for good cause stated in the order in which the action is taken. A change of venue is not necessary because of the disqualification of a district judge in a case or proceeding pending in the judge's [his] court~~[, but the judge shall immediately certify his disqualification to the governor. The governor shall designate a district judge of another district to exchange benches with the disqualified judge to try the case. The governor shall notify both judges of his designation, and the judges shall exchange benches. If the judges are prevented from exchanging benches, the parties or their counsels may agree on an attorney of the court for the trial of the case. The district judge or special judge shall certify to the governor the fact of a failure of the parties or their counsels to agree on an attorney, and the governor shall appoint a person legally qualified to act as judge in the trial of the case]~~.

SECTION 2.02. Sections 24.003 and 24.007, Government Code, are amended to read as follows:

Sec. 24.003. TRANSFER OF CASES; EXCHANGE OF BENCHES ~~[SUBSTITUTE JUDGES IN CERTAIN COUNTIES]~~. (a) This section applies only to ~~[civil cases in]~~ counties with two ~~[five]~~ or more district courts.

(b) Unless provided otherwise by the local rules of administration, a district judge in the county may:

(1) transfer any civil or criminal case or proceeding on the court's docket to the docket of another district court in the county;

(2) hear and determine any case or proceeding pending in another district court in the county without having the case transferred;

(3) sit for another district court in the county and hear and determine any case or proceeding pending in that court;

(4) temporarily exchange benches with the judge of another district court in the county;

(5) try different cases in the same court at the same time; and

(6) occupy the judge's own courtroom or the courtroom of another district court in the county.

(c) If a district judge in the county is sick or otherwise absent, another district judge in the county may hold court for the judge.

(d) A district judge in the county may hear and determine any part or question of any case or proceeding pending in any of the district courts, and any other district judge may complete the hearing and render judgment in the case or proceeding. A district judge may hear and determine motions, including motions for new trial, petitions for injunction, applications for the appointment of a receiver, interventions, pleas in abatement, dilatory pleas, and all preliminary matters, questions, and proceedings, and may enter judgment or order on them in the court in which the case or proceeding is pending without transferring the case or proceeding. The district judge in whose court the matter is pending may proceed to hear, complete, and determine the matter, or all or any part of another matter, and render a final judgment. A district judge may issue a restraining order or injunction that is returnable to any other district court.

(e) A judgment or order shall be entered in the minutes of the court in which the case is pending.

(f) This section does not limit the powers of a district judge when acting for another judge by exchange of benches or otherwise. ~~If a district judge is disqualified in a case pending in his court and his disqualification is certified to the governor, the governor may require any other district judge in the county to exchange benches with the disqualified judge.~~

~~[(e) If a district judge is absent, sick, or disqualified, any of the district judges in the county may hold court for him or may transfer a pending case to the court of any other district judge in the county.]~~

Sec. 24.007. JURISDICTION. (a) The district court has the jurisdiction provided by Article V, Section 8, of the Texas Constitution.

(b) A district court has original jurisdiction of a civil matter in which the amount in controversy is more than \$500, exclusive of interest.

SECTION 2.03. Section 24.012(a), Government Code, is amended to read as follows:

(a) Notwithstanding any other law, each ~~Each~~ district ~~[and criminal district] court holds in each county in the judicial district [at least two] terms that commence on the first Mondays in January and July of [court] each year [in each county in the district]. To the extent of a conflict between this subsection and a specific provision relating to a particular judicial district, this section controls.~~

SECTION 2.04. Subchapter A, Chapter 24, Government Code, is amended by adding Sections 24.023, 24.024, 24.025, 24.026, 24.027, 24.028, 24.029, 24.030, and 24.031 to read as follows:

Sec. 24.023. OBLIGATIONS; BONDS. (a) When a case is transferred from one court to another, all processes, writs, bonds, recognizances, and other obligations issued by the transferring court are returnable to the court to which the case is transferred as if originally issued by that court.

(b) The obligees in all bonds and recognizances taken in and for a court from which a case is transferred, and all witnesses summoned to appear in a district court from which a case is transferred, are required to appear before the court to which the case is transferred as if the bond, recognizance, or summons was taken in or for that court.

Sec. 24.024. FILING AND DOCKETING CASES. In a county with two or more district courts, the district judges may adopt rules governing the filing and numbering of cases, the assignment of cases for trial, and the distribution of the work of the courts as in their discretion they consider necessary or desirable for the orderly dispatch of the business of the courts.

Sec. 24.025. SUPPLEMENTAL COMPENSATION. (a) Unless otherwise provided by this subchapter, all district judges in a county are entitled to equal amounts of supplemental compensation from the county.

(b) A district judge is entitled to an amount of supplemental compensation for serving on the juvenile board of a county that is equal to the amount other judges serving on the juvenile board receive.

Sec. 24.026. APPOINTMENT OF INITIAL JUDGE. On the creation of a new judicial district, the initial vacancy in the office of district judge is filled in accordance with Section 28, Article V, Texas Constitution.

Sec. 24.027. GRAND AND PETIT JURORS. All grand and petit jurors selected in a county before a new district court is created or the composition of an existing district court is modified by an amendment to this chapter are considered to be selected for the new or modified district court, as applicable.

Sec. 24.028. CASES TRANSFERRED. If by an amendment to this chapter a county is removed from the composition of an existing judicial district and added to another existing or new judicial district, all cases and proceedings from that county that are pending in the district court of the judicial district from which the county was removed are transferred to the district court of the judicial district to which the county is added. The judge of each affected district court shall sign the proper orders in connection with the transfer.

Sec. 24.029. PROCESSES, WRITS, AND OTHER OBLIGATIONS REMAIN VALID. (a) If by an amendment to this chapter a county is removed from the composition of an existing judicial district and added to another existing or new judicial district, or if an amendment to this chapter changes the time or place at which the terms of court are held, all processes, writs, bonds, recognizances, and other obligations issued from and made returnable to that court before the effective date of the transfer or other change are returnable as provided by this subsection. An obligation issued from the affected court is returnable to another district court in the county on the date that court directs, but may not be made returnable on a date that is earlier than the date on which the obligation was originally returnable. The obligations are legal and valid as if the obligations had been made returnable to the issuing court.

(b) The obligees in all appearance bonds and recognizances taken in and for a district court of a county before the effective date of an amendment to this chapter, and all witnesses summoned to appear before that district court under laws existing before the effective date of an amendment to this chapter, are required to appear at another district court in the county on the date that court directs, but may not be required to appear on a date that is earlier than the date on which the obligees or witnesses were originally required to appear.

Sec. 24.030. LOCATION OF COURT. (a) A district court shall sit in the county seat for a jury trial in a civil case. The commissioners court of the county may authorize a district court to sit in any municipality within the county to hear and

determine nonjury trials in civil cases and to hear and determine motions, arguments, and other matters not heard before a jury in a civil case that is within the court's jurisdiction.

(b) The district clerk or the clerk's deputy serves as clerk of the court when a court sits in a municipality other than the municipality that is the county seat and may transfer:

(1) all necessary books, minutes, records, and papers to that municipality while the court is in session there; and

(2) the books, minutes, records, and papers back to the clerk's office in the county seat at the end of each session.

(c) If the commissioners court authorizes a district court to sit in a municipality other than the municipality that is the county seat, the commissioners court shall provide suitable facilities for the court in that municipality.

Sec. 24.031. COURT OFFICERS. The prosecuting attorney, the sheriff, the district clerk, the bailiffs, and the other officers serving the other district courts of the county shall serve in their respective capacities for the courts listed in this chapter.

SECTION 2.05. Section 25.0362(g), Government Code, is amended to read as follows:

(g) In matters of concurrent jurisdiction, a judge of a county court at law and a judge of a district court in Cass County may transfer cases between the courts in the same manner that judges of district courts may transfer cases under Section 24.003 [~~24.303~~].

SECTION 2.06. Section 25.0732(w), Government Code, is amended to read as follows:

(w) In matters of concurrent jurisdiction, a judge of a statutory county court in El Paso County and a judge of a district court or another statutory county court in El Paso County may transfer cases between the courts in the same manner judges of district courts transfer cases under Section 24.003 [~~24.303~~].

SECTION 2.07. Section 25.1672(c), Government Code, is amended to read as follows:

(c) In matters of concurrent jurisdiction, judges of the county courts at law and district courts in the county may exchange benches and courtrooms and may transfer cases between their dockets in the same manner that district court judges exchange benches and transfer cases under Section 24.003 [~~24.303~~].

SECTION 2.08. Section 25.1862(v), Government Code, is amended to read as follows:

(v) In matters of concurrent jurisdiction, a judge of a county court at law and a judge of a district court or another county court at law may transfer cases between the courts in the same manner judges of district courts transfer cases under Section 24.003 [~~24.303~~].

SECTION 2.09. Section 25.1932(k), Government Code, is amended to read as follows:

(k) Notwithstanding Section 74.121(b)(1), in matters of concurrent jurisdiction, the judge of a county court at law and the judges of the district courts in the county may exchange benches and courtrooms and may transfer cases between their dockets in the same manner that judges of district courts exchange benches and transfer cases under Section 24.003 [~~24.303~~].

SECTION 2.10. Section 74.121(b)(2), Government Code, is amended to read as follows:

(2) Notwithstanding Subdivision (1), in matters of concurrent jurisdiction, a judge of a statutory county court in Midland County and a judge of a district court in Midland County may exchange benches and courtrooms with each other and may transfer cases between their dockets in the same manner that judges of district courts exchange benches and transfer cases under Section 24.003 [~~24.303~~].

SECTION 2.11. Section 659.012(d), Government Code, is amended to read as follows:

(d) Notwithstanding any other provision in this section or other law, in [H] a county with more than five district courts, a district judge who serves as a local administrative district judge under Section 74.091 is entitled to an annual salary from the state that is \$5,000 more than the salary from the state to which the judge is otherwise entitled [~~under Subsection (a)(1)~~].

SECTION 2.12. The following provisions of the Government Code are repealed:

- (1) Section 24.013;
- (2) Section 24.302;
- (3) Section 24.303;
- (4) Section 24.304;
- (5) Section 24.305;
- (6) Section 24.307;
- (7) Section 24.308;
- (8) Section 24.309;
- (9) Section 24.311;
- (10) Section 24.312;
- (11) Section 24.313;
- (12) Section 24.314;
- (13) Section 24.525(b);
- (14) Section 24.526(b);
- (15) Section 24.527(b);
- (16) Sections 24.528(b) and (c); and
- (17) Sections 24.529(b) and (c).

ARTICLE 3. STATUTORY COUNTY COURTS

SECTION 3.01. Section 25.0002, Government Code, is amended to read as follows:

Sec. 25.0002. DEFINITIONS [~~DEFINITION~~]. In this chapter:

(1) "Criminal law cases and proceedings" includes cases and proceedings for allegations of conduct punishable in part by confinement in the county jail not to exceed one year.

(2) "Family[, ~~"family~~] law cases and proceedings" includes cases and proceedings under Titles 1, 2, 4, and 5, Family Code [~~involving adoptions, birth records, or removal of disability of minority or coverture; change of names of persons; child welfare, custody, support and reciprocal support, dependency, neglect, or delinquency; paternity; termination of parental rights; divorce and marriage annulment, including the adjustment of property rights, custody and support of minor children involved therein, temporary support pending final hearing, and every other matter incident to divorce or annulment proceedings; independent actions involving child support, custody of minors, and wife or child desertion; and independent actions involving controversies between parent and child, between parents, and between spouses~~].

(3) "Juvenile law cases and proceedings" includes all cases and proceedings brought under Title 3, Family Code.

(4) "Mental health cases and proceedings" includes all cases and proceedings brought under Chapter 462, Health and Safety Code, or Subtitle C or D, Title 7, Health and Safety Code.

SECTION 3.02. Section 25.0003(c), Government Code, is amended to read as follows:

(c) In addition to other jurisdiction provided by law, a statutory county court exercising civil jurisdiction concurrent with the constitutional jurisdiction of the county court has concurrent jurisdiction with the district court in:

(1) civil cases in which the matter in controversy exceeds \$500 but does not exceed \$200,000 [~~\$100,000~~], excluding interest, statutory or punitive damages and penalties, and attorney's fees and costs, as alleged on the face of the petition; and

(2) appeals of final rulings and decisions of the division of workers' compensation of the Texas Department of Insurance regarding workers' compensation claims, regardless of the amount in controversy.

SECTION 3.03. Section 25.0004, Government Code, is amended by adding Subsections (f) and (g) to read as follows:

(f) The judge of a statutory county court does not have general supervisory control or appellate review of the commissioners court.

(g) A judge of a statutory county court has the judicial immunity of a district judge.

SECTION 3.04. Section 25.0007, Government Code, is amended to read as follows:

Sec. 25.0007. JURIES; PRACTICE AND PROCEDURE. (a) The drawing of jury panels, selection of jurors, and practice in the statutory county courts must conform to that prescribed by law for county courts.

(b) Practice in a statutory county court is that prescribed by law for county courts, except that practice, procedure, rules of evidence, issuance of process and writs, and all other matters pertaining to the conduct of trials and hearings in the statutory county courts, other than the number of jurors, that involve those matters of concurrent jurisdiction with district courts are governed by the laws and rules pertaining to district courts. This section does not affect local rules of administration adopted under Section 74.093.



SECTION 3.05. Section 25.0010, Government Code, is amended by amending Subsection (b) and adding Subsections (c), (d), (e), and (f) to read as follows:

(b) The county attorney or criminal district attorney [~~and sheriff~~] shall serve each statutory county court as required by law.

(c) A county sheriff shall in person or by deputy attend a statutory county court as required by the court.

(d) The county clerk shall serve as clerk of each statutory county court. The court officials shall perform the duties and responsibilities of their offices and are entitled to the compensation, fees, and allowances prescribed by law for those offices.

(e) The judge of a statutory county court may appoint the personnel necessary for the operation of the court, including a court coordinator or administrative assistant, if the commissioners court has approved the creation of the position.

(f) The commissioners court may authorize the employment of as many additional assistant district attorneys, assistant county attorneys, deputy sheriffs, and clerks as are necessary for a statutory county court.

SECTION 3.06. (a) Section 25.0014, Government Code, is amended to read as follows:

Sec. 25.0014. QUALIFICATIONS OF JUDGE. The judge of a statutory county court must:

(1) be at least 25 years of age;

(2) be a United States citizen and have resided in the county for at least two years before election or appointment; and

(3) be a licensed attorney in this state who has practiced law or served as a judge of a court in this state, or both combined, for the four years preceding election or appointment, unless otherwise provided for by law.

(b) The change in law made by this Act to Section 25.0014, Government Code, does not apply to a person serving as a statutory county court judge immediately before the effective date of this Act who met the qualifications of Section 25.0014, Government Code, as it existed on that date, and the former law is continued in effect for determining that person's qualifications to serve as a statutory county court judge.

SECTION 3.07. Subchapter A, Chapter 25, Government Code, is amended by adding Sections 25.0016 and 25.00161 to read as follows:

Sec. 25.0016. TERMS OF COURT. The commissioners court, by order, shall set at least two terms a year for the statutory county court.

Sec. 25.00161. PRIVATE PRACTICE OF LAW. Except as otherwise provided by law, the regular judge of a statutory county court shall diligently discharge the duties of the office on a full-time basis and may not engage in the private practice of law.

SECTION 3.08. Section 25.0022(t), Government Code, is amended to read as follows:

(t) To be eligible for assignment under this section, a former or retired judge of a statutory probate court must:

(1) not have been removed from office;

(2) certify under oath to the presiding judge, on a form prescribed by the state board of regional judges, that:

(A) the judge has not been publicly reprimanded or censured by the State Commission on Judicial Conduct; and

(B) the judge:

(i) did not resign or retire from office after the State Commission on Judicial Conduct notified the judge of the commencement of a full investigation into an allegation or appearance of misconduct or disability of the judge as provided in Section 33.022 and before the final disposition of that investigation; or

(ii) if the judge did resign from office under circumstances described by Subparagraph (i), was not publicly reprimanded or censured as a result of the investigation;

(3) annually demonstrate that the judge has completed in the past state fiscal year the educational requirements for an active statutory probate court judge;

(4) have served as an active judge for at least 72 [96] months in a district, statutory probate, statutory county, or appellate court; and

(5) have developed substantial experience in the judge's area of specialty.

SECTION 3.09. Section 25.00231, Government Code, is amended by amending Subsection (c) and adding Subsection (e) to read as follows:

(c) In lieu of the bond required by Subsection (b), a county may elect to obtain insurance or to self-insure in the amount required by Subsection (b) against losses caused by the statutory probate court judge's gross negligence in performing the duties of office.

(e) This section does not apply to an assigned or visiting judge sitting by assignment in a statutory probate court.

SECTION 3.10. (a) Sections 25.00255(g), (g-1), (i), (i-1), (i-2), (i-3), (i-5), (k), (l), and (m), Government Code, are amended to read as follows:

(g) A judge who recuses himself or herself:

(1) shall enter an order of recusal and:

(A) if the judge serves a statutory probate court located in a county with only one statutory probate court, request that the presiding judge of the statutory probate courts [~~administrative judicial district~~] assign a judge under Section 25.002201 to hear the case; or

(B) subject to Subsection (l), if the judge serves a statutory probate court located in a county with more than one statutory probate court, request that the clerk who serves the statutory probate courts in that county randomly reassign the case to a judge of one of the other statutory probate courts located in the county; and

(2) may not take other action in the case except for good cause stated in the order in which the action is taken.

(g-1) A judge who disqualifies himself or herself:

(1) shall enter an order of disqualification and request that the presiding judge of the statutory probate courts [~~administrative judicial district~~] assign a judge under Section 25.002201 to hear the case; and

(2) may not take other action in the case.

(i) After receiving a request under Subsection (h), the presiding judge of the statutory probate courts, subject to and except as provided by this section, shall [immediately forward the request to the presiding judge of the administrative judicial district and request that the presiding judge of the administrative judicial district]

assign a judge to hear the motion for recusal or disqualification. The presiding judge may not assign a judge of a statutory probate court to hear a motion under this subsection if the judge of the statutory probate court serves in the same county as the statutory probate court judge who is the subject of the motion. If the judge who is the subject of a motion for recusal or disqualification serves as the presiding judge of the statutory probate courts, the chief justice of the supreme court shall assign a judge to hear the motion [~~Not later than the 15th day after the date the presiding judge of the administrative judicial district receives the request, the presiding judge shall:~~

~~(1) set a hearing before himself or herself or a judge designated by the presiding judge, except that the presiding judge may not designate a judge of a statutory probate court in the same county as the statutory probate court served by the judge who is the subject of the motion;~~

~~(2) cause notice of the hearing to be given to all parties or their counsel to the case; and~~

~~(3) make other orders, including orders for interim or ancillary relief, in the pending case].~~

(i-1) The judge assigned to hear a motion for recusal or disqualification under Subsection (i) shall:

(1) set a hearing;

(2) cause notice of the hearing to be given to all parties or their counsel to the case; and

(3) make other orders, including orders for interim or ancillary relief, in the pending case [~~If the presiding judge of the administrative judicial district does not assign a judge to hear a motion for recusal or disqualification within the time prescribed by Subsection (i), the presiding judge of the statutory probate courts may assign a judge to hear the motion and take other action under that subsection].~~

(i-2) A judge who hears a motion for recusal or disqualification under Subsection [~~(i) or~~] (i-1) may also hear any amended or supplemented motion for recusal or disqualification filed in the case.

(i-3) If a motion for recusal or disqualification is granted after a hearing conducted as provided by Subsection [~~(i) or~~] (i-1), the judge who heard the motion shall:

(1) if the judge subject to recusal or disqualification serves a statutory probate court located in a county with only one statutory probate court, enter an order of recusal or disqualification, as appropriate, and request that the presiding judge of the statutory probate courts [~~administrative judicial district~~] assign a judge under Section 25.002201 to hear the case; or

(2) subject to Subsection (1), if the judge subject to recusal or disqualification serves a statutory probate court located in a county with more than one statutory probate court, enter an order of recusal or disqualification, as appropriate, and request that the clerk who serves the statutory probate courts in that county randomly reassign the case to a judge of one of the other statutory probate courts located in the county.

(i-5) A judge assigned to hear a motion for recusal or disqualification under Subsection (i) is entitled to receive the same salary, compensation, and expenses, and to be paid in the same manner and from the same fund, as a judge otherwise assigned

under Section 25.0022[~~except that a judge assigned under Subsection (i) shall provide the information required by Section 25.0022(l) to the presiding judge of the administrative judicial district, who shall immediately forward the information to the presiding judge of the statutory probate courts~~].

(k) A party may file a motion for sanctions alleging that another party in the case filed a motion for the recusal or disqualification of a judge solely to delay the case and without sufficient cause. The presiding judge of the statutory probate courts [~~administrative judicial district~~] or the judge assigned to hear the motion for recusal may approve a motion for sanctions authorized by Rule 215.2(b), Texas Rules of Civil Procedure.

(l) If a clerk of a statutory probate court is unable to reassign a case as requested under Subsection (g)(1)(B) or (i-3)(2) because the other statutory probate court judges in the county have been recused or disqualified or are otherwise unavailable to hear the case, the clerk shall immediately notify the presiding judge of the statutory probate courts [~~administrative judicial district~~] and request that the presiding judge of the statutory probate courts [~~administrative judicial district~~] assign a judge under Section 25.002201 to hear the case.

(m) The clerk of a statutory probate court shall immediately notify and provide to the presiding judge of the statutory probate courts a copy of an order of recusal or disqualification issued with respect to the judge of a ~~the~~ statutory probate court.

(b) Sections 25.002201(a) and (b), Government Code, are amended to read as follows:

(a) Not later than the 15th day after the date an order of recusal or disqualification of a statutory probate court judge is issued in a case, the presiding judge of the statutory probate courts, except as provided by Subsection (b), [~~administrative judicial district~~] shall assign a statutory probate court judge or a former or retired judge of a statutory probate court to hear the case if:

(1) the judge of the statutory probate court recused himself or herself under Section 25.00255(g)(1)(A);

(2) the judge of the statutory probate court disqualified himself or herself under Section 25.00255(g-1);

(3) the order was issued under Section 25.00255(i-3)(1); or

(4) the presiding judge of the statutory probate courts [~~administrative judicial district~~] receives notice and a request for assignment from the clerk of the statutory probate court under Section 25.00255(l).

(b) If the [~~presiding~~] judge who is the subject of an order of recusal or disqualification is [~~of an administrative judicial district does not assign a judge under Subsection (a) within the time prescribed by that subsection,~~] the presiding judge of the statutory probate courts, the chief justice of the supreme court shall [~~may~~] assign a statutory probate court judge or a former or retired judge of a statutory probate court to hear the case [~~instead of the presiding judge of the administrative judicial district making the assignment under that subsection~~].

(c) Section 25.00255(i-4), Government Code, is repealed.

(d) The changes in law made by this section apply only to a motion for recusal or disqualification of a judge that is filed on or after the effective date of this Act. A motion for recusal or disqualification of a judge filed before the effective date of this Act is governed by the law in effect on the date the motion was filed, and the former law is continued in effect for that purpose.

SECTION 3.11. (a) Subchapter B, Chapter 25, Government Code, is amended by adding Sections 25.0033, 25.0034, and 25.0035 to read as follows:

Sec. 25.0033. QUALIFICATIONS OF JUDGE. The judge of a statutory probate court must:

(1) be at least 25 years of age;

(2) be a United States citizen and have resided in the county for at least two years before election or appointment; and

(3) be a licensed attorney in this state who has practiced law or served as a judge of a court in this state, or both combined, for the five years preceding election or appointment, unless otherwise provided for by law.

Sec. 25.0034. PRIVATE PRACTICE OF LAW. The regular judge of a statutory probate court shall diligently discharge the duties of the office on a full-time basis and may not engage in the private practice of law.

Sec. 25.0035. TERMS OF COURT. The commissioners court, by order, shall set at least two terms a year for the statutory probate court.

(b) Section 25.0033, Government Code, as added by this Act, does not apply to a person serving as a statutory probate court judge immediately before the effective date of this Act. The qualifications of a person serving as a statutory probate court judge on the effective date of this Act are governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 3.12. Sections 25.0042(g) and (i), Government Code, are amended to read as follows:

(g) The district clerk serves as clerk of a county court at law in all cases arising under the Family Code and Section 23.001 and shall establish a separate docket for a county court at law; the county clerk serves as clerk of the court in all other cases. ~~[The commissioners court may employ as many deputy sheriffs and bailiffs as are necessary to serve the court.]~~

~~(i) [Practice in a county court at law is that prescribed by law for county courts, except that practice and procedure, rules of evidence, issuance of process and writs, and all other matters pertaining to the conduct of trials and hearings in a county court at law involving cases under the Family Code and Section 23.001 are governed by this section and the laws and rules pertaining to district courts and county courts.]~~ If a case under the Family Code or Section 23.001 is tried before a jury, the jury shall be composed of 12 members.

SECTION 3.13. Section 25.0102(h), Government Code, is amended to read as follows:

(h) ~~[Practice in a county court at law is that prescribed by law for county courts, except that practice and procedure, rules of evidence, issuance of process and writs, and all other matters pertaining to the conduct of trials and hearings in the county court at law involving family law cases and proceedings shall be governed by this~~

~~section and the laws and rules pertaining to district courts.]~~ If a family law case or proceeding is tried before a jury, the jury shall be composed of 12 members. In[; in] all other cases the jury shall be composed of six members.

SECTION 3.14. Sections 25.0132(e) and (f), Government Code, are amended to read as follows:

(e) The district clerk serves as clerk of a county court at law in family law cases and proceedings, and the county clerk serves as clerk of the court in all other cases. The district clerk shall establish a separate docket for a county court at law. ~~[The commissioners court may employ as many deputy sheriffs and bailiffs as are necessary to serve a county court at law.]~~

~~(f) [Practice in a county court at law is that prescribed by law for county courts, except that practice and procedure, rules of evidence, issuance of process and writs, and all other matters pertaining to the conduct of trials and hearings in a county court at law involving family law cases and proceedings is that prescribed by law for district courts and county courts.]~~ If a family law case or proceeding is tried before a jury, the jury shall be composed of 12 members.

SECTION 3.15. Section 25.0202(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Bosque County has concurrent jurisdiction with the district court in:

- (1) family law cases and proceedings;
- (2) civil cases in which the matter in controversy exceeds \$500 but does not exceed \$200,000 ~~[\$100,000]~~, excluding interest, court costs, and attorney's fees; and
- (3) contested probate matters ~~[under Section 5(b), Texas Probate Code]~~.

SECTION 3.16. Section 25.0212(b), Government Code, is amended to read as follows:

(b) A county court at law does not have ~~[general supervisory control or appellate review of the commissioners court or]~~ jurisdiction of:

- (1) felony criminal matters;
- (2) suits on behalf of the state to recover penalties or escheated property;
- (3) misdemeanors involving official misconduct;
- (4) contested elections; or
- (5) civil cases in which the matter in controversy exceeds \$200,000 ~~[\$100,000]~~, excluding interest, statutory or punitive damages and penalties, and attorney's fees and costs, as alleged on the face of the petition.

SECTION 3.17. Sections 25.0222(a) and (k), Government Code, are amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a statutory county court in Brazoria County has concurrent jurisdiction with the district court in:

- (1) civil cases in which the matter in controversy exceeds \$500 but does not exceed \$200,000 ~~[\$100,000]~~, excluding interest, statutory damages and penalties, and attorney's fees and costs, as alleged on the face of the petition;

(2) appeals of final rulings and decisions of the division of workers' compensation of the Texas Department of Insurance regarding workers' compensation claims, regardless of the amount in controversy; and

(3) family law cases and proceedings and juvenile jurisdiction under Section 23.001.

(k) The district clerk serves as clerk of the statutory county courts in cases instituted in the district courts in which the district courts and statutory county courts have concurrent jurisdiction, and the county clerk serves as clerk for all other cases. [~~The commissioners court may employ as many additional assistant criminal district attorneys, deputy sheriffs, and deputy clerks as are necessary to serve the statutory county courts.~~]

SECTION 3.18. Sections 25.0302(e) and (f), Government Code, are amended to read as follows:

(e) The district clerk serves as clerk of a county court at law in family law cases and proceedings, and the county clerk serves as clerk of the court in all other cases and proceedings. The district clerk shall establish a separate docket for a county court at law. [~~The commissioners court may employ the assistant district attorneys, deputy sheriffs, and bailiffs necessary to serve each county court at law.~~]

(f) [~~Practice in a county court at law is that prescribed by law for county courts, except that practice and procedure, rules of evidence, issuance of process and writs, and all other matters pertaining to the conduct of trials and hearings in a county court at law involving family law cases and proceedings shall be governed by this section and the laws and rules pertaining to district courts.~~] If a family law case or proceeding is tried before a jury, the jury shall be composed of 12 members.

SECTION 3.19. Section 25.0312(b), Government Code, is amended to read as follows:

(b) A county court at law does not have [~~general supervisory control or appellate review of the commissioners court or~~] jurisdiction of:

- (1) felony cases other than writs of habeas corpus;
- (2) misdemeanors involving official misconduct;
- (3) contested elections; or
- (4) appeals from county court.

SECTION 3.20. Section 25.0362(b), Government Code, is amended to read as follows:

(b) A county court at law does not have [~~general supervisory control or appellate review of the commissioners court or~~] jurisdiction of:

- (1) misdemeanors involving official misconduct;
- (2) suits on behalf of the state to recover penalties or escheated property;
- (3) contested elections;
- (4) suits in which the county is a party; or
- (5) felony cases involving capital murder.

SECTION 3.21. Section 25.0482(f), Government Code, is amended to read as follows:

(f) The district clerk serves as clerk of a county court at law for family law cases and proceedings, and the county clerk serves as clerk for all other cases and proceedings. ~~[The district clerk shall establish a separate docket for a county court at law. The commissioners court may employ as many assistant county attorneys, deputy sheriffs, and bailiffs as are necessary to serve the county courts at law.]~~

SECTION 3.22. Section 25.0632(g), Government Code, is amended to read as follows:

(g) ~~[Jurors regularly impaneled for the week by the district courts of Denton County must include sufficient numbers to serve in the statutory county courts and statutory probate courts as well as the district courts. The jurors shall be made available by the district judge as necessary.]~~ The jury in a statutory county court or statutory probate court in all civil or criminal matters is composed of 12 members, except that in misdemeanor criminal cases and any other case in which the court has jurisdiction that under general law would be concurrent with the county court, the jury is composed of six members.

SECTION 3.23. Section 25.0732(r), Government Code, is amended to read as follows:

(r) Section ~~[Sections]~~ 25.0006(b) does ~~[and 25.0007 do]~~ not apply to County Court at Law No. 2, 3, 4, 5, 6, or 7 of El Paso County, Texas.

SECTION 3.24. Section 25.0733(a), Government Code, is amended to read as follows:

(a) Sections 25.0732(q) and [25.0732(d), (h), (i), (j), (m), (n), (o), (p), (q), (r) [and (v)]], relating to county courts at law in El Paso County, apply to a statutory probate court in El Paso County.

SECTION 3.25. Sections 25.0862(i) and (l), Government Code, are amended to read as follows:

(i) ~~[The clerk of the statutory county courts and statutory probate court shall keep a separate docket for each court.]~~ The clerk shall tax the official court reporter's fees as costs in civil actions in the same manner as the fee is taxed in civil cases in the district courts. ~~[The district clerk serves as clerk of the county courts in a cause of action arising under the Family Code and an appeal of a final ruling or decision of the division of workers' compensation of the Texas Department of Insurance regarding workers' compensation claims, and the county clerk serves as clerk of the court in all other cases.]~~

(l) Each reporter may be made available when not engaged in proceedings in their court to report proceedings in all other courts. ~~[Practice, appeals, and writs of error in a statutory county court are as prescribed by law for county courts and county courts at law.]~~ Appeals and writs of error may be taken from judgments and orders of the County Courts Nos. 1, 2, and 3 of Galveston County and the judges, in civil and criminal cases, in the manner prescribed by law for appeals and writs of error. Appeals from interlocutory orders of the County Courts Nos. 1, 2, and 3 appointing a receiver or overruling a motion to vacate or appoint a receiver may be taken and are governed by the laws relating to appeals from similar orders of district courts.

SECTION 3.26. Section 25.0962(f), Government Code, is amended to read as follows:



(f) ~~[Practice in a county court at law is that prescribed by law for county courts, except that practice and procedure, rules of evidence, issuance of process and writs, and all other matters pertaining to the conduct of trials and hearings in a county court at law involving cases in the court's concurrent jurisdiction with the district court shall be governed by this section and the laws and rules pertaining to district courts as well as county courts.]~~ If a case in the court's concurrent jurisdiction with the district court is tried before a jury, the jury shall be composed of 12 members.

SECTION 3.27. Section 25.1033(a), Government Code, is amended to read as follows:

(a) A county criminal court at law in Harris County has the criminal jurisdiction provided by law for county courts, concurrent jurisdiction with civil statutory county courts for Harris County to hear appeals of the suspension of a driver's license and original proceedings regarding occupational driver's licenses, and appellate jurisdiction in appeals of criminal cases from justice courts and municipal courts in the county.

SECTION 3.28. Section 25.1042(g), Government Code, is amended to read as follows:

(g) The criminal district attorney is entitled to the same fees prescribed by law for prosecutions in the county court. ~~[The commissioners court may employ as many additional deputy sheriffs and clerks as are necessary to serve a county court at law.]~~

SECTION 3.29. Sections 25.1072(e) and (f), Government Code, are amended to read as follows:

(e) The county clerk serves as clerk of a county court at law, except that the district clerk serves as clerk of the court in family law cases and proceedings. The district clerk shall establish a separate docket for a county court at law. ~~[The commissioners court may employ as many assistant district attorneys, deputy sheriffs, and bailiffs as are necessary to serve the court.]~~

(f) ~~[Practice in a county court at law is that prescribed by law for county courts, except that practice and procedure, rules of evidence, issuance of process and writs, and other matters pertaining to the conduct of trials and hearings in a county court at law involving family law cases and proceedings are governed by this section and the laws and rules pertaining to district courts, as well as county courts.]~~ If a family law case or proceeding is tried before a jury, the jury shall be composed of 12 members.

SECTION 3.30. Section 25.1142(b), Government Code, is amended to read as follows:

(b) A county court at law does not have ~~[general supervisory control or appellate review of the commissioners court or]~~ jurisdiction of:

- (1) civil cases in which the amount in controversy exceeds \$200,000 ~~[\$100,000]~~, excluding interest;
- (2) felony jury trials;
- (3) suits on behalf of the state to recover penalties or escheated property;
- (4) misdemeanors involving official misconduct; or
- (5) contested elections.

SECTION 3.31. Section 25.1182(b), Government Code, is amended to read as follows:

(b) A county court at law's civil jurisdiction concurrent with the district court in civil cases is limited to cases in which the matter in controversy does not exceed \$200,000. A county court at law does not have [~~general supervisory control or appellate review of the commissioners court or~~] jurisdiction of:

- (1) suits on behalf of this state to recover penalties or escheated property;
- (2) felony cases involving capital murder;
- (3) misdemeanors involving official misconduct; or
- (4) contested elections.

SECTION 3.32. Section 25.1312(b), Government Code, is amended to read as follows:

(b) A statutory county court in Kaufman County does not have [~~general supervisory control or appellate review of the commissioners court or~~] jurisdiction of:

- (1) felony cases involving capital murder;
- (2) suits on behalf of the state to recover penalties or escheated property;
- (3) misdemeanors involving official misconduct; or
- (4) contested elections.

SECTION 3.33. Section 25.1542(m), Government Code, is amended to read as follows:

(m) [~~Practice and procedure and rules of evidence governing trials in and appeals from a county court apply to a county court at law, except that practice and procedure, rules of evidence, issuance of process and writs, and all other matters pertaining to the conduct of trials and hearings involving family law cases and proceedings shall be governed by this section and the laws and rules pertaining to district courts as well as county courts.~~] In family law cases, juries shall be composed of 12 members.

SECTION 3.34. Section 25.1652(g), Government Code, is amended to read as follows:

(g) [~~Practice in a county court at law is that prescribed by law for county courts, except that practice and procedure, rules of evidence, issuance of process and writs, and all other matters pertaining to the conduct of trials and hearings involving family law matters and proceedings shall be governed by this section and the laws and rules pertaining to district courts.~~] If a family law case is tried before a jury, the jury shall be composed of 12 members.

SECTION 3.35. Section 25.1762(i), Government Code, is amended to read as follows:

(i) [~~The laws governing the drawing, selection, service, and pay of jurors for county courts apply to a county court at law. Jurors regularly impaneled for a week by a district court may, at the request of the judge of a county court at law, be made available by the district judge in the numbers requested and shall serve for the week in the county court at law.~~] In matters of concurrent jurisdiction with the district court, if a party to a suit files a written request for a 12-member jury with the clerk of the county court at law at a reasonable time that is not later than 30 days before the date the suit is set for trial, the jury shall be composed of 12 members.

SECTION 3.36. Section 25.1772(b), Government Code, is amended to read as follows:

(b) A county court at law does not have [~~general supervisory control or appellate review of the commissioners court or~~] jurisdiction of:

- (1) suits on behalf of this state to recover penalties or escheated property;
- (2) felony cases involving capital murder;
- (3) misdemeanors involving official misconduct; or
- (4) contested elections.

SECTION 3.37. Section 25.1892(e), Government Code, is amended to read as follows:

(e) [~~The county attorney or district attorney serves a county court at law as required by the judge.~~] The district clerk serves as clerk of a county court at law in cases enumerated in Subsection (a)(2), and the county clerk serves as clerk in all other cases. The district clerk shall establish a separate docket for a county court at law. [~~The commissioners court may employ as many additional assistant county attorneys, deputy sheriffs, and clerks as are necessary to serve a county court at law.~~]

SECTION 3.38. Section 25.1932(i), Government Code, is amended to read as follows:

(i) [~~Practice in a county court at law is that prescribed by law for county courts, except that practice and procedure, rules of evidence, issuance of process and writs, and all other matters pertaining to the conduct of trials and hearings in a county court at law involving cases in the court's concurrent jurisdiction with the district court shall be governed by this section and the laws and rules pertaining to district courts as well as county courts.~~] If a case in the court's concurrent jurisdiction with the district court is tried before a jury, the jury shall be composed of 12 members.

SECTION 3.39. Section 25.2012(b), Government Code, is amended to read as follows:

(b) A county court at law does not have [~~general supervisory control or appellate review of the commissioners court or~~] jurisdiction of:

- (1) felony cases involving capital murder;
- (2) suits on behalf of the state to recover penalties or escheated property;
- (3) misdemeanors involving official misconduct; or
- (4) contested elections.

SECTION 3.40. Section 25.2142(n), Government Code, is amended to read as follows:

(n) [~~A special judge of a county court at law is entitled to receive for services actually performed the same amount of compensation as the regular judge.~~] A former judge sitting as a visiting judge of a county court at law is entitled to receive for services performed the same amount of compensation that the regular judge receives, less an amount equal to the pro rata annuity received from any state, district, or county retirement fund. An active judge sitting as a visiting judge of a county court at law is entitled to receive for services performed the same amount of compensation that the regular judge receives, less an amount equal to the pro rata compensation received from state or county funds as salary, including supplements.

SECTION 3.41. (a) Section 25.2222(b), Government Code, as amended by Chapter 22 (S.B. 124), Acts of the 72nd Legislature, Regular Session, 1991, and Chapter 265 (H.B. 7), Acts of the 79th Legislature, Regular Session, 2005, is reenacted and amended to read as follows:

(b) A county court at law has concurrent jurisdiction with the district court in:

- (1) civil cases in which the matter in controversy exceeds \$500 and does not exceed \$200,000 [~~\$100,000~~], excluding mandatory damages and penalties, attorney's fees, interest, and costs;
- (2) nonjury family law cases and proceedings;
- (3) final rulings and decisions of the division of workers' compensation of the Texas Department of Insurance regarding workers' compensation claims, regardless of the amount in controversy;
- (4) eminent domain proceedings, both statutory and inverse, regardless of the amount in controversy;
- (5) suits to decide the issue of title to real or personal property;
- (6) suits to recover damages for slander or defamation of character;
- (7) suits for the enforcement of a lien on real property;
- (8) suits for the forfeiture of a corporate charter;
- (9) suits for the trial of the right to property valued at \$200 or more that has been levied on under a writ of execution, sequestration, or attachment; and
- (10) suits for the recovery of real property.

(b) Section 25.2222(b), Government Code, as amended by Chapter 746 (H.B. 66), Acts of the 72nd Legislature, Regular Session, 1991, is repealed as duplicative of Section 25.2222(b), Government Code, as amended by Subsection (a) of this section.

SECTION 3.42. Section 25.2232(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Taylor County has:

- (1) concurrent jurisdiction with the county court in the trial of cases involving insanity and approval of applications for admission to state hospitals and special schools if admission is by application; and
- (2) concurrent jurisdiction with the district court in civil cases in which the matter in controversy exceeds \$500 but does not exceed \$200,000 [~~\$100,000~~], excluding interest.

SECTION 3.43. Section 25.2352(i), Government Code, is amended to read as follows:

(i) ~~[Practice in a county court at law is that prescribed by law for county courts, except that practice and procedure, rules of evidence, issuance of process and writs, and all other matters pertaining to the conduct of trials and hearings involving family law cases and proceedings shall be governed by this section and the laws and rules pertaining to district courts.]~~ If a family law case is tried before a jury, the jury shall be composed of 12 members.

SECTION 3.44. Section 25.2382(i), Government Code, is amended to read as follows:

(i) ~~[Practice in a county court at law is that prescribed by law for county courts, except that practice and procedure, rules of evidence, issuance of process and writs, and all other matters pertaining to the conduct of trials and hearings in a county court at law involving matters enumerated in Subsection (a)(2)(B) or (C) shall be governed~~

~~by this section and the laws and rules pertaining to district courts.]~~ If a family law case ~~[in Subsection (a)(2)(B) or (C)]~~ is tried before a jury, the jury shall be composed of 12 members.

SECTION 3.45. (a) Section 25.2421(a), Government Code, is amended to read as follows:

- (a) Webb County has the following statutory county courts:
  - (1) the County Court at Law No. 1 of Webb County; ~~and~~
  - (2) the County Court at Law No. 2 of Webb County; and
  - (3) the County Court at Law No. 3 of Webb County.

(b) ~~Notwithstanding Section 25.2421(a), Government Code, as amended by this Act, the County Court at Law No. 3 of Webb County is created January 1, 2031, or on an earlier date determined by the Commissioners Court of Webb County by an order entered in its minutes.~~

SECTION 3.46. Sections 25.2422(g) and (h), Government Code, are amended to read as follows:

(g) The district attorney of the 49th Judicial District serves as district attorney of a county court at law, except that the county attorney of Webb County prosecutes all juvenile, child welfare, mental health, and other civil cases in which the state is a party. The district clerk serves as clerk of a county court at law in the cases enumerated in Subsection (a)(2), and the county clerk serves as clerk of a county court at law in all other cases. ~~[The commissioners court may employ as many deputy sheriffs and bailiffs as are necessary to serve the court.]~~

(h) ~~[Practice and procedure, rules of evidence, issuance of process and writs, and all other matters pertaining to the conduct of trials and hearings in a county court at law involving those matters of concurrent jurisdiction enumerated in Subsection (a)(2)(B) or (C) are governed by this section and the laws and rules pertaining to district courts, as well as county courts.]~~ If a family law case ~~[enumerated in Subsection (a)(2)(B) or (C)]~~ is tried before a jury, the jury shall be composed of 12 members.

SECTION 3.47. Sections 25.2452(d) and (k), Government Code, are amended to read as follows:

(d) A county court at law does not have jurisdiction of:

- (1) a case under:
  - (A) the Alcoholic Beverage Code;
  - (B) the Election Code; or
  - (C) the Tax Code;
- (2) a matter over which the district court has exclusive jurisdiction; or
- (3) a civil case, other than a case under the Family Code or the Texas Probate Code, in which the amount in controversy is:

(A) less than the maximum amount in controversy allowed the justice court in Wichita County; or

(B) more than \$200,000 ~~[\$100,000]~~, exclusive of punitive or exemplary damages, penalties, interest, costs, and attorney's fees.

(k) Except as otherwise required by law, if a case is tried before a jury, the jury shall be composed of six members and may render verdicts by a five to one margin in civil cases and a unanimous verdict in criminal cases. ~~[The laws governing the~~

~~drawing, selection, service, and pay of jurors for county courts apply to the county courts at law. Jurors regularly impaneled for a week by a district court may, on request of the county judge exercising the jurisdiction provided by this section or a county court at law judge, be made available and shall serve for the week in the county court or county court at law.]~~

SECTION 3.48. Section 25.2462(h), Government Code, is amended to read as follows:

(h) ~~[The county attorney and the county sheriff shall attend a county court at law as required by the judge.]~~ The district clerk serves as clerk of a county court at law in family law cases and proceedings, and the county clerk serves as clerk of the court in all other cases and proceedings.

SECTION 3.49. Section 25.2482(i), Government Code, is amended to read as follows:

(i) ~~[The county attorney and the county sheriff shall attend a county court at law as required by the judge.]~~ The district clerk serves as clerk of a county court at law in family law cases and proceedings, and the county clerk serves as clerk of the court in all other cases and proceedings.

SECTION 3.50. Section 25.2512(a), Government Code, as amended by Chapters 518 (S.B. 1491) and 746 (H.B. 66), Acts of the 72nd Legislature, Regular Session, 1991, is reenacted and amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Wise County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) eminent domain cases;

(B) civil cases in which the amount in controversy exceeds \$500, but does not exceed \$200,000 ~~[\$100,000]~~, excluding interest and attorney's fees; and

(C) family law cases and proceedings.

SECTION 3.51. The following provisions of the Government Code are repealed:

(1) Sections 25.0042(b), (d), (f), and (j);

(2) Sections 25.0052(b), (f), (g), and (h);

(3) Sections 25.0102(b), (d), (f), and (i);

(4) Sections 25.0132(d), (g), and (h);

(5) Sections 25.0152(c) and (e);

(6) Sections 25.0162(b), (f), (g), (h), and (i);

(7) Sections 25.0172(d), (k), (l), (m), (n), (o), (q), (s), and (t);

(8) Sections 25.0173(c), (d), (h), (i), and (k);

(9) Sections 25.0202(c), (d), and (g);

(10) Sections 25.0212(c), (e), and (g);

(11) Sections 25.0222(d), (e), (i), (j), and (n);

(12) Sections 25.0232(b), (d), (f), (h), and (i);

(13) Sections 25.0272(b), (c), and (e);

(14) Sections 25.0292(b), (c), (g), (h), and (i);

(15) Sections 25.0302(b), (d), and (g);

- (16) Sections 25.0312(c), (e), and (j);
- (17) Sections 25.0332(e), (g), (i), (k), (l), and (m);
- (18) Section 25.0362(c);
- (19) Sections 25.0392(b), (d), (f), (i), (j), and (k);
- (20) Sections 25.0452(b), (c), and (d);
- (21) Sections 25.0453(a), (c), (d), and (e);
- (22) Sections 25.0482(b), (d), (e), (g), and (h);
- (23) Sections 25.0512(a), (b), (d), (g), and (h);
- (24) Sections 25.0522(b), (d), (f), and (g);
- (25) Sections 25.0592(b), (h), (i), (j), and (k);
- (26) Sections 25.0593(d), (f), (g), (h), (i), and (j);
- (27) Sections 25.0594(d), (e), (g), (h), (i), (j), and (k);
- (28) Sections 25.0595(c), (d), (f), and (g);
- (29) Section 25.0596;
- (30) Sections 25.0632(a), (b), and (d);
- (31) Sections 25.0702(b), (g), (h), (j), (k), and (l);
- (32) Sections 25.0722(b), (d), (f), (j), and (k);
- (33) Sections 25.0732(d), (g), (h), (i), (j), (m), (n), (o), (p), (s), and (v);
- (34) Sections 25.0733(c), (d), and (f);
- (35) Section 25.0742(b);
- (36) Sections 25.0812(d), (f), (h), (j), and (l);
- (37) Sections 25.0862(f) and (j);
- (38) Sections 25.0932(e), (f), and (i);
- (39) Sections 25.0942(c), (f), (g), (j), and (k);
- (40) Sections 25.0962(d), (e), and (g);
- (41) Sections 25.1032(d), (e), (g), (h), and (k);
- (42) Sections 25.1033(d), (e), (f), (m), and (o);
- (43) Sections 25.1034(c), (h), (k), and (l);
- (44) Sections 25.1042(b), (f), (h), and (i);
- (45) Sections 25.1072(b), (d), (g), and (h);
- (46) Sections 25.1092(e), (f), (l), and (o);
- (47) Sections 25.1102(d), (e), (h), (i), (j), and (l);
- (48) Section 25.1103;
- (49) Sections 25.1112(b), (c), (f), and (k);
- (50) Sections 25.1132(f), (g), (h), (j), (l), (m), and (p);
- (51) Sections 25.1142(c), (e), and (g);
- (52) Sections 25.1152(b), (e), (f), (h), and (i);
- (53) Sections 25.1182(c), (e), and (h);
- (54) Sections 25.1252(c), (g), and (i);
- (55) Sections 25.1282(b), (d), (f), (h), and (i);
- (56) Sections 25.1312(d), (e), (i), (k), (l), and (n);
- (57) Sections 25.1322(d), (e), (f), (i), and (j);
- (58) Sections 25.1352(d) and (h);
- (59) Sections 25.1392(e), (g), and (i);
- (60) Sections 25.1412(b), (c), (e), (h), (i), and (k);
- (61) Sections 25.1482(d), (g), (h), (l), and (m);

- (62) Sections 25.1542(f), (i), (k), and (n);
- (63) Sections 25.1572(e), (f), and (g);
- (64) Sections 25.1652(d), (f), and (h);
- (65) Sections 25.1672(b) and (f);
- (66) Sections 25.1722(b), (c), and (g);
- (67) Sections 25.1732(d), (e), (f), (h), and (i);
- (68) Sections 25.1762(b), (e), (f), and (h);
- (69) Sections 25.1772(c), (e), and (h);
- (70) Sections 25.1792(e), (f), (h), (i), and (j);
- (71) Sections 25.1802(c), (h), (i), (j), (k), (l), and (q);
- (72) Sections 25.1832(b), (d), and (j);
- (73) Sections 25.1852(e), (f), and (i);
- (74) Sections 25.1862(c), (f), (h), (i), (j), (m), (n), (p), (q), and (u);
- (75) Section 25.1892(d);
- (76) Sections 25.1902(e), (g), (i), (j), and (k);
- (77) Sections 25.1932(b), (c), (f), (h), and (j);
- (78) Sections 25.1972(b), (d), (f), (h), and (j);
- (79) Sections 25.2012(d), (e), (i), (k), (l), and (n);
- (80) Sections 25.2032(c), (e), and (h);
- (81) Sections 25.2072(c), (e), (f), (h), and (i);
- (82) Sections 25.2142(c), (e), (i), (r), (t), and (u);
- (83) Sections 25.2162(f), (h), (j), and (k);
- (84) Sections 25.2222(c), (g), (h), (i), (k), and (n);
- (85) Sections 25.2223(c), (e), (g), and (h);
- (86) Sections 25.2224(b), (c), (f), (g), (i), and (j);
- (87) Sections 25.2232(b), (e), (f), and (g);
- (88) Sections 25.2282(b), (d), (f), (g), (i), and (j);
- (89) Sections 25.2292(b), (e), (i), (k), and (l);
- (90) Sections 25.2293(e), (f), (g), (k), and (l);
- (91) Sections 25.2352(b), (d), (f), (g), and (j);
- (92) Sections 25.2362(c), (e), and (h);
- (93) Sections 25.2372(c), (f), (g), (h), and (i);
- (94) Sections 25.2382(b), (d), (f), and (j);
- (95) Sections 25.2392(b), (d), (f), and (j);
- (96) Sections 25.2412(b), (d), (f), (i), and (k);
- (97) Sections 25.2422(b), (d), (f), (i), and (j);
- (98) Sections 25.2452(f), (h), and (j);
- (99) Sections 25.2462(c), (d), (e), (g), (i), and (j);
- (100) Sections 25.2482(d), (e), (f), (h), (j), and (k); and
- (101) Sections 25.2512(b), (e), (h), and (i).

SECTION 3.52. Section 25.0022(t), Government Code, as amended by this article, applies only to an assignment of a visiting judge under Chapter 25, Government Code, made on or after the effective date of this Act. An assignment made before the effective date of this Act is governed by Section 25.0022(t), Government Code, as that section existed on the date of the assignment, and that law is continued in effect for that purpose.



ARTICLE 4. PROVISIONS RELATING TO JUSTICE AND SMALL CLAIMS  
COURTS

SECTION 4.01. (a) Section 27.005, Government Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) For purposes of removal under Chapter 87, Local Government Code, "incompetency" in the case of a justice of the peace includes the failure of the justice to successfully complete:

(1) within one year after the date the justice is first elected, an 80-hour course in the performance of the justice's duties; and

(2) each following year:

(A) [;] a 20-hour course in the performance of the justice's duties; and

(B) a 15-hour course regarding substantive, procedural, and evidentiary law in civil matters.

(c) The educational requirement in Subsection (a)(2)(B) applies only in a year in which funds are appropriated by the state for the purpose of funding the cost of attending the course.

(b) Subject to Subsection (c) of this section, Section 27.005(a), Government Code, as amended by this section, applies to a justice of the peace serving on or after the effective date of this article, regardless of the date the justice was elected or appointed.

(c) A justice of the peace serving on the effective date of this article must complete the justice's initial 15-hour course in substantive, procedural, and evidentiary law required by Section 27.005(a)(2)(B), Government Code, as added by this section, not later than December 31, 2012.

SECTION 4.02. Subchapter C, Chapter 27, Government Code, is amended by adding Section 27.060 to read as follows:

Sec. 27.060. SMALL CLAIMS. (a) A justice court shall conduct proceedings in a small claims case, as that term is defined by the supreme court, in accordance with rules of civil procedure promulgated by the supreme court to ensure the fair, expeditious, and inexpensive resolution of small claims cases.

(b) Except as provided by Subsection (c), rules of the supreme court must provide that:

(1) if both parties appear, the judge shall proceed to hear the case;

(2) formal pleadings other than the statement are not required;

(3) the judge shall hear the testimony of the parties and the witnesses that the parties produce and shall consider the other evidence offered;

(4) the hearing is informal, with the sole objective being to dispense speedy justice between the parties;

(5) discovery is limited to that considered appropriate and permitted by the judge; and

(6) the judge shall develop the facts of the case, and for that purpose may question a witness or party and may summon any party to appear as a witness as the judge considers necessary to a correct judgment and speedy disposition of the case.

(c) The rules of the supreme court must provide specific procedures for an action by:

(1) an assignee of a claim or other person seeking to bring an action on an assigned claim;

(2) a person primarily engaged in the business of lending money at interest;  
or

(3) a collection agency or collection agent.

SECTION 4.03. Subchapter C, Chapter 27, Government Code, is amended by adding Section 27.061 to read as follows:

Sec. 27.061. RULES OF ADMINISTRATION. The justices of the peace in each county shall, by majority vote, adopt local rules of administration.

SECTION 4.04. Subchapter E, Chapter 15, Civil Practice and Remedies Code, is amended by adding Section 15.0821 to read as follows:

Sec. 15.0821. ADMINISTRATIVE RULES FOR TRANSFER. The justices of the peace in each county shall, by majority vote, adopt local rules of administration regarding the transfer of a pending case from one precinct to a different precinct.

SECTION 4.05. Article 4.12, Code of Criminal Procedure, is amended by adding Subsection (e) to read as follows:

(e) The justices of the peace in each county shall, by majority vote, adopt local rules of administration regarding the transfer of a pending misdemeanor case from one precinct to a different precinct.

SECTION 4.06. (a) Chapter 28, Government Code, is repealed.

(b) On the effective date of this section, each small claims court under Chapter 28, Government Code, is abolished.

SECTION 4.07. Not later than May 1, 2013, the Texas Supreme Court shall promulgate:

(1) rules to define cases that constitute small claims cases;

(2) rules of civil procedure applicable to small claims cases as required by Section 27.060, Government Code, as added by this article; and

(3) rules for eviction proceedings.

SECTION 4.08. (a) Immediately before the date the small claims court in a county is abolished in accordance with this article, the justice of the peace sitting as judge of that court shall transfer all cases pending in the court to a justice court in the county.

(b) When a case is transferred as provided by Subsection (a) of this section, all processes, writs, bonds, recognizances, or other obligations issued from the transferring court are returnable to the court to which the case is transferred as if originally issued by that court. The obligees on all bonds and recognizances taken in and for the transferring court and all witnesses summoned to appear in the transferring court are required to appear before the court to which the case is transferred as if originally required to appear before that court.

SECTION 4.09. Sections 4.02 and 4.06 of this article take effect May 1, 2013.

#### ARTICLE 5. ASSOCIATE JUDGES

SECTION 5.01. Subtitle D, Title 2, Government Code, is amended by adding Chapter 54A to read as follows:

CHAPTER 54A. ASSOCIATE JUDGES  
SUBCHAPTER A. CRIMINAL ASSOCIATE JUDGES

Sec. 54A.001. APPLICABILITY. This subchapter applies to a district court or a statutory county court that hears criminal cases.

Sec. 54A.002. APPOINTMENT. (a) A judge of a court subject to this subchapter may appoint a full-time or part-time associate judge to perform the duties authorized by this subchapter if the commissioners court of the county in which the court has jurisdiction has authorized the creation of an associate judge position.

(b) If a court has jurisdiction in more than one county, an associate judge appointed by that court may serve only in a county in which the commissioners court has authorized the appointment.

(c) If more than one court in a county is subject to this subchapter, the commissioners court may authorize the appointment of an associate judge for each court or may authorize one or more associate judges to share service with two or more courts.

(d) If an associate judge serves more than one court, the associate judge's appointment must be made as established by local rule, but in no event by less than a vote of two-thirds of the judges under whom the associate judge serves.

Sec. 54A.003. QUALIFICATIONS. To qualify for appointment as an associate judge under this subchapter, a person must:

(1) be a resident of this state and one of the counties the person will serve;

(2) have been licensed to practice law in this state for at least four years;

(3) not have been removed from office by impeachment, by the supreme court, by the governor on address to the legislature, by a tribunal reviewing a recommendation of the State Commission on Judicial Conduct, or by the legislature's abolition of the judge's court; and

(4) not have resigned from office after having received notice that formal proceedings by the State Commission on Judicial Conduct had been instituted as provided by Section 33.022 and before final disposition of the proceedings.

Sec. 54A.004. COMPENSATION. (a) An associate judge shall be paid a salary determined by the commissioners court of the county in which the associate judge serves.

(b) If an associate judge serves in more than one county, the associate judge shall be paid a salary as determined by agreement of the commissioners courts of the counties in which the associate judge serves.

(c) The associate judge's salary is paid from the county fund available for payment of officers' salaries.

Sec. 54A.005. TERMINATION. (a) An associate judge who serves a single court serves at the will of the judge of that court.

(b) The employment of an associate judge who serves more than two courts may only be terminated by a majority vote of all the judges of the courts the associate judge serves.

(c) The employment of an associate judge who serves two courts may be terminated by either of the judges of the courts the associate judge serves.

(d) To terminate an associate judge's employment, the appropriate judges must sign a written order of termination. The order must state:

- (1) the associate judge's name and state bar identification number;
- (2) each court ordering termination; and
- (3) the date the associate judge's employment ends.

Sec. 54A.006. PROCEEDINGS THAT MAY BE REFERRED. (a) A judge may refer to an associate judge any matter arising out of a criminal case involving:

- (1) a negotiated plea of guilty or no contest before the court;
- (2) a bond forfeiture;
- (3) a pretrial motion;
- (4) a writ of habeas corpus;
- (5) an examining trial;
- (6) an occupational driver's license;
- (7) an appeal of an administrative driver's license revocation hearing;
- (8) a civil commitment matter under Subtitle C, Title 7, Health and Safety

Code:

- (9) setting, adjusting, or revoking bond; and
- (10) any other matter the judge considers necessary and proper.

(b) An associate judge may accept an agreed plea of guilty or no contest from a defendant charged with misdemeanor, felony, or both misdemeanor and felony offenses and may assess punishment if a plea agreement is announced on the record between the defendant and the state.

(c) An associate judge has all of the powers of a magistrate under the laws of this state and may administer an oath for any purpose.

(d) An associate judge may select a jury. Except as provided in Subsection (b), an associate judge may not preside over a trial on the merits, whether or not the trial is before a jury.

Sec. 54A.007. ORDER OF REFERRAL. (a) To refer one or more cases to an associate judge, a judge must issue a written order of referral that specifies the associate judge's duties.

(b) An order of referral may:

(1) limit the powers of the associate judge and direct the associate judge to report only on specific issues, do particular acts, or receive and report on evidence only;

(2) set the time and place for the hearing;

(3) prescribe a closing date for the hearing;

(4) provide a date for filing the associate judge's findings;

(5) designate proceedings for more than one case over which the associate judge shall preside;

(6) direct the associate judge to call the court's docket; and

(7) set forth general powers and limitations or authority of the associate judge applicable to any case referred.

Sec. 54A.008. POWERS. (a) Except as limited by an order of referral, an associate judge to whom a case is referred may:

(1) conduct hearings;

(2) hear evidence;

(3) compel production of relevant evidence;

(4) rule on the admissibility of evidence;

- (5) issue summons for the appearance of witnesses;
- (6) examine a witness;
- (7) swear a witness for a hearing;
- (8) make findings of fact on evidence;
- (9) formulate conclusions of law;
- (10) rule on pretrial motions;
- (11) recommend the rulings, orders, or judgment to be made in a case;
- (12) regulate proceedings in a hearing;
- (13) order the attachment of a witness or party who fails to obey a subpoena;
- (14) accept a plea of guilty from a defendant charged with misdemeanor, felony, or both misdemeanor and felony offenses;
- (15) select a jury; and
- (16) take action as necessary and proper for the efficient performance of the duties required by the order of referral.

(b) An associate judge may not enter a ruling on any issue of law or fact if that ruling could result in dismissal or require dismissal of a pending criminal prosecution, but the associate judge may make findings, conclusions, and recommendations on those issues.

(c) Except as limited by an order of referral, an associate judge who is appointed by a district or statutory county court judge and to whom a case is referred may accept a plea of guilty or nolo contendere in a misdemeanor case for a county criminal court. The associate judge shall forward any fee or fine collected for the misdemeanor offense to the county clerk.

(d) An associate judge may, in the interest of justice, refer a case back to the referring court regardless of whether a timely objection to the associate judge hearing the trial on the merits or presiding at a jury trial has been made by any party.

Sec. 54A.009. ATTENDANCE OF BAILIFF. A bailiff shall attend a hearing by an associate judge if directed by the referring court.

Sec. 54A.010. COURT REPORTER. At the request of a party, the court shall provide a court reporter to record the proceedings before the associate judge.

Sec. 54A.011. WITNESS. (a) A witness appearing before an associate judge is subject to the penalties for perjury provided by law.

(b) A referring court may issue attachment against and may fine or imprison a witness whose failure to appear after being summoned or whose refusal to answer questions has been certified to the court.

Sec. 54A.012. PAPERS TRANSMITTED TO JUDGE. At the conclusion of the proceedings, an associate judge shall transmit to the referring court any papers relating to the case, including the associate judge's findings, conclusions, orders, recommendations, or other action taken.

Sec. 54A.013. JUDICIAL ACTION. (a) Not later than the 30th day after the date an action is taken by an associate judge, a referring court may modify, correct, reject, reverse, or recommit for further information the action taken by the associate judge.

(b) If the court does not modify, correct, reject, reverse, or recommit an action to the associate judge, the action becomes the decree of the court.

Sec. 54A.014. JUDICIAL IMMUNITY. An associate judge has the same judicial immunity as a district judge.

[Sections 54A.015-54A.100 reserved for expansion]  
SUBCHAPTER B. CIVIL ASSOCIATE JUDGES

Sec. 54A.101. APPLICABILITY. This subchapter applies to a district court or a statutory county court that is assigned civil cases.

Sec. 54A.102. APPOINTMENT. (a) A judge of a court subject to this subchapter may appoint a full-time or part-time associate judge to perform the duties authorized by this subchapter if the commissioners court of the county in which the court has jurisdiction has authorized the creation of an associate judge position.

(b) If a district court has jurisdiction in more than one county, an associate judge appointed by that court may serve only in a county in which the commissioners court has authorized the appointment.

(c) If more than one court in a county is subject to this subchapter, the commissioners court may authorize the appointment of an associate judge for each court or may authorize one or more associate judges to share service with two or more courts.

(d) If an associate judge serves more than one court, the associate judge's appointment must be made as established by local rule, but in no event by less than a vote of two-thirds of the judges under whom the associate judge serves.

Sec. 54A.103. QUALIFICATIONS. To qualify for appointment as an associate judge under this subchapter, a person must:

(1) be a resident of this state and one of the counties the person will serve;

(2) have been licensed to practice law in this state for at least four years;

(3) not have been removed from office by impeachment, by the supreme court, by the governor on address to the legislature, by a tribunal reviewing a recommendation of the State Commission on Judicial Conduct, or by the legislature's abolition of the judge's court; and

(4) not have resigned from office after having received notice that formal proceedings by the State Commission on Judicial Conduct had been instituted as provided in Section 33.022 and before final disposition of the proceedings.

Sec. 54A.104. COMPENSATION. (a) An associate judge shall be paid a salary determined by the commissioners court of the county in which the associate judge serves.

(b) If an associate judge serves in more than one county, the associate judge shall be paid a salary as determined by agreement of the commissioners courts of the counties in which the associate judge serves.

(c) The associate judge's salary is paid from the county fund available for payment of officers' salaries.

Sec. 54A.105. TERMINATION. (a) An associate judge who serves a single court serves at the will of the judge of that court.

(b) The employment of an associate judge who serves more than two courts may only be terminated by a majority vote of all the judges of the courts the associate judge serves.

(c) The employment of an associate judge who serves two courts may be terminated by either of the judges of the courts the associate judge serves.

(d) To terminate an associate judge's employment, the appropriate judges must sign a written order of termination. The order must state:

- (1) the associate judge's name and state bar identification number;
- (2) each court ordering termination; and
- (3) the date the associate judge's employment ends.

Sec. 54A.106. CASES THAT MAY BE REFERRED. (a) Except as provided by this section, a judge of a court may refer any civil case or portion of a civil case to an associate judge for resolution.

(b) Unless a party files a written objection to the associate judge hearing a trial on the merits, the judge may refer the trial to the associate judge. A trial on the merits is any final adjudication from which an appeal may be taken to a court of appeals.

(c) A party must file an objection to an associate judge hearing a trial on the merits or presiding at a jury trial not later than the 10th day after the date the party receives notice that the associate judge will hear the trial. If an objection is filed, the referring court shall hear the trial on the merits or preside at a jury trial.

Sec. 54A.107. METHODS OF REFERRAL. (a) A case may be referred to an associate judge by an order of referral in a specific case or by an omnibus order.

(b) The order of referral may limit the powers or duties of an associate judge.

Sec. 54A.108. POWERS. (a) Except as limited by an order of referral, an associate judge may:

- (1) conduct hearings;
- (2) hear evidence;
- (3) compel production of relevant evidence;
- (4) rule on the admissibility of evidence;
- (5) issue summons for the appearance of witnesses;
- (6) examine a witness;
- (7) swear a witness for a hearing;
- (8) make findings of fact on evidence;
- (9) formulate conclusions of law;
- (10) rule on pretrial motions;
- (11) recommend the rulings, orders, or judgment to be made in a case;
- (12) regulate proceedings in a hearing;
- (13) order the attachment of a witness or party who fails to obey a subpoena; and

(14) take action as necessary and proper for the efficient performance of the duties required by the order of referral.

(b) An associate judge may, in the interest of justice, refer a case back to the referring court regardless of whether a timely objection to the associate judge hearing the trial on the merits or presiding at a jury trial has been made by any party.

Sec. 54A.109. WITNESS. (a) A witness appearing before an associate judge is subject to the penalties for perjury provided by law.

(b) A referring court may fine or imprison a witness who:

- (1) failed to appear before an associate judge after being summoned; or
- (2) improperly refused to answer questions if the refusal has been certified to the court by the associate judge.

Sec. 54A.110. COURT REPORTER; RECORD. (a) A court reporter may be provided during a hearing held by an associate judge appointed under this subchapter. A court reporter is required to be provided when the associate judge presides over a jury trial.

(b) A party, the associate judge, or the referring court may provide for a reporter during the hearing if one is not otherwise provided.

(c) Except as provided by Subsection (a), in the absence of a court reporter or on agreement of the parties, the record may be preserved by any means approved by the associate judge.

(d) The referring court or associate judge may assess the expense of preserving the record under Subsection (c) as costs.

(e) On appeal of the associate judge's report or proposed order, the referring court may consider testimony or other evidence in the record if the record is taken by a court reporter.

Sec. 54A.111. NOTICE OF DECISION; APPEAL. (a) After hearing a matter, an associate judge shall notify each attorney participating in the hearing of the associate judge's decision. An associate judge's decision has the same force and effect as an order of the referring court unless a party appeals the decision as provided by Subsection (b).

(b) To appeal an associate judge's decision, other than the issuance of a temporary restraining order or temporary injunction, a party must file an appeal in the referring court not later than the seventh day after the date the party receives notice of the decision under Subsection (a).

(c) A temporary restraining order issued by an associate judge is effective immediately and expires on the 15th day after the date of issuance unless, after a hearing, the order is modified or extended by the associate judge or referring judge.

(d) A temporary injunction issued by an associate judge is effective immediately and continues during the pendency of a trial unless, after a hearing, the order is modified by a referring judge.

(e) A matter appealed to the referring court shall be tried de novo and is limited to only those matters specified in the appeal. Except on leave of court, a party may not submit on appeal any additional evidence or pleadings.

Sec. 54A.112. NOTICE OF RIGHT TO DE NOVO HEARING; WAIVER. (a) Notice of the right to a de novo hearing before the referring court shall be given to all parties.

(b) The notice may be given:

(1) by oral statement in open court;

(2) by posting inside or outside the courtroom of the referring court; or

(3) as otherwise directed by the referring court.

(c) Before the start of a hearing by an associate judge, a party may waive the right of a de novo hearing before the referring court in writing or on the record.

Sec. 54A.113. ORDER OF COURT. (a) Pending a de novo hearing before the referring court, a proposed order or judgment of the associate judge is in full force and effect and is enforceable as an order or judgment of the referring court, except for an order providing for the appointment of a receiver.



(b) If a request for a de novo hearing before the referring court is not timely filed or the right to a de novo hearing before the referring court is waived, the proposed order or judgment of the associate judge becomes the order or judgment of the referring court only on the referring court's signing the proposed order or judgment.

(c) An order by an associate judge for the temporary detention or incarceration of a witness or party shall be presented to the referring court on the day the witness or party is detained or incarcerated. The referring court, without prejudice to the right to a de novo hearing provided by Section 54A.115, may approve the temporary detention or incarceration or may order the release of the party or witness, with or without bond, pending a de novo hearing. If the referring court is not immediately available, the associate judge may order the release of the party or witness, with or without bond, pending a de novo hearing or may continue the person's detention or incarceration for not more than 72 hours.

Sec. 54A.114. JUDICIAL ACTION ON ASSOCIATE JUDGE'S PROPOSED ORDER OR JUDGMENT. Unless a party files a written request for a de novo hearing before the referring court, the referring court may:

(1) adopt, modify, or reject the associate judge's proposed order or judgment;

(2) hear additional evidence; or

(3) recommit the matter to the associate judge for further proceedings.

Sec. 54A.115. DE NOVO HEARING. (a) A party may request a de novo hearing before the referring court by filing with the clerk of the referring court a written request not later than the seventh working day after the date the party receives notice of the substance of the associate judge's decision as provided by Section 54A.111.

(b) A request for a de novo hearing under this section must specify the issues that will be presented to the referring court. The de novo hearing is limited to the specified issues.

(c) Notice of a request for a de novo hearing before the referring court shall be given to the opposing attorney in the manner provided by Rule 21a, Texas Rules of Civil Procedure.

(d) If a request for a de novo hearing before the referring court is filed by a party, any other party may file a request for a de novo hearing before the referring court not later than the seventh working day after the date the initial request was filed.

(e) The referring court, after notice to the parties, shall hold a de novo hearing not later than the 30th day after the date the initial request for a de novo hearing was filed with the clerk of the referring court.

(f) In the de novo hearing before the referring court, the parties may present witnesses on the issues specified in the request for hearing. The referring court may also consider the record from the hearing before the associate judge, including the charge to and verdict returned by a jury, if the record was taken by a court reporter.

(g) The denial of relief to a party after a de novo hearing under this section or a party's waiver of the right to a de novo hearing before the referring court does not affect the right of a party to file a motion for new trial, a motion for judgment notwithstanding the verdict, or other posttrial motions.

(h) A party may not demand a second jury in a de novo hearing before the referring court if the associate judge's proposed order or judgment resulted from a jury trial.

Sec. 54A.116. APPELLATE REVIEW. (a) A party's failure to request a de novo hearing before the referring court or a party's waiver of the right to request a de novo hearing before the referring court does not deprive the party of the right to appeal to or request other relief from a court of appeals or the supreme court.

(b) Except as provided by Subsection (c), the date an order or judgment by the referring court is signed is the controlling date for the purposes of appeal to or request for other relief from a court of appeals or the supreme court.

(c) The date an agreed order or a default order is signed by an associate judge is the controlling date for the purpose of an appeal to, or a request for other relief relating to the order from, a court of appeals or the supreme court.

Sec. 54A.117. JUDICIAL ACTION. (a) Not later than the 30th day after the date an action is taken by an associate judge, a referring court may modify, correct, reject, reverse, or recommit for further information the action taken by the associate judge.

(b) If the court does not modify, correct, reject, reverse, or recommit an action to the associate judge, the action becomes the decree of the court.

Sec. 54A.118. JUDICIAL IMMUNITY. An associate judge appointed under this subchapter has the judicial immunity of a district judge.

SECTION 5.02. Subchapter G, Chapter 54, Government Code, is transferred to Chapter 54A, Government Code, as added by this Act, redesignated as Subchapter C, Chapter 54A, Government Code, and amended to read as follows:

SUBCHAPTER C [G]. STATUTORY PROBATE COURT ASSOCIATE JUDGES

Sec. 54A.201 [~~54.604~~]. DEFINITION. In this subchapter, "statutory probate court" has the meaning assigned by Section 3, Texas Probate Code.

Sec. 54A.202. APPLICABILITY. This subchapter applies to a statutory probate court.

Sec. 54A.203 [~~54.603~~]. APPOINTMENT. (a) After obtaining the approval of the commissioners court to create an associate judge position, the judge of a statutory probate court by order may appoint one or more full-time or part-time ~~[a person to act as]~~ associate judges to perform the duties authorized by this subchapter ~~[judge for the statutory probate court]~~.

(b) If a statutory probate court has jurisdiction in more than one county, an associate judge appointed by that court may serve only in a county in which the commissioners court has authorized the appointment.

(c) The commissioners court may authorize the appointment of an associate judge for each court or may authorize one or more associate judges to share service with two or more courts, if more than one statutory probate court exists in a county.

(d) ~~(e)~~ If an associate judge serves more than one court, the associate judge's appointment must be made with the unanimous approval of all the judges under whom the associate judge serves.

~~(d) An associate judge must meet the qualifications to serve as a judge of the court to which the associate judge is appointed.~~

(e) An associate judge appointed under this subchapter may serve as an associate judge appointed under Section 574.0085, Health and Safety Code.

Sec. 54A.204. QUALIFICATIONS. To qualify for appointment as an associate judge under this subchapter, a person must:

(1) be a resident of this state and one of the counties the person will serve;  
(2) have been licensed to practice law in this state for at least five years;  
(3) not have been removed from office by impeachment, by the supreme court, by the governor on address to the legislature, by a tribunal reviewing a recommendation of the State Commission on Judicial Conduct, or by the legislature's abolition of the judge's court; and

(4) not have resigned from office after having received notice that formal proceedings by the State Commission on Judicial Conduct had been instituted as provided in Section 33.022 and before final disposition of the proceedings.

Sec. 54A.205 [54.605]. COMPENSATION. (a) An associate judge is entitled to the compensation set by the appointing judge and approved by the commissioners court or commissioners courts of the counties in which the associate judge serves. [The salary of the associate judge may not exceed the salary of the appointing judge.]

(b) If an associate judge serves in more than one county, the associate judge shall be paid a salary as determined by agreement of the commissioners courts of the counties in which the associate judge serves.

(c) Except as provided by Subsection (d) [(e)], the compensation of the associate judge shall be paid by the county from the county general fund. The compensation must be paid in the same manner that the appointing judge's salary is paid.

(d) [(e)] On the recommendation of the statutory probate court judges in the county and subject to the approval of the county commissioners court, the county may pay all or part of the compensation of the associate judge from the excess contributions remitted to the county under Section 25.00212 and deposited in the contributions fund created under Section 25.00213.

Sec. 54A.206 [54.604]. TERMINATION OF ASSOCIATE JUDGE. (a) An associate judge who serves a single court serves at the will of the judge of that court.

(b) The employment of an associate judge who serves more than two courts may only be terminated by a majority vote of all the judges of the courts that the associate judge serves.

(c) The employment of an associate judge who serves two courts may be terminated by either of the judges of the courts that the associate judge serves.

(d) The appointment of the associate judge terminates if:

(1) the associate judge becomes a candidate for election to public office; or  
(2) the commissioners court does not appropriate funds in the county's budget to pay the salary of the associate judge.

(e) If an associate judge serves a single court and the appointing judge vacates the judge's office, the associate judge's employment continues, subject to Subsections (d) and (h), unless the successor appointed or elected judge terminates that employment.

(f) If an associate judge serves two courts and one of the appointing judges vacates the judge's office, the associate judge's employment continues, subject to Subsections (d) and (h), unless the successor appointed or elected judge terminates that employment or the judge of the other court served by the associate judge terminates that employment as provided by Subsection (c).

(g) If an associate judge serves more than two courts and an appointing judge vacates the judge's office, the associate judge's employment continues, subject to Subsections (d) and (h), unless:

(1) if no successor judge has been elected or appointed, the majority of the judges of the other courts the associate judge serves vote to terminate that employment; or

(2) if a successor judge has been elected or appointed, the majority of the judges of the courts the associate judge serves, including the successor judge, vote to terminate that employment as provided by Subsection (b).

(h) Notwithstanding the powers of an associate judge provided by Section 54A.209 ~~[54.610]~~, an associate judge whose employment continues as provided by Subsection (e), (f), or (g) after the judge of a court served by the associate judge vacates the judge's office may perform administrative functions with respect to that court, but may not perform any judicial function, including any power prescribed by Section 54A.209 ~~[54.610]~~, with respect to that court until a successor judge is appointed or elected.

Sec. 54A.207 ~~[54.608]~~. CASES THAT MAY BE REFERRED. (a) Except as provided by this section, a judge of a court may refer to an associate judge any aspect of a suit over which the probate court has jurisdiction, including any matter ancillary to the suit.

(b) Unless a party files a written objection to the associate judge hearing a trial on the merits, the judge may refer the trial to the associate judge. A trial on the merits is any final adjudication from which an appeal may be taken to a court of appeals.

(c) A party must file an objection to an associate judge hearing a trial on the merits or presiding at a jury trial not later than the 10th day after the date the party receives notice that the associate judge will hear the trial. If an objection is filed, the referring court shall hear the trial on the merits or preside at a jury trial.

Sec. 54A.2071 ~~[54.606]~~. OATH. An associate judge must take the constitutional oath of office required of appointed officers of this state.

~~[Sec. 54.607. MAGISTRATE. An associate judge appointed under this subchapter is a magistrate.]~~

Sec. 54A.208 ~~[54.609]~~. METHODS ~~[ORDER]~~ OF REFERRAL. (a) A case may be referred to an associate judge by an order of referral in a specific case or by an omnibus order ~~[In referring a case to an associate judge, the judge of the referring court shall render:~~

~~[(1) an individual order of referral; or~~

~~[(2) a general order of referral]~~ specifying the class and type of cases to be referred ~~[heard by the associate judge].~~

(b) The order of referral may limit the power or duties of an associate judge.

Sec. 54A.209 ~~[54.610]~~. POWERS OF ASSOCIATE JUDGE. (a) Except as limited by an order of referral, an associate judge may:

- (1) conduct a hearing;
- (2) hear evidence;
- (3) compel production of relevant evidence;
- (4) rule on the admissibility of evidence;
- (5) issue a summons for the appearance of witnesses;
- (6) examine a witness;
- (7) swear a witness for a hearing;
- (8) make findings of fact on evidence;
- (9) formulate conclusions of law;
- (10) rule on pretrial motions;
- (11) recommend the rulings, orders, or judgment [~~an order~~] to be made ~~rendered~~ in a case;
- (12) [~~(11)~~] regulate all proceedings in a hearing before the associate judge;
- (13) [~~(12)~~] take action as necessary and proper for the efficient performance of the [~~associate judge's~~] duties required by the order of referral;
- (14) [~~(13)~~] order the attachment of a witness or party who fails to obey a subpoena;
- (15) [~~(14)~~] order the detention of a witness or party found guilty of contempt, pending approval by the referring court as provided by Section 54A.214 [~~54.616~~];
- (16) [~~(15)~~] without prejudice to the right to a de novo hearing under Section 54A.216 [~~54.618~~], render and sign:
  - (A) a final order agreed to in writing as to both form and substance by all parties;
  - (B) a final default order;
  - (C) a temporary order;
  - (D) a final order in a case in which a party files an unrevoked waiver made in accordance with Rule 119, Texas Rules of Civil Procedure, that waives notice to the party of the final hearing or waives the party's appearance at the final hearing;
  - (E) an order specifying that the court clerk shall issue:
    - (i) letters testamentary or of administration; or
    - (ii) letters of guardianship; or
  - (F) an order for inpatient or outpatient mental health, mental retardation, or chemical dependency services or an order authorizing psychoactive medications; and
- (17) [~~(16)~~] sign a final order that includes a waiver of the right to a de novo hearing in accordance with Section 54A.216 [~~54.618~~].
  - (b) An associate judge may, in the interest of justice, refer a case back to the referring court regardless of whether a timely objection to the associate judge hearing the trial on the merits or presiding at a jury trial has been made by any party.
  - (c) An order described by Subsection (a)(16) [~~(a)(15)~~] that is rendered and signed by an associate judge constitutes an order of the referring court. The judge of the referring court shall sign the order not later than the 30th day after the date the associate judge signs the order.
  - (d) An answer filed by or on behalf of a party who previously filed a waiver described in Subsection (a)(16)(D) [~~(a)(15)(D)~~] revokes that waiver.

Sec. 54A.2091 [~~54.614~~]. ATTENDANCE OF BAILIFF. A bailiff shall attend a hearing conducted by an associate judge if directed to attend by the referring court.

~~[Sec. 54.612. COURT REPORTER. (a) A court reporter may be provided during a hearing held by an associate judge appointed under this subchapter unless required by other law. A court reporter is required to be provided when the associate judge presides over a jury trial.~~

~~[(b) A party, the associate judge, or the referring court may provide for a reporter during the hearing, if one is not otherwise provided.~~

~~[(c) Except as provided by Subsection (a), in the absence of a court reporter or on agreement of the parties, the record may be preserved by any means approved by the referring court.~~

~~[(d) The referring court or associate judge may impose on a party the expense of preserving the record as a court cost.~~

~~[(e) On a request for a de novo hearing, the referring court may consider testimony or other evidence in the record, if the record is taken by a court reporter, in addition to witnesses or other matters presented under Section 54.618.]~~

Sec. 54A.210 [~~54.613~~]. WITNESS. (a) A witness appearing before an associate judge is subject to the penalties for perjury provided by law.

(b) A referring court may issue attachment against and may fine or imprison a witness whose failure [who:

[(1) fails] to appear [before an associate judge] after being summoned or whose refusal to answer questions has been certified to the court[; or

[(2) improperly refuses to answer a question if the refusal has been certified to the court by the associate judge].

Sec. 54A.211. COURT REPORTER; RECORD. (a) A court reporter may be provided during a hearing held by an associate judge appointed under this subchapter. A court reporter is required to be provided when the associate judge presides over a jury trial.

(b) A party, the associate judge, or the referring court may provide for a reporter during the hearing if one is not otherwise provided.

(c) Except as provided by Subsection (a), in the absence of a court reporter or on agreement of the parties, the record may be preserved by any means approved by the associate judge.

(d) The referring court or associate judge may assess the expense of preserving the record as court costs.

(e) On appeal of the associate judge's report or proposed order, the referring court may consider testimony or other evidence in the record if the record is taken by a court reporter.

Sec. 54A.212 [~~54.614~~]. REPORT. (a) The associate judge's report may contain the associate judge's findings, conclusions, or recommendations and may be in the form of a proposed order.

(b) The associate judge shall prepare a [written] report in the form directed by the referring court, including in the form of:

- (1) a notation on the referring court's docket sheet or in the court's jacket; or
- (2) a proposed order.

(c) [~~(b)~~] After a hearing, the associate judge shall provide the parties participating in the hearing notice of the substance of the associate judge's report, including any proposed order.

(d) [~~(c)~~] Notice may be given to the parties:

(1) in open court, by an oral statement, or by providing a copy of the associate judge's written report, including any proposed order;

(2) by certified mail, return receipt requested; or

(3) by facsimile transmission.

(e) [~~(d)~~] There is a rebuttable presumption that notice is received on the date stated on:

(1) the signed return receipt, if notice was provided by certified mail; or

(2) the confirmation page produced by the facsimile machine, if notice was provided by facsimile transmission.

(f) [~~(e)~~] After a hearing conducted by an associate judge, the associate judge shall send the associate judge's signed and dated report, including any proposed order, and all other papers relating to the case to the referring court.

Sec. 54A.213 [~~54.615~~]. NOTICE OF RIGHT TO DE NOVO HEARING BEFORE REFERRING COURT. (a) An associate judge shall give all parties notice of the right to a de novo hearing before the referring court.

(b) The notice may be given:

(1) by oral statement in open court;

(2) by posting inside or outside the courtroom of the referring court; or

(3) as otherwise directed by the referring court.

(c) Before the start of a hearing by an associate judge, a party may waive the right to a de novo hearing before the referring court in writing or on the record.

Sec. 54A.214 [~~54.616~~]. ORDER OF COURT. (a) Pending a de novo hearing before the referring court, the decisions and recommendations of the associate judge or a proposed order or judgment of the associate judge has the full force and effect, and is enforceable as, an order or judgment of the referring court, except for an order providing for the appointment of a receiver.

(b) Except as provided by Section 54A.209(c) [~~54.610(c)~~], if a request for a de novo hearing before the referring court is waived, the decisions and recommendations of the associate judge or the proposed order or judgment of the associate judge becomes the order or judgment of the referring court at the time the judge of the referring court signs the proposed order or judgment.

(c) An order by an associate judge for the temporary detention or incarceration of a witness or party shall be presented to the referring court on the day the witness or party is detained or incarcerated. The referring court, without prejudice to the right to a de novo hearing provided by Section 54A.216, may approve the temporary detention or incarceration or may order the release of the party or witness, with or without bond, pending a de novo hearing. If the referring court is not immediately available, the associate judge may order the release of the party or witness, with or without bond, pending a de novo hearing or may continue the person's detention or incarceration for not more than 72 hours.

Sec. 54A.215 [54.617]. JUDICIAL ACTION ON ASSOCIATE JUDGE'S PROPOSED ORDER OR JUDGMENT. (a) Unless a party files a written request for a de novo hearing before the referring court, the referring court may:

(1) adopt, modify, or reject the associate judge's proposed order or judgment;

(2) hear further evidence; or

(3) recommit the matter to the associate judge for further proceedings.

(b) The judge of the referring court shall sign a proposed order or judgment the court adopts as provided by Subsection (a)(1) not later than the 30th day after the date the associate judge signed the order or judgment.

Sec. 54A.216 [54.618]. DE NOVO HEARING BEFORE REFERRING COURT. (a) A party may request a de novo hearing before the referring court by filing with the clerk of the referring court a written request not later than the seventh working day after the date the party receives notice of the substance of the associate judge's report as provided by Section 54A.212 [54.614].

(b) A request for a de novo hearing under this section must specify the issues that will be presented to the referring court. The de novo hearing is limited to the specified issues.

(c) In the de novo hearing before the referring court, the parties may present witnesses on the issues specified in the request for hearing. The referring court may also consider the record from the hearing before the associate judge, including the charge to and verdict returned by a jury, if the record was taken by a court reporter.

(d) Notice of a request for a de novo hearing before the referring court must be given to the opposing attorney in the manner provided by Rule 21a, Texas Rules of Civil Procedure.

(e) If a request for a de novo hearing before the referring court is filed by a party, any other party may file a request for a de novo hearing before the referring court not later than the seventh working day after the date of filing of the initial request.

(f) The referring court, after notice to the parties, shall hold a de novo hearing not later than the 30th day after the date on which the initial request for a de novo hearing was filed with the clerk of the referring court [~~unless all of the parties agree to a later date~~].

(g) Before the start of a hearing conducted by an associate judge, the parties may waive the right of a de novo hearing before the referring court. The waiver may be in writing or on the record.

(h) The denial of relief to a party after a de novo hearing under this section or a party's waiver of the right to a de novo hearing before the referring court does not affect the right of a party to file a motion for new trial, motion for judgment notwithstanding the verdict, or other post-trial motion.

(i) A party may not demand a second jury in a de novo hearing before the referring court if the associate judge's proposed order or judgment resulted from a jury trial.

Sec. 54A.217 [54.619]. APPELLATE REVIEW. (a) A party's failure to request a de novo hearing before the referring court or a party's waiver of the right to request a de novo hearing before the referring court does not deprive the party of the right to appeal to or request other relief from a court of appeals or the supreme court.



(b) Except as provided by Subsection (c), the date the judge of a referring court signs an order or judgment is the controlling date for the purposes of appeal to or request for other relief from a court of appeals or the supreme court.

(c) The date an order described by Section 54A.209(a)(16) [~~54.610(a)(15)~~] is signed by an associate judge is the controlling date for the purpose of an appeal to, or a request for other relief relating to the order from, a court of appeals or the supreme court.

~~[Sec. 54.620. IMMUNITY. An associate judge appointed under this subchapter has the judicial immunity of a probate judge. All existing immunity granted an associate judge by law, express or implied, continues in full force and effect.]~~

SECTION 5.03. Chapter 201, Family Code, is amended by adding Subchapter D to read as follows:

#### SUBCHAPTER D. ASSOCIATE JUDGE FOR JUVENILE MATTERS

Sec. 201.301. APPLICABILITY. This subchapter applies only to an associate judge appointed under this subchapter and does not apply to a juvenile court master appointed under Subchapter K, Chapter 54, Government Code.

Sec. 201.302. APPOINTMENT. (a) A judge of a court that is designated as a juvenile court may appoint a full-time or part-time associate judge to perform the duties authorized by this chapter if the commissioners court of a county in which the court has jurisdiction has authorized creation of an associate judge position.

(b) If a court has jurisdiction in more than one county, an associate judge appointed by that court may serve only in a county in which the commissioners court has authorized the appointment.

(c) If more than one court in a county has been designated as a juvenile court, the commissioners court may authorize the appointment of an associate judge for each court or may authorize one or more associate judges to share service with two or more courts.

(d) If an associate judge serves more than one court, the associate judge's appointment must be made as established by local rule, but in no event by less than a vote of two-thirds of the judges under whom the associate judge serves.

Sec. 201.303. QUALIFICATIONS. To qualify for appointment as an associate judge under this subchapter, a person must:

(1) be a resident of this state and one of the counties the person will serve;

(2) have been licensed to practice law in this state for at least four years;

(3) not have been removed from office by impeachment, by the supreme court, by the governor on address to the legislature, by a tribunal reviewing a recommendation of the State Commission on Judicial Conduct, or by the legislature's abolition of the judge's court; and

(4) not have resigned from office after having received notice that formal proceedings by the State Commission on Judicial Conduct had been instituted as provided in Section 33.022, Government Code, and before final disposition of the proceedings.

Sec. 201.304. COMPENSATION. (a) An associate judge shall be paid a salary determined by the commissioners court of the county in which the associate judge serves.

(b) If an associate judge serves in more than one county, the associate judge shall be paid a salary as determined by agreement of the commissioners courts of the counties in which the associate judge serves.

(c) The associate judge's salary is paid from the county fund available for payment of officers' salaries.

Sec. 201.305. TERMINATION. (a) An associate judge who serves a single court serves at the will of the judge of that court.

(b) The employment of an associate judge who serves more than two courts may only be terminated by a majority vote of all the judges of the courts which the associate judge serves.

(c) The employment of an associate judge who serves two courts may be terminated by either of the judges of the courts which the associate judge serves.

(d) To terminate an associate judge's employment, the appropriate judges must sign a written order of termination. The order must state:

(1) the associate judge's name and state bar identification number;

(2) each court ordering termination; and

(3) the date the associate judge's employment ends.

Sec. 201.306. CASES THAT MAY BE REFERRED. (a) Except as provided by this section, a judge of a juvenile court may refer to an associate judge any aspect of a juvenile matter brought:

(1) under this title or Title 3; or

(2) in connection with Rule 308, Texas Rules of Civil Procedure.

(b) Unless a party files a written objection to the associate judge hearing a trial on the merits, the judge may refer the trial to the associate judge. A trial on the merits is any final adjudication from which an appeal may be taken to a court of appeals.

(c) A party must file an objection to an associate judge hearing a trial on the merits or presiding at a jury trial not later than the 10th day after the date the party receives notice that the associate judge will hear the trial. If an objection is filed, the referring court shall hear the trial on the merits or preside at a jury trial.

(d) The requirements of Subsections (b) and (c) apply when a judge has authority to refer the trial of a suit under this title, Title 1, or Title 4 to an associate judge, master, or other assistant judge regardless of whether the assistant judge is appointed under this subchapter.

Sec. 201.307. METHODS OF REFERRAL. (a) A case may be referred to an associate judge by an order of referral in a specific case or by an omnibus order.

(b) The order of referral may limit the power or duties of an associate judge.

Sec. 201.308. POWERS OF ASSOCIATE JUDGE. (a) Except as limited by an order of referral, an associate judge may:

(1) conduct a hearing;

(2) hear evidence;

(3) compel production of relevant evidence;

(4) rule on the admissibility of evidence;

(5) issue a summons for:

(A) the appearance of witnesses; and

(B) the appearance of a parent who has failed to appear before an agency authorized to conduct an investigation of an allegation of abuse or neglect of a child after receiving proper notice;

(6) examine a witness;

(7) swear a witness for a hearing;

(8) make findings of fact on evidence;

(9) formulate conclusions of law;

(10) recommend an order to be rendered in a case;

(11) regulate proceedings in a hearing;

(12) order the attachment of a witness or party who fails to obey a subpoena;

(13) order the detention of a witness or party found guilty of contempt, pending approval by the referring court; and

(14) take action as necessary and proper for the efficient performance of the associate judge's duties.

(b) An associate judge may, in the interest of justice, refer a case back to the referring court regardless of whether a timely objection to the associate judge hearing the trial on the merits or presiding at a jury trial has been made by any party.

Sec. 201.309. REFEREES. (a) An associate judge appointed under this subchapter may serve as a referee as provided by Sections 51.04(g) and 54.10.

(b) A referee appointed under Section 51.04(g) may be appointed to serve as an associate judge under this subchapter.

Sec. 201.310. ATTENDANCE OF BAILIFF. A bailiff may attend a hearing by an associate judge if directed by the referring court.

Sec. 201.311. WITNESS. (a) A witness appearing before an associate judge is subject to the penalties for perjury provided by law.

(b) A referring court may fine or imprison a witness who:

(1) failed to appear before an associate judge after being summoned; or

(2) improperly refused to answer questions if the refusal has been certified to the court by the associate judge.

Sec. 201.312. COURT REPORTER; RECORD. (a) A court reporter may be provided during a hearing held by an associate judge appointed under this subchapter. A court reporter is required to be provided when the associate judge presides over a jury trial or a contested final termination hearing.

(b) A party, the associate judge, or the referring court may provide for a reporter during the hearing if one is not otherwise provided.

(c) Except as provided by Subsection (a), in the absence of a court reporter or on agreement of the parties, the record may be preserved by any means approved by the associate judge.

(d) The referring court or associate judge may assess the expense of preserving the record as costs.

(e) On a request for a de novo hearing, the referring court may consider testimony or other evidence in the record, if the record is taken by a court reporter, in addition to witnesses or other matters presented under Section 201.317.

Sec. 201.313. REPORT. (a) The associate judge's report may contain the associate judge's findings, conclusions, or recommendations and may be in the form of a proposed order. The associate judge's report must be in writing and in the form directed by the referring court.

(b) After a hearing, the associate judge shall provide the parties participating in the hearing notice of the substance of the associate judge's report, including any proposed order.

(c) Notice may be given to the parties:

(1) in open court, by an oral statement or by providing a copy of the associate judge's written report, including any proposed order;

(2) by certified mail, return receipt requested; or

(3) by facsimile.

(d) A rebuttable presumption exists that notice is received on the date stated on:

(1) the signed return receipt, if notice was provided by certified mail; or

(2) the confirmation page produced by the facsimile machine, if notice was provided by facsimile.

(e) After a hearing conducted by an associate judge, the associate judge shall send the associate judge's signed and dated report, including any proposed order, and all other papers relating to the case to the referring court.

Sec. 201.314. NOTICE OF RIGHT TO DE NOVO HEARING; WAIVER. (a) An associate judge shall give all parties notice of the right to a de novo hearing to the judge of the referring court.

(b) The notice may be given:

(1) by oral statement in open court;

(2) by posting inside or outside the courtroom of the referring court; or

(3) as otherwise directed by the referring court.

(c) Before the start of a hearing by an associate judge, a party may waive the right of a de novo hearing before the referring court in writing or on the record.

Sec. 201.315. ORDER OF COURT. (a) Pending a de novo hearing before the referring court, a proposed order or judgment of the associate judge is in full force and effect and is enforceable as an order or judgment of the referring court, except for an order providing for the appointment of a receiver.

(b) If a request for a de novo hearing before the referring court is not timely filed or the right to a de novo hearing before the referring court is waived, the proposed order or judgment of the associate judge becomes the order or judgment of the referring court only on the referring court's signing the proposed order or judgment.

(c) An order by an associate judge for the temporary detention or incarceration of a witness or party shall be presented to the referring court on the day the witness or party is detained or incarcerated. The referring court, without prejudice to the right to a de novo hearing provided by Section 201.317, may approve the temporary detention or incarceration or may order the release of the party or witness, with or without bond, pending a de novo hearing. If the referring court is not immediately available, the associate judge may order the release of the party or witness, with or without bond, pending a de novo hearing or may continue the person's detention or incarceration for not more than 72 hours.

Sec. 201.316. JUDICIAL ACTION ON ASSOCIATE JUDGE'S PROPOSED ORDER OR JUDGMENT. Unless a party files a written request for a de novo hearing before the referring court, the referring court may:

(1) adopt, modify, or reject the associate judge's proposed order or judgment;

(2) hear additional evidence; or

(3) recommit the matter to the associate judge for further proceedings.

Sec. 201.317. DE NOVO HEARING. (a) A party may request a de novo hearing before the referring court by filing with the clerk of the referring court a written request not later than the seventh working day after the date the party receives notice of the substance of the associate judge's report as provided by Section 201.313.

(b) A request for a de novo hearing under this section must specify the issues that will be presented to the referring court. The de novo hearing is limited to the specified issues.

(c) Notice of a request for a de novo hearing before the referring court shall be given to the opposing attorney in the manner provided by Rule 21a, Texas Rules of Civil Procedure.

(d) If a request for a de novo hearing before the referring court is filed by a party, any other party may file a request for a de novo hearing before the referring court not later than the seventh working day after the date the initial request was filed.

(e) The referring court, after notice to the parties, shall hold a de novo hearing not later than the 30th day after the date the initial request for a de novo hearing was filed with the clerk of the referring court.

(f) In the de novo hearing before the referring court, the parties may present witnesses on the issues specified in the request for hearing. The referring court may also consider the record from the hearing before the associate judge, including the charge to and verdict returned by a jury, if the record was taken by a court reporter.

(g) The denial of relief to a party after a de novo hearing under this section or a party's waiver of the right to a de novo hearing before the referring court does not affect the right of a party to file a motion for new trial, a motion for judgment notwithstanding the verdict, or other posttrial motions.

(h) A party may not demand a second jury in a de novo hearing before the referring court if the associate judge's proposed order or judgment resulted from a jury trial.

Sec. 201.318. APPELLATE REVIEW. (a) A party's failure to request a de novo hearing before the referring court or a party's waiver of the right to request a de novo hearing before the referring court does not deprive the party of the right to appeal to or request other relief from a court of appeals or the supreme court.

(b) Except as provided by Subsection (c), the date an order or judgment by the referring court is signed is the controlling date for the purposes of appeal to or request for other relief from a court of appeals or the supreme court.

(c) The date an agreed order or a default order is signed by an associate judge is the controlling date for the purpose of an appeal to, or a request for other relief relating to the order from, a court of appeals or the supreme court.

Sec. 201.319. JUDICIAL IMMUNITY. An associate judge appointed under this subchapter has the judicial immunity of a district judge.

Sec. 201.320. VISITING ASSOCIATE JUDGE. (a) If an associate judge appointed under this subchapter is temporarily unable to perform the judge's official duties because of absence or illness, injury, or other disability, a judge of a court having jurisdiction of a suit under this title or Title 1 or 4 may appoint a visiting associate judge to perform the duties of the associate judge during the period of the associate judge's absence or disability if the commissioners court of a county in which the court has jurisdiction authorizes the employment of a visiting associate judge.

(b) To be eligible for appointment under this section, a person must have served as an associate judge for at least two years.

(c) Sections 201.001 through 201.017 apply to a visiting associate judge appointed under this section.

SECTION 5.04. Section 22.110(b), Government Code, is amended to read as follows:

(b) The court of criminal appeals shall adopt the rules necessary to accomplish the purposes of this section. The rules must require each district judge, judge of a statutory county court, associate judge appointed under Chapter 54A [54] of this code or Chapter 201, Family Code, master, referee, and magistrate to complete at least 12 hours of the training within the judge's first term of office or the judicial officer's first four years of service and provide a method for certification of completion of that training. At least four hours of the training must be dedicated to issues related to child abuse and neglect and must cover at least two of the topics described in Subsections (d)(8)-(12). At least six hours of the training must be dedicated to the training described by Subsections (d)(5), (6), and (7). The rules must require each judge and judicial officer to complete an additional five hours of training during each additional term in office or four years of service. At least two hours of the additional training must be dedicated to issues related to child abuse and neglect. The rules must exempt from the training requirement of this subsection each judge or judicial officer who files an affidavit stating that the judge or judicial officer does not hear any cases involving family violence, sexual assault, or child abuse and neglect.

SECTION 5.05. (a) Section 101.0611, Government Code, is amended to read as follows:

Sec. 101.0611. DISTRICT COURT FEES AND COSTS: GOVERNMENT CODE. The clerk of a district court shall collect fees and costs under the Government Code as follows:

(1) appellate judicial system filing fees for:

(A) First or Fourteenth Court of Appeals District (Sec. 22.2021, Government Code) . . . not more than \$5;

(B) Second Court of Appeals District (Sec. 22.2031, Government Code) . . . not more than \$5;

(C) Third Court of Appeals District (Sec. 22.2041, Government Code) . . . \$5;

(D) Fourth Court of Appeals District (Sec. 22.2051, Government Code) . . . not more than \$5;

(E) Fifth Court of Appeals District (Sec. 22.2061, Government Code) . . . not more than \$5;

(E-1) Sixth Court of Appeals District (Sec. 22.2071, Government Code)  
 ... \$5;

(E-2) Seventh Court of Appeals District (Sec. 22.2081, Government Code) ... \$5;

(F) Ninth Court of Appeals District (Sec. 22.2101, Government Code)  
 ... \$5;

(G) Eleventh Court of Appeals District (Sec. 22.2121, Government Code) ... \$5;

(G-1) Twelfth Court of Appeals District (Sec. 22.2131, Government Code) ... \$5; and

(H) Thirteenth Court of Appeals District (Sec. 22.2141, Government Code) ... not more than \$5;

(2) when administering a case for the Rockwall County Court at Law (Sec. 25.2012, Government Code) ... civil fees and court costs as if the case had been filed in district court;

(3) additional filing fees:

(A) for each suit filed for insurance contingency fund, if authorized by the county commissioners court (Sec. 51.302, Government Code) ... not to exceed \$5;

(B) to fund the improvement of Dallas County civil court facilities, if authorized by the county commissioners court (Sec. 51.705, Government Code) ... not more than \$15;

(B-1) to fund the improvement of Bexar County court facilities, if authorized by the county commissioners court (Sec. 51.706, Government Code) ... not more than \$15; and

(C) to fund the improvement of Hays County court facilities, if authorized by the county commissioners court (Sec. 51.707, Government Code) ... not more than \$15; and

(D) to fund the preservation of court records (Sec. 51.708, Government Code) ... not more than \$10;

(4) for filing a suit, including an appeal from an inferior court:

(A) for a suit with 10 or fewer plaintiffs (Sec. 51.317, Government Code) ... \$50;

(B) for a suit with at least 11 but not more than 25 plaintiffs (Sec. 51.317, Government Code) ... \$75;

(C) for a suit with at least 26 but not more than 100 plaintiffs (Sec. 51.317, Government Code) ... \$100;

(D) for a suit with at least 101 but not more than 500 plaintiffs (Sec. 51.317, Government Code) ... \$125;

(E) for a suit with at least 501 but not more than 1,000 plaintiffs (Sec. 51.317, Government Code) ... \$150; or

(F) for a suit with more than 1,000 plaintiffs (Sec. 51.317, Government Code) ... \$200;

(5) for filing a cross-action, counterclaim, intervention, contempt action, motion for new trial, or third-party petition (Sec. 51.317, Government Code) ... \$15;

(6) for issuing a citation or other writ or process not otherwise provided for, including one copy, when requested at the time a suit or action is filed (Sec. 51.317, Government Code) . . . \$8;

(7) for records management and preservation (Sec. 51.317, Government Code) . . . \$10;

(7-a) for district court records archiving, if adopted by the county commissioners court (Sec. 51.317(b)(5), Government Code) . . . not more than \$5;

(8) for issuing a subpoena, including one copy (Sec. 51.318, Government Code) . . . \$8;

(9) for issuing a citation, commission for deposition, writ of execution, order of sale, writ of execution and order of sale, writ of injunction, writ of garnishment, writ of attachment, or writ of sequestration not provided for in Section 51.317, or any other writ or process not otherwise provided for, including one copy if required by law (Sec. 51.318, Government Code) . . . \$8;

(10) for searching files or records to locate a cause when the docket number is not provided (Sec. 51.318, Government Code) . . . \$5;

(11) for searching files or records to ascertain the existence of an instrument or record in the district clerk's office (Sec. 51.318, Government Code) . . . \$5;

(12) for abstracting a judgment (Sec. 51.318, Government Code) . . . \$8;

(13) for approving a bond (Sec. 51.318, Government Code) . . . \$4;

(14) for a certified copy of a record, judgment, order, pleading, or paper on file or of record in the district clerk's office, including certificate and seal, for each page or part of a page (Sec. 51.318, Government Code) . . . \$1;

(15) for a noncertified copy, for each page or part of a page (Sec. 51.318, Government Code) . . . not to exceed \$1;

(16) fee for performing a service:

(A) related to the matter of the estate of a deceased person (Sec. 51.319, Government Code) . . . the same fee allowed the county clerk for those services;

(B) related to the matter of a minor (Sec. 51.319, Government Code) . . . the same fee allowed the county clerk for the service;

(C) of serving process by certified or registered mail (Sec. 51.319, Government Code) . . . the same fee a sheriff or constable is authorized to charge for the service under Section 118.131, Local Government Code; and

(D) prescribed or authorized by law but for which no fee is set (Sec. 51.319, Government Code) . . . a reasonable fee;

(17) jury fee (Sec. 51.604, Government Code) . . . \$30; and

(18) additional filing fee for family protection on filing a suit for dissolution of a marriage under Chapter 6, Family Code (Sec. 51.961, Government Code) . . . not to exceed \$15[;]

~~[(19) at a hearing held by an associate judge in Dallas County, a court cost to preserve the record, in the absence of a court reporter, by other means (Sec. 54.509, Government Code) . . . as assessed by the referring court or associate judge; and~~

~~[(20) at a hearing held by an associate judge in Duval County, a court cost to preserve the record (Sec. 54.1151, Government Code) . . . as imposed by the referring court or associate judge].~~



(b) Sections 101.06111, 101.06113, 101.06114, 101.06115, 101.06116, and 101.06117, Government Code, are repealed.

SECTION 5.06. Section 602.002, Government Code, is amended to read as follows:

Sec. 602.002. OATH MADE IN TEXAS. An oath made in this state may be administered and a certificate of the fact given by:

(1) a judge, retired judge, or clerk of a municipal court;  
 (2) a judge, retired judge, senior judge, clerk, or commissioner of a court of record;

(3) a justice of the peace or a clerk of a justice court;  
 (4) an associate judge, magistrate, master, referee, or criminal law hearing officer;

(5) a notary public;  
 (6) ~~(5)~~ a member of a board or commission created by a law of this state, in a matter pertaining to a duty of the board or commission;

(7) ~~(6)~~ a person employed by the Texas Ethics Commission who has a duty related to a report required by Title 15, Election Code, in a matter pertaining to that duty;

(8) ~~(7)~~ a county tax assessor-collector or an employee of the county tax assessor-collector if the oath relates to a document that is required or authorized to be filed in the office of the county tax assessor-collector;

(9) ~~(8)~~ the secretary of state or a former secretary of state;  
 (10) ~~(9)~~ an employee of a personal bond office, or an employee of a county, who is employed to obtain information required to be obtained under oath if the oath is required or authorized by Article 17.04 or by Article 26.04(n) or (o), Code of Criminal Procedure;

(11) ~~(10)~~ the lieutenant governor or a former lieutenant governor;  
 (12) ~~(11)~~ the speaker of the house of representatives or a former speaker of the house of representatives;

(13) ~~(12)~~ the governor or a former governor;  
 (14) ~~(13)~~ a legislator or retired legislator;  
 (15) ~~(14)~~ the attorney general or a former attorney general;

(16) ~~(15)~~ the secretary or clerk of a municipality in a matter pertaining to the official business of the municipality; or

(17) ~~(16)~~ a peace officer described by Article 2.12, Code of Criminal Procedure, if:

(A) the oath is administered when the officer is engaged in the performance of the officer's duties; and

(B) the administration of the oath relates to the officer's duties.

SECTION 5.07. Article 2.09, Code of Criminal Procedure, is amended to read as follows:

Art. 2.09. WHO ARE MAGISTRATES. Each of the following officers is a magistrate within the meaning of this Code: The justices of the Supreme Court, the judges of the Court of Criminal Appeals, the justices of the Courts of Appeals, the judges of the District Court, the magistrates appointed by the judges of the district courts of Bexar County, Dallas County, or Tarrant County that give preference to

criminal cases, the criminal law hearing officers for Harris County appointed under Subchapter L, Chapter 54, Government Code, the criminal law hearing officers for Cameron County appointed under Subchapter BB, Chapter 54, Government Code, the magistrates or associate judges appointed by the judges of the district courts of Lubbock County, Nolan County, or Webb County, the magistrates appointed by the judges of the criminal district courts of Dallas County or Tarrant County, the associate judges [~~masters~~] appointed by the judges of the district courts and the county courts at law that give preference to criminal cases in Jefferson County, the associate judges [~~magistrates~~] appointed by the judges of the district courts and the statutory county courts of Brazos County, Nueces County, or Williamson County, the magistrates appointed by the judges of the district courts and statutory county courts that give preference to criminal cases in Travis County, the criminal magistrates appointed by the Brazoria County Commissioners Court, the county judges, the judges of the county courts at law, judges of the county criminal courts, the judges of statutory probate courts, the associate judges appointed by the judges of the statutory probate courts under [~~Subchapter G,~~] Chapter 54A [54], Government Code, the associate judges appointed by the judge of a district court under Chapter 54A [~~Subchapter II, Chapter 54~~], Government Code, the justices of the peace, and the mayors and recorders and the judges of the municipal courts of incorporated cities or towns.

SECTION 5.08. Article 102.017(d), Code of Criminal Procedure, is amended to read as follows:

(d) Except as provided by Subsection (d-2), the clerks of the respective courts shall collect the costs and pay them to the county or municipal treasurer, as appropriate, or to any other official who discharges the duties commonly delegated to the county or municipal treasurer, as appropriate, for deposit in a fund to be known as the courthouse security fund or a fund to be known as the municipal court building security fund, as appropriate. Money deposited in a courthouse security fund may be used only for security personnel, services, and items related to buildings that house the operations of district, county, or justice courts, and money deposited in a municipal court building security fund may be used only for security personnel, services, and items related to buildings that house the operations of municipal courts. For purposes of this subsection, operations of a district, county, or justice court include the activities of associate judges, masters, magistrates, referees, hearing officers, criminal law magistrate court judges, and masters in chancery appointed under:

- (1) Section 61.311, Alcoholic Beverage Code;
- (2) Section 51.04(g) or Chapter 201, Family Code;
- (3) Section 574.0085, Health and Safety Code;
- (4) Section 33.71, Tax Code;
- (5) Chapter 54A [~~Chapter 54~~], Government Code; or
- (6) Rule 171, Texas Rules of Civil Procedure.

SECTION 5.09. Section 54.10(a), Family Code, is amended to read as follows:

(a) Except as provided by Subsection (e), a hearing under Section 54.03, 54.04, or 54.05, including a jury trial, a hearing under Chapter 55, including a jury trial, or a hearing under the Interstate Compact for Juveniles (Chapter 60) may be held by a referee appointed in accordance with Section 51.04(g) or an associate judge [~~a master~~] appointed under Chapter 54A [54], Government Code, provided:

(1) the parties ~~have~~ been informed by the referee or associate judge [~~master~~] that they are entitled to have the hearing before the juvenile court judge; and

(2) after each party is given an opportunity to object, no party objects to holding the hearing before the referee or associate judge [~~master~~].

SECTION 5.10. A magistrate, master, referee, associate judge, or hearing officer appointed as provided by Subchapters A, B, C, E, F, I, O, P, S, T, U, V, X, CC, FF, and II, Chapter 54, Government Code, before the effective date of this Act, continues to serve as an associate judge under Chapter 54A, Government Code, as added by this article, with the powers and duties provided by that chapter, provided the court for which the magistrate, master, referee, associate judge, or hearing officer serves has authority to appoint an associate judge under Chapter 54A, Government Code.

SECTION 5.11. The changes in law made by this article apply to a matter referred to an associate judge on or after the effective date of this article. A matter referred to an associate judge before the effective date of this article is governed by the law in effect on the date the matter was referred to the associate judge, and the former law is continued in effect for that purpose.

SECTION 5.12. The following subchapters of Chapter 54, Government Code, are repealed:

- (1) Subchapter A;
- (2) Subchapter B;
- (3) Subchapter C;
- (4) Subchapter E;
- (5) Subchapter F;
- (6) Subchapter I;
- (7) Subchapter O;
- (8) Subchapter P;
- (9) Subchapter S;
- (10) Subchapter T;
- (11) Subchapter U;
- (12) Subchapter V;
- (13) Subchapter X;
- (14) Subchapter CC;
- (15) Subchapter FF; and
- (16) Subchapter II.

#### ARTICLE 6. COURT ADMINISTRATION

SECTION 6.01. Section 74.005, Government Code, is amended to read as follows:

Sec. 74.005. APPOINTMENT OF [REGIONAL] PRESIDING JUDGES OF ADMINISTRATIVE JUDICIAL REGIONS. (a) The governor, with the advice and consent of the senate, shall appoint one judge in each administrative judicial region as presiding judge of the region.

(b) On the death, resignation, removal, or expiration of the term of office of a presiding judge, the governor immediately shall appoint or reappoint a presiding judge.

SECTION 6.02. Section 74.050, Government Code, is amended to read as follows:

Sec. 74.050. SUPPORT STAFF ~~[ADMINISTRATIVE ASSISTANT]~~. (a) The presiding judge may employ, directly or through a contract with another governmental entity, a full-time or part-time administrative assistant and a full-time or part-time staff attorney.

(a-1) A presiding judge may only employ a staff attorney under this section to the extent available funds are appropriated by the state.

~~(b) An administrative assistant [must have the qualifications established by rule of the supreme court.~~

~~[(c) An administrative assistant]~~ shall aid the presiding judge in carrying out the judge's duties under this chapter. The administrative assistant shall:

(1) perform the duties that are required by the presiding judge and by the rules of administration;

(2) conduct correspondence for the presiding judge;

(3) under the direction of the presiding judge, make an annual report of the activities of the administrative region and special reports as provided by the rules of administration to the supreme court, which shall be made in the manner directed by the supreme court; and

(4) attend to other matters that are prescribed by the council of judges.

~~(c) [(d)]~~ An administrative assistant, with the approval of the presiding judge, may purchase the necessary office equipment, stamps, stationery, and supplies and employ additional personnel as authorized by the presiding judge.

~~(d) [(e)]~~ An administrative assistant or staff attorney is entitled to receive the compensation from the state provided by the General Appropriations Act, from county funds, or from any public or private grant.

(e) A staff attorney may provide assistance to a district judge for a specific case at the direction of the judicial committee for additional resources.

(f) The office of court administration shall assist the presiding judges in:

(1) monitoring the compliance of staff attorneys with any job performance standards, uniform practices adopted by the presiding judges, and federal and state laws and policies;

(2) addressing the training needs and resource requirements of the staff attorneys;

(3) conducting annual performance evaluations for the staff attorneys based on written personnel performance standards adopted by the presiding judges; and

(4) receiving, investigating, and resolving complaints about particular staff attorneys based on a uniform process adopted by the presiding judges.

(g) Adequate quarters for a staff attorney hired as provided by this section shall be provided in a courthouse of the administrative judicial region.

SECTION 6.03. Section 74.093(c), Government Code, is amended to read as follows:

(c) The rules may provide for:

(1) the selection and authority of a presiding judge of the courts giving preference to a specified class of cases, such as civil, criminal, juvenile, or family law cases;

(2) other strategies for managing cases that require special judicial attention;

(3) a coordinated response for the transaction of essential judicial functions in the event of a disaster; and

(4) ~~(3)~~ any other matter necessary to carry out this chapter or to improve the administration and management of the court system and its auxiliary services.

SECTION 6.04. Chapter 74, Government Code, is amended by adding Subchapter J to read as follows:

SUBCHAPTER J. ADDITIONAL RESOURCES FOR CERTAIN CASES

Sec. 74.251. APPLICABILITY OF SUBCHAPTER. This subchapter does not apply to:

(1) a criminal matter;

(2) a case in which judicial review is sought under Subchapter G, Chapter 2001; or

(3) a case that has been transferred by the judicial panel on multidistrict litigation to a district court for consolidated or coordinated pretrial proceedings under Subchapter H.

Sec. 74.252. RULES TO GUIDE DETERMINATION OF WHETHER CASE REQUIRES ADDITIONAL RESOURCES. (a) The supreme court shall adopt rules under which courts, presiding judges of the administrative judicial regions, and the judicial committee for additional resources may determine whether a case requires additional resources to ensure efficient judicial management of the case.

(b) In developing the rules, the supreme court shall include considerations regarding whether a case involves or is likely to involve:

(1) a large number of parties who are separately represented by counsel;

(2) coordination with related actions pending in one or more courts in other counties of this state or in one or more United States district courts;

(3) numerous pretrial motions that present difficult or novel legal issues that will be time-consuming to resolve;

(4) a large number of witnesses or substantial documentary evidence;

(5) substantial postjudgment supervision;

(6) a trial that will last more than four weeks; and

(7) a substantial additional burden on the trial court's docket and the resources available to the trial court to hear the case.

Sec. 74.253. JUDICIAL DETERMINATION. (a) On the motion of a party in a case, or on the court's own motion, the judge of the court in which the case is pending shall review the case and determine whether, under rules adopted by the supreme court under Section 74.252, the case will require additional resources to ensure efficient judicial management. The judge is not required to conduct an evidentiary hearing for purposes of making the determination but may, in the judge's discretion, direct the attorneys for the parties to the case and the parties to appear before the judge for a conference to provide information to assist the judge in making the determination.

(b) On determining that a case will require additional resources as provided by Subsection (a), the judge shall:

(1) notify the presiding judge of the administrative judicial region in which the court is located about the case; and

(2) request any specific additional resources that are needed, including the assignment of a judge under this chapter.

(c) If the presiding judge of the administrative judicial region agrees that, in accordance with the rules adopted by the supreme court under Section 74.252, the case will require additional resources to ensure efficient judicial management, the presiding judge shall:

(1) use resources previously allotted to the presiding judge; or

(2) submit a request for specific additional resources to the judicial committee for additional resources.

Sec. 74.254. JUDICIAL COMMITTEE FOR ADDITIONAL RESOURCES.

(a) The judicial committee for additional resources is composed of:

(1) the chief justice of the supreme court; and

(2) the nine presiding judges of the administrative judicial regions.

(b) The chief justice of the supreme court serves as presiding officer. The office of court administration shall provide staff support to the committee.

(c) On receipt of a request for additional resources from a presiding judge of an administrative judicial region under Section 74.253, the committee shall determine whether the case that is the subject of the request requires additional resources in accordance with the rules adopted under Section 74.252. If the committee determines that the case does require additional resources, the committee shall make available the resources requested by the trial judge to the extent funds are available for those resources under the General Appropriations Act and to the extent the committee determines the requested resources are appropriate to the circumstances of the case.

(d) Subject to Subsections (c) and (f), additional resources the committee may make available under this section include:

(1) the assignment of an active or retired judge under this chapter, subject to the consent of the judge of the court in which the case for which the resources are provided is pending;

(2) additional legal, administrative, or clerical personnel;

(3) information and communication technology, including case management software, video teleconferencing, and specially designed courtroom presentation hardware or software to facilitate presentation of the evidence to the trier of fact;

(4) specialized continuing legal education;

(5) an associate judge;

(6) special accommodations or furnishings for the parties;

(7) other services or items determined necessary to try the case; and

(8) any other resources the committee considers appropriate.

(e) Notwithstanding any provision of Subchapter C, a justice or judge to whom Section 74.053(d) applies may not be assigned under Subsection (d).

(f) The judicial committee for additional resources may not provide additional resources under this subchapter in an amount that is more than the amount appropriated for this purpose.

Sec. 74.255. COST OF ADDITIONAL RESOURCES. The cost of additional resources provided for a case under this subchapter shall be paid by the state and may not be taxed against any party in the case for which the resources are provided or against the county in which the case is pending.

Sec. 74.256. NO STAY OR CONTINUANCE PENDING DETERMINATION. The filing of a motion under Section 74.253 in a case is not grounds for a stay or continuance of the proceedings in the case in the court in which the case is pending during the period the motion or request is being considered by:

- (1) the judge of that court;
- (2) the presiding judge of the administrative judicial region; or
- (3) the judicial committee for additional resources.

Sec. 74.257. APPELLATE REVIEW. A determination made by a trial court judge, the presiding judge of an administrative judicial region, or the judicial committee for additional resources under this subchapter is not appealable or subject to review by mandamus.

SECTION 6.05. (a) The Texas Supreme Court shall request the president of the State Bar of Texas to appoint a task force to consider and make recommendations regarding the rules for determining whether civil cases pending in trial courts require additional resources for efficient judicial management required by Section 74.252, Government Code, as added by this Act. The president of the State Bar of Texas shall ensure that the task force has diverse representation and includes judges of trial courts and attorneys licensed to practice law in this state who regularly appear in civil cases before courts in this state. The task force shall provide recommendations on the rules to the Texas Supreme Court not later than March 1, 2012.

(b) The Texas Supreme Court shall:

- (1) consider the recommendations of the task force provided as required by Subsection (a) of this section; and
- (2) adopt the rules required by Section 74.252, Government Code, as added by this Act, not later than May 1, 2012.

SECTION 6.06. The changes in law made by this article apply to cases pending on or after May 1, 2012.

#### ARTICLE 7. GRANT PROGRAMS

SECTION 7.01. Subchapter C, Chapter 72, Government Code, is amended by adding Section 72.029 to read as follows:

Sec. 72.029. GRANTS FOR COURT SYSTEM ENHANCEMENTS. (a) The office shall develop and administer, except as provided by Subsection (c), a program to provide grants from available funds to counties for initiatives that will enhance their court systems or otherwise carry out the purposes of this chapter.

(b) To be eligible for a grant under this section, a county must:

(1) use the grant money to implement initiatives that will enhance the county's court system, including grants to develop programs to more efficiently manage cases that require special judicial attention, or otherwise carry out the purposes of this chapter; and

(2) apply for the grant in accordance with procedures developed by the office and comply with any other requirements of the office.

(c) The judicial committee for additional resources shall determine whether to award a grant to a county that meets the eligibility requirements prescribed by Subsection (b).

(d) If the judicial committee for additional resources awards a grant to a county, the office shall:

(1) direct the comptroller to distribute the grant money to the county; and

(2) monitor the county's use of the grant money.

SECTION 7.02. Subchapter A, Chapter 22, Government Code, is amended by adding Section 22.017 to read as follows:

Sec. 22.017. GRANTS FOR CHILD PROTECTION. (a) In this section, "commission" means the Permanent Judicial Commission for Children, Youth and Families established by the supreme court.

(b) The commission shall develop and administer a program to provide grants from available funds for initiatives that will improve safety and permanency outcomes, enhance due process, or increase the timeliness of resolution in child protection cases.

(c) To be eligible for a grant under this section, a prospective recipient must:

(1) use the grant money to improve safety or permanency outcomes, enhance due process, or increase timeliness of resolution in child protection cases; and

(2) apply for the grant in accordance with procedures developed by the commission and comply with any other requirements of the supreme court.

(d) If the commission awards a grant, the commission shall:

(1) direct the comptroller to distribute the grant money; and

(2) monitor the use of the grant money.

#### ARTICLE 8. VEXATIOUS LITIGANTS

SECTION 8.01. Section 11.001(3), Civil Practice and Remedies Code, is amended to read as follows:

(3) "Local administrative judge" means a local administrative district judge, a local administrative statutory probate court judge, or a local administrative statutory county court judge.

SECTION 8.02. Section 11.101, Civil Practice and Remedies Code, is amended by adding Subsection (c) to read as follows:

(c) A litigant may appeal from a prefiling order entered under Subsection (a) designating the person a vexatious litigant.

SECTION 8.03. Section 11.102, Civil Practice and Remedies Code, is amended by adding Subsection (c) to read as follows:

(c) A decision of a local administrative judge denying a litigant permission to file a litigation under Subsection (a), or conditioning permission to file a litigation on the furnishing of security under Subsection (b), is not grounds for appeal, except that the litigant may apply for a writ of mandamus with the court of appeals not later than the 30th day after the date of the decision. The denial of a writ of mandamus by the court of appeals is not grounds for appeal to the supreme court or court of criminal appeals.

SECTION 8.04. Section 11.103, Civil Practice and Remedies Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:



(a) Except as provided by Subsection (d), a [A] clerk of a court may not file a litigation, original proceeding, appeal, or other claim presented by a vexatious litigant subject to a prefiling order under Section 11.101 unless the litigant obtains an order from the local administrative judge permitting the filing.

(d) A clerk of a court of appeals may file an appeal from a prefiling order entered under Section 11.101 designating a person a vexatious litigant or a timely filed writ of mandamus under Section 11.102(c).

SECTION 8.05. Section 11.104, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 11.104. NOTICE TO OFFICE OF COURT ADMINISTRATION; DISSEMINATION OF LIST. (a) A clerk of a court shall provide the Office of Court Administration of the Texas Judicial System a copy of any prefiling order issued under Section 11.101 not later than the 30th day after the date the prefiling order is signed.

(b) The Office of Court Administration of the Texas Judicial System shall post on the agency's Internet website [maintain] a list of vexatious litigants subject to prefiling orders under Section 11.101 [and shall annually send the list to the clerks of the courts of this state]. On request of a person designated a vexatious litigant, the list shall indicate whether the person designated a vexatious litigant has filed an appeal of that designation.

SECTION 8.06. The posting, before the effective date of this article, of the name of a person designated a vexatious litigant under Chapter 11, Civil Practice and Remedies Code, on a list of vexatious litigants on the Internet website of the Office of Court Administration of the Texas Judicial System is not:

- (1) grounds for a cause of action;
- (2) a defense against a finding that a plaintiff is a vexatious litigant under Chapter 11, Civil Practice and Remedies Code; or
- (3) grounds for relief or appeal from a stay, order, or dismissal or any other action taken by a court or a clerk of a court under Chapter 11, Civil Practice and Remedies Code.

#### ARTICLE 9. STUDY BY OFFICE OF COURT ADMINISTRATION OF TEXAS JUDICIAL SYSTEM

SECTION 9.01. In this article, "office of court administration" means the Office of Court Administration of the Texas Judicial System.

SECTION 9.02. (a) The office of court administration shall study the district courts and statutory county courts of this state to determine overlapping jurisdiction in civil cases in which the amount in controversy is more than \$200,000. The study must determine the feasibility, efficiency, and potential cost of converting to district courts those statutory county courts with jurisdiction in civil cases in which the amount in controversy is more than \$200,000.

(b) Not later than January 1, 2013, the office of court administration shall submit a report regarding the determinations made by the office relating to statutory county courts to the governor, the lieutenant governor, the speaker of the house of representatives, the chairs of the standing committees of the senate and house of

representatives with primary jurisdiction over the judicial system, and the commissioners court of any county with a statutory county court with jurisdiction in civil cases in which the amount in controversy is more than \$200,000.

**ARTICLE 10. NO APPROPRIATION; EFFECTIVE DATE**

**SECTION 10.01.** This Act does not make an appropriation. A provision in this Act that creates a new governmental program, creates a new entitlement, or imposes a new duty on a governmental entity is not mandatory during a fiscal period for which the legislature has not made a specific appropriation to implement the provision.

**SECTION 10.02.** Except as otherwise provided by this Act, this Act takes effect January 1, 2012.

**Floor Amendment No. 1**

Amend **CSSB 1717** (house committee printing) as follows:

(1) Strike SECTION 4.01 of the bill (page 46, line 22, through page 47, line 21) and substitute the following:

**SECTION 4.01.** (a) Section 27.005(a), Government Code, is amended to read as follows:

(a) For purposes of removal under Chapter 87, Local Government Code, "incompetent" in the case of a justice of the peace includes the failure of the justice to successfully complete:

(1) within one year after the date the justice is first elected, an 80-hour course in the performance of the justice's duties; and

(2) each following year, a 20-hour course in the performance of the justice's duties, including not less than 10 hours of instruction regarding substantive, procedural, and evidentiary law in civil matters.

(b) Section 27.005(a), Government Code, as amended by this section, applies to a justice of the peace serving on or after the effective date of this article, regardless of the date the justice was elected or appointed.

(2) Strike Section 6.02 of the bill (page 102, line 8, through page 104, line 5) and substitute the following:

**SECTION 6.02.** Section 74.050, Government Code, is amended to read as follows:

Sec. 74.050. **SUPPORT STAFF** [~~ADMINISTRATIVE ASSISTANT~~]. (a) The presiding judge may employ, directly or through a contract with another governmental entity, a full-time or part-time administrative assistant.

(b) An administrative assistant [~~must have the qualifications established by rule of the supreme court.~~

~~[(c) An administrative assistant]~~ shall aid the presiding judge in carrying out the judge's duties under this chapter. The administrative assistant shall:

(1) perform the duties that are required by the presiding judge and by the rules of administration;

(2) conduct correspondence for the presiding judge;

(3) under the direction of the presiding judge, make an annual report of the activities of the administrative region and special reports as provided by the rules of administration to the supreme court, which shall be made in the manner directed by the supreme court; and

(4) attend to other matters that are prescribed by the council of judges.

(c) [(~~e~~)] An administrative assistant, with the approval of the presiding judge, may purchase the necessary office equipment, stamps, stationery, and supplies and employ additional personnel as authorized by the presiding judge.

(d) [(~~e~~)] An administrative assistant is entitled to receive the compensation from the state provided by the General Appropriations Act, from county funds, or from any public or private grant.

(3) In SECTION 7.01 of the bill, in added Section 72.029, Government Code (page 110, following line 27), add a new Subsection (e) to read as follows:

(e) The office may accept gifts, grants, and donations for purposes of this section. The office may not use state funds to provide a grant under this section or to administer the grant program.

(4) In SECTION 7.02 of the bill, in added Section 22.017, Government Code (page 111, between lines 21 and 22), add a new Subsection (e) to read as follows:

(e) The commission may accept gifts, grants, and donations for purposes of this section. The commission may not use state funds to provide a grant under this section or to administer the grant program.

(5) In SECTION 9.02 of the bill (page 114, between lines 23 and 24) add a new Subsection (c) to read as follows:

(c) The office of court administration may accept gifts, grants, and donations to conduct the study under this section. The office of court administration may not use state funds to conduct the study and, notwithstanding Subsection (a) of this section, is required to conduct the study only to the extent gifts, grants, and donations are available for that purpose.

## Floor Amendment No. 2

Amend **CSSB 1717** (house committee printing) by adding the following appropriately numbered ARTICLE to the bill and renumbering subsequent ARTICLES accordingly:

### ARTICLE \_\_\_\_ . SUITS AFFECTING THE PARENT-CHILD RELATIONSHIP

SECTION \_\_\_\_ .01. Section 263.601, Family Code, is amended by amending Subdivision (1) and adding Subdivision (3-a) to read as follows:

(1) "Foster care" means a voluntary residential living arrangement with a foster parent or other residential child-care provider that is:

(A) licensed or approved by the department or verified by a licensed child-placing agency; and

(B) paid under a contract with the department.

(3-a) "Trial independence period" means a period of not less than six months, or a longer period as a court may order not to exceed 12 months, during which a young adult exits foster care with the option to return to foster care under the continuing extended jurisdiction of the court.

SECTION \_\_\_\_ .02. Section 263.602, Family Code, is amended to read as follows:

Sec. 263.602. EXTENDED JURISDICTION. (a) A court that had continuing, exclusive jurisdiction over a young adult on the day before ~~[may, at]~~ the young adult's 18th birthday continues to have extended ~~[request, render an order that extends the~~

court's] jurisdiction over the young adult and shall retain the case on the court's docket while the young adult remains in extended foster care and during a trial independence period described [as provided] by this section [subchapter].

(b) A court with extended jurisdiction over a young adult who remains in extended foster care shall conduct extended foster care review hearings every six months for the purpose of reviewing and making findings regarding:

(1) whether the young adult's living arrangement is safe and appropriate and whether the department has made reasonable efforts to place the young adult in the least restrictive environment necessary to meet the young adult's needs;

(2) whether the department is making reasonable efforts to finalize the permanency plan that is in effect for the young adult, including a permanency plan for independent living;

(3) whether, for a young adult whose permanency plan is independent living:

(A) the young adult participated in the development of the plan of service;

(B) the young adult's plan of service reflects the independent living skills and appropriate services needed to achieve independence by the projected date; and

(C) the young adult continues to make reasonable progress in developing the skills needed to achieve independence by the projected date; and

(4) whether additional services that the department is authorized to provide are needed to meet the needs of the young adult [The extended jurisdiction of the court terminates on the earlier of:

(1) the young adult's 21st birthday; or

(2) the date the young adult withdraws consent to the extension of the court's jurisdiction in writing or in court].

(c) Not later than the 10th day before the date set for a hearing under this section, the department shall file with the court a copy of the young adult's plan of service and a report that addresses the issues described by Subsection (b).

(d) Notice of an extended foster care review hearing shall be given as provided by Rule 21a, Texas Rules of Civil Procedure, to the following persons, each of whom has a right to present evidence and be heard at the hearing:

(1) the young adult who is the subject of the suit;

(2) the department;

(3) the foster parent with whom the young adult is placed and the administrator of a child-placing agency responsible for placing the young adult, if applicable;

(4) the director of the residential child-care facility or other approved provider with whom the young adult is placed, if applicable;

(5) each parent of the young adult whose parental rights have not been terminated and who is still actively involved in the life of the young adult;

(6) a legal guardian of the young adult, if applicable; and

(7) the young adult's attorney ad litem, guardian ad litem, and volunteer advocate, the appointment of which has not been previously dismissed by the court.

(e) If, after reviewing the young adult's plan of service and the report filed under Subsection (c), and any additional testimony and evidence presented at the review hearing, the court determines that the young adult is entitled to additional services, the court may order the department to take appropriate action to ensure that the young adult receives those services.

(f) A court with extended jurisdiction over a young adult as described in Subsection (a) shall continue to have jurisdiction over the young adult and shall retain the case on the court's docket until the earlier of:

(1) the last day of the:

(A) sixth month after the date the young adult leaves foster care; or

(B) 12th month after the date the young adult leaves foster care if specified in a court order, for the purpose of allowing the young adult to pursue a trial independence period; or

(2) the young adult's 21st birthday.

(g) A court with extended jurisdiction described by this section is not required to conduct periodic hearings for a young adult during a trial independence period and may not compel a young adult who has exited foster care to attend a court hearing.

SECTION \_\_\_\_ .03. Subchapter G, Chapter 263, Family Code, is amended by adding Section 263.6021 to read as follows:

Sec. 263.6021. VOLUNTARY EXTENDED JURISDICTION FOR YOUNG ADULT RECEIVING TRANSITIONAL LIVING SERVICES. (a) Notwithstanding Section 263.602, a court that had continuing, exclusive jurisdiction over a young adult on the day before the young adult's 18th birthday may, at the young adult's request, render an order that extends the court's jurisdiction beyond the end of a trial independence period if the young adult receives transitional living services from the department.

(b) The extended jurisdiction of the court under this section terminates on the earlier of:

(1) the young adult's 21st birthday; or

(2) the date the young adult withdraws consent to the extension of the court's jurisdiction in writing or in court.

(c) At the request of a young adult who is receiving transitional living services from the department and who consents to voluntary extension of the court's jurisdiction under this section, the court may hold a hearing to review the services the young adult is receiving.

(d) Before a review hearing scheduled under this section, the department must file with the court a report summarizing the young adult's transitional living services plan, services being provided to the young adult under that plan, and the young adult's progress in achieving independence.

(e) If, after reviewing the report and any additional testimony and evidence presented at the hearing, the court determines that the young adult is entitled to additional services, the court may order the department to take appropriate action to ensure that the young adult receives those services.

SECTION \_\_\_\_ .04. Subsections (a) and (c), Section 263.603, Family Code, are amended to read as follows:

(a) Notwithstanding Section 263.6021 [~~263.602~~], if the court believes that a young adult may be incapacitated as defined by Section 601(14)(B), Texas Probate Code, the court may extend its jurisdiction on its own motion without the young adult's consent to allow the department to refer the young adult to the Department of Aging and Disability Services for guardianship services as required by Section 48.209, Human Resources Code.

(c) If the Department of Aging and Disability Services determines a guardianship is not appropriate, or the court with probate jurisdiction denies the application to appoint a guardian, the court under Subsection (a) may continue to extend its jurisdiction over the young adult only as provided by Section 263.602 or 263.6021.

SECTION \_\_\_\_ .05. Section 263.609, Family Code, is repealed.

SECTION \_\_\_\_ .06. This article takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this article takes effect September 1, 2011.

### Floor Amendment No. 3

Amend **CSSB 1717** (house committee report) as follows:

(1) In the recital to SECTION 4.05 of the bill (page 49, line 12), between "by" and "adding", insert "amending Subsection (a) and".

(2) In SECTION 4.05 of the bill, before proposed Article 4.12(e), Code of Criminal Procedure (page 49, between lines 12 and 13), insert the following:

(a) Except as otherwise provided by this article, a misdemeanor case to be tried in justice court shall be tried:

(1) in the precinct in which the offense was committed;

(2) in the precinct in which the defendant or any of the defendants reside;

[or]

(3) with the written consent of the state and each defendant or the defendant's attorney, in any other precinct within the county; or

(4) if the offense was committed in a county with a population of 3.3 million or more, in any precinct in the county that is adjacent to the precinct in which the offense was committed.

(3) Add the following appropriately numbered SECTION to ARTICLE 4 of the bill and renumber the remaining SECTIONS of the bill accordingly:

SECTION \_\_\_\_ . Article 4.12(a), Code of Criminal Procedure, as amended by this article, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

### Floor Amendment No. 6

Amend **CSSB 1717** (house committee printing) by adding the following appropriately numbered ARTICLE to the bill and renumbering subsequent ARTICLES and SECTIONS of the bill accordingly:

ARTICLE \_\_\_\_ . MANAGED ASSIGNED COUNSEL PROGRAMS

SECTION \_\_\_\_ .01. Article 26.04, Code of Criminal Procedure, is amended by amending Subsection (a) and adding Subsection (f-1) to read as follows:

(a) The judges of the county courts, statutory county courts, and district courts trying criminal cases in each county, by local rule, shall adopt and publish written countywide procedures for timely and fairly appointing counsel for an indigent defendant in the county arrested for or charged with a misdemeanor punishable by confinement or a felony. The procedures must be consistent with this article and Articles 1.051, 15.17, 26.05, and 26.052. A court shall appoint an attorney from a public appointment list using a system of rotation, unless the court appoints an attorney under Subsection (f), (f-1), (h), or (i). The court shall appoint attorneys from among the next five names on the appointment list in the order in which the attorneys' names appear on the list, unless the court makes a finding of good cause on the record for appointing an attorney out of order. An attorney who is not appointed in the order in which the attorney's name appears on the list shall remain next in order on the list.

(f-1) In a county in which a managed assigned counsel program is operated in accordance with Article 26.047, the managed assigned counsel program may appoint counsel to represent the defendant in accordance with guidelines established for the program.

SECTION \_\_\_\_ .02. Chapter 26, Code of Criminal Procedure, is amended by adding Article 26.047 to read as follows:

Art. 26.047. MANAGED ASSIGNED COUNSEL PROGRAM. (a) In this article:

(1) "Governmental entity" has the meaning assigned by Article 26.044.

(2) "Managed assigned counsel program" or "program" means a program operated with public funds:

(A) by a governmental entity, nonprofit corporation, or bar association under a written agreement with a governmental entity, other than an individual judge or court; and

(B) for the purpose of appointing counsel under Article 26.04 or Section 51.10, Family Code.

(b) The commissioners court of any county, on written approval of a judge of the juvenile court of a county or a county court, statutory county court, or district court trying criminal cases in the county, may appoint a governmental entity, nonprofit corporation, or bar association to operate a managed assigned counsel program. The commissioners courts of two or more counties may enter into a written agreement to jointly appoint and fund a governmental entity, nonprofit corporation, or bar association to operate a managed assigned counsel program. In appointing an entity to operate a managed assigned counsel program under this subsection, the commissioners court shall specify or the commissioners courts shall jointly specify:

(1) the types of cases in which the program may appoint counsel under Article 26.04 or Section 51.10, Family Code, and the courts in which the counsel appointed by the program may be required to appear; and

(2) the term of any agreement establishing a program and how the agreement may be terminated or renewed.

(c) The commissioners court or commissioners courts shall require a written plan of operation from an entity operating a program under this article. The plan of operation must include:

- (1) a budget for the program, including salaries;
- (2) a description of each personnel position, including the program's director;
- (3) the maximum allowable caseload for each attorney appointed by the program;
- (4) provisions for training personnel of the program and attorneys appointed under the program;
- (5) a description of anticipated overhead costs for the program;
- (6) a policy regarding licensed investigators and expert witnesses used by attorneys appointed under the program;
- (7) a policy to ensure that appointments are reasonably and impartially allocated among qualified attorneys; and
- (8) a policy to ensure that an attorney appointed under the program does not accept appointment in a case that involves a conflict of interest for the attorney that has not been waived by all affected clients.

(d) A program under this article must have a director. Unless the program uses a review committee appointed under Subsection (e), a program under this article must be directed by a person who:

- (1) is a member of the State Bar of Texas;
- (2) has practiced law for at least three years; and
- (3) has substantial experience in the practice of criminal law.

(e) The governmental entity, nonprofit corporation, or bar association appointed under Subsection (b) may appoint a review committee of three or more individuals to appoint attorneys to the program's public appointment list described by Subsection

(f). Each member of the committee:

- (1) must meet the requirements described by Subsection (d);
- (2) may not be employed as a prosecutor; and
- (3) may not be included on or apply for inclusion on the public appointment

list described by Subsection (f).

(f) The program's public appointment list from which an attorney is appointed must contain the names of qualified attorneys, each of whom:

- (1) applies to be included on the list;
- (2) meets any applicable requirements specified by the procedure for appointing counsel adopted under Article 26.04(a) and the Task Force on Indigent Defense; and
- (3) is approved by the program director or review committee, as applicable.

(g) A court may replace an attorney appointed by the program for the same reasons and in the same manner described by Article 26.04(k).

(h) A managed assigned counsel program is entitled to receive funds for personnel costs and expenses incurred in amounts fixed by the commissioners court and paid out of the appropriate county fund, or jointly fixed by the commissioners courts and proportionately paid out of each appropriate county fund if the program serves more than one county.



(i) A managed assigned counsel program may employ personnel and enter into contracts necessary to perform the program's duties as specified by the commissioners court or commissioners courts under this article.

SECTION \_\_\_\_ .03. Article 26.05(c), Code of Criminal Procedure, is amended to read as follows:

(c) Each fee schedule adopted shall state reasonable fixed rates or minimum and maximum hourly rates, taking into consideration reasonable and necessary overhead costs and the availability of qualified attorneys willing to accept the stated rates, and shall provide a form for the appointed counsel to itemize the types of services performed. No payment shall be made under this article until the form for itemizing the services performed is submitted to the judge presiding over the proceedings or, if the county operates a managed assigned counsel program under Article 26.047, the director of the program, and the judge or director, as applicable, approves the payment. If the judge or director disapproves the requested amount of payment, the judge or director shall make written findings stating the amount of payment that the judge or director approves and each reason for approving an amount different from the requested amount. An attorney whose request for payment is disapproved or is not otherwise acted on by the 60th day after the date the request for payment is submitted may appeal the disapproval or failure to act by filing a motion with the presiding judge of the administrative judicial region. On the filing of a motion, the presiding judge of the administrative judicial region shall review the disapproval of payment or failure to act and determine the appropriate amount of payment. In reviewing the disapproval or failure to act, the presiding judge of the administrative judicial region may conduct a hearing. Not later than the 45th day after the date an application for payment of a fee is submitted under this article, the commissioners court shall pay to the appointed counsel the amount that is approved by the presiding judge of the administrative judicial region and that is in accordance with the fee schedule for that county.

SECTION \_\_\_\_ .04. Section 71.001, Government Code, is amended by adding Subdivision (8-a) to read as follows:

(8-a) "Managed assigned counsel program" has the meaning assigned by Article 26.047, Code of Criminal Procedure.

SECTION \_\_\_\_ .05. Section 71.060(a), Government Code, is amended to read as follows:

(a) The Task Force on Indigent Defense shall develop policies and standards for providing legal representation and other defense services to indigent defendants at trial, on appeal, and in postconviction proceedings. The policies and standards may include:

(1) performance standards for counsel appointed to represent indigent defendants;

(2) qualification standards under which attorneys may qualify for appointment to represent indigent defendants, including:

(A) qualifications commensurate with the seriousness of the nature of the proceeding;

(B) qualifications appropriate for representation of mentally ill defendants and noncitizen defendants;

(C) successful completion of relevant continuing legal education programs approved by the council; and

(D) testing and certification standards;

(3) standards for ensuring appropriate appointed caseloads for counsel appointed to represent indigent defendants;

(4) standards for determining whether a person accused of a crime or juvenile offense is indigent;

(5) policies and standards governing the organization and operation of an assigned counsel program;

(6) policies and standards governing the organization and operation of a public defender consistent with recognized national policies and standards;

(7) standards for providing indigent defense services under a contract defender program consistent with recognized national policies and standards;

(8) standards governing the reasonable compensation of counsel appointed to represent indigent defendants;

(9) standards governing the availability and reasonable compensation of providers of indigent defense support services for counsel appointed to represent indigent defendants;

(10) standards governing the operation of a legal clinic or program that provides legal services to indigent defendants and is sponsored by a law school approved by the supreme court;

(11) policies and standards governing the appointment of attorneys to represent children in proceedings under Title 3, Family Code; ~~and~~

(12) policies and standards governing the organization and operation of a managed assigned counsel program consistent with nationally recognized policies and standards; and

(13) other policies and standards for providing indigent defense services as determined by the task force to be appropriate.

#### **Floor Amendment No. 7**

Amend **CSSB 1717** by adding the following appropriately numbered ARTICLE to the bill and renumbering subsequent ARTICLES of the bill accordingly:

ARTICLE \_\_\_\_ . STATE COSTS FOR ATTORNEYS AD LITEM AND GUARDIANS AD LITEM APPOINTED TO REPRESENT MINORS IN JUDICIAL BYPASS ABORTION PROCEEDINGS

SECTION \_\_\_\_ .01. (a) Not later than December 1, 2011, the supreme court by rule shall establish procedures for the supreme court and each county court at law, court having probate jurisdiction, district court, and court of appeals in this state to conduct a financial audit to determine for the state fiscal year beginning September 1, 2011, the amount of state funds used to pay the costs of attorneys ad litem and guardians ad litem appointed to represent minors under Section 33.003 or 33.004, Family Code.

(b) In the procedures adopted under Subsection (a) of this section, the supreme court must require each state court to submit to the supreme court a report on the results of the financial audit conducted by the court not later than November 1, 2012.

(c) Not later than January 1, 2013, the supreme court shall submit to the lieutenant governor and the speaker of the house of representatives a report that summarizes the results of financial audits conducted in the state courts and includes the total amount of state funds used in the state fiscal year beginning September 1, 2011, to pay the costs of attorneys ad litem and guardians ad litem appointed to represent minors under Section 33.003 or 33.004, Family Code.

SECTION \_\_\_\_\_. Section 33.003(e), Family Code, is amended to read as follows:

(e) The court shall appoint a guardian ad litem for the minor. If the minor has not retained an attorney, the court shall appoint an attorney to represent the minor. ~~The [If the guardian ad litem is an attorney admitted to the practice of law in this state, the] court may not~~ appoint the guardian ad litem to serve as the minor's attorney. The court may not appoint the minor's attorney to be the guardian ad litem for the minor.

SECTION \_\_\_\_\_. The change in law made by this Act to Section 33.003(e), Family Code, applies only to an application for a court order authorizing a minor to consent to an abortion filed under Section 33.003, Family Code, as amended by this Act, on or after the effective date of this Act. An application filed before the effective date of this Act is governed by the law in effect at the time the application was filed, and that law is continued in effect for that purpose.

### Floor Amendment No. 8

Amend **CSSB 1717** (house committee printing) by adding the following appropriately numbered SECTION to ARTICLE 1 of the bill and renumbering subsequent SECTIONS of the ARTICLE accordingly:

SECTION \_\_\_\_\_. Subchapter A, Chapter 22, Government Code, is amended by adding Section 22.018 to read as follows:

Sec. 22.018. PUBLIC INFORMATION REGARDING CERTAIN PETITIONS AND MOTIONS. (a) The supreme court shall adopt rules governing the collection of statistical information relating to applications and appeals granted under Sections 33.003(h) and 33.004(b), Family Code. The information collected by the supreme court must include:

(1) the number of judicial bypass cases in which the court appointed a guardian ad litem;

(2) the number of judicial bypass cases in which the court appointed counsel;

(3) whether or not the guardian ad litem and counsel are the same individual;

(4) the number of judicial bypass cases in which the judge issued an order authorizing an abortion without notification; and

(5) the number of judicial bypass cases in which the judge denied an order, the number of appeals filed as a result of a denial, the number of denials that were affirmed, and the number of denials that were reversed.

(b) The information collected under this section must be available to the public in aggregate form on an administrative judicial region basis, as determined by the court.

(c) Statistical information collected under this section may not include the minor's name or any other confidential information of the minor.

**Floor Amendment No. 9**

Amend **CSSB 1717** (house committee printing) by adding the following appropriately numbered SECTION to ARTICLE 6 of the bill and renumbering subsequent SECTIONS of the ARTICLE accordingly:

SECTION 6. \_\_\_\_\_. (a) Section 74.141, Government Code, is amended to read as follows:

Sec. 74.141. DEFENSE OF JUDGES. The attorney general shall defend a state district judge, a presiding judge of an administrative region, the presiding judge of the statutory probate courts, or an active, retired, or former judge assigned under this chapter in any action or suit in any court in which the judge is a defendant because of his office as judge if the judge requests the attorney general's assistance in the defense of the suit.

(b) Section 74.141, Government Code, as amended by this Act, applies to a cause of action filed on or after the effective date of this Act. A cause of action filed before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

**Floor Amendment No. 10**

Amend **CSSB 1717** (house committee printing) by adding the following appropriately numbered ARTICLE to the bill and renumbering subsequent ARTICLES and SECTIONS of the bill accordingly:

## ARTICLE \_\_\_\_\_. COURT REPORTERS

SECTION \_\_\_\_\_.01. Section 52.047, Government Code, is amended by adding Subsection (h) to read as follows:

(h) A court reporter may not be required to file an official transcript of a trial before the 60th day after the date a notice of appeal is filed. To the extent this subsection conflicts with the Texas Rules of Appellate Procedure or other rules of procedure, this subsection controls. Notwithstanding Sections 22.003, 22.004, and 22.108, the supreme court or the court of criminal appeals may not amend or adopt a rule in conflict with this section. This subsection does not apply to an official transcript required for an accelerated appeal or an interlocutory appeal.

**Floor Amendment No. 12**

Amend **CSSB 1717** (house committee printing) by adding the following appropriately numbered ARTICLE to the bill and renumbering ARTICLES of the bill accordingly:

## ARTICLE \_\_\_\_\_. INMATE LITIGATION

SECTION \_\_\_\_\_.01. Section 14.002(a), Civil Practice and Remedies Code, is amended to read as follows:

(a) This chapter applies only to an action, including an appeal or original proceeding, [a suit] brought by an inmate in a district, county, justice of the peace, or small claims court or an appellate court, including the supreme court or the court of criminal appeals, in which an affidavit or unsworn declaration of inability to pay costs is filed by the inmate.

SECTION \_\_\_\_\_.02. Sections 14.004(a) and (b), Civil Practice and Remedies Code, are amended to read as follows:

(a) An inmate who files an affidavit or unsworn declaration of inability to pay costs shall file a separate affidavit or declaration:

(1) identifying each action [suit], other than an action [a-suit] under the Family Code, previously brought by the person and in which the person was not represented by an attorney, without regard to whether the person was an inmate at the time the action [suit] was brought; and

(2) describing each action [suit] that was previously brought by:

(A) stating the operative facts for which relief was sought;

(B) listing the case name, cause number, and the court in which the action [suit] was brought;

(C) identifying each party named in the action [suit]; and

(D) stating the result of the action [suit], including whether the action or a claim that was a basis for the action [suit] was dismissed as frivolous or malicious under Section 13.001 or Section 14.003 or otherwise.

(b) If the affidavit or unsworn declaration filed under this section states that a previous action or claim [suit] was dismissed as frivolous or malicious, the affidavit or unsworn declaration must state the date of the final order affirming the dismissal.

SECTION \_\_\_\_\_.03. Section 14.007(a), Civil Practice and Remedies Code, is amended to read as follows:

(a) An order of a court under Section 14.006(a) shall include the costs described by Subsection (b) if the court finds that:

(1) the inmate has previously filed an action to which this chapter applies [in a district, county, justice of the peace, or small claims court]; and

(2) a final order has been issued that affirms that the action was dismissed as frivolous or malicious under Section 13.001 or Section 14.003 or otherwise.

SECTION \_\_\_\_\_.04. The change in law made by this article applies only to an action brought on or after the effective date of this Act. An action brought before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

### Floor Amendment No. 13

Amend **CSSB 1717** (house committee printing) by adding the following appropriately numbered ARTICLE to the bill and renumbering subsequent ARTICLES and SECTIONS of the bill accordingly:

#### ARTICLE \_\_\_\_\_. PROVISIONS RELATED TO EXEMPTING CERTAIN JUDICIAL OFFICERS FROM CERTAIN CONCEALED HANDGUN LICENSING REQUIREMENTS

SECTION \_\_\_\_\_. Section 411.201(a)(1), Government Code, is amended to read as follows:

(1) "Active judicial officer" means:

(A) a person serving as a judge or justice of the supreme court, the court of criminal appeals, a court of appeals, a district court, a criminal district court, a constitutional county court, a statutory county court, a justice court, or a municipal court; ~~[or]~~

(B) a federal judge who is a resident of this state; or

(C) a person appointed and serving as an associate judge under Chapter 201, Family Code.

SECTION \_\_\_\_\_. Section 46.15(a), Penal Code, is amended to read as follows:

(a) Sections 46.02 and 46.03 do not apply to:

(1) peace officers or special investigators under Article 2.122, Code of Criminal Procedure, and neither section prohibits a peace officer or special investigator from carrying a weapon in this state, including in an establishment in this state serving the public, regardless of whether the peace officer or special investigator is engaged in the actual discharge of the officer's or investigator's duties while carrying the weapon;

(2) parole officers and neither section prohibits an officer from carrying a weapon in this state if the officer is:

(A) engaged in the actual discharge of the officer's duties while carrying the weapon; and

(B) in compliance with policies and procedures adopted by the Texas Department of Criminal Justice regarding the possession of a weapon by an officer while on duty;

(3) community supervision and corrections department officers appointed or employed under Section 76.004, Government Code, and neither section prohibits an officer from carrying a weapon in this state if the officer is:

(A) engaged in the actual discharge of the officer's duties while carrying the weapon; and

(B) authorized to carry a weapon under Section 76.0051, Government Code;

(4) an active judicial officer as defined by Section 411.201, Government Code, [a judge or justice of a federal court, the supreme court, the court of criminal appeals, a court of appeals, a district court, a criminal district court, a constitutional county court, a statutory county court, a justice court, or a municipal court] who is licensed to carry a concealed handgun under Subchapter H, Chapter 411, Government Code;

(5) an honorably retired peace officer or federal criminal investigator who holds a certificate of proficiency issued under Section 1701.357, Occupations Code, and is carrying a photo identification that:

(A) verifies that the officer honorably retired after not less than 15 years of service as a commissioned officer; and

(B) is issued by a state or local law enforcement agency;

(6) a district attorney, criminal district attorney, county attorney, or municipal attorney who is licensed to carry a concealed handgun under Subchapter H, Chapter 411, Government Code;

(7) an assistant district attorney, assistant criminal district attorney, or assistant county attorney who is licensed to carry a concealed handgun under Subchapter H, Chapter 411, Government Code;

(8) a bailiff designated by an active judicial officer as defined by Section 411.201, Government Code, who is:

(A) licensed to carry a concealed handgun under Chapter 411, Government Code; and

(B) engaged in escorting the judicial officer; or  
 (9) a juvenile probation officer who is authorized to carry a firearm under Section 142.006, Human Resources Code.

SECTION \_\_\_\_\_. The change in law made by this article to Section 46.15, Penal Code, applies only to an offense committed on or after the effective date of this article. An offense committed before the effective date of this article is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this article if any element of the offense occurred before that date.

SECTION \_\_\_\_\_. This article takes effect September 1, 2011.

### **Floor Amendment No. 15**

Amend **CSSB 1717** (house committee printing) by adding the following appropriately numbered SECTION to ARTICLE 1 of the bill and renumbering subsequent SECTIONS of the ARTICLE accordingly:

SECTION 1. \_\_\_\_\_. (a) Sections 22.201(b), (k), and (o), Government Code, are amended to read as follows:

(b) The First Court of Appeals District is composed of the counties of Austin, Brazoria, Chambers, Colorado, Fort Bend, Galveston, Grimes, Harris, Walker, Waller, and Washington.

(k) The Tenth Court of Appeals District is composed of the counties of Bosque, Burleson, Brazos, Coryell, Ellis, Falls, Freestone, Hamilton, Hill, Johnson, Leon, Limestone, Madison, McLennan, Navarro, Robertson, and Somervell~~[, and Walker]~~.

(o) The Fourteenth Court of Appeals District is composed of the counties of Austin, Brazoria, Chambers, Colorado, Fort Bend, Galveston, Grimes, Harris, Walker, Waller, and Washington.

(b) Section 22.201, Government Code, as amended by this article, does not affect the jurisdiction on appeal of any case from a county that is transferred by this article to a different court of appeals district if the transcripts for the case were filed before September 1, 2011, in the appropriate court of appeals district.

### **Floor Amendment No. 16**

Amend **CSSB 1717** by adding the following appropriately numbered ARTICLE to the bill and renumbering subsequent ARTICLES and SECTIONS of the bill accordingly:

ARTICLE \_\_\_\_\_. PROFESSIONAL PROSECUTORS

SECTION \_\_\_\_\_.01. Section 46.002, Government Code, is amended to read as follows:

Sec. 46.002. PROSECUTORS SUBJECT TO CHAPTER. This chapter applies to the state prosecuting attorney, all county prosecutors, and the following state prosecutors:

(1) the district attorneys for Kenedy and Kleberg Counties and for the 1st, 2nd, 8th, 9th, 12th, 18th, 21st, 23rd, 25th, 26th, 27th, 29th, 31st, 32nd, 33rd, 34th, 35th, 36th, 38th, 39th, 42nd, 43rd, 46th, 47th, 49th, 50th, 51st, 52nd, 53rd, 63rd, 64th, 66th, 69th, 70th, 76th, 81st, 83rd, 84th, 85th, 88th, 90th, 97th, 100th, 105th, 106th,

109th, 110th, 112th, 118th, 119th, 123rd, 142nd, 143rd, 145th, 156th, 159th, 173rd, 196th, 198th, 216th, 220th, 229th, 235th, 253rd, 258th, 259th, 266th, 268th, 271st, 286th, 287th, 329th, 344th, 349th, 355th, and 506th judicial districts;

(2) the criminal district attorneys for the counties of Anderson, Austin, Bastrop, Bexar, Bowie, Brazoria, Caldwell, Calhoun, Cass, Collin, Comal, Dallas, Deaf Smith, Denton, Eastland, Fannin, Galveston, Grayson, Gregg, Harrison, Hays, Hidalgo, Jasper, Jefferson, Kaufman, Lubbock, McLennan, Madison, Navarro, Newton, Panola, Polk, Randall, Rockwall, San Jacinto, Smith, Tarrant, Taylor, Tyler, Upshur, Van Zandt, Victoria, Walker, Waller, Wichita, Wood, and Yoakum; and

(3) the county attorneys performing the duties of district attorneys in the counties of Andrews, Callahan, Cameron, Castro, Colorado, Crosby, Ellis, Falls, Freestone, Lamar, Lamb, Lampasas, Lee, Limestone, Marion, Milam, Morris, Ochiltree, Orange, Rains, Red River, Robertson, Rusk, Swisher, Terry, Webb, and Willacy.

SECTION \_\_\_\_.02. This article takes effect September 1, 2011.

#### **Floor Amendment No. 17**

Amend **CSSB 1717** (house committee printing) by adding the following appropriately numbered SECTION to ARTICLE 3 of the bill and renumbering subsequent SECTIONS of the ARTICLE accordingly:

SECTION 3.\_\_\_\_. (a) Section 25.0453, Government Code, is amended by adding Subsection (g) to read as follows:

(g) The judge of a statutory probate court may, unless a party objects, provide that a proceeding be recorded by a good quality electronic recording device instead of by a court reporter. A stenographic record of an electronically recorded proceeding is not required except on order of the judge or request of a party. If a recording device is used, the court reporter is not required to be present to certify the record. The judge may designate one or more persons to act as the court recorder and shall assign to a court recorder the duties and responsibilities necessary to act in that capacity.

(b) Section 25.0453(g), Government Code, as added by this article, applies only to a proceeding commenced on or after the effective date of this Act. A proceeding commenced before the effective date of this Act is covered by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

#### **Floor Amendment No. 19**

Amend **CSSB 1717** (house committee printing) by adding the following appropriately number ARTICLE and renumbering subsequent ARTICLES and SECTIONS of the bill accordingly:

#### ARTICLE \_\_\_\_ APPLICATION OF FOREIGN LAWS

SECTION \_\_\_\_.01. Title 6, Civil Practice and Remedies Code, is amended by adding Chapter 148 to read as follows:

#### CHAPTER 148. APPLICATION OF FOREIGN LAWS; SELECTION OF FOREIGN FORUM

Sec. 148.001. DEFINITION. In this chapter, "foreign law" means a law, rule, or legal code of a jurisdiction outside of the states and territories of the United States.



Sec. 148.002. DECISION BASED ON FOREIGN LAW. A ruling or decision of a court, arbitrator, or administrative adjudicator on a matter arising under the Family Code may not be based on a foreign law if the application of that law would violate a right guaranteed by the United States Constitution or the constitution or a statute of this state.

Sec. 148.003. CHOICE OF FOREIGN LAW OR FORUM IN CONTRACT. (a) A contract provision providing that a foreign law is to govern a dispute arising under the Family Code is void to the extent that the application of the foreign law to the dispute would violate a right guaranteed by the United States Constitution or the constitution of this state.

(b) A contract provision providing that the forum to resolve a dispute arising under the Family Code is located outside the states and territories of the United States is void if the foreign law that would be applied to the dispute in that forum would, as applied, violate a right guaranteed by the United States Constitution or the constitution of this state.

SECTION \_\_\_\_.02. (a) Section 148.002, Civil Practice and Remedies Code, as added by this article, applies only to a ruling or decision that becomes final on or after the effective date of this Act. A ruling or decision that becomes final before the effective date of this Act and any appeal of that ruling or decision 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.

(b) Section 148.003, Civil Practice and Remedies Code, as added by this article, applies only to a contract entered into on or after the effective date of this Act. A contract entered into before the effective date of this Act is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

### **Floor Amendment No. 20**

Amend Amendment No. 19 by Berman amending **CSSB 1717** as follows:

(1) In the SECTION of the amendment adding Section 148.002, Civil Practice and Remedies Code (page 1, line 16), between "violate a" and "right", insert "civil right or a".

(2) In the SECTION of the amendment adding Section 148.003(a), Civil Practice and Remedies Code (page 1, line 23), between "violate a" and "right", insert "civil right or a".

(3) In the SECTION of the amendment adding Section 148.003(b), Civil Practice and Remedies Code (page 1, line 29), between "violate a" and "right", insert "civil right or a".

### **Floor Amendment No. 22**

Amend **CSSB 1717** (house committee printing) by adding the following appropriately numbered ARTICLE to the bill and renumbering subsequent ARTICLES and SECTIONS of the bill accordingly:

ARTICLE \_\_\_\_. VICTIM-OFFENDER MEDIATION

SECTION \_\_\_\_.01. Section 1, Article 28.01, Code of Criminal Procedure, is amended to read as follows:

Sec. 1. The court may set any criminal case for a pre-trial hearing before it is set for trial upon its merits, and direct the defendant and his attorney, if any of record, and the State's attorney, to appear before the court at the time and place stated in the court's order for a conference and hearing. The defendant must be present at the arraignment, and his presence is required during any pre-trial proceeding. The pre-trial hearing shall be to determine any of the following matters:

- (1) Arraignment of the defendant, if such be necessary; and appointment of counsel to represent the defendant, if such be necessary;
- (2) Pleadings of the defendant;
- (3) Special pleas, if any;
- (4) Exceptions to the form or substance of the indictment or information;
- (5) Motions for continuance either by the State or defendant; provided that grounds for continuance not existing or not known at the time may be presented and considered at any time before the defendant announces ready for trial;
- (6) Motions to suppress evidence—When a hearing on the motion to suppress evidence is granted, the court may determine the merits of said motion on the motions themselves, or upon opposing affidavits, or upon oral testimony, subject to the discretion of the court;
- (7) Motions for change of venue by the State or the defendant; provided, however, that such motions for change of venue, if overruled at the pre-trial hearing, may be renewed by the State or the defendant during the voir dire examination of the jury;
- (8) Discovery;
- (9) Entrapment; ~~and~~
- (10) Motion for appointment of interpreter; and
- (11) Motion to allow the defendant to enter a pretrial victim-offender mediation program established under Subchapter A-1, Chapter 56.

SECTION \_\_\_\_ .02. Chapter 56, Code of Criminal Procedure, is amended by adding Subchapter A-1 to read as follows:

SUBCHAPTER A-1. PRETRIAL VICTIM-OFFENDER MEDIATION PROGRAM

Art. 56.21. AUTHORITY TO ESTABLISH PROGRAM. (a) The commissioners court of a county or governing body of a municipality may establish a pretrial victim-offender mediation program for persons who:

(1) have been arrested for or charged with a misdemeanor under Title 7, Penal Code, in any court in this state other than a district court; and

(2) have not previously been convicted of a felony or a misdemeanor, other than a misdemeanor regulating traffic and punishable by fine only.

(b) A county court, statutory county court, municipal court, or justice court that implements a program under this subchapter may adopt administrative rules as necessary or convenient to implement or operate the program, including additional criteria related to a defendant's eligibility to enter the program.

(c) The commissioners court of a county or governing body of a municipality that establishes a pretrial victim-offender mediation program under this subchapter may:

(1) allow for the referral to the program of arrested persons who have not yet been indicted or otherwise formally charged; and

(2) adopt administrative procedures as necessary to implement and operate the program, including additional program requirements that have been approved by the attorney representing the state in the county or municipality, as applicable.

Art. 56.22. PROGRAM. (a) A pretrial victim-offender mediation program established under Article 56.21 is coordinated by the attorney representing the state and must require:

(1) the attorney representing the state:

(A) to identify defendants who are eligible to participate in the program, including a consideration by the attorney representing the state of whether the defendant meets any additional locally developed eligibility criteria; and

(B) to the extent feasible and using existing resources, to make available to complaining witnesses and victims in appropriate criminal cases information and literature indicating that a victim-offender mediation program may be available in a case if certain eligibility criteria are met by the defendant;

(2) the consent of the victim, the defendant, and the attorney representing the state to be obtained before the case may proceed to pretrial victim-offender mediation; and

(3) the defendant to enter into a binding mediation agreement in accordance with Article 56.24 that:

(A) includes an apology by the defendant; and

(B) requires the defendant to:

(i) pay restitution to the victim; or

(ii) perform community service.

(b) All communications made in a pretrial victim-offender mediation program are confidential and may not be introduced into evidence except in a proceeding involving a question concerning the meaning of a mediation agreement.

(c) A pretrial victim-offender mediation program may require the staff and other resources of pretrial services departments and community supervision correction departments to assist in monitoring the defendant's compliance with a mediation agreement reached through the program.

(d) A pretrial victim-offender mediation may be conducted by a court-appointed mediator who meets the training requirements provided by Sections 154.052(a) and (b), Civil Practice and Remedies Code, or by any other appropriate person designated by the court. Neither the attorney representing the state nor the attorney representing the defendant in the criminal action may serve as a mediator under the pretrial victim-offender mediation program.

(e) If a defendant enters a pretrial victim-offender mediation program, the court may defer the proceedings without accepting a plea of guilty or nolo contendere or entering an adjudication of guilt. The court may not require the defendant to admit guilt or enter a plea of guilty or nolo contendere to enter the program.

(f) The case must be returned to the docket and proceed through the regular criminal justice system if:

(1) a pretrial victim-offender mediation does not result in a mediation agreement; or

(2) the defendant fails to successfully fulfill the terms of the mediation agreement by the date specified in the mediation agreement.

(g) If a case is returned to the docket under Subsection (f), the defendant retains all of the rights that the defendant possessed before entering the pretrial victim-offender mediation program under this subchapter. Notwithstanding any other law, for purposes of determining the duration and expiration of an applicable statute of limitation under Chapter 12, the running of the period of limitation is tolled while the defendant is enrolled in a program under this subchapter.

(h) The court on the motion of the attorney representing the state shall dismiss the indictment or information charging the defendant with the commission of the offense, if the defendant:

(1) successfully completes the mediation agreement as determined by the attorney representing the state; and

(2) either:

(A) pays all court costs; or

(B) enters a payment plan approved by the court or the attorney representing the state for such payment.

(i) The attorney representing the state or the court may extend the initial compliance period granted to the defendant. A determination by the court regarding whether the mediation agreement has been successfully completed is final and may not be appealed.

(j) If the defendant is not arrested or convicted of a subsequent felony or misdemeanor other than a misdemeanor regulating traffic and punishable by fine only on or before the first anniversary of the date the defendant successfully completed a mediation agreement under this subchapter, on the motion of the defendant, the court shall enter an order of nondisclosure under Section 411.081, Government Code, as if the defendant had received a discharge and dismissal under Section 5(c), Article 42.12, with respect to all records and files related to the defendant's arrest for the offense for which the defendant entered the pretrial victim-offender mediation program.

Art. 56.23. MOTION AND HEARING. (a) The court on its own motion may, and on the motion of either party shall, hold a pretrial hearing to determine whether to allow an eligible defendant to enter a pretrial victim-offender mediation program under this subchapter.

(b) The court shall conduct a pretrial hearing under this article in accordance with Chapter 28 and the rules of evidence.

(c) At a pretrial hearing under this article, either party may present any evidence relevant to the defendant's eligibility under Article 56.22 and other additional locally developed eligibility criteria to enter a pretrial victim-offender mediation program.

Art. 56.24. MEDIATION AGREEMENT. (a) A mediation agreement under this subchapter must be:

(1) signed by the defendant and the victim; and

(2) ratified by the attorney representing the state in a request for a court order documenting and approving the mediation agreement.

(b) A mediation agreement under this subchapter may require testing, counseling, and treatment of the defendant to address alcohol abuse, abuse of controlled substances, mental health, or anger management or any other service that is reasonably related to the offense for which the defendant was arrested or charged.

(c) A mediation agreement under this subchapter is not valid for more than one year after the date on which the mediation agreement is ratified unless the court and the attorney representing the state approve the extension of the agreement.

(d) A mediation agreement under this subchapter does not constitute a plea or legal admission of responsibility.

Art. 56.25. OVERSIGHT. (a) The lieutenant governor and the speaker of the house of representatives may assign to appropriate legislative committees duties relating to the oversight of pretrial victim-offender mediation programs established under this subchapter.

(b) A legislative committee or the governor may request the state auditor to perform a management, operations, or financial or accounting audit of a pretrial victim-offender mediation program established under this subchapter.

Art. 56.26. FEES. (a) A pretrial victim-offender mediation program established under this subchapter may collect from a defendant in the program:

(1) a reasonable program participation fee not to exceed \$500; and

(2) an alcohol or controlled substance testing, counseling, and treatment fee in an amount necessary to cover the costs of the testing, counseling, or treatment if such testing, counseling, or treatment is required by the mediation agreement.

(b) Fees collected under this article may be paid on a periodic basis or on a deferred payment schedule at the discretion of the judge, magistrate, or program director administering the pretrial victim-offender mediation program. The fees must be:

(1) based on the defendant's ability to pay; and

(2) used only for purposes specific to the program.

SECTION \_\_\_\_ .03. Subchapter A, Chapter 102, Code of Criminal Procedure, is amended by adding Article 102.0179 to read as follows:

Art. 102.0179. COSTS ATTENDANT TO PRETRIAL VICTIM-OFFENDER MEDIATION. (a) A defendant who participates in a pretrial victim-offender mediation program established under Subchapter A-1, Chapter 56, on successful completion of the terms of the defendant's mediation agreement or on conviction, shall pay as court costs \$15 plus an additional program participation fee as described by Article 56.26 in the amount prescribed by that article.

(b) The court clerk shall collect the costs imposed under this article. The clerk shall keep a separate record of any money collected under this article and shall pay any money collected to the county or municipal treasurer, as appropriate, or to any other official who discharges the duties commonly delegated to a treasurer, for deposit in a fund to be known as the county pretrial victim-offender mediation program fund or in a fund to be known as the municipal pretrial victim-offender mediation program fund, as appropriate.

(c) A county or municipality that collects court costs under this article shall use the money in a fund described by Subsection (b) exclusively for the maintenance of the pretrial victim-offender mediation program operated in the county or municipality.

SECTION \_\_\_\_ .04. Subchapter B, Chapter 102, Government Code, is amended by adding Section 102.0216 to read as follows:

Sec. 102.0216. ADDITIONAL COURT COSTS: CODE OF CRIMINAL PROCEDURE. A defendant who participates in a pretrial victim-offender mediation program established under Subchapter A-1, Chapter 56, Code of Criminal Procedure, shall pay on successful completion of the terms of the defendant's mediation agreement or on conviction, in addition to all other costs, to help fund pretrial victim-offender mediation programs established under that subchapter (Art. 102.0179, Code of Criminal Procedure) . . . \$15 plus an additional program participation fee in an amount not to exceed \$500.

SECTION \_\_\_\_.05. (a) The change in law made by this Act in adding Subchapter A-1, Chapter 56, Code of Criminal Procedure, applies to a defendant who enters a pretrial victim-offender mediation program under that subchapter regardless of whether the defendant committed the offense for which the defendant enters the program before, on, or after the effective date of this Act.

(b) The change in law made by this Act in adding Article 102.0179, Code of Criminal Procedure, and Section 102.0216, Government 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 subsection, an offense was committed before the effective date of this Act if any element of the offense was committed before that date.

#### **Floor Amendment No. 24**

Amend **CSSB 1717** (house committee printing) by adding the following appropriately numbered ARTICLE to the bill and renumbering subsequent ARTICLES and SECTIONS of the bill accordingly:

ARTICLE \_\_\_\_. PRETRIAL HEARINGS IN CRIMINAL CASES

SECTION \_\_\_\_.01. Article 28.01, Code of Criminal Procedure, is amended by adding Section 4 to read as follows:

Sec. 4. A court shall set a pre-trial hearing in a criminal case other than a case involving only an offense punishable as a Class C misdemeanor, if not later than the 60th day before the date on which trial commences, the state or the defendant requests the hearing. The court must:

(1) hold the requested hearing not later than the 30th day before the date on which trial commences; and

(2) to the extent feasible, rule at the hearing on all pre-trial motions filed in the case.

SECTION \_\_\_\_.02 The change in law made by this article applies only to a criminal case in which the indictment or information is presented to the court on or after the effective date of this Act. A criminal case in which the indictment or information is presented to the court before the effective date of this Act is governed by the law in effect when the indictment or information is presented, and the former law is continued in effect for that purpose.

#### **Floor Amendment No. 25**

Amend **CSSB 1717** (house committee printing) by adding the following appropriately numbered ARTICLE to the bill and renumbering subsequent ARTICLES and SECTIONS of the bill accordingly:

ARTICLE \_\_\_\_ . COURT COSTS

SECTION \_\_\_\_ . Subsection (b), Section 51.005, Government Code, is amended to read as follows:

(b) The fees are:

- (1) application for petition for review [~~writ of error~~] . . . . . \$ 50
- (2) additional fee if application for petition for review [~~writ of error~~] is granted . . . . . \$ 75
- (3) motion for leave to file petition for writ of mandamus, prohibition, injunction, and other similar proceedings originating in the supreme court . . . . . \$ 50
- (4) additional fee if a motion under Subdivision (3) is granted. . . . . \$ 75
- (5) certified question from a federal court of appeals to the supreme court \$ 75
- (6) case appealed to the supreme court from the district court by direct appeal . . . . . \$100
- (7) any other proceeding filed in the supreme court . . . . . \$ 75.

SECTION \_\_\_\_ . Subsection (a), Section 51.207, Government Code, is amended to read as follows:

(a) The clerk of a court of appeals shall collect the fees described in Subsection (b) in a civil case before the court for the following services:

- (1) filing records, applications, motions, briefs, and other necessary and proper papers;
- (2) docketing and making docket and minute book entries;
- (3) issuing notices, citations, processes, and mandates;
- (4) preparing transcripts on application for petition for review [~~writ of error~~] to the supreme court; and
- (5) performing other necessary clerical duties.

SECTION \_\_\_\_ . Section 101.021, Government Code, is amended to read as follows:

Sec. 101.021. SUPREME COURT FEES AND COSTS: GOVERNMENT CODE. The clerk of the supreme court shall collect fees and costs as follows:

- (1) application for petition for review [~~writ of error~~] (Sec. 51.005, Government Code) . . . \$50;
- (2) additional fee if application for petition for review [~~writ of error~~] is granted (Sec. 51.005, Government Code) . . . \$75;
- (3) motion for leave to file petition for writ of mandamus, prohibition, injunction, and other similar proceedings originating in the supreme court (Sec. 51.005, Government Code) . . . \$50;
- (4) additional fee if a motion under Subdivision (3) is granted (Sec. 51.005, Government Code) . . . \$75;
- (5) certified question from a federal court of appeals to the supreme court (Sec. 51.005, Government Code) . . . \$75;
- (6) case appealed to the supreme court from the district court by direct appeal (Sec. 51.005, Government Code) . . . \$100;
- (7) any other proceeding filed in the supreme court (Sec. 51.005, Government Code) . . . \$75;

(8) administering an oath and giving a sealed certificate of the oath (Sec. 51.005, Government Code) . . . \$5;

(9) making certain copies, including certificate and seal (Sec. 51.005, Government Code) . . . \$5, or \$0.50 per page if more than 10 pages;

(10) any official service performed by the clerk for which a fee is not otherwise provided (Sec. 51.005, Government Code) . . . reasonable amount set by order or rule of supreme court;

(10-a) supreme court support account filing fee (Sec. 51.0051, Government Code) . . . amount set by the supreme court, not to exceed \$50;

(11) issuance of attorney's license or certificate (Sec. 51.006, Government Code) . . . \$10; and

(12) additional filing fee to fund civil legal services for the indigent (Sec. 51.941, Government Code) . . . \$25.

### **Floor Amendment No. 26**

Amend **CSSB 1717** (house committee printing) as follows:

(1) In ARTICLE 4 of the bill, add the following appropriately numbered SECTION to the ARTICLE and renumber the subsequent SECTIONS of the ARTICLE accordingly:

SECTION 4.\_\_\_\_. Section 102.104, Government Code, is repealed.

(2) Add the following appropriately numbered ARTICLE to the bill and renumber subsequent ARTICLES and SECTIONS of the bill accordingly:

ARTICLE \_\_\_\_ . REPEAL OF CERTAIN COURT COSTS

SECTION \_\_\_\_ .01. The following provisions are repealed:

(1) Section 102.122, Government Code; and

(2) Section 545.412(b-1), Transportation Code.

### **Floor Amendment No. 27**

Amend **CSSB 1717** (house committee printing) by adding the following appropriately numbered ARTICLE to the bill and renumbering subsequent ARTICLES and SECTIONS of the bill accordingly:

ARTICLE \_\_\_\_ . CONFIDENTIALITY OF CERTAIN COURT RECORDS

SECTION \_\_\_\_ .01. Chapter 44, Code of Criminal Procedure, is amended by adding Article 44.282 to read as follows:

Art. 44.282. RECORDS AND FILES RELATING TO CERTAIN CHILDREN.

(a) In this article, "child" has the meaning assigned by Section 51.02, Family Code.

(b) All records and files relating to a child who is appealing a conviction from a municipal court or a justice court for a misdemeanor offense punishable by a fine only, other than a traffic offense, are confidential during the pendency of the appeal and may not be disclosed except as provided by Article 45.0217(c).

(c) All records and files relating to a child whose conviction from a municipal court or a justice court for a misdemeanor offense punishable by a fine only, other than a traffic offense, was appealed are confidential following the disposition of the appeal and may not be disclosed except as provided by Article 45.0217(c):

(1) on satisfaction of the judgment, if the conviction is affirmed; or

(2) on reversal or remand of the conviction.



SECTION \_\_\_\_ .02. Chapter 45, Code of Criminal Procedure, is amended by adding Article 45.0217 to read as follows:

Art. 45.0217. CONFIDENTIALITY OF CERTAIN CONVICTION RECORDS AND FILES OF CHILDREN. (a) In this article, "child" has the meaning assigned by Section 51.02, Family Code.

(b) Except as provided by Subsection (c), on satisfaction of the judgment, all records and files relating to a child who is convicted of a misdemeanor offense punishable by a fine only, other than a traffic offense, including records and files held by a law enforcement agency, are confidential and may not be disclosed.

(c) Records and files relating to a child convicted of a misdemeanor offense punishable by a fine only, other than a traffic offense, may be disclosed to:

- (1) a judge or magistrate, including the staff of a judge or magistrate;
- (2) the Department of Public Safety or another criminal justice agency, for a criminal justice purpose, as those terms are defined by Section 411.082, Government Code;
- (3) the attorney for the child;
- (4) the prosecuting attorney;
- (5) the child and the child's parent, guardian, or managing conservator; and
- (6) a person to whom information is required to be disclosed under Article

15.27.

SECTION \_\_\_\_ .03. Section 411.0851(a), Government Code, is amended to read as follows:

(a) A private entity that compiles and disseminates for compensation criminal history record information shall destroy and may not disseminate any information in the possession of the entity with respect to which the entity has received notice that:

- (1) an order of expunction has been issued under Article 55.02, Code of Criminal Procedure; or
- (2) an order of nondisclosure has been issued under Section 411.081(d) [~~or~~ (~~§1~~)].

SECTION \_\_\_\_ .04. The heading to Section 552.142, Government Code, is amended to read as follows:

~~Sec. 552.142. EXCEPTION: RECORDS OF CERTAIN DEFERRED ADJUDICATIONS [AND CERTAIN MISDEMEANORS PUNISHABLE BY FINE ONLY].~~

SECTION \_\_\_\_ .05. Section 552.142(a), Government Code, is amended to read as follows:

(a) Information is excepted from the requirements of Section 552.021 if an order of nondisclosure with respect to the information has been issued under Section 411.081(d) [~~or~~ (~~§1~~)].

SECTION \_\_\_\_ .06. Section 552.1425(a), Government Code, is amended to read as follows:

(a) A private entity that compiles and disseminates for compensation criminal history record information may not compile or disseminate information with respect to which the entity has received notice that:

- (1) an order of expunction has been issued under Article 55.02, Code of Criminal Procedure; or

(2) an order of nondisclosure has been issued under Section 411.081(d) [~~or (f-1)~~].

SECTION \_\_\_\_ .07. Section 58.005, Family Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) Subsection (a) [~~This section~~] does not apply to information collected under Section 58.104 or under Subchapter D-1.

(c) Except as provided by Article 45.0217(c), Code of Criminal Procedure, all records and files relating to a child who is convicted of a misdemeanor offense punishable by a fine only, other than a traffic offense, or is found to have engaged in conduct indicating a need for supervision that is described by Section 51.03(b)(1), are confidential and may not be disclosed:

(1) on satisfaction of the judgment, if the records and files relate to a child who is convicted of a misdemeanor offense punishable by a fine only, other than a traffic offense; or

(2) on completion of the terms of the disposition, if the records and files relate to a child found to have engaged in conduct indicating a need for supervision that is described by Section 51.03(b)(1).

SECTION \_\_\_\_ .08. Sections 411.081(f-1) and (j), Government Code, are repealed.

SECTION \_\_\_\_ .09. The changes in law made by this article apply to all records and files that exist on or after the effective date of this Act, regardless of when the conviction or the finding that is the subject of the records and files occurred or when the judgment contained in the records and files was satisfied or the terms of the disposition contained in the records and files was completed.

### **Floor Amendment No. 1 on Third Reading**

Amend Amendment No. 8 by Harnett, as added on second reading, to **CSSB 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.

The amendments were read.

Senator Duncan moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **SB 1717** before appointment.

There were no motions offered.

The President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Duncan, Chair; Harris, Huffman, Uresti, and Hinojosa.

**SENATE BILL 683 WITH HOUSE AMENDMENT**

Senator Huffman called **SB 683** from the President's table for consideration of the House amendment to the bill.

The President Pro Tempore laid the bill and the House amendment before the Senate.

**Floor Amendment No. 1**

Amend **SB 683** (house committee printing) by striking SECTION 3 of the bill and substituting:

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2011.

The amendment was read.

Senator Huffman moved to concur in the House amendment to **SB 683**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

**SENATE BILL 516 WITH HOUSE AMENDMENT**

Senator Patrick called **SB 516** from the President's table for consideration of the House amendment to the bill.

The President Pro Tempore laid the bill and the House amendment before the Senate.

**Floor Amendment No. 1 on Third Reading**

Amend **SB 516** on third reading as follows:

(1) In the recital to SECTION 2 of the bill (page 1, line 11), strike "(c) and (d)" and substitute "(c), (d), and (e)".

(2) In SECTION 2 of the bill, following added Section 11.131(d), Tax Code (page 2, between lines 14 and 15), add the following:

(e) A surviving spouse who qualifies for an exemption under Subsection (c) or (d) must apply for an exemption under that subsection each year the surviving spouse claims entitlement to the exemption as required by Sections 11.43(a) and (b).

(3) Add the following appropriately numbered SECTION to the bill and renumber the subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 11.43(c), Tax Code, is amended to read as follows:

(c) An exemption provided by Section 11.13, 11.131(b) [~~11.131~~], 11.17, 11.18, 11.182, 11.183, 11.19, 11.20, 11.21, 11.22, 11.23(h), (j), or (j-1), 11.231, 11.254, 11.29, 11.30, or 11.31, once allowed, need not be claimed in subsequent years, and except as otherwise provided by Subsection (e), the exemption applies to the property until it changes ownership or the person's qualification for the exemption changes. However, the chief appraiser may require a person allowed one of the exemptions in a prior year to file a new application to confirm the person's current qualification for the exemption by delivering a written notice that a new application is required, accompanied by an appropriate application form, to the person previously allowed the exemption.

The amendment was read.

Senator Patrick moved that the Senate do not concur in the House amendment, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **SB 516** before appointment.

There were no motions offered.

The President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Patrick, Chair; Birdwell, Hinojosa, Nichols, and Huffman.

### **SENATE BILL 1788 WITH HOUSE AMENDMENTS**

Senator Patrick called **SB 1788** from the President's table for consideration of the House amendments to the bill.

The President Pro Tempore laid the bill and the House amendments before the Senate.

#### **Floor Amendment No. 1**

Amend **SB 1788** by adding the following appropriately numbered ARTICLE and renumbering subsequent ARTICLES and SECTIONS of the bill accordingly:

ARTICLE \_\_\_\_ . FISCAL MATTERS REGARDING FOUNDATION SCHOOL PROGRAM AND TAX INCREMENT FUND

SECTION \_\_\_\_ .01. Subchapter E, Chapter 42, Education Code, is amended by adding Section 42.2511 to read as follows:

Sec. 42.2511. FUNDING LEVELS BASED ON CERTAIN TAX INCREMENT FUND PAYMENTS. (a) This section applies only to a school district that:

(1) deposited taxes before May 1, 2011, in a tax increment fund created under Chapter 311, Tax Code, for a reinvestment zone plan; and

(2) received a notice from the commissioner of a reduction in state funding for the 2004-2005, 2005-2006, 2006-2007, 2007-2008, and 2008-2009 school years based on the deposit of taxes into the tax increment fund that were reported to the commissioner by the district but not on the form used by the agency to calculate entitlements under this chapter.

(b) Notwithstanding any other law, the state and local revenue a school district subject to this section is entitled to receive for the state fiscal biennium beginning September 1, 2011, is reduced by one-half of the reduction calculated by the commissioner due to the taxes deposited in the tax increment fund for the 2004-2005, 2005-2006, 2006-2007, 2007-2008, and 2008-2009 school years.

(c) This section expires September 1, 2013.

#### **Floor Amendment No. 2**

Amend **SB 1788** (house committee report) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Subchapter A, Chapter 29, Education Code, is amended by adding Section 29.0111 to read as follows:

Sec. 29.0111. BEGINNING OF TRANSITION PLANNING. Appropriate state transition planning under the procedure adopted under Section 29.0111 must begin for a student not later than when the student reaches 14 years of age.

The amendments were read.

Senator Patrick moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **SB 1788** before appointment.

There were no motions offered.

The President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Patrick, Chair; Huffman, Shapiro, Nelson, and West.

#### **CONFERENCE COMMITTEE ON HOUSE BILL 1732**

Senator Hinojosa called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 1732** and moved that the request be granted.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **HB 1732** before appointment.

There were no motions offered.

Accordingly, the President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Hinojosa, Chair; Williams, Seliger, Whitmire, and Nelson.

#### **CONFERENCE COMMITTEE ON HOUSE BILL 753**

Senator Zaffirini called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 753** and moved that the request be granted.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **HB 753** before appointment.

There were no motions offered.

Accordingly, the President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Zaffirini, Chair; Deuell, Carona, Rodriguez, and Eltife.

### CONFERENCE COMMITTEE ON HOUSE BILL 2226

Senator Carona called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2226** and moved that the request be granted.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **HB 2226** before appointment.

There were no motions offered.

Accordingly, the President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Carona, Chair; Gallegos, Zaffirini, Nichols, and Eltife.

### CONFERENCE COMMITTEE ON HOUSE BILL 2560

Senator Estes called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2560** and moved that the request be granted.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **HB 2560** before appointment.

There were no motions offered.

Accordingly, the President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Estes, Chair; Huffman, Wentworth, Lucio, and Hegar.

### SENATE BILL 635 WITH HOUSE AMENDMENTS

Senator Nichols called **SB 635** from the President's table for consideration of the House amendments to the bill.

The President Pro Tempore laid the bill and the House amendments before the Senate.

#### Amendment

Amend **SB 635** by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to the authority of the Texas Commission on Environmental Quality.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 13.043(h), Water Code, is amended to read as follows:

(h) The commission or executive director 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).

SECTION 2. Sections 13.187(b) and (l), Water Code, are amended to read as follows:

(b) A copy of the statement of intent shall be mailed or delivered to the appropriate offices of each affected municipality, to the executive director, and to any ~~[other]~~ affected persons as required by the regulatory authority's rules.

(l) At any time during the pendency of the rate proceeding the regulatory authority or, if the regulatory authority is the commission, the executive director may fix interim rates to remain in effect until a final determination is made on the proposed rate.

SECTION 3. Section 13.242(c), Water Code, is amended to read as follows:

(c) The commission may by rule allow a municipality or utility or water supply corporation to render retail water or sewer service without a certificate of public convenience and necessity if the municipality has given notice under Section 13.255 ~~[of this code]~~ that it intends to provide retail water or sewer service to an area or if the utility or water supply corporation has less than 15 potential connections and is not within the certificated area of another retail public utility.

SECTION 4. 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 commission or the executive director after public notice ~~[and hearing]~~, are valid and enforceable and are incorporated into the appropriate areas of public convenience and necessity.

SECTION 5. Section 49.321, Water Code, is amended to read as follows:

Sec. 49.321. DISSOLUTION AUTHORITY. After notice ~~[and hearing]~~, the commission or executive director may dissolve any district that is inactive for a period of five consecutive years and has no outstanding bonded indebtedness.

SECTION 6. Section 49.324, Water Code, is amended to read as follows:

Sec. 49.324. ORDER OF DISSOLUTION. The commission or the executive director may enter an order dissolving the district ~~[at the conclusion of the hearing]~~ if the commission or executive director ~~[#]~~ finds that the district has performed none of the functions for which it was created for a period of five consecutive years ~~[before the day of the proceeding]~~ and that the district has no outstanding bonded indebtedness.

SECTION 7. Section 49.326(a), Water Code, is amended to read as follows:

(a) Appeals from an ~~[a commission]~~ order dissolving a district shall be filed and heard in the district court of any of the counties in which the land is located.

SECTION 8. Section 54.030(b), Water Code, is amended to read as follows:

(b) The governing body of a district which desires to convert into a district operating under this chapter shall adopt and enter in the minutes of the governing body a resolution declaring that in its judgment, conversion into a municipal utility district operating under this chapter and under Article XVI, Section 59, of the Texas Constitution, would serve the best interest of the district and would be a benefit to the land and property included in the district. The resolution shall also request that the commission approve ~~[to hold a hearing on the question of]~~ the conversion of the district.

SECTION 9. Section 54.032, Water Code, is amended to read as follows:

Sec. 54.032. CONVERSION OF DISTRICT: NOTICE. (a) Notice of the conversion [~~hearing~~] shall be given by publishing notice in a newspaper with general circulation in the county or counties in which the district is located.

(b) The notice shall be published once a week for two consecutive weeks [~~with the first publication to be made not less than 14 full days before the time set for the hearing~~].

(c) The notice shall:

(1) [~~state the time and place of the hearing;~~

[~~2~~] set out the resolution adopted by the district in full; and

(2) [~~3~~] notify all interested persons how they may offer comments [~~to appear and offer testimony~~] for or against the proposal contained in the resolution.

SECTION 10. Section 54.033, Water Code, is amended to read as follows:

Sec. 54.033. CONVERSION OF DISTRICT; FINDINGS. (a) If [~~After a hearing, if~~] the commission or the executive director finds that conversion of the district into one operating under this chapter would serve the best interest of the district and would be a benefit to the land and property included in the district, the commission or executive director [~~it~~] shall enter an order making this finding and the district shall become a district operating under this chapter and no confirmation election shall be required.

(b) If the commission or the executive director finds that the conversion of the district would not serve the best interest of the district and would not be a benefit to the land and property included in the district, the commission or executive director [~~it~~] shall enter an order against conversion of the district into one operating under this chapter.

(c) The findings of the commission or the executive director entered under this section shall be subject to appeal or review within 30 days after entry of the order [~~of the commission~~] granting or denying the conversion.

(d) A copy of the [~~commission~~] order converting a district shall be filed in the deed records of the county or counties in which the district is located.

SECTION 11. Sections 49.322 and 54.031, Water Code, are repealed.

SECTION 12. Except as otherwise provided by this Act, this Act applies only to a statement of intent filed on or after the effective date of this Act. A rate change to which a statement of intent filed before the effective date of this Act applies is governed by the law in effect on the date the statement was filed, and that law is continued in effect for that purpose.

SECTION 13. This Act takes effect September 1, 2011.

### Floor Amendment No. 1

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".

### **Floor Amendment No. 2**

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.

### **Floor Amendment No. 3**

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.

### **Floor Amendment No. 7**

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 3. 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 decertificated 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 ~~of~~ the executive director of the utility commission will ~~[director's decision whether to]~~ request that the utility commission hold a public hearing to determine if the transaction will serve the public interest. The executive director of the utility commission may request a hearing if:

(1) the application filed with the utility commission or the public notice was improper;

(2) the person purchasing or acquiring the water or sewer system has not demonstrated adequate financial, managerial, and technical capability for providing continuous and adequate service to the service area being acquired and to any areas currently certificated to the person;

(3) the person or an affiliated interest of the person purchasing or acquiring the water or sewer system has a history of:

(A) noncompliance with the requirements of the utility commission, the commission, or the [Texas] Department of State Health Services; or

(B) continuing mismanagement or misuse of revenues as a utility service provider;

(4) the person purchasing or acquiring the water or sewer system cannot demonstrate the financial ability to provide the necessary capital investment to ensure the provision of continuous and adequate service to the customers of the water or sewer system; or

(5) there are concerns that the transaction may not serve the public interest, after the application of the considerations provided by Section 13.246(c) for determining whether to grant a certificate of convenience and necessity.

(f) Unless the executive director of the utility commission requests that a public hearing be held, the sale, acquisition, lease, or rental may be completed as proposed:

(1) at the end of the 120-day period; or

(2) at any time after the executive director of the utility commission notifies the utility or water supply or sewer service corporation that a hearing will not be requested.

(g) If a hearing is requested or if the utility or water supply or sewer service corporation fails to make the application as required or to provide public notice, the sale, acquisition, lease, or rental may not be completed unless the utility commission determines that the proposed transaction serves the public interest.

SECTION 2.50. 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 instituted by filing a petition with a district court in Travis County, as provided by Subchapter G, Chapter 2001, Government Code.

(m) Notwithstanding any other provision of law, the agency ~~[commission]~~ may compromise, modify, extend the time for payment of, or remit, with or without condition, any penalty imposed under this section.

SECTION 2.66. 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.

### Floor Amendment No. 9

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.

### Floor Amendment No. 1 on Third Reading

Amend **CSSB 635** on third reading by striking:

(1) the section of the bill, as added by Floor Amendment No. 2 by Larson on second reading, that amends Subchapter C, Chapter 361, Health and Safety Code, by adding Section 361.0865; and

(2) the section of the bill, as added by Floor Amendment No. 2 by Larson on second reading, that reads:

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.

### **Floor Amendment No. 2 on Third Reading**

Amend **CSSB 635** on third reading by striking the SECTION of the bill added by Amendment No. 9 by Dutton, amending Section 13.185(h), Water Code, and providing transition provisions for that Section.

### **Floor Amendment No. 3 on Third Reading**

Amend **CSSB 635** on third reading by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Subchapter B, Chapter 501, Health and Safety Code, is amended by adding Section 501.0234 to read as follows:

Sec. 501.234. DENATONIUM BENZOATE ADDITIVE REQUIREMENT FOR CERTAIN PRODUCTS CONTAINING ETHYLENE GLYCOL. (a) This section applies to a product to be sold as antifreeze or engine coolant that:

(1) contains an ethylene glycol concentration greater than 10 percent by volume; and

(2) is manufactured after January 1, 2013.

(b) A manufacturer of a product described by Subsection (a) may not distribute the product for sale in this state unless the product includes denatonium benzoate in an amount of not less than 30 parts per million and not more than 50 parts per million by weight.

(c) A manufacturer of a product described by Subsection (a) shall:

(1) maintain a record of the trade name, scientific name, and active ingredients of the denatonium benzoate used to comply with Subsection (b); and

(2) on request, make the record available to the commission and the public.

(d) Subject to Subsection (e), a manufacturer, processor, distributor, recycler, or seller of a product described by Subsection (a) that includes denatonium benzoate in the concentrations required by Subsection (b) is not liable to any person for any personal injury, death, property damage, damage to the environment, including natural resources, or economic loss that results from the inclusion of denatonium benzoate in the product.

(e) The limitation on liability provided by Subsection (d) does not apply to the extent that the cause of the liability is unrelated to the inclusion of denatonium benzoate in a product described by Subsection (a).

(f) This section does not exempt a manufacturer of denatonium benzoate from liability under other law.

(g) A political subdivision of this state may not adopt or enforce an ordinance, regulation, or policy that is inconsistent with or more restrictive than this section.

(h) This section does not apply to the sale of:

(1) a motor vehicle that contains a product described by Subsection (a); or

(2) a container sold at wholesale that contains 55 gallons or more of antifreeze or engine coolant.

(i) The Commission may adopt rules for the implementation.



(j) In this SECTION, "Commission" means the Texas Commission on Environmental Quality.

SECTION \_\_\_\_\_. A manufacturer is required to comply with Section 501.0234, Health and Safety Code, as added by this Act, only after January 1, 2013.

The amendments were read.

Senator Nichols moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **SB 635** before appointment.

There were no motions offered.

The President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Nichols, Chair; Hegar, Patrick, Gallegos, and Fraser.

### SENATE BILL 408 WITH HOUSE AMENDMENT

Senator Estes called **SB 408** from the President's table for consideration of the House amendment to the bill.

The President Pro Tempore laid the bill and the House amendment before the Senate.

#### Amendment

Amend **SB 408** by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to inspection of and the operation of watercraft on the John Graves Scenic Riverway; providing for the imposition of a criminal penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsection (b), Section 26.555, Water Code, is amended to read as follows:

(b) A ~~[The]~~ visual inspection from an aircraft flying over the John Graves Scenic Riverway ~~[inspections and the drawing of water samples]~~ must be conducted at least once in a winter month and at least once in a summer month. A ~~[The]~~ visual inspection and the drawing of water samples for testing ~~[inspections]~~ must be conducted ~~[both]~~ from the surface of the ~~[John Graves Scenic Riverway and from an aircraft flying over the]~~ riverway at least once in a spring month and at least once in a fall month.

SECTION 2. Subchapter M, Chapter 26, Water Code, is amended by adding Section 26.563 to read as follows:

Sec. 26.563. CERTAIN CRAFT PROHIBITED. (a) The commission by rule shall prohibit the commercial or recreational use of the following craft on the waters of the John Graves Scenic Riverway:

(1) airboats, fanboats, and similar shallow draft watercraft that use an aircraft-type propeller for propulsion; and

(2) hovercraft.

(b) A rule adopted under this section must allow for the operation of craft described by Subsection (a) for:

(1) a visual inspection conducted under Section 26.555; or

(2) law enforcement purposes.

(c) A person who operates a hovercraft or watercraft in violation of a rule adopted under this section commits an offense. An offense under this section is a Class C misdemeanor. Any peace officer, including a law enforcement officer commissioned by the Parks and Wildlife Commission, may enforce this section.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2011.

The amendment was read.

Senator Estes moved to concur in the House amendment to **SB 408**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

#### RECESS

On motion of Senator Whitmire, the Senate at 2:47 p.m. recessed until 4:30 p.m. today.

#### AFTER RECESS

The Senate met at 4:48 p.m. and was called to order by President Pro Tempore Ogden.

#### CONFERENCE COMMITTEE ON HOUSE BILL 2048

Senator Deuell called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2048** and moved that the request be granted.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **HB 2048** before appointment.

There were no motions offered.

Accordingly, the President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Deuell, Chair; Hinojosa, Nelson, Whitmire, and Seliger.

#### SENATE BILL 158 WITH HOUSE AMENDMENTS

Senator Williams called **SB 158** from the President's table for consideration of the House amendments to the bill.

The President Pro Tempore laid the bill and the House amendments before the Senate.

**Floor Amendment No. 1**

Amend **SB 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.

**Floor Amendment No. 2**

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 (H.B. 354) and 900 (S.B. 1067), Acts of the 73rd Legislature, Regular Session, 1993, are reenacted to read as follows:

(b) Except as provided in Subsections (c) and (d), an offense under this section is one category higher than the most serious offense listed in Subsection (a) that was committed, and if the most serious offense is a Class A misdemeanor, the offense is a state jail felony, except that if the most serious offense is a felony of the first degree, the offense is a felony of the first degree.

(c) Conspiring to commit an offense under this section is of the same degree as the most serious offense listed in Subsection (a) that the person conspired to commit.

SECTION \_\_\_\_\_. Section 71.05(a), Penal Code, as amended by Chapters 761 (H.B. 3544) and 900 (S.B. 1067), Acts of the 73rd Legislature, Regular Session, 1993, is reenacted and amended to read as follows:

(a) It is an affirmative defense to prosecution under Section 71.02 that under circumstances manifesting a voluntary and complete renunciation of the actor's ~~his~~ criminal objective, the actor withdrew from the combination before commission of an offense listed in ~~Subsection (a) of~~ Section 71.02(a) ~~71.02~~ and took further affirmative action that prevented the commission of the offense.

SECTION \_\_\_\_\_. 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.

### **Floor Amendment No. 2 on Third Reading**

Amend **SB 158** on third reading by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Chapter 48, Penal Code, is amended by adding Section 48.03 to read as follows:

Sec. 48.03. PROHIBITION RELATING TO SALE OR DELIVERY OF SALVIA DIVINORUM EXTRACT. (a) A person commits an offense if the person, with criminal negligence, sells, delivers, or causes to be sold or delivered an extract of salvia divinorum, Salvinorin A, or a product containing an extract of salvia divinorum or Salvinorin A to another person.

(b) An offense under this section is a Class B misdemeanor.

The amendments were read.

Senator Williams moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **SB 158** before appointment.

There were no motions offered.

The President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Williams, Chair; Huffman, Hinojosa, Eltife, and West.

### **CONFERENCE COMMITTEE ON HOUSE BILL 2357**

Senator Williams called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2357** and moved that the request be granted.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **HB 2357** before appointment.

There were no motions offered.

Accordingly, the President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Williams, Chair; Wentworth, Nichols, Lucio, and Watson.

### **CONFERENCE COMMITTEE ON HOUSE BILL 2734**

Senator Williams called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2734** and moved that the request be granted.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **HB 2734** before appointment.

There were no motions offered.

Accordingly, the President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Williams, Chair; Hinojosa, Wentworth, Shapiro, and Nichols.

### SENATE BILL 1664 WITH HOUSE AMENDMENTS

Senator Eltife, on behalf of Senator Duncan, called **SB 1664** from the President's table for consideration of the House amendments to the bill.

The President Pro Tempore laid the bill and the House amendments before the Senate.

#### Amendment

Amend **SB 1664** by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to the powers and duties of and contributions to and benefits from the systems and programs administered by the Employees Retirement System of Texas.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter A, Chapter 609, Government Code, is amended by adding Section 609.015 to read as follows:

Sec. 609.015. BENEFICIARY CAUSING DEATH OF PARTICIPATING EMPLOYEE. (a) Any benefits, funds, or account balances payable on the death of a participating employee may not be paid to a person convicted of or adjudicated as having caused that death but instead are payable as if the convicted person had predeceased the decedent.

(b) The plan is not required to change the recipient of any benefits, funds, or account balances under this section unless it receives actual notice of the conviction or adjudication of a beneficiary. However, the plan may delay payment of any benefits, funds, or account balances payable on the death of a participating employee pending the results of a criminal investigation or civil proceeding and other legal proceedings relating to the cause of death.

(c) For the purposes of this section, a person has been convicted of or adjudicated as having caused the death of a participating employee if the person:

(1) pleads guilty or nolo contendere to, or is found guilty by a court or jury in a criminal proceeding of, causing the death of the participating employee, regardless of whether sentence is imposed or probated, and no appeal of the conviction is pending and the time provided for appeal has expired; or

(2) is found liable by a court or jury in a civil proceeding for causing the death of the participating employee and no appeal of the judgement is pending and the time provided for appeal has expired.

SECTION 2. Subsection (c), Section 659.140, Government Code, is amended to read as follows:

(c) ~~The [Each member of the]~~ state policy committee must:

(1) be composed of employees and retired state employees receiving benefits under Chapter 814; and

(2) [a state employee. The membership must] represent employees at different levels of employee classification.

SECTION 3. Subsection (b), Section 659.143, Government Code, is amended to read as follows:

(b) The presiding officer of a local employee committee shall recruit at least five but not more than 10 additional members. The members must represent different levels of employee classification. One or more members may be retired state employees receiving retirement benefits under Chapter 814.

SECTION 4. Section 811.010, Government Code, as added by Chapter 232 (S.B. 1589), Acts of the 81st Legislature, Regular Session, 2009, is redesignated as Section 811.012, Government Code, and amended to read as follows:

Sec. 811.012 ~~[811.010]~~. PROVISION OF CERTAIN INFORMATION TO COMPTROLLER. (a) Not later than June 1, 2016, and once every five years after that date ~~[of each year]~~, the retirement system shall provide to the comptroller, for the purpose of assisting the comptroller in the identification of persons entitled to unclaimed property reported to the comptroller, the name, address, social security number, and date of birth of each member, retiree, and beneficiary from the retirement system's records.

(b) Information provided to the comptroller under this section is confidential and may not be disclosed to the public.

(c) The retirement system shall provide the information in the format prescribed by rule of the comptroller.

SECTION 5. Section 813.404, Government Code, is amended to read as follows:

Sec. 813.404. CONTRIBUTIONS FOR SERVICE NOT PREVIOUSLY ESTABLISHED. For each month of membership, military, or equivalent membership service not previously credited in the retirement system, a member claiming credit in the elected class shall pay a contribution in an amount equal to the greater of:

(1) eight percent of the monthly salary paid to members of the legislature at the time the credit is established; or

(2) the appropriate member contribution provided by Section 815.402 for ~~[six percent of the monthly state salary paid to]~~ a person who holds, at the time the credit is established, the office for which credit is sought.

SECTION 6. Subsection (a), Section 813.505, Government Code, is amended to read as follows:

(a) A member claiming credit in the employee class for membership service not previously established shall, for each month of the service, pay a contribution in an amount equal to the greater of:

(1) the appropriate member contribution provided by Section 815.402 ~~[six percent of the member's monthly state compensation]~~ for the service during the time for which credit is sought; or

(2) \$18.

SECTION 7. Subsections (a), (c), (d), and (e), Section 814.007, Government Code, are amended to read as follows:

(a) Any benefits, funds, or account balances [A benefit] payable on the death of a member or annuitant may not be paid to a person convicted of or adjudicated as having caused [causing] that death but instead are [is] payable as if the convicted person had predeceased the decedent.

(c) The retirement system shall reduce any annuity computed in part on the age of the convicted or adjudicated person to a lump sum equal to the present value of the remainder of the annuity. The reduced amount is payable to a person entitled as provided by this section to receive the benefit.

(d) The retirement system is not required to change the recipient of any benefits, funds, or account balances under this section unless it receives actual notice of the conviction or adjudication of a beneficiary. However, the retirement system may delay payment of any benefits, funds, or account balances [a benefit] payable on the death of a member or annuitant pending the results of a criminal investigation or civil proceeding and other [ef] legal proceedings relating to the cause of death.

(e) For the purposes of this section, a person has been convicted of or adjudicated as having caused [causing] the death of a member or annuitant if the person:

(1) pleads guilty or nolo contendere to, or is found guilty by a court or jury in a criminal proceeding of, causing the death of the member or annuitant, regardless of whether sentence is imposed or probated, [;] and

[(2) has] no appeal of the conviction is pending and the time provided for appeal has expired; or

(2) is found liable by a court or jury in a civil proceeding for causing the death of the member or annuitant and no appeal of the judgment is pending and the time provided for appeal has expired.

SECTION 8. The heading to Section 814.009, Government Code, is amended to read as follows:

Sec. 814.009. DEDUCTION FROM ANNUITY FOR STATE EMPLOYEE ORGANIZATION.

SECTION 9. Subchapter A, Chapter 814, Government Code, is amended by adding Sections 814.0095 and 814.0096 to read as follows:

Sec. 814.0095. CHARITABLE DEDUCTION FROM ANNUITY. (a) Except as provided by Section 814.0096(c), a person who receives an annuity under this subchapter may, on a printed or electronic form filed with the retirement system, authorize the retirement system to deduct from the person's monthly annuity payment the amount of a contribution to the state employee charitable campaign in the manner and for the same purposes for which a state employee may authorize deductions to that campaign under Subchapter I, Chapter 659.

(b) An authorization under this section must direct the board of trustees to deposit the deducted funds with the comptroller for distribution as required by Section 659.132(g) in the same manner in which a state employee's deduction is distributed.

(c) An authorization under this section remains in effect for the period described by Section 659.137 unless the person revokes the authorization by giving notice to the board of trustees.



(d) The board of trustees may adopt rules to administer this section. Any rules adopted must be consistent with the comptroller's rules related to the state employee charitable campaign.

Sec. 814.0096. COORDINATION WITH STATE EMPLOYEE CHARITABLE CAMPAIGN POLICY COMMITTEE. (a) The board of trustees and the state employee charitable campaign policy committee established under Section 659.140 shall coordinate responsibility for the administration of charitable deductions from annuity payments to the state employee charitable campaign under Section 814.0095.

(b) The state employee charitable campaign policy committee is authorized to approve a budget that includes funding for as many of the expenses incurred by the retirement system associated with the implementation and administration of annuitants' participation in the state employee charitable campaign as is practicable, including notification of annuitants.

(c) Except as provided by this subsection, the board of trustees shall charge an administrative fee to cover any costs not paid under Subsection (b) in the implementation of Section 814.0095 to the charitable organizations participating in the state employee charitable campaign conducted under that section in the same proportion that the contributions to that charitable organization bear to the total of contributions in that campaign. The board of trustees shall determine the most efficient and effective method of collecting the administrative fee and shall adopt rules for the implementation of this subsection.

(d) If necessary, the board of trustees and the state employee charitable campaign policy committee may make the annuity deduction authorization under Section 814.0095(a) available in stages to subgroups of the retirement system's annuity recipients as money becomes available to cover the expenses under Subsection (b).

SECTION 10. Subsection (d), Section 814.104, Government Code, is amended to read as follows:

(d) Except as provided by Section 814.102 or by rule adopted under Section 813.304(d) or 803.202(a)(2), a member who was not a member on the date hired, was hired on or after September 1, 2009, and has service credit in the retirement system is eligible to retire and receive a service retirement annuity if the member:

(1) is at least 65 years old and has at least 10 years of service credit in the employee class; or

(2) has at least 10 [5] years of service credit in the employee class and the sum of the member's age and amount of service credit in the employee class, including months of age and credit, equals or exceeds the number 80.

SECTION 11. Subsection (d), Section 814.1075, Government Code, is amended to read as follows:

(d) The standard combined service retirement annuity that is payable under this section is based on retirement at either the age of 55 or the age at which the sum of the member's age and amount of service credit in the employee class equals or exceeds the number 80. The annuity of a law enforcement or custodial officer who retires before reaching the age of 55 under any eligibility criteria is actuarially reduced by

five percent for each year the member retires before the member reaches age 55, with a maximum possible reduction of 25 percent. The actuarial reduction described by this section is in addition to any other actuarial reduction required by law.

SECTION 12. Section 815.303, Government Code, is amended to read as follows:

Sec. 815.303. SECURITIES LENDING. (a) The retirement system may, in the exercise of its constitutional discretion to manage the assets of the retirement system, select one or more commercial banks, depository trust companies, or other entities to serve as custodian or custodians of the system's securities and to lend the securities under rules or policies adopted by the board of trustees and as required by this section.

(b) To be eligible to lend securities under this section, a bank or brokerage firm must:

(1) be experienced in the operation of a fully secured securities loan program;

(2) maintain adequate capital in the prudent judgment of the retirement system to assure the safety of the securities;

(3) execute an indemnification agreement satisfactory in form and content to the retirement system fully indemnifying the retirement system against loss resulting from borrower default in its operation of a securities loan program for the system's securities; and

(4) require any securities broker or dealer to whom it lends securities belonging to the retirement system to deliver to and maintain with the custodian or securities lending agent collateral in the form of cash or ~~[United States government]~~ securities that are obligations of the United States or agencies or instrumentalities of the United States in an amount equal to but not less than 100 percent of the market value, from time to time, as determined by the retirement system, of the loaned securities.

SECTION 13. Section 815.402, Government Code, is amended by adding Subsections (a-1) and (h-1) to read as follows:

(a-1) Notwithstanding Subsection (a)(1), if the state contribution to the retirement system is computed using a percentage less than 6.5 percent for the state fiscal year beginning September 1, 2011, the member's contribution is not required to be computed using a percentage equal to the percentage used to compute the state contribution for that biennium. This subsection expires September 1, 2012.

(h-1) Notwithstanding Subsection (h), if the state contribution to the law enforcement and custodial officer supplemental retirement fund is computed using a percentage less than 0.5 percent for the state fiscal year beginning September 1, 2011, the member's contribution is not required to be computed using a percentage equal to the percentage used to compute the state contribution for that biennium. This subsection expires September 1, 2012.

SECTION 14. Subchapter D, Chapter 834, Government Code, is amended by adding Section 834.305 to read as follows:

Sec. 834.305. BENEFICIARY CAUSING DEATH OF MEMBER OR ANNUITANT. (a) Any benefits, funds, or account balances payable on the death of a member or annuitant may not be paid to a person convicted of or adjudicated as having caused that death but instead are payable as if the convicted person had predeceased the decedent.

(b) A person who becomes eligible under this section to select death or survivor benefits may select benefits as if the person were the designated beneficiary.

(c) The retirement system shall reduce any annuity computed in part on the age of the convicted or adjudicated person to a lump sum equal to the present value of the remainder of the annuity. The reduced amount is payable to a person entitled as provided by this section to receive the benefit.

(d) The retirement system is not required to change the recipient of any benefits, funds, or account balances under this section unless it receives actual notice of the conviction or adjudication of a beneficiary. However, the retirement system may delay payment of any benefits, funds, or account balances payable on the death of a member or annuitant pending the results of a criminal investigation or civil proceeding and other legal proceedings relating to the cause of death.

(e) For the purposes of this section, a person has been convicted of or adjudicated as having caused the death of a member or annuitant if the person:

(1) pleads guilty or nolo contendere to, or is found guilty by a court or jury in a criminal proceeding of, causing the death of the member or annuitant, regardless of whether sentence is imposed or probated, and no appeal of the conviction is pending and the time provided for appeal has expired; or

(2) is found liable by a court or jury in a civil proceeding for causing the death of the member or annuitant and no appeal of the judgment is pending and the time provided for appeal has expired.

SECTION 15. Subchapter D, Chapter 839, Government Code, is amended by adding Section 839.306 to read as follows:

Sec. 839.306. BENEFICIARY CAUSING DEATH OF MEMBER OR ANNUITANT. (a) Any benefits, funds, or account balances payable on the death of a member or annuitant may not be paid to a person convicted of or adjudicated as having caused that death but instead are payable as if the convicted person had predeceased the decedent.

(b) A person who becomes eligible under this section to select death or survivor benefits may select benefits as if the person were the designated beneficiary.

(c) The retirement system shall reduce any annuity computed in part on the age of the convicted or adjudicated person to a lump sum equal to the present value of the remainder of the annuity. The reduced amount is payable to a person entitled as provided by this section to receive the benefit.

(d) The retirement system is not required to change the recipient of any benefits, funds, or account balances under this section unless it receives actual notice of the conviction or adjudication of a beneficiary. However, the retirement system may delay payment of any benefits, funds, or account balances payable on the death of a member or annuitant pending the results of a criminal investigation or civil proceeding and other legal proceedings relating to the cause of death.

(e) For the purposes of this section, a person has been convicted of or adjudicated as having caused the death of a member or annuitant if the person:

(1) pleads guilty or nolo contendere to, or is found guilty by a court or jury in a criminal proceeding of, causing the death of the member or annuitant, regardless of whether sentence is imposed or probated, and no appeal of the conviction is pending and the time provided for appeal has expired; or

(2) is found liable by a court or jury in a civil proceeding for causing the death of the member or annuitant and no appeal of the judgment is pending and the time provided for appeal has expired.

SECTION 16. Subsection (a), Section 1551.004, Insurance Code, is amended to read as follows:

(a) In this chapter, "dependent" with respect to an individual eligible to participate in the group benefits program [~~under Section 1551.101 or 1551.102~~] means the individual's:

(1) spouse;

(2) unmarried child younger than 26 [~~25~~] years of age;

(3) child of any age who the board of trustees determines lives with or has the child's care provided by the individual on a regular basis if:

(A) the child is mentally [~~retarded~~] or physically incapacitated to the extent that the child is dependent on the individual for care or support, as determined by the board of trustees;

(B) the child's coverage under this chapter has not lapsed; and

(C) the child is at least 26 [~~25~~] years old and was enrolled as a participant in the health benefits coverage under the group benefits program on the date of the child's 26th [~~25th~~] birthday;

(4) child of any age who is unmarried, for purposes of health benefit coverage under this chapter, on expiration of the child's continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. No. 99-272) and its subsequent amendments; and

(5) ward, as that term is defined by Section 601, Texas Probate Code, who is 26 years of age or younger.

SECTION 17. Subchapter B, Chapter 1551, Insurance Code, is amended by adding Section 1551.068 to read as follows:

Sec. 1551.068. QUALIFICATION OF GROUP BENEFITS PROGRAM. Notwithstanding any provision of this chapter or any other law, it is intended that the provisions of this chapter be construed and administered in a manner that coverages under the group benefits program will be considered in compliance with applicable federal law. The board of trustees may adopt rules that modify the coverage provided under the program by adding, deleting, or changing a provision of the program, including rules that modify eligibility and enrollment requirements and the benefits available under the program.

SECTION 18. Section 1551.220, Insurance Code, is amended to read as follows:

Sec. 1551.220. BENEFICIARY CAUSING DEATH OF PARTICIPANT OR BENEFICIARY OF PARTICIPANT. (a) Any benefits, funds, or account balances [~~A benefit~~] payable on the death of a participant or the beneficiary of a participant in the

group benefits program may not be paid to a person convicted of or adjudicated as having caused ~~causing~~ that death but instead are ~~is~~ payable as if the convicted person had predeceased the decedent.

(b) The Employees Retirement System of Texas is not required to change the recipient of any benefits, funds, or account balances under this section unless it receives actual notice of the conviction or adjudication of a beneficiary. However, the retirement system may delay payment of any benefits, funds, or account balances ~~a benefit~~ payable on the death of a participant or beneficiary of a participant pending the results of a criminal investigation or civil proceeding and other ~~of~~ legal proceedings relating to the cause of death.

(c) For the purposes of this section, a person has been convicted of or adjudicated as having caused ~~causing~~ the death of a participant or beneficiary of a participant if the person:

(1) pleads guilty or nolo contendere to, or is found guilty by a court or jury in a criminal proceeding of, causing the death of the participant or beneficiary of a participant, regardless of whether sentence is imposed or probated,<sup>[3]</sup> and

~~(2) has~~ no appeal of the conviction is pending and the time provided for appeal has expired; or

(2) is found liable by a court or jury in a civil proceeding for causing the death of the member or annuitant and no appeal of the judgment is pending and the time provided for appeal has expired.

SECTION 19. Subchapter E, Chapter 1551, Insurance Code, is amended by adding Section 1551.226 to read as follows:

Sec. 1551.226. TOBACCO CESSATION COVERAGE. (a) The board of trustees shall develop a plan for providing under any health benefit plan provided under the group benefits program tobacco cessation coverage for participants.

(b) The plan developed under Subsection (a) must include coverage for prescription drugs that aid participants in ceasing the use of tobacco products.

SECTION 20. Subchapter G, Chapter 1551, Insurance Code, is amended by adding Section 1551.3075 to read as follows:

Sec. 1551.3075. TOBACCO USER PREMIUM DIFFERENTIAL. (a) The board of trustees shall assess each participant in a health benefit plan provided under the group benefits program who uses one or more tobacco products a tobacco user premium differential, to be paid in monthly installments. Except as provided by Subsection (b), the board of trustees shall determine the amount of the monthly installments of the premium differential.

(b) If the General Appropriations Act for a state fiscal biennium sets the amount of the monthly installments of the tobacco user premium differential for that biennium, the board of trustees shall assess the premium differential during that biennium in the amount prescribed by the General Appropriations Act.

SECTION 21. Subchapter G, Chapter 1551, Insurance Code, is amended by adding Section 1551.3076 to read as follows:

Sec. 1551.3076. EMPLOYER ENROLLMENT FEE. (a) The board of trustees shall assess each employer whose employees participate in the group benefits program an employer enrollment fee in an amount not to exceed a percentage of the employer's total payroll, as determined by the General Appropriations Act.

(b) The board of trustees shall deposit the enrollment fees to the credit of the employees life, accident, and health insurance and benefits fund to be used for the purposes specified by Section 1551.401.

SECTION 22. Section 1551.314, Insurance Code, is amended to read as follows:

Sec. 1551.314. CERTAIN STATE CONTRIBUTIONS PROHIBITED. A state contribution may not be:

(1) made for coverages under this chapter selected by an individual who receives a state contribution[~~, other than as a spouse, dependent, or beneficiary,~~] for coverages under a group benefits program provided by another state health plan or by an institution of higher education, as defined by Section 61.003, Education Code; or

(2) made for or used to pay a tobacco user premium differential assessed under Section 1551.3075.

SECTION 23. The change in law made by Sections 609.015, 834.305, and 839.306, Government Code, as added by this Act, and Sections 814.007, Government Code, and 1551.220, Insurance Code, as amended by this Act, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 24. (a) The board of trustees of the Employees Retirement System of Texas, in cooperation with the comptroller of public accounts and the state employee charitable campaign policy committee established under Section 659.140, Government Code, as amended by this Act, may adopt rules to implement Sections 814.0095 and 814.0096, Government Code, as added by this Act.

(b) The board of trustees of the Employees Retirement System of Texas by rule shall designate the start date on which annuity deductions begin under Sections 814.0095 and 814.0096, Government Code, as added by this Act.

SECTION 25. (a) Subsection (d), Section 814.104, Government Code, as amended by this Act, applies only to a member of the Employees Retirement System of Texas who retires on or after the effective date of this Act.

(b) A member of the Employees Retirement System of Texas who retires before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 26. The board of trustees of the Employees Retirement System of Texas shall develop and fully implement the plan for providing tobacco cessation coverage as required by Section 1551.226, Insurance Code, as added by this Act, and implement the tobacco user premium differential required under Section 1551.3075, Insurance Code, as added by this Act, not later than January 1, 2012.

SECTION 27. To the extent of any conflict, this Act prevails over another Act of the 82nd Legislature, Regular Session, 2011, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 28. This Act takes effect September 1, 2011.

**Floor Amendment No. 1**

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  
~~operator's and chauffeur's license~~ 11.1426 percent;
- (8) criminal justice planning 12.5537 percent;
- (9) an account in the state treasury to be used only for the establishment and operation of the Center for the Study and Prevention of Juvenile Crime and Delinquency at Prairie View A&M University 1.2090 percent;
- (10) compensation to victims of crime fund 37.6338 percent;
- (11) fugitive apprehension account 12.0904 percent;
- (12) judicial and court personnel training fund 4.8362 percent;
- (13) an account in the state treasury to be used for the establishment and operation of the Correctional Management Institute of Texas and Criminal Justice Center Account 1.2090 percent; and
- (14) fair defense account 6.0143 percent.

(c) Notwithstanding any other provision of this Act, this section takes effect September 1, 2013.

**Floor Amendment No. 2**

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.

### Floor Amendment No. 3

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.

The amendments were read.

Senator Eltife, on behalf of Senator Duncan, moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **SB 1664** before appointment.

There were no motions offered.

The President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Duncan, Chair; Williams, Ellis, Van de Putte, and Deuell.

**SENATE BILL 40 WITH HOUSE AMENDMENTS**

Senator Zaffirini called **SB 40** from the President's table for consideration of the House amendments to the bill.

The President Pro Tempore laid the bill and the House amendments before the Senate.

**Amendment**

Amend **SB 40** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to the composition and functions of the Texas Guaranteed Student Loan Corporation.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 57.01 and 57.11, Education Code, are amended to read as follows:

Sec. 57.01. DECLARATION OF POLICY. The legislature, giving due consideration to the historical and continuing interest of the people of the State of Texas in encouraging deserving and qualified persons to realize their aspirations for education beyond high school, finds and declares that postsecondary education for qualified Texans [~~those~~] who desire to pursue such [~~an~~] education [~~and are properly qualified therefor~~] is important to the welfare and security of this state and the nation and, consequently, is an important public purpose. The legislature finds and declares that the state can achieve its full economic and social potential only if every individual has the opportunity to contribute to the full extent of the individual's [~~his or her~~] capabilities and only when financial barriers to the individual's [~~his or her~~] economic, social, and educational goals are removed. It is, therefore, the purpose of this chapter to establish the Texas Guaranteed Student Loan Corporation to:

(1) administer a guaranteed student loan program, student financial aid programs, and other student loan programs to assist qualified ~~[Texas]~~ students in this state and across the nation in receiving a postsecondary education in this state or elsewhere in the nation; ~~[and]~~

(2) assist institutions of higher education by providing ~~[provide]~~ necessary and desirable services related to financial aid and student ~~[the]~~ loan programs; and

(3) participate in revenue-generating activities related to higher education student financial aid and student loan programs to the extent the activities support the corporation's primary purposes under Subdivisions (1) and (2) ~~[program, including cooperative awareness efforts with appropriate educational and civic associations designed to disseminate postsecondary education awareness information, including information regarding student financial aid and the Federal Family Education Loan Program, and other relevant topics including the prevention of student loan default].~~

Sec. 57.11. TEXAS GUARANTEED STUDENT LOAN CORPORATION. (a) The Texas Guaranteed Student Loan Corporation is created to administer the programs authorized by this chapter.

(b) The corporation is a public nonprofit corporation and, except as otherwise provided in this chapter, has all the powers and duties incident to a nonprofit corporation under Chapter 22, Business Organizations Code ~~[the Texas Non-Profit Corporation Act (Article 1396 1.01 et seq., Vernon's Texas Civil Statutes)].~~

(c) ~~[(b)]~~ Except as otherwise provided by law, all expenses of the corporation shall be paid from revenue ~~[income]~~ of the corporation.

(d) ~~[(c)]~~ The corporation is subject to Chapters ~~[Chapter]~~ 551 and 552, Government Code.

(e) ~~[(d)]~~ Student loan borrower information collected, assembled, or maintained by the corporation is confidential and is not subject to disclosure under Chapter 552, Government Code.

SECTION 2. Section 57.12(a), Education Code, is amended to read as follows:

(a) The Texas Guaranteed Student Loan Corporation is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the corporation is abolished and this chapter expires September 1, 2013 ~~[2017]~~.

SECTION 3. Section 57.1311(b), Education Code, is amended to read as follows:

(b) The training program must provide the person with information regarding:

(1) the provisions of this chapter, including the policies developed under Section 57.19(i) regarding the separation of policymaking and management responsibilities, and the corporation's programs, functions, rules, and budget;

(2) the results of the most recent formal audit of the corporation;

(3) the requirements of laws relating to open meetings, public information, and conflicts of interest; and

(4) any applicable ethics policies adopted by the corporation or the Texas Ethics Commission.

SECTION 4. Sections 57.13(a) and (b), Education Code, are amended to read as follows:

(a) The corporation is governed by a board of nine [4+] directors in accordance with this section.

(b) The governor, with the advice and consent of the senate, shall appoint the [4+] members of [to] the board as follows:

(1) four [five] members who must have knowledge of or experience in finance, including management of funds or business operations;

(2) one member who must be a student enrolled at a postsecondary educational institution for the number of credit hours required by the institution to be classified as a full-time student of the institution; and

(3) four members who must be members the faculty or administration of a [an eligible] postsecondary educational institution that is an eligible institution for purposes of the Higher Education Act of 1965, as amended[, as defined by Section 57.46].

SECTION 5. Section 57.131(d), Education Code, is amended to read as follows:

(d) A person may not be one of the members of the board required by Section 57.13(b) to have knowledge of or experience in finance if the person:

(1) is a member of the board of directors or an employee of a [an eligible] lender that:

(A) participates in a [the guaranteed] student loan program; or

(B) originates, makes, holds, services, or has a pecuniary interest of any kind in higher education student loans of any nature; or

(2) owns:

(A) 10 percent or more of the voting stock or shares of a business entity that engages in an activity described by Subdivision (1); or

(B) \$15,000 or more of the fair market value of a business entity that engages in an activity described by Subdivision (1).

SECTION 6. Section 57.14, Education Code, is amended to read as follows:

Sec. 57.14. DIRECTORS' TERMS OF OFFICE. Members of the board [appointed by the governor] serve for terms of six years, with the terms of three [or four] members[, as applicable,] expiring on January 31 of each odd-numbered year.

SECTION 7. Section 57.17, Education Code, is amended to read as follows:

Sec. 57.17. OFFICERS. The governor shall designate the chairman from among the board's membership. The board shall elect from among its members a [chairman,] vice-chairman[;] and other officers that the board considers necessary. The chairman and vice-chairman serve for a term of one year and may be redesignated or reelected, as applicable.

SECTION 8. Subchapter B, Chapter 57, Education Code, is amended by adding Section 57.181 to read as follows:

Sec. 57.181. MEETING BY TELEPHONE CONFERENCE CALL; QUORUM PRESENT AT ONE LOCATION REQUIRED. (a) Notwithstanding Chapter 551, Government Code, the board or a board committee may hold a meeting by telephone conference call only if a quorum of the board or board committee, as applicable, is physically present at one location of the meeting.

(b) A telephone conference call meeting is subject to the notice requirements applicable to other meetings, except that the meeting notice must also specify:

(1) the location of the meeting where a quorum of the board or board committee, as applicable, will be physically present; and

(2) the intent to have a quorum present at that location.

(c) The meeting location where a quorum is physically present must be open to the public during the open portions of a telephone conference call meeting. The open portions of the meeting must be audible to the public at the location where the quorum is present and be tape-recorded at that location. The tape recording must be made available to the public.

(d) The meeting location where a quorum is physically present must provide two-way communication during the entire telephone conference call meeting, and the identification of each party to the telephone conference call must be clearly stated before the party speaks.

(e) A member of the board who participates in a board or board committee meeting by telephone conference call but is not physically present at the meeting location where a quorum is physically present is not considered to be absent from the meeting for any purpose. The vote of a member of the board who participates in a board or board committee meeting by telephone conference call is counted for the purpose of determining the number of votes cast on a motion or other proposition before the board or board committee.

(f) A member of the board may participate remotely by telephone conference call instead of by being physically present at the location of a board meeting for not more than one board meeting per calendar year. A board member who participates remotely in any portion of a board meeting by telephone conference call is considered to have participated in the entire board meeting by telephone conference call. For purposes of this subsection, remote participation by telephone conference call in a meeting of a board committee does not count as remote participation by telephone conference call in a board meeting regardless of whether:

(1) a quorum of the full board attends the board committee meeting; or

(2) notice of the board committee meeting is also posted as notice of a board meeting.

(g) A person who is not a member of the board may not speak at the board or board committee meeting from a remote location by telephone conference call, except as provided by Section 551.129, Government Code.

(h) The authority provided by this section is in addition to the authority provided by Section 551.125, Government Code.

SECTION 9. Section 57.19(d), Education Code, is amended to read as follows:

(d) The president or the president's designee shall develop a ~~[an intra-agency]~~ career ladder program for the corporation. The program shall require internal corporate ~~[intra-agency]~~ postings of all nonentry level positions concurrently with any public posting.

SECTION 10. Section 57.20(a), Education Code, is amended to read as follows:

(a) The corporation shall appoint an ombudsman ~~[maintain a system]~~ to promptly and efficiently act on complaints filed with the corporation. The ombudsman ~~[corporation]~~ shall maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition.

SECTION 11. Sections 57.21(a) and (c), Education Code, are amended to read as follows:

(a) The corporation shall take an active role in coordinating, facilitating, promoting, and providing assistance and support to:

(1) programs that focus on and disseminate [designed to make available to the residents of this state] information regarding [concerning] postsecondary education awareness and the availability of student financial aid [, including the Federal Family Education Loan Program,] and that [to] assist families in obtaining [needed] postsecondary education financing;

(2) programs designed to assist students, families, borrowers, and schools in preventing [prevent] student loan default throughout the life of the loan, provided that such programs are required as a part of a guaranty agency's obligation under the Federal Family Education Loan Program established by the Higher Education Act of 1965 (20 U.S.C. Section 1071 et seq.), or are funded by statutory or regulatory mandate, compensation, grant, contract, award, or other appropriate means; and

(3) programs designed to increase student retention and graduation rates in postsecondary education.

(c) To the extent practicable, each [Each] state agency that conducts higher education and financial aid outreach activities shall enter into a memorandum of understanding with the corporation. The memorandum of understanding may [must] outline how the corporation and the state agency will coordinate outreach activities to maximize resources and avoid duplication.

SECTION 12. The heading to Section 57.22, Education Code, is amended to read as follows:

Sec. 57.22. APPLICATION OF BUSINESS ORGANIZATIONS CODE [THE TEXAS NON-PROFIT CORPORATION ACT].

SECTION 13. Section 57.22(a), Education Code, is amended to read as follows:

(a) The corporation is subject to Chapter 22, Business Organizations Code [the Texas Non-Profit Corporation Act (Article 1396 1.01 et seq., Vernon's Texas Civil Statutes)], except that:

(1) the corporation may not make donations for the public welfare or for charitable or scientific purposes or in aid of war activities;

(2) the corporation is not required to file articles of incorporation;

(3) the corporation is not subject to voluntary or involuntary dissolution;

(4) the corporation may not be placed in receivership; and

(5) the corporation is not required to make reports to the secretary of state under Section 22.357, Business Organizations Code [Article 9.01 of that Act].

SECTION 14. Section 57.24, Education Code, is amended to read as follows:

Sec. 57.24. AUTHORITY TO PARTICIPATE IN OTHER REVENUE-GENERATING ACTIVITIES; LIMITATIONS. (a) The corporation may participate in a revenue-generating activity by entering into a contract with the United States Department of Education, with this state or any agency, instrumentality, or political subdivision of this state, with any eligible institution as defined by Section 435 of the Higher Education Act of 1965 (20 U.S.C. Section 1085), as amended, that is eligible to participate in a program under Title IV of that Act, with any guaranty agency as defined by Section 435 of that Act (20 U.S.C. Section 1085), or with any

entity to which the United States Department of Education has awarded one or more contracts to provide services under Title IV of that Act ~~[that is consistent with the corporation's purposes]~~ if the board determines that ~~[the revenue from the activity]~~:

(1) ~~[is sufficient to cover the costs of]~~ the activity is consistent with the corporation's purposes described by Section 57.01; [and]

(2) revenue from the activity is sufficient to cover the costs of the activity, including the opportunity costs of any invested capital, within a defined period of time determined by the board for purposes of this section; and

(3) revenue from the activity will enable the corporation to support educational purposes under Section 57.211 ~~[may contribute to a reduction in the insurance premium paid by students under Section 57.43 of this code].~~

(b) The corporation may enter into a contract with the United States Department of Education under Subsection (a) alone or in concert with any of the entities with which the corporation may enter into a contract under that subsection.

(c) If, under Subsection (a) ~~[of this section]~~, the board authorizes the corporation to perform additional services, the corporation may not require postsecondary educational institutions or students to use those services unless required by state or federal law.

(d) If, under Subsection (a), the board authorizes the corporation to perform debt collection, default aversion, financial literacy, exit counseling, or loan servicing, the corporation may perform those services only in relation to higher education student loans.

(e) The corporation shall submit a written report to the legislature and the Legislative Budget Board not later than December 1 of each even-numbered year regarding the corporation's participation in revenue-generating activities under this section. The report must:

(1) include the amounts of revenue from and expenses associated with the activities;

(2) demonstrate how that revenue is used for the support of educational purposes under Section 57.211; and

(3) certify:

(A) the reasonable and necessary amount of operating funds under Section 57.71 required to fulfill the corporation's responsibilities under Section 57.41(a); and

(B) the amount of excess operating funds under Section 57.71.

(f) Contracts entered into by the corporation in pursuit of the corporation's primary purposes described by Sections 57.01(1) and (2) do not constitute revenue-generating activities under this section and are not subject to the requirements prescribed by this section.

SECTION 15. Section 57.41(a), Education Code, is amended to read as follows:

(a) The corporation shall serve as the designated guarantee agency under the Federal Family Education Loan Program in accordance with ~~[loans made to eligible borrowers by eligible lenders as provided by the federal guaranteed student loan program under]~~ the Higher Education Act of 1965, 20 U.S.C. Section [See.] 1001 et seq., as amended, regulations adopted under that Act, and other applicable federal law.

SECTION 16. Section 57.461, Education Code, is amended to read as follows:

Sec. 57.461. [~~POSTSECONDARY EDUCATIONAL INSTITUTIONS AND LENDER~~] ADVISORY COMMITTEES. [~~(a)~~] The corporation shall establish advisory committees as the board considers appropriate [:

~~(1) an advisory committee that is composed of 15 members who represent the postsecondary educational institutions that participate in the corporation's guaranteed student loan program; and~~

~~(2) an advisory committee that is composed of 12 members including:~~

~~[(A) one member who represents the Texas Higher Education Coordinating Board; and~~

~~[(B) 11 members who represent lenders that participate in the corporation's guaranteed student loan program].~~

~~[(b) The board shall appoint advisory committee members on the recommendation of the president.~~

~~[(c) The board may establish other advisory committees as the board considers necessary.~~

~~[(d) The board shall:~~

~~(1) specify each advisory committee's purpose and duties; and~~

~~(2) require each committee to report to the board in a manner specified by the board relating to each committee's activities and work results.]~~

SECTION 17. Sections 57.47(a), (b), and (d), Education Code, are amended to read as follows:

(a) If a student borrower defaults on a loan and the corporation is required to honor the guarantee, the corporation may [~~or the Texas Higher Education Coordinating Board shall~~] bring suit against the defaulting party in accordance with the requirements of the Higher Education Act of 1965, 20 U.S.C. Section [~~See-~~] 1001 et seq., as amended.

(b) A suit against a defaulting party under this section may be brought in the county in which the defaulting person resides, in which the lender is located, or in Travis or Williamson County.

(d) Notwithstanding any other law, if the corporation [~~or the Texas Higher Education Coordinating Board~~] brings suit against a defaulting party under this section, the corporation [~~or the coordinating board, as appropriate,~~] shall pay 50 percent of the filing fee or other costs of court taxed and collected in advance that are in effect on the date on which the suit is filed. If the defaulting borrower prevails in the suit filed under this section, the corporation [~~or the coordinating board, as appropriate,~~] shall pay the remaining 50 percent of the statutory filing fee on the date of the final disposition of the suit. If the corporation [~~or coordinating board~~] prevails in the suit:

(1) the judgment shall find the defaulting borrower liable to the corporation [~~or the coordinating board, as appropriate,~~] for the amount of the filing fee; and

(2) the corporation [~~or coordinating board, as appropriate,~~] shall pay the remaining 50 percent of the statutory filing fee not later than one week after the date on which the defaulting borrower pays to the corporation [~~or coordinating board, as appropriate,~~] the full amount, including the filing fee, for which the borrower is liable to the corporation [~~or coordinating board~~].

SECTION 18. Sections 57.481(a), (b), and (c), Education Code, are amended to read as follows:

(a) ~~[In this section, "loan default rate" means the rate at which student borrowers default on loans guaranteed by the corporation as determined by the corporation in compliance with federal guidelines.~~

~~[(b)]~~ The corporation shall take a comprehensive and ~~[an]~~ active role in coordinating, facilitating, and providing technical assistance on guaranteed student loan default prevention and reduction initiatives and programs that promote responsible borrowing, financial literacy, debt management, research, and informed policymaking ~~[in the state]~~ and shall work with the appropriate state agencies and other entities inside and outside this state, including eligible postsecondary educational institutions, eligible lenders, servicers, secondary markets, the Texas Higher Education Coordinating Board, the Texas ~~[Central]~~ Education Agency, ~~[and]~~ state professional and occupational licensing agencies, and the United States Department of Education.

~~(b) [(c)]~~ The corporation shall maintain a system of communication among the appropriate state agencies and entities to address student ~~[reduce]~~ loan default prevention issues ~~[claims]~~.

SECTION 19. Section 57.49, Education Code, is amended to read as follows:

Sec. 57.49. COOPERATION OF STATE AGENCIES AND SUBDIVISIONS. Each agency and political subdivision of the state shall cooperate with the corporation in providing information to the agency's or political subdivision's clients concerning student financial aid, including information about delinquency, default prevention, and life-of-loan issues. Each agency and political subdivision shall provide information to the corporation on request to assist the corporation in curing delinquent loans, ~~[and]~~ collecting defaulted loans, and developing information and reports concerning responsible borrowing.

SECTION 20. Sections 57.50 and 57.71, Education Code, are amended to read as follows:

Sec. 57.50. NONDISCRIMINATION. Neither the corporation nor an eligible lender may discriminate against an eligible student in making a loan or loan guarantee on the basis of race, age, religion, or sex or any other basis prohibited by applicable law.

Sec. 57.71. FEDERAL ~~[RESERVE]~~ AND OPERATING FUNDS. The corporation shall maintain a federal fund ~~[establish reserve]~~ and operating fund ~~[funds]~~ in accordance with Sections ~~[Section]~~ 422, 422A, and 422B of the Higher Education Act of 1965 (20 U.S.C. Sections ~~[Section]~~ 1072, 1072a, and 1072b), as amended.

SECTION 21. Subchapter D, Chapter 57, Education Code, is amended by adding Section 57.762 to read as follows:

Sec. 57.762. REVIEW BY STATE AUDITOR. In addition to any other audit required by law, the state auditor shall periodically review the corporation's activities in a manner consistent with the state auditor's audit plan under Chapter 321, Government Code. The corporation shall reimburse the state auditor for all reasonable costs incurred by the state auditor in conducting a review under this section.



SECTION 22. Section 57.78, Education Code, is amended to read as follows:

Sec. 57.78. INVESTMENTS. The federal fund maintained by the corporation under Section 57.71 shall [All money of the corporation may] be invested in accordance with Section 422A of the Higher Education Act of 1965 (20 U.S.C. Section 1072a), as amended. The operating fund maintained by the corporation under Section 57.71 may be invested only in accordance with Chapter 2256, Government Code. Authority to invest the operating fund in accordance with Chapter 2256, Government Code, complies with Section 422B of the Higher Education Act of 1965 (20 U.S.C. Section 1072b), as amended.

SECTION 23. The following provisions of the Education Code are repealed:

- (1) Section 57.13(d);
- (2) Sections 57.19(c), (g), and (h);
- (3) Sections 57.41(c) and (d);
- (4) Section 57.42;
- (5) Section 57.43;
- (6) Section 57.44;
- (7) Section 57.45;
- (8) Section 57.46; and
- (9) Sections 57.481(d), (e), (f), (g), and (h).

SECTION 24. (a) Notwithstanding any other law, to comply with the requirements of Section 57.13, Education Code, as amended by this Act, and Section 30a, Article XVI, Texas Constitution:

(1) the term of the member of the board of directors of the Texas Guaranteed Student Loan Corporation appointed under Section 57.13(b)(1), Education Code, for a term to expire January 31, 2017, expires September 1, 2011; and

(2) that board position ceases to exist on September 1, 2011.

(b) Subsection (a) of this section does not prohibit the member of the board of directors of the Texas Guaranteed Student Loan Corporation serving in the board position that ceases to exist under that subsection from being appointed as a member of the board under Section 57.13(b), Education Code, for any other term if the person is otherwise qualified to serve in that position.

SECTION 25. This Act takes effect September 1, 2011.

### Floor Amendment No. 1

Amend **CSSB 40** (house committee printing), in SECTION 14 of the bill, by striking added Section 57.24(f), Education Code (page 12, lines 9 through 13).

### Floor Amendment No. 2

Amend **CSSB 40** (house committee printing) as follows:

(1) Strike SECTION 4 of the bill, amending Sections 57.13(a) and (b), Education Code (page 3, line 26, through page 4, line 16), and substitute the following:

SECTION 4. Section 57.13(b), Education Code, is amended to read as follows:

(b) The governor, with the advice and consent of the senate, shall appoint the ~~10~~ members of the ~~10~~ the board as follows:

(1) five members who must have knowledge of or experience in finance, including management of funds or business operations;

(2) one member who must be a student enrolled at a postsecondary educational institution for the number of credit hours required by the institution to be classified as a full-time student of the institution; and

(3) five ~~four~~ members who must be members the faculty or administration of a an eligible postsecondary educational institution that is an eligible institution for purposes of the Higher Education Act of 1965, as amended~~[, as defined by Section 57.46]~~.

(2) Strike SECTION 6 of the bill, amending Section 57.14, Education Code (page 5, lines 9 through 14), and substitute the following:

SECTION 6. Section 57.14, Education Code, is amended to read as follows:

Sec. 57.14. DIRECTORS' TERMS OF OFFICE. Members of the board ~~[appointed by the governor]~~ serve for terms of six years, with the terms of three or four members, as applicable, expiring on January 31 of each odd-numbered year.

(3) Strike SECTION 24 of the bill (page 17, line 21 through page 18, line 8), and substitute the following:

SECTION 24. Notwithstanding any other law, to comply with the requirements of Section 57.13, Education Code, as amended by this Act, and Section 30a, Article XVI, Texas Constitution, as soon as practicable on or after September 1, 2011, the governor shall appoint one additional member to the board of directors of the Texas Guaranteed Student Loan Corporation under Section 57.13(b)(3), Education Code, for a term to expire January 31, 2015.

The amendments were read.

Senator Zaffirini moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **SB 40** before appointment.

There were no motions offered.

The President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Zaffirini, Chair; Duncan, Watson, Carona, and Eltife.

### **SENATE BILL 472 WITH HOUSE AMENDMENTS**

Senator West called **SB 472** from the President's table for consideration of the House amendments to the bill.

The President Pro Tempore laid the bill and the House amendments before the Senate.

**Floor Amendment No. 1 on Third Reading**

Amend **SB 472** (house committee printing) on third reading by adding the following appropriately numbered SECTION and renumbering SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Chapter 209, Property Code, is amended by adding Section 209.0041 to read as follows:

Sec. 209.0041. ADOPTION OR AMENDMENT OF CERTAIN DEDICATORY INSTRUMENTS. (a) In this section, "development period" means a period stated in a declaration during which a declarant reserves:

(1) a right to facilitate the development, construction, and marketing of the subdivision; and

(2) a right to direct the size, shape, and composition of the subdivision.

(b) This section applies to a residential subdivision in which property owners are subject to mandatory membership in a property owners' association.

(c) This section does not apply to a property owners' association that is subject to Chapter 552, Government Code, by application of Section 552.0036, Government Code.

(d) This section does not apply to the amendment of a declaration during a development period.

(e) This section applies to a dedicatory instrument regardless of the date on which the dedicatory instrument was created.

(f) This section supersedes any contrary requirement in a dedicatory instrument.

(g) To the extent of any conflict with another provision of this title, this section prevails.

(h) Except as provided by this subsection, a declaration may be amended only by a vote of 67 percent of the total votes allocated to property owners in the property owners' association, in addition to any governmental approval required by law. If the declaration contains a lower percentage, the percentage in the declaration controls.

(i) A bylaw may not be amended to conflict with the declaration.

**Floor Amendment No. 2 on Third Reading**

Amend **SB 472** on third reading, in added Section 209.0058, Property Code, by adding the following new subsection:

(d) A person whose name is on the ballot may not access the signed ballots.

**Floor Amendment No. 3 on Third Reading**

Amend **SB 472** (house committee printing) on third reading as follows:

(1) In SECTION 3 of the bill (page 4, line 21), between "SECTION 3." and "Section 209.0059", insert "Sections 202.004(d), (e), (f), and (g)."

(2) Add the following appropriately numbered SECTION to the bill and renumber subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 202.004, Property Code, is amended by adding Subsections (d), (e), (f), and (g) to read as follows:

(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.

The amendments were read.

Senator West moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **SB 472** before appointment.

There were no motions offered.

The President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators West, Chair; Wentworth, Nichols, Nelson, and Davis.

#### **CONFERENCE COMMITTEE ON HOUSE BILL 2490**

Senator Carona called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2490** and moved that the request be granted.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **HB 2490** before appointment.

There were no motions offered.

Accordingly, the President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Carona, Chair; Eltife, Lucio, Van de Putte, and Zaffirini.

**CONFERENCE COMMITTEE ON HOUSE BILL 2900**

Senator Harris called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2900** and moved that the request be granted.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **HB 2900** before appointment.

There were no motions offered.

Accordingly, the President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Harris, Chair; Huffman, Watson, Lucio, and Rodriguez.

**CONFERENCE COMMITTEE ON HOUSE BILL 1711**

Senator Jackson called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 1711** and moved that the request be granted.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **HB 1711** before appointment.

There were no motions offered.

Accordingly, the President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Jackson, Chair; Williams, Eltife, Huffman, and Lucio.

**MESSAGE FROM THE HOUSE**

HOUSE CHAMBER

Austin, Texas

Thursday, May 26, 2011 - 3

The Honorable President of the Senate  
Senate Chamber  
Austin, Texas

Mr. President:

I am directed by the House to inform the Senate that the House has taken the following action:

**THE HOUSE HAS CONCURRED IN THE SENATE AMENDMENTS TO THE FOLLOWING MEASURES:**

**HB 3** (140 Yeas, 2 Nays, 1 Present, not voting)

**HB 1043** (129 Yeas, 12 Nays, 1 Present, not voting)

**HB 1228** (133 Yeas, 7 Nays, 3 Present, not voting)

**HB 1386** (111 Yeas, 32 Nays, 1 Present, not voting)

**HB 1728** (143 Yeas, 0 Nays, 2 Present, not voting)

**HB 1754** (71 Yeas, 68 Nays, 2 Present, not voting)

**HB 1788** (96 Yeas, 47 Nays, 1 Present, not voting)

**HB 2207** (142 Yeas, 0 Nays, 1 Present, not voting)

**HB 2594** (103 Yeas, 35 Nays, 1 Present, not voting)

**HB 3090** (138 Yeas, 1 Nays, 2 Present, not voting)

**HB 3396** (144 Yeas, 0 Nays, 2 Present, not voting)

**HB 3859** (141 Yeas, 0 Nays, 2 Present, not voting)

THE HOUSE HAS REFUSED TO CONCUR IN THE SENATE AMENDMENTS TO THE FOLLOWING MEASURES AND REQUESTS THE APPOINTMENT OF A CONFERENCE COMMITTEE TO ADJUST THE DIFFERENCES BETWEEN THE TWO HOUSES:

**HB 1400** (non-record vote)

House Conferees: Elkins - Chair/Anchia/Bonnen/King, Tracy O./Martinez Fischer

**HB 1517** (non-record vote)

House Conferees: Isaac - Chair/Kleinschmidt/Lozano/Phillips/Rodriguez, Eddie

**HB 1616** (non-record vote)

House Conferees: Geren - Chair/Hamilton/King, Phil/Kolkhorst/Ritter

**HB 2439** (non-record vote)

House Conferees: Gallego - Chair/Harless/Hilderbran/Martinez, "Mando"/Menendez

THE HOUSE HAS GRANTED THE REQUEST OF THE SENATE FOR THE APPOINTMENT OF A CONFERENCE COMMITTEE ON THE FOLLOWING MEASURES:

**SB 144** (non-record vote)

House Conferees: Thompson - Chair/Alonzo/Davis, Yvonne/Dutton/Gallego

**SB 156** (non-record vote)

House Conferees: Gonzales, Veronica - Chair/Coleman/Davis, John/Kolkhorst/Zerwas

**SB 341** (non-record vote)

House Conferees: Menendez - Chair/Farias/Larson/Martinez Fischer/Ritter

**SB 747** (non-record vote)

House Conferees: Hamilton - Chair/Driver/Kuempel/Quintanilla/Thompson

**SB 1198** (non-record vote)

House Conferees: Hartnett - Chair/Bohac/Madden/Munoz, Jr./Thompson

THE HOUSE HAS ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

**SB 321** (130 Yeas, 11 Nays, 2 Present, not voting)

Respectfully,  
/s/Robert Haney, Chief Clerk  
House of Representatives

**SENATE BILL 1134 WITH HOUSE AMENDMENTS**

Senator Hegar called **SB 1134** from the President's table for consideration of the House amendments to the bill.

The President Pro Tempore laid the bill and the House amendments before the Senate.

**Amendment**

Amend **SB 1134** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to the issuance of permits for certain facilities regulated by the Texas Commission on Environmental Quality.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter C, Chapter 382, Health and Safety Code, is amended by adding Sections 382.051961, 382.051962, and 382.051963 to read as follows:

Sec. 382.051961. PERMIT FOR CERTAIN OIL AND GAS FACILITIES. (a) This section applies only to new facilities or modifications of existing facilities that belong to Standard Industrial Classification Codes 1311 (Crude Petroleum and Natural Gas), 1321 (Natural Gas Liquids), 4612 (Crude Petroleum Pipelines), 4613 (Refined Petroleum Pipelines), 4922 (Natural Gas Transmission), and 4923 (Natural Gas Transmission and Distribution).

(b) The commission may not adopt a new permit by rule or a new standard permit or amend an existing permit by rule or an existing standard permit relating to a facility to which this section applies unless the commission:

(1) conducts a regulatory analysis as provided by Section 2001.0225, Government Code;

(2) determines, based on the evaluation of credible air quality monitoring data, that the emissions limits or other emissions-related requirements of the permit are necessary to ensure that the intent of this chapter is not contravened, including the protection of the public's health and physical property;

(3) establishes any required emissions limits or other emissions-related requirements based on:

(A) the evaluation of credible air quality monitoring data; and

(B) credible air quality modeling that is not based on the worst-case scenario of emissions or other worst-case modeling scenarios unless the actual air quality monitoring data and evaluation of that data indicate that the worst-case scenario of emissions or other worst-case modeling scenarios yield modeling results that reflect the actual air quality monitoring data and evaluation; and

(4) considers whether the requirements of the permit should be imposed only on facilities that are located in a particular geographic region of the state.

(c) The air quality monitoring data and the evaluation of that data under Subsection (b):

(1) must be relevant and technically and scientifically credible, as determined by the commission; and

(2) may be generated by an ambient air quality monitoring program conducted by or on behalf of the commission in any part of the state or by another governmental entity of this state, a local or federal governmental entity, or a private organization.

Sec. 382.051962. AUTHORIZATION FOR PLANNED MAINTENANCE, START-UP, OR SHUTDOWN ACTIVITIES RELATING TO CERTAIN OIL AND GAS FACILITIES. (a) In this section, "planned maintenance, start-up, or shutdown activity" means an activity with emissions or opacity that:

(1) is not expressly authorized by commission permit, rule, or order and involves the maintenance, start-up, or shutdown of a facility;

(2) is part of normal or routine facility operations;

(3) is predictable as to timing; and

(4) involves the type of emissions normally authorized by permit.

(b) The commission may adopt one or more permits by rule or one or more standard permits and may amend one or more existing permits by rule or standard permits to authorize planned maintenance, start-up, or shutdown activities for facilities described by Section 382.051961(a). The adoption or amendment of a permit under this subsection must comply with Section 382.051961(b).

(c) An unauthorized emission or opacity event from a planned maintenance, start-up, or shutdown activity is subject to an affirmative defense as established by commission rules as those rules exist on the effective date of this section if:

(1) the emission or opacity event occurs at a facility described by Section 382.051961(a);

(2) an application or registration to authorize the planned maintenance, start-up, or shutdown activities of the facility is submitted to the commission on or before the earlier of:

(A) January 5, 2014; or

(B) the 120th day after the effective date of a new or amended permit adopted by the commission under Subsection (b); and

(3) the affirmative defense criteria in the rules are met.

(d) The affirmative defense described by Subsection (c) is not available for a facility on or after the date that an application or registration to authorize the planned maintenance, start-up, or shutdown activities of the facility is approved, denied, or voided.

Sec. 382.051963. AMENDMENT OF CERTAIN PERMITS. (a) A permit by rule or standard permit that has been adopted by the commission under this subchapter and is in effect on the effective date of this section may be amended to require:

(1) the permit holder to provide to the commission information about a facility authorized by the permit, including the location of the facility; and



(2) any facility handling sour gas to be a minimum distance from a recreational area, a residence, or another structure not occupied or used solely by the operator of the facility or by the owner of the property upon which the facility is located.

(b) The amendment of a permit under this section is not subject to Section 382.051961(b).

SECTION 2. (a) Sections 382.051961, 382.051962, and 382.051963, Health and Safety Code, as added by this Act, apply only to a new permit by rule or a new standard permit or any amendment to an existing permit by rule or amendment to an existing standard permit adopted by the Texas Commission on Environmental Quality on or after the effective date of this Act.

(b) A permit by rule or standard permit adopted by the Texas Commission on Environmental Quality and in effect before the effective date of this Act is not subject to Sections 382.051961 and 382.051962, Health and Safety Code, as added by this Act.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2011.

#### **Floor Amendment No. 1**

Amend **CSSB 1134** (house committee report) as follows:

(1) In the recital to SECTION 1 of the bill (page 1, lines 6 and 7), strike "and 382.051963" and substitute "382.051963, and 382.051964".

(2) In SECTION 1 of the bill, after added Section 382.051963, Health and Safety Code (page 4, between lines 25 and 26), add the following:

Sec. 382.051964. AGGREGATION OF FACILITIES. Notwithstanding any other provision of this chapter, the commission may not aggregate a facility that belongs to a Standard Industrial Classification Code identified by Section 382.051961(a) with another facility that belongs to a Standard Industrial Classification Code identified by that section for purposes of consideration as an oil and gas facility, a stationary source, or another single source in a permit by rule or a standard permit unless the facilities being aggregated:

(1) are under the control of the same person or are under the control of persons under common control;

(2) belong to the same two-digit major grouping of Standard Industrial Classification Codes;

(3) are operationally dependant; and

(4) are located not more than 500 feet from a tank battery, separator, or combustion facility.

(3) In SECTION 2(a) of the bill (page 4, lines 26 and 27), strike "and 382.051963" and substitute "382.051963, and 382.051964".

(4) In SECTION 2(b) of the bill (page 5, lines 7 and 8), strike "382.051961 and 382.051962" and substitute "382.051961, 382.051962, and 382.051964".

**Floor Amendment No. 3**

Amend **CSSB 1134** (house committee report) in SECTION 1 of the bill, in added Section 382.051961, Health and Safety Code (page 2, between lines 26 and 27), by inserting the following:

(d) Unless a demonstration is otherwise required under federal law, a new or amended standard permit or permit by rule adopted under this section may not require a demonstration of compliance with a national ambient air quality standard before the demonstration is required by a state implementation plan adopted to implement that national ambient air quality standard.

**Floor Amendment No. 1 on Third Reading**

Amend **CSSB 1134** on third reading in added Section 382.051964, Health and Safety Code, as added by Amendment No. 1 by Wayne Smith, as follows:

(1) In added Section 382.051964(2), Health and Safety Code, between "same" and "two-digit", insert "first".

(2) In added Section 382.051964(4), Health and Safety Code, strike "tank battery, separator, or combustion facility" and substitute "condensate tank, oil tank, produced water storage tank, or combustion facility that:

(A) is under the control of the same person who controls the facilities being aggregated or is under the control of persons under common control;

(B) belongs to the same first two-digit major grouping of Standard Industrial Classification Codes as the facilitates being aggregated; and

(C) is operationally dependant on the facilities being aggregated".

The amendments were read.

Senator Hegar moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **SB 1134** before appointment.

There were no motions offered.

The President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Hegar, Chair; Fraser, Deuell, Jackson, and Whitmire.

**BILLS AND RESOLUTIONS SIGNED**

The President Pro Tempore announced the signing of the following enrolled bills and resolutions in the presence of the Senate after the captions had been read:

**SB 1124, SB 1169, SB 1200, SB 1225, SB 1290, SB 1360, SB 1383, SB 1393, SB 1434, SB 1545, SB 1560, SB 1617, SB 1619, SB 1726, SB 1799, SB 1877, SB 1899, SB 1910, SB 1913, SB 1916, SB 1925, SB 1926, SCR 2, SCR 58, SJR 9, SJR 14, SJR 26, SJR 37, SJR 50.**

**CONFERENCE COMMITTEE ON HOUSE BILL 2729**

Senator Watson called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2729** and moved that the request be granted.

The motion prevailed without objection.

The President Pro Tempore asked if there were any motions to instruct the conference committee on **HB 2729** before appointment.

There were no motions offered.

Accordingly, the President Pro Tempore announced the appointment of the following conferees on the part of the Senate: Senators Watson, Chair; Jackson, Eltife, Zaffirini, and Ellis.

**SENATE BILL 573 WITH HOUSE AMENDMENTS**

Senator Nichols called **SB 573** from the President's table for consideration of the House amendments to the bill.

The President Pro Tempore laid the bill and the House amendments before the Senate.

**Amendment**

Amend **SB 573** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to certificates of public convenience and necessity for water or sewer services.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 13.254, Water Code, is amended by amending Subsections (a) and (a-2) and adding Subsections (a-5) and (a-6) to read as follows:

(a) The 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 it finds that:

(1) the certificate holder has never provided, is no longer providing, is incapable of providing, or has failed to provide continuous and adequate service in the area, or part of the area, covered by the certificate;

(2) in an affected county as defined in Section 16.341, the cost of providing service by the certificate holder is so prohibitively expensive as to constitute denial of service, provided that, for commercial developments or for residential developments started after September 1, 1997, in an affected county as defined in Section 16.341, the fact that the cost of obtaining service from the currently certificated retail public utility makes the development economically unfeasible does not render such cost prohibitively expensive in the absence of other relevant factors;

(3) the certificate holder has agreed in writing to allow another retail public utility to provide service within its service area, except for an interim period, without amending its certificate; or

(4) the certificate holder has failed to file a cease and desist action pursuant to Section 13.252 within 180 days of the date that it became aware that another retail public utility was providing service within its service area, unless the certificate holder demonstrates good cause for its failure to file such action within the 180 days.

(a-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 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-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 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 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 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.

SECTION 2. This Act takes effect September 1, 2011.

### **Floor Amendment No. 1**

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".

### **Floor Amendment No. 2**

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 ~~if~~ 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.

### **Floor Amendment No. 3**

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."

### **Floor Amendment No. 4**

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.

### **Floor Amendment No. 1 on Third Reading**

Amend **CSSB 573** (house committee printing) on third reading in SECTION 1 of the bill, in added Section 13.254(a-5), Water Code (page 3, line 4), between "220,000" and the period, by inserting ", and not in a county that has population of more than 45,500 and less than 47,500".



**Floor Amendment No. 2 on Third Reading**

Amend **CSSB 573** on third reading as follows:

(1) In Section 13.254(a-3), Water Code, as amended on second reading by Amendment No. 2 by Callegari and Amendment No. 3 by Lucio III, strike "Except in a county that borders the United Mexican States and the Gulf of Mexico or a county adjacent to that county, 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.".

(2) Add a new appropriately numbered SECTION to the bill and renumber subsequent SECTIONS accordingly:

SECTION \_\_\_\_\_. Section 13.254, Water Code, is amended by adding Subsections (a-8), (a-9), and (a-10) to read as follows:

(a-8) If a certificate holder has never made service available through planning, design, construction of facilities, or contractual obligations to serve the area a petitioner seeks to have released under Subsection (a-1), 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.

(a-9) Subsection (a-8) does not apply to a county that borders the United Mexican States and the Gulf of Mexico or a county adjacent to a county that borders the United Mexican States and the Gulf of Mexico.

(a-10) Subsection (a-8) does not apply to a county:

(1) with a population of more than 30,000 and less than 35,000 that borders the Red River; or

(2) a county with a population of more than 100,000 and less than 200,000 that borders a county described by Subdivision (1).

(3) Strike Section 13.245(c-4), Water Code, as added on second reading in Amendment No. 2 by Callegari and Amendment No. 3 by Lucio III, and substitute the following:

(c-4) Subsections (c-1), (c-2), and (c-3) do not apply to:

(1) a county that borders the United Mexican States and the Gulf of Mexico or a county adjacent to such a county;

(2) a county with a population of more than 30,000 and less than 35,000 that borders the Red River; or

(3) a county with a population of more than 100,000 and less than 200,000 that borders a county described by Subdivision (2).

(4) In the recital to the SECTION of the bill that amends Section 13.2451, Water Code, as added on second reading by Amendment No. 2 by Callegari, strike "Sections 13.2451(a) and (b), Water Code are amended" and substitute "Section 13.2451, Water Code, is amended by amending Subsections (a) and (b) and adding Subsections (b-1) and (b-2) to read as follows:".

(5) In Section 13.2451(b), Water Code, as amended on second reading by Amendment No. 2 by Callegari and Amendment No. 3 by Lucio III, strike "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." and substitute "This subsection does not apply to a transfer of a certificate as approved by the commission."

(6) In Section 13.2451, Water Code, as amended on second reading by Amendment No. 2 by Callegari and Amendment No. 3 by Lucio III, insert the following:

(b-1) Subsection (b) does not apply to 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.

(b-2) Subsection (b) does not apply to an extension of extraterritorial jurisdiction in a county:

(1) with a population of more than 30,000 and less than 35,000 that borders the Red River; or

(2) with a population of more than 100,000 and less than 200,000 that borders a county described by Subdivision (1).

### **Floor Amendment No. 3 on Third Reading**

Amend **CSSB 573** on third reading as follows:

(1) In Section 13.254(a-3), Water Code, as amended on second reading by Amendment No. 2 by Callegari and Amendment No. 3 by Lucio III, strike "Except in a county that borders the United Mexican States and the Gulf of Mexico or a county adjacent to that county, 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."

(2) Add a new appropriately numbered SECTION to the bill and renumber subsequent SECTIONS accordingly:

SECTION \_\_\_\_ . Section 13.254, Water Code, is amended by adding Subsections (a-8), (a-9), and (a-11) to read as follows:

(a-8) If a certificate holder has never made service available through planning, design, construction of facilities, or contractual obligations to serve the area a petitioner seeks to have released under Subsection (a-1), 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.

(a-9) Subsection (a-8) does not apply to a county that borders the United Mexican States and the Gulf of Mexico or a county adjacent to a county that borders the United Mexican States and the Gulf of Mexico.

(a-11) Subsection (a-8) does not apply to a county:

(1) with a population of 130,000 or more that is adjacent to a county with a population of 1.5 million or more that is within 200 miles of an international border;  
or

(2) a county with a population of more than 40,000 and less than 50,000 that contains a portion of the San Antonio River.

(3) In Section 13.245, Water Code, as amended on second reading in Amendment No. 2 by Callegari and Amendment No. 3 by Lucio III, insert the following:

(c-5) Subsections (c-1), (c-2), and (c-3) do not apply to:

(1) with a population of 130,000 or more that is adjacent to a county with a population of 1.5 million or more that is within 200 miles of an international border;  
or

(2) a county with a population of more than 40,000 and less than 50,000 that contains a portion of the San Antonio River.

(4) In the recital to the SECTION of the bill that amends Section 13.2451, Water Code, as added on second reading by Amendment No. 2 by Callegari, strike "Sections 13.2451(a) and (b), Water Code are amended" and substitute "Section 13.2451, Water Code, is amended by amending Subsections (a) and (b) and adding Subsections (b-1) and (b-3) to read as follows:".

(5) In Section 13.2451(b), Water Code, as amended on second reading by Amendment No. 2 by Callegari and Amendment No. 3 by Lucio III, strike "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." and substitute "This subsection does not apply to a transfer of a certificate as approved by the commission."

(6) In Section 13.2451, Water Code, as amended on second reading by Amendment No. 2 by Callegari and Amendment No. 3 by Lucio III, insert the following:

(b-1) Subsection (b) does not apply to 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.

(b-3) Subsection (b) does not apply to an extension of extraterritorial jurisdiction in a county:

(1) with a population of 130,000 or more that is adjacent to a county with a population of 1.5 million or more that is within 200 miles of an international border;  
or

(2) a county with a population of more than 40,000 and less than 50,000 that contains a portion of the San Antonio River.

The amendments were read.

Senator Nichols moved to concur in the House amendments to **SB 573**.

The motion prevailed by the following vote: Yeas 25, Nays 6.

Yeas: Birdwell, Carona, Davis, Ellis, Eltife, Fraser, Gallegos, Harris, Hegar, Huffman, Jackson, Nelson, Nichols, Ogden, Patrick, Rodriguez, Seliger, Shapiro, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Deuell, Duncan, Estes, Hinojosa, Lucio, Uresti.

### BILLS SIGNED

The President Pro Tempore announced the signing of the following enrolled bills in the presence of the Senate after the captions had been read:

**SB 17, SB 173, SB 201, SB 244, SB 271, SB 327, SB 329, SB 364, SB 365, SB 370, SB 460, SB 475, SB 479, SB 717, SB 738, SB 762, SB 766, SB 768, SB 781, SB 789, SB 801, SB 819, SB 847, SB 937, SB 969, SB 975, SB 1009, SB 1026, SB 1042, SB 1055, SB 1058, SB 1073, SB 1120, HB 149, HB 254, HB 338, HB 343, HB 364, HB 412, HB 447, HB 528, HB 534, HB 577, HB 588, HB 654, HB 692, HB 737, HB 787, HB 890, HB 943, HB 963, HB 990, HB 1048, HB 1060, HB 1070, HB 1116, HB 1129, HB 1144, HB 1148, HB 1163, HB 1226, HB 1235, HB 1274, HB 1305, HB 1315, HB 1486, HB 1499, HB 1610, HB 1615, HB 1942, HB 1964, HB 1992, HB 2038, HB 2098, HB 2120, HB 2160, HB 2170, HB 2195, HB 2223, HB 2280, HB 2292, HB 2325, HB 2359, HB 2425, HB 2472, HB 2604, HB 2619, HB 2632.**

(President in Chair)

### SENATE BILL 875 WITH HOUSE AMENDMENTS

Senator Fraser called **SB 875** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

#### Floor Amendment No. 2

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.

#### **Floor Amendment No. 1 on Third Reading**

Amend **SB 875** on third reading in Section 93.003, Civil Practice and Remedies Code, as added by the second reading Bonnen amendment by adding Subsection (c) to that section to read as follows:

(c) Nothing in this section prohibits or affects an action for nuisance or trespass related to the production, use, release into the environment, or remediation of methyl tertiary butyl ether.

#### **Floor Amendment No. 2 on Third Reading**

Amend **SB 875** on third reading in Section 93.003(b), Civil Practice and Remedies Code, as added by Amendment No. 2 by Bonnen, by striking "clear and convincing evidence" and substituting "a preponderance of the evidence".

#### **Floor Amendment No. 3 on Third Reading**

Amend the Bonnen Amendment (second reading) No. 2 to **SB 875** on third reading as follows:

On page 1, line 22, insert "specifically" between "was" and "authorized."

#### **Floor Amendment No. 4 on Third Reading**

Amend **SB 875** on third reading as follows:

SECTION 1 (b) by striking the word "related to" and add in place "solely based on"

#### **Floor Amendment No. 6 on Third Reading**

Amend **SB 875** on third reading, in added Section 93.003, Civil Practice and Remedies Code, by adding the following new subsection:

(c) An affirmative defense under this section may not be asserted against this state, a political subdivision of this state, or any other governmental entity in this state.

The amendments were read.

Senator Fraser moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed without objection.

The President asked if there were any motions to instruct the conference committee on **SB 875** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate: Senators Fraser, Chair; Duncan, Watson, Jackson, and Estes.

#### **CONFERENCE COMMITTEE ON HOUSE BILL 2380**

Senator Shapiro called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 2380** and moved that the request be granted.

The motion prevailed without objection.

The President asked if there were any motions to instruct the conference committee on **HB 2380** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate: Senators Shapiro, Chair; Patrick, Carona, Seliger, and Nelson.

#### **SENATE BILL 181 WITH HOUSE AMENDMENTS**

Senator Shapiro called **SB 181** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

#### **Floor Amendment No. 1**

Amend **SB 181** by inserting the following appropriately-numbered SECTION and renumbering any subsequent SECTIONS and updating any cross-references accordingly:

SECTION \_\_\_\_\_. Section 16.053(c), Water Code, is amended to read as follows:

(c) No later than 60 days after the designation of the regions under Subsection (b), the board shall designate representatives within each regional water planning area to serve as the initial coordinating body for planning. The initial coordinating body may then designate additional representatives to serve on the regional water planning group. The initial coordinating body shall designate additional representatives if necessary to ensure adequate representation from the interests comprising that region, including the public, counties, municipalities, industries, agricultural interests, environmental interests, small businesses, electric generating utilities, river authorities, water districts, and water utilities. The regional water planning group shall maintain adequate representation from those interests. In addition, the commissioners court of each county located in the regional water planning area shall appoint one representative of the county to the regional water planning group. In addition, representatives of the board, the Parks and Wildlife Department, and the Department of Agriculture shall serve as ex officio members of each regional water planning group.

SECTION \_\_\_\_\_. As soon as practicable after the effective date of this Act, the commissioners court of each county in this state shall appoint an initial representative of the county to the regional water planning group for the regional water planning area in which the county is located, as required by Section 16.053(c), Water Code, as amended by this Act.

**Floor Amendment No. 1 on Third Reading**

Amend **SB 181** on third reading by striking the SECTION of the bill amending Water Code Section 16.053(c), as added on second reading by House Floor Amendment No. 1, and renumbering the remaining sections appropriately.

The amendments were read.

Senator Shapiro moved to concur in the House amendments to **SB 181**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

**BILLS AND RESOLUTIONS SIGNED**

The President announced the signing of the following enrolled bills and resolutions in the presence of the Senate after the captions had been read:

**HB 2725, HB 2769, HB 2792, HB 2872, HB 2994, HB 3093, HB 3134, HB 3145, HB 3167, HB 3182, HB 3270, HB 3311, HB 3336, HB 3404, HB 3410, HB 3423, HB 3439, HB 3578, HB 3727, HB 3788, HB 3796, HB 3823, HB 3829, HB 3836, HB 3862, HB 3864, HCR 24, HCR 86, HCR 130, HCR 153, HJR 109.**

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 1**

Senator Ogden submitted the following Conference Committee Report:

Austin, Texas  
May 26, 2011

Honorable David Dewhurst  
President of the Senate

Honorable Joe Straus  
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 1** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

OGDEN  
DUNCAN  
HINOJOSA  
NELSON  
WILLIAMS

PITTS  
CROWNOVER  
OTTO  
ZERWAS

On the part of the Senate

On the part of the House

The Conference Committee Report on **HB 1** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 2694**

Senator Huffman submitted the following Conference Committee Report:

Austin, Texas  
May 24, 2011

Honorable David Dewhurst  
President of the Senate

Honorable Joe Straus  
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2694** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

HUFFMAN  
FRASER  
HEGAR  
HINOJOSA  
NICHOLS

On the part of the Senate

W. SMITH  
BONNEN  
CHISUM  
GEREN

On the part of the House

The Conference Committee Report on **HB 2694** was filed with the Secretary of the Senate on Thursday, May 26, 2011.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 263**

Senator Carona submitted the following Conference Committee Report:

Austin, Texas  
May 25, 2011

Honorable David Dewhurst  
President of the Senate

Honorable Joe Straus  
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 263** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

CARONA  
ELTIFE  
RODRIGUEZ  
SELIGER  
ZAFFIRINI

On the part of the Senate

KOLKHORST  
COLEMAN  
S. DAVIS  
S. KING

On the part of the House



A BILL TO BE ENTITLED  
AN ACT

relating to the revocation, suspension, or restriction of the license of a physician placed on deferred adjudication community supervision or arrested for certain offenses.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 164.057, Occupations Code, is amended by adding Subsection (c) to read as follows:

(c) The board shall revoke the license of a physician placed on deferred adjudication community supervision for an offense under:

(1) Section 22.011(a)(2), Penal Code (sexual assault of a child);

(2) Section 22.021(a)(1)(B), Penal Code (aggravated sexual assault of a child); or

(3) Section 21.11, Penal Code (indecenty with a child).

SECTION 2. Subchapter B, Chapter 164, Occupations Code, is amended by adding Section 164.0595 to read as follows:

Sec. 164.0595. TEMPORARY SUSPENSION OR RESTRICTION OF LICENSE FOR CERTAIN ARRESTS. (a) A disciplinary panel appointed under Section 164.059 may suspend or restrict the license of a person arrested for an offense under:

(1) Section 22.011(a)(2), Penal Code (sexual assault of a child);

(2) Section 22.021(a)(1)(B), Penal Code (aggravated sexual assault of a child);

(3) Section 21.02, Penal Code (continuous sexual abuse of a young child or children); or

(4) Section 21.11, Penal Code (indecenty with a child).

(b) Before suspending or restricting a license under this section, the disciplinary panel must determine that the person arrested for an offense listed in Subsection (a) is the same person who holds a license issued by the board.

(c) A suspension or restriction under this section remains in effect until the final disposition of the case.

(d) Sections 164.059(c), (d), (e), (f), and (g) apply to a suspension or restriction under this section.

(e) The board shall adopt rules to implement this section, including rules regarding evidence that serves as proof of final disposition of a case.

SECTION 3. Subsection (b), Section 164.102, Occupations Code, is amended to read as follows:

(b) Except on an express determination, based on substantial evidence, that granting probation is in the best interests of the public and of the person whose license has been suspended, revoked, or canceled, the board may not grant probation to a person whose license has been canceled, revoked, or suspended because of a felony conviction under:

(1) Chapter 481 or 483, Health and Safety Code;

(2) Section 485.033, Health and Safety Code; [✗]

(3) the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.); or

(4) any of the following sections of the Penal Code:

(A) Section 22.011(a)(2) (sexual assault of a child);

(B) Section 22.021(a)(1)(B) (aggravated sexual assault of a child);

(C) Section 21.02 (continuous sexual abuse of a young child or children); or

(D) Section 21.11 (indecenty with a child).

SECTION 4. (a) Subsection (c), Section 164.057, and Section 164.0595, Occupations Code, as added by this Act, and Section 164.102, Occupations Code, as amended by this Act, apply 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.

SECTION 5. This Act takes effect September 1, 2011.

The Conference Committee Report on **SB 263** was filed with the Secretary of the Senate on Thursday, May 26, 2011.

### CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1112

Senator Nichols submitted the following Conference Committee Report:

Austin, Texas

May 24, 2011

Honorable David Dewhurst  
President of the Senate

Honorable Joe Straus  
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 1112** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

NICHOLS  
SHAPIRO  
WATSON  
WILLIAMS  
RODRIGUEZ  
On the part of the Senate

PHILLIPS  
HARPER-BROWN  
LAVENDER  
PICKETT  
FLETCHER  
On the part of the House

The Conference Committee Report on **HB 1112** was filed with the Secretary of the Senate on Thursday, May 26, 2011.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 2499**

Senator Nichols submitted the following Conference Committee Report:

Austin, Texas  
May 26, 2011

Honorable David Dewhurst  
President of the Senate

Honorable Joe Straus  
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 2499** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

NICHOLS  
HEGAR  
HINOJOSA  
HUFFMAN  
WHITMIRE

On the part of the Senate

COOK  
BONNEN  
BRANCH  
GEREN  
MENENDEZ

On the part of the House

The Conference Committee Report on **HB 2499** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 249**

Senator Estes submitted the following Conference Committee Report:

Austin, Texas  
May 26, 2011

Honorable David Dewhurst  
President of the Senate

Honorable Joe Straus  
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 249** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

ESTES  
CARONA  
FRASER  
LUCIO  
WILLIAMS

On the part of the Senate

ORR  
FLYNN  
LEGLER  
TRUITT

On the part of the House

A BILL TO BE ENTITLED  
AN ACT

relating to the composition of the Finance Commission of Texas.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsections (a) and (b), Section 11.101, Finance Code, are amended to read as follows:

(a) The Finance Commission of Texas is composed of 11 [~~nine~~] members appointed by the governor with the advice and consent of the senate.

(b) Members of the finance commission serve staggered six-year terms, with as near as possible to [~~of six years with the terms of~~] one-third of the members' terms [~~members~~] expiring February 1 of each even-numbered year.

SECTION 2. Subsections (b) and (c), Section 11.102, Finance Code, are amended to read as follows:

(b) Two members [~~One member~~] of the finance commission must be [~~a~~] banking executives [~~executive~~], one member of the finance commission must be a savings executive, one member of the finance commission must be a consumer credit executive, and one member of the finance commission must be a mortgage broker.

(c) Six [~~Five~~] members of the finance commission must be representatives of the general public. At least one of those members must be a certified public accountant.

SECTION 3. As soon as practicable after the effective date of this Act, the governor shall appoint two additional members to the Finance Commission of Texas. In appointing those members, the governor shall appoint one person to a term expiring February 1, 2014, and one person to a term expiring February 1, 2016.

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2011.

The Conference Committee Report on **SB 249** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 3577**

Senator Zaffirini submitted the following Conference Committee Report:

Austin, Texas  
May 25, 2011

Honorable David Dewhurst  
President of the Senate

Honorable Joe Straus  
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 3577** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

ZAFFIRINI  
 CARONA  
 DUNCAN  
 ELTIFE  
 WATSON

On the part of the Senate

L. GONZALES  
 SCHWERTNER  
 STRAMA  
 WORKMAN  
 SCOTT

On the part of the House

The Conference Committee Report on **HB 3577** was filed with the Secretary of the Senate on Thursday, May 26, 2011.

**CONFERENCE COMMITTEE REPORT ON  
 SENATE BILL 313**

Senator Seliger submitted the following Conference Committee Report:

Austin, Texas  
 May 25, 2011

Honorable David Dewhurst  
 President of the Senate

Honorable Joe Straus  
 Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 313** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

SELIGER  
 DUNCAN  
 ELTIFE  
 HINOJOSA  
 WATSON

On the part of the Senate

PRICE  
 BECK  
 LUCIO  
 D. MILLER  
 RITTER

On the part of the House

**A BILL TO BE ENTITLED  
 AN ACT**

relating to priority groundwater management areas.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:**

SECTION 1. Subsection (a), Section 35.007, Water Code, is amended to read as follows:

(a) The executive director and the executive administrator shall meet periodically to identify, based on information gathered by the commission and the Texas Water Development Board, those areas of the state that are experiencing or that are expected to experience, within the immediately following 50-year [~~25-year~~] period, critical groundwater problems, including shortages of surface water or groundwater, land subsidence resulting from groundwater withdrawal, and contamination of groundwater supplies. Not later than September 1, 2005, the commission, with assistance and cooperation from the Texas Water Development Board, shall complete the initial designation of priority groundwater management

areas across all major and minor aquifers of the state for all areas that meet the criteria for that designation. The studies may be prioritized considering information from the regional planning process, information from the Texas Water Development Board groundwater management areas and from groundwater conservation districts, and any other information available. After the initial designation of priority groundwater management areas, the commission and the Texas Water Development Board shall annually review the need for additional designations as provided by this subsection.

SECTION 2. Section 35.008, Water Code, is amended by adding Subsection (j) to read as follows:

(j) The commission may adopt rules regarding:

(1) the creation of a district over all or part of a priority groundwater management area that was designated as a critical area under Chapter 35, Water Code, as that chapter existed before September 1, 1997, or under other prior law; and

(2) the addition of all or part of the land in a priority groundwater management area described by Subdivision (1) to an existing district.

SECTION 3. Section 35.012, Water Code, is amended by amending Subsection (b) and adding Subsection (b-1) to read as follows:

(b) Except as provided by Section 35.013, within ~~Within~~ two years, but no sooner than 120 days, from the date on which the commission issues an order under Section 35.008 designating a priority groundwater management area, for those areas that are not within a district, the commission shall[-

[(4)] create one or more new districts under Section 36.0151[-

[(2) recommend that the areas, or a portion of the areas, be added to an existing district under Section 35.013; or

[(3) take any combination of the actions under Subdivisions (1) and (2)].

(b-1) For purposes of this section, the commission may consider territory in two separately designated priority groundwater management areas to be in the same designated priority groundwater management area if:

(1) the two areas share a common boundary and one or more common aquifers; and

(2) the commission determines that a district composed of territory in the two areas will result in more effective or efficient groundwater management than other options available to the commission.

SECTION 4. Section 35.013, Water Code, is amended by amending Subsections (b), (c), (e), (f), (g), and (h) and adding Subsections (b-1) and (g-1) to read as follows:

(b) The commission shall submit a copy of the order to the board of the district to which it is recommending the priority groundwater management area be added. Not later than the 120th day after the date of receiving the copy, the ~~The~~ board shall vote on the addition of the priority groundwater management area to the district and shall advise the commission of the outcome.

(b-1) If the district described by Subsection (b) has not approved an ad valorem tax on the date of the commission's order issued under Section 35.008 and the board of the district votes to accept the addition of the priority groundwater management area to the district, the board shall enter an order adding the territory in the district.

(c) If the district described by Subsection (b) has approved an ad valorem tax on the date of the commission's order issued under Section 35.008 and the board votes to accept the addition of the priority groundwater management area to the district, the board:

(1) shall enter an order adding the territory in the district;

(2) may request the Texas AgriLife ~~[Agricultural]~~ Extension Service, the commission, and the Texas Water Development Board, with the cooperation and assistance of the Department of Agriculture and other state agencies, to administer an educational program to inform the residents of the status of the area's water resources, the addition of territory to the district, and ~~[management]~~ options for financing management of the groundwater resources of the ~~[including possible annexation into a]~~ district;

(3) ~~[(2)]~~ shall call an election to be held not later than the 270th day after the date of the board's vote under Subsection (b) within the priority groundwater management area, or portion of the priority groundwater management area, as delineated by the commission to determine if the added area will assume a proportional share of the debts or taxes of the district ~~[priority groundwater management area will be added to the district];~~ and

(4) ~~[(3)]~~ shall designate election precincts and polling places for the elections in the order calling an election under this subsection.

(e) The ballots for the election shall be printed to provide for voting for or against the proposition: "The ~~[inclusion of \_\_\_\_\_ (briefly describe priority groundwater management area) in the \_\_\_\_\_ District. "If the district has outstanding debts or taxes, the proposition shall include the following language: "and]~~ assumption by the \_\_\_\_\_ (briefly describe the territory added under Subsection (c)(1)) ~~[described area]~~ of a proportional share of the debts or taxes of the \_\_\_\_\_ District instead of the assessment of fees in the described area to fund the groundwater management activities of the district."

(f) Immediately after the election, the presiding judge of each polling place shall deliver the returns of the election to the board, and the board shall canvass the returns for the election within the priority groundwater management area and declare the results. If a majority of the voters in the priority groundwater management area voting on the proposition vote in favor of the proposition, the board shall declare that the priority groundwater management area assumes a proportional share of the debts or taxes of ~~[is added to]~~ the district. If a majority of the voters in the priority groundwater management area voting on the proposition do not vote in favor of the proposition ~~[against adding the priority groundwater management area to the district]~~, the board shall adopt rules to implement Subsection (g-1) ~~[declare that the priority groundwater management area is not added to the district]~~. The board shall file a copy of the election results with the commission.

(g) The ~~[If the voters approve adding the priority groundwater management area to the district, the]~~ board of the district to which the priority groundwater management area is added shall provide reasonable representation on that board compatible with the district's existing scheme of representation. Not later than the 30th day after the date on which the board declares that the priority groundwater management area is

added to the district, the board of the existing district shall appoint a person or persons to represent the area until the next regularly scheduled election or appointment of directors.

(g-1) If the voters do not approve the assumption of a proportional share of the debts or taxes of a district under Subsection (e), the board shall assess production fees in the added territory based on the amount of water authorized by permit to be withdrawn from a well or the amount actually withdrawn. A district may use revenue generated for any purpose authorized by Section 36.206 or 36.207. Initial production fees may not exceed production fees as set in Section 36.205(c), but may be increased by the board on a majority vote after the first anniversary of the commission order. Production fees may be raised incrementally by 40 percent and 10 percent every following year until the maximum production fees equal:

(1) \$2 per acre-foot, payable annually, for water used for an agricultural purpose; or

(2) 30 cents per 1,000 gallons, payable annually, for water used for any non-agricultural purpose.

(h) Not later than the first anniversary of the date on which [H] the proposition is defeated, or [if] the board of the existing district votes not to accept the addition of the area to the district, [then] the commission shall, except as provided under Subsection (i):

(1) [;] create under Section 36.0151 one or more districts covering the priority groundwater management area; or

(2) recommend the area be added to another existing district as provided by this section [not later than the first anniversary of the date on which the proposition is defeated or the board votes not to accept the area].

SECTION 5. Section 36.0151, Water Code, is amended by amending Subsection (a) and adding Subsections (c), (d), and (e) to read as follows:

(a) If the commission is required to create a district under Section 35.012(b), it shall, without an evidentiary hearing, issue an order creating the district and shall provide in its order that temporary directors be appointed under Section 36.0161 [~~36.016~~] and that an election be called by the temporary directors to authorize the district to assess taxes and to elect permanent directors.

(c) The commission may amend the territory in an order issued under Section 35.008 or this section to adjust for areas that, in the time between when the order was issued under Section 35.008 and the order is issued under this section, have:

(1) been added to an existing district or created as a separate district; or

(2) not been added to an existing district or created as a separate district.

(d) In making a modification under Subsection (c), the commission may recommend:

(1) creation of a new district in the area; or

(2) that the area be added to a different district.

(e) Except as provided by Section 35.013(h), a change in the order under Subsection (c) does not affect a deadline under Section 35.012 or 35.013.

SECTION 6. Subsection (h), Section 36.0171, Water Code, is amended to read as follows:



(h) If the majority of the votes cast at the election are against the levy of a maintenance tax, the district shall set production [~~permit~~] fees in accordance with Section 35.013(g-1) to pay for the district's regulation of groundwater in the district, including fees based on the amount of water to be withdrawn from a well.

SECTION 7. (a) The changes in law made by this Act apply to any territory in a priority groundwater management area that is not included in a groundwater conservation district on the effective date of this Act.

(b) Not later than September 1, 2012, the Texas Commission on Environmental Quality shall create a district or add territory to an existing district for any territory for which the commission has issued an order recommending creation of a district or addition of territory to an existing district under Section 35.008, Water Code, before the effective date of this Act, unless the commission determines that the territory is not suitable under Subsection (i), Section 35.013, Water Code.

SECTION 8. All governmental acts and proceedings, including the adoption of rules, of the Texas Commission on Environmental Quality relating to the creation of a groundwater conservation district over all or part of a priority groundwater management area that was designated as a critical area under Chapter 35, Water Code, as that chapter existed before September 1, 1997, or under other prior law, are validated in all respects as of the dates on which they occurred.

SECTION 9. Subsection (a), Section 35.007, Water Code, as amended by this Act, applies only to a designation of a priority groundwater management area made by the Texas Commission on Environmental Quality on or after the effective date of this Act. A designation made before the effective date of this Act is governed by the law in effect when the designation was made, and that law is continued in effect for that purpose.

SECTION 10. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2011.

The Conference Committee Report on **SB 313** was filed with the Secretary of the Senate on Thursday, May 26, 2011.

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 871**

Senator Zaffirini submitted the following Conference Committee Report:

Austin, Texas  
May 26, 2011

Honorable David Dewhurst  
President of the Senate

Honorable Joe Straus  
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 871** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

ZAFFIRINI

CARONA

DEUELL

ELTIFE

RODRIGUEZ

On the part of the Senate

Y. DAVIS

COLEMAN

GOODEN

NAISHTAT

REYNOLDS

On the part of the House

The Conference Committee Report on **HB 871** was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 1489**

Senator Whitmire submitted the following Conference Committee Report:

Austin, Texas

May 26, 2011

Honorable David Dewhurst  
President of the Senate

Honorable Joe Straus  
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 1489** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

WHITMIRE

HARRIS

HINOJOSA

HUFFMAN

SHAPIRO

On the part of the Senate

MADDEN

ALLEN

HUNTER

PERRY

WORKMAN

On the part of the House

**A BILL TO BE ENTITLED  
AN ACT**

relating to educational, juvenile justice, and criminal justice responses to truancy.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:**

SECTION 1. Subsection (a), Section 25.094, Education Code, is amended to read as follows:

(a) An individual commits an offense if the individual:

(1) is 12 years of age or older and younger than 18 years of age;

(2) is required to attend school under Section 25.085; and

(3) [(2)] fails to attend school on 10 or more days or parts of days within a six-month period in the same school year or on three or more days or parts of days within a four-week period.

SECTION 2. Section 51.03, Family Code, is amended by adding Subsection (e-1) to read as follows:

(e-1) Notwithstanding any other law, for purposes of conduct described by Subsection (b)(2), "child" means a person who is:

(1) 10 years of age or older;

(2) alleged or found to have engaged in the conduct as a result of acts committed before becoming 18 years of age; and

(3) required to attend school under Section 25.085, Education Code.

SECTION 3. Subsections (a) and (b), Section 54.021, Family Code, are amended to read as follows:

(a) The juvenile court may waive its exclusive original jurisdiction and transfer a child to the constitutional county court, if the county has a population of two million or more, or to an appropriate justice or municipal court, with the permission of the county, justice, or municipal court, for disposition in the manner provided by Subsection (b) if the child is 12 years of age or older and is alleged to have engaged in conduct described in Section 51.03(b)(2). A waiver of jurisdiction under this subsection may be for an individual case or for all cases in which a child is alleged to have engaged in conduct described in Section 51.03(b)(2). The waiver of a juvenile court's exclusive original jurisdiction for all cases in which a child is alleged to have engaged in conduct described in Section 51.03(b)(2) is effective for a period of one year.

(b) A county, justice, or municipal court may exercise jurisdiction over a person alleged to have engaged in conduct indicating a need for supervision by engaging in conduct described in Section 51.03(b)(2) in a case where:

(1) the person is 12 years of age or older;

(2) the juvenile court has waived its original jurisdiction under this section;  
and

(3) [(2)] a complaint is filed by the appropriate authority in the county, justice, or municipal court charging an offense under Section 25.094, Education Code.

SECTION 4. Chapter 54, Family Code, is amended by adding Section 54.0402 to read as follows:

Sec. 54.0402. DISPOSITIONAL ORDER FOR FAILURE TO ATTEND SCHOOL. A dispositional order regarding conduct under Section 51.03(b)(2) is effective for the period specified by the court in the order but may not extend beyond the 180th day after the date of the order or beyond the end of the school year in which the order was entered, whichever period is longer.

SECTION 5. Section 54.05, Family Code, is amended by amending Subsections (a) and (b) and adding Subsection (a-1) to read as follows:

(a) Except as provided by Subsection (a-1), any [Any] disposition, except a commitment to the Texas Youth Commission, may be modified by the juvenile court as provided in this section until:

(1) the child reaches his 18th birthday; or

(2) the child is earlier discharged by the court or operation of law.

(a-1) A disposition regarding conduct under Section 51.03(b)(2) may be modified by the juvenile court as provided by this section until the expiration of the period described by Section 54.0402.

(b) Except for a commitment to the Texas Youth Commission or a disposition under Section 54.0402, all dispositions automatically terminate when the child reaches his 18th birthday.

SECTION 6. Article 45.054, Code of Criminal Procedure, is amended by adding Subsections (i) and (j) to read as follows:

(i) A county, justice, or municipal court shall dismiss the complaint against an individual alleging that the individual committed an offense under Section 25.094, Education Code, if:

(1) the court finds that the individual has successfully complied with the conditions imposed on the individual by the court under this article; or

(2) the individual presents to the court proof that the individual has obtained a high school diploma or a high school equivalency certificate.

(j) A county, justice, or municipal court may waive or reduce a fee or court cost imposed under this article if the court finds that payment of the fee or court cost would cause financial hardship.

SECTION 7. Article 45.055, Code of Criminal Procedure, is amended by amending Subsection (a) and adding Subsection (e) to read as follows:

(a) Except as provided by Subsection (e), an [An] individual convicted of not more than one violation of Section 25.094, Education Code, may, on or after the individual's 18th birthday, apply to the court in which the individual was convicted to have the conviction and records relating to the conviction expunged.

(e) A court shall expunge an individual's conviction under Section 25.094, Education Code, and records relating to a conviction, regardless of whether the individual has previously been convicted of an offense under that section, if:

(1) the court finds that the individual has successfully complied with the conditions imposed on the individual by the court under Article 45.054; or

(2) before the individual's 21st birthday, the individual presents to the court proof that the individual has obtained a high school diploma or a high school equivalency certificate.

SECTION 8. Subsections (b) and (c), Article 102.0174, Code of Criminal Procedure, are amended to read as follows:

(b) The governing body of a municipality by ordinance may create a juvenile case manager fund and may require a defendant convicted of a fine-only misdemeanor offense in a municipal court to pay a juvenile case manager fee not to exceed \$5 as a cost of court if the municipality employs a juvenile case manager. A municipality that does not employ a juvenile case manager may not collect a fee under this subsection.

(c) The commissioners court of a county by order may create a juvenile case manager fund and may require a defendant convicted of a fine-only misdemeanor offense in a justice court, county court, or county court at law to pay a juvenile case manager fee not to exceed \$5 as a cost of court if the court employs a juvenile case manager. A justice court, county court, or county court at law that does not employ a juvenile case manager may not collect a fee under this subsection.

SECTION 9. Subsections (a) and (b), Section 25.091, Education Code, are amended to read as follows:

(a) A peace officer serving as an attendance officer has the following powers and duties concerning enforcement of compulsory school attendance requirements:

(1) to investigate each case of a violation of compulsory school attendance requirements referred to the peace officer;

(2) to enforce compulsory school attendance requirements by:

(A) applying truancy prevention measures adopted under Section 25.0915 to the student; and

(B) if the truancy prevention measures fail to meaningfully address the student's conduct:

(i) referring the [a] student to a juvenile court or filing a complaint against the [a] student in a county, justice, or municipal court if the student has unexcused absences for the amount of time specified under Section 25.094 or under Section 51.03(b)(2), Family Code; or ~~and~~

(ii) ~~(B)~~ filing a complaint in a county, justice, or municipal court against a parent who violates Section 25.093;

(3) to serve court-ordered legal process;

(4) to review school attendance records for compliance by each student investigated by the officer;

(5) to maintain an investigative record on each compulsory school attendance requirement violation and related court action and, at the request of a court, the board of trustees of a school district, or the commissioner, to provide a record to the individual or entity requesting the record;

(6) to make a home visit or otherwise contact the parent of a student who is in violation of compulsory school attendance requirements, except that a peace officer may not enter a residence without the permission of the parent of a student required under this subchapter to attend school or of the tenant or owner of the residence except to lawfully serve court-ordered legal process on the parent; and

(7) to take a student into custody with the permission of the student's parent or in obedience to a court-ordered legal process.

(b) An attendance officer employed by a school district who is not commissioned as a peace officer has the following powers and duties with respect to enforcement of compulsory school attendance requirements:

(1) to investigate each case of a violation of the compulsory school attendance requirements referred to the attendance officer;

(2) to enforce compulsory school attendance requirements by:

(A) applying truancy prevention measures adopted under Section 25.0915 to the student; and

(B) if the truancy prevention measures fail to meaningfully address the student's conduct:

(i) referring the [a] student to a juvenile court or filing a complaint against the [a] student in a county, justice, or municipal court if the student has unexcused absences for the amount of time specified under Section 25.094 or under Section 51.03(b)(2), Family Code; and

(ii) [~~B~~] filing a complaint in a county, justice, or municipal court against a parent who violates Section 25.093;

(3) to monitor school attendance compliance by each student investigated by the officer;

(4) to maintain an investigative record on each compulsory school attendance requirement violation and related court action and, at the request of a court, the board of trustees of a school district, or the commissioner, to provide a record to the individual or entity requesting the record;

(5) to make a home visit or otherwise contact the parent of a student who is in violation of compulsory school attendance requirements, except that the attendance officer may not enter a residence without permission of the parent or of the owner or tenant of the residence;

(6) at the request of a parent, to escort a student from any location to a school campus to ensure the student's compliance with compulsory school attendance requirements; and

(7) if the attendance officer has or is informed of a court-ordered legal process directing that a student be taken into custody and the school district employing the officer does not employ its own police department, to contact the sheriff, constable, or any peace officer to request that the student be taken into custody and processed according to the legal process.

SECTION 10. Subchapter C, Chapter 25, Education Code, is amended by adding Section 25.0915 to read as follows:

Sec. 25.0915. TRUANCY PREVENTION MEASURES; REFERRAL AND FILING REQUIREMENT. (a) A school district shall adopt truancy prevention measures designed to:

(1) address student conduct related to truancy in the school setting;

(2) minimize the need for referrals to juvenile court for conduct described by Section 51.03(b)(2), Family Code; and

(3) minimize the filing of complaints in county, justice, and municipal courts alleging a violation of Section 25.094.

(b) Each referral to juvenile court for conduct described by Section 51.03(b)(2), Family Code, or complaint filed in county, justice, or municipal court alleging a violation by a student of Section 25.094 must:

(1) be accompanied by a statement from the student's school certifying that:

(A) the school applied the truancy prevention measures adopted under Subsection (a) to the student; and

(B) the truancy prevention measures failed to meaningfully address the student's school attendance; and

(2) specify whether the student is eligible for or receives special education services under Subchapter A, Chapter 29.

SECTION 11. Section 58.106, Family Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a) Except as otherwise provided by this section, information contained in the juvenile justice information system is confidential information for the use of the department and may not be disseminated by the department except:

(1) with the permission of the juvenile offender, to military personnel of this state or the United States;

(2) to a person or entity to which the department may grant access to adult criminal history records as provided by Section 411.083, Government Code;

(3) to a juvenile justice agency;

(4) to the Texas Youth Commission and the Texas Juvenile Probation Commission for analytical purposes; ~~and~~

(5) to the office of independent ombudsman of the Texas Youth Commission; and

(6) to a county, justice, or municipal court exercising jurisdiction over a juvenile under Section 54.021.

(a-1) Information disseminated under Subsection (a) remains confidential after dissemination and may be disclosed by the recipient only as provided by this title.

SECTION 12. Section 102.061, Government Code, as amended by Chapters 87 (S.B. 1969), 1172 (H.B. 3389), and 1183 (H.B. 3637), Acts of the 81st Legislature, Regular Session, 2009, is reenacted and amended to read as follows:

Sec. 102.061. ADDITIONAL COURT COSTS ON CONVICTION IN STATUTORY COUNTY COURT: CODE OF CRIMINAL PROCEDURE. The clerk of a statutory county court shall collect fees and costs under the Code of Criminal Procedure on conviction of a defendant as follows:

(1) a jury fee (Art. 102.004, Code of Criminal Procedure) . . . \$20;

(2) a fee for services of the clerk of the court (Art. 102.005, Code of Criminal Procedure) . . . \$40;

(3) a records management and preservation services fee (Art. 102.005, Code of Criminal Procedure) . . . \$25;

(4) a county and district court technology fee (Art. 102.0169, Code of Criminal Procedure) . . . \$4;

(5) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) . . . \$3;

(6) a juvenile delinquency prevention and graffiti eradication fee (Art. 102.0171, Code of Criminal Procedure) . . . \$50; ~~and~~

(7) a juvenile case manager fee (Art. 102.0174, Code of Criminal Procedure) . . . not to exceed \$5 if the court employs a juvenile case manager; and

(8) [~~7~~] a civil justice fee (Art. 102.022, Code of Criminal Procedure) . . . \$0.10.

SECTION 13. Section 102.081, Government Code, as amended by Chapters 87 (S.B. 1969), 1172 (H.B. 3389), and 1183 (H.B. 3637), Acts of the 81st Legislature, Regular Session, 2009, is reenacted and amended to read as follows:

Sec. 102.081. ADDITIONAL COURT COSTS ON CONVICTION IN COUNTY COURT: CODE OF CRIMINAL PROCEDURE. The clerk of a county court shall collect fees and costs under the Code of Criminal Procedure on conviction of a defendant as follows:

(1) a jury fee (Art. 102.004, Code of Criminal Procedure) . . . \$20;

(2) a fee for clerk of the court services (Art. 102.005, Code of Criminal Procedure) . . . \$40;

(3) a records management and preservation services fee (Art. 102.005, Code of Criminal Procedure) . . . \$25;

(4) a county and district court technology fee (Art. 102.0169, Code of Criminal Procedure) . . . \$4;

(5) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) . . . \$3;

(6) a juvenile delinquency prevention and graffiti eradication fee (Art. 102.0171, Code of Criminal Procedure) . . . \$50; ~~and~~

(7) a juvenile case manager fee (Art. 102.0174, Code of Criminal Procedure) . . . not to exceed \$5 if the court employs a juvenile case manager; and

(8) ~~(7)~~ a civil justice fee (Art. 102.022, Code of Criminal Procedure) . . . \$0.10.

SECTION 14. Section 102.101, Government Code, is amended to read as follows:

Sec. 102.101. ADDITIONAL COURT COSTS ON CONVICTION IN JUSTICE COURT: CODE OF CRIMINAL PROCEDURE. A clerk of a justice court shall collect fees and costs under the Code of Criminal Procedure on conviction of a defendant as follows:

(1) a jury fee (Art. 102.004, Code of Criminal Procedure) . . . \$3;

(2) a fee for withdrawing request for jury less than 24 hours before time of trial (Art. 102.004, Code of Criminal Procedure) . . . \$3;

(3) a jury fee for two or more defendants tried jointly (Art. 102.004, Code of Criminal Procedure) . . . one jury fee of \$3;

(4) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) . . . \$4;

(5) a fee for technology fund on a misdemeanor offense (Art. 102.0173, Code of Criminal Procedure) . . . \$4;

(6) a juvenile case manager fee (Art. 102.0174, Code of Criminal Procedure) . . . not to exceed \$5 if the court employs a juvenile case manager;

(7) a fee on conviction of certain offenses involving issuing or passing a subsequently dishonored check (Art. 102.0071, Code of Criminal Procedure) . . . not to exceed \$30;

(8) a court cost on conviction of a Class C misdemeanor in a county with a population of 3.3 million or more, if authorized by the county commissioners court (Art. 102.009, Code of Criminal Procedure) . . . not to exceed \$7; and

(9) a civil justice fee (Art. 102.022, Code of Criminal Procedure) . . . \$0.10.

SECTION 15. Section 102.121, Government Code, is amended to read as follows:

Sec. 102.121. ADDITIONAL COURT COSTS ON CONVICTION IN MUNICIPAL COURT: CODE OF CRIMINAL PROCEDURE. The clerk of a municipal court shall collect fees and costs on conviction of a defendant as follows:

(1) a jury fee (Art. 102.004, Code of Criminal Procedure) . . . \$3;

(2) a fee for withdrawing request for jury less than 24 hours before time of trial (Art. 102.004, Code of Criminal Procedure) . . . \$3;

(3) a jury fee for two or more defendants tried jointly (Art. 102.004, Code of Criminal Procedure) . . . one jury fee of \$3;



(4) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) . . . \$3;

(5) a fee for technology fund on a misdemeanor offense (Art. 102.0172, Code of Criminal Procedure) . . . not to exceed \$4;

(6) a juvenile case manager fee (Art. 102.0174, Code of Criminal Procedure) . . . not to exceed \$5 if the municipality employs a juvenile case manager; and

(7) a civil justice fee (Art. 102.022, Code of Criminal Procedure) . . . \$0.10.

SECTION 16. Subsection (e), Article 45.056, Code of Criminal Procedure, is repealed.

SECTION 17. The change in law made by this Act applies only to conduct that occurs on or after the effective date of this Act. Conduct that occurs before the effective date of this Act is governed by the law in effect at the time the conduct occurred, and the former law is continued in effect for that purpose. For purposes of this section, conduct occurs before the effective date of this Act if any element of the violation occurs before that date.

SECTION 18. To the extent of any conflict, this Act prevails over another Act of the 82nd Legislature, Regular Session, 2011, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 19. This Act takes effect September 1, 2011.

The Conference Committee Report on **SB 1489** was filed with the Secretary of the Senate.

### MOTION TO ADJOURN

On motion of Senator Whitmire and by unanimous consent, the Senate at 6:25 p.m. agreed to adjourn, pending the receipt of Messages from the House, until 10:00 a.m. tomorrow.

### MESSAGE FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

Thursday, May 26, 2011 - 4

The Honorable President of the Senate

Senate Chamber

Austin, Texas

Mr. President:

I am directed by the House to inform the Senate that the House has taken the following action:

THE HOUSE HAS REFUSED TO CONCUR IN THE SENATE AMENDMENTS TO THE FOLLOWING MEASURES AND REQUESTS THE APPOINTMENT OF A CONFERENCE COMMITTEE TO ADJUST THE DIFFERENCES BETWEEN THE TWO HOUSES:

**HB 213** (non-record vote)

House Conferees: Rodriguez, Eddie - Chair/Anchia/Keffer/Munoz, Jr./Truitt

**HB 300** (non-record vote)

House Conferees: Kolkhorst - Chair/Flynn/Laubenberg/Naishtat/Truitt

**HB 1103** (non-record vote)

House Conferees with Instructions: Lucio III - Chair/Pena/Scott/Thompson/Woolley

**HB 2093** (non-record vote)

House Conferees: Thompson - Chair/Eiland/Sheets/Smithee/Taylor, Van

**HB 3691** (non-record vote)

House Conferees: Gallego - Chair/Christian/Davis, Yvonne/Martinez, "Mando"/Zedler

THE HOUSE HAS GRANTED THE REQUEST OF THE SENATE FOR THE APPOINTMENT OF A CONFERENCE COMMITTEE ON THE FOLLOWING MEASURES:

**SB 563** (non-record vote)

House Conferees: Torres - Chair/Garza/Harper-Brown/Lucio III/Zedler

THE HOUSE HAS ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

**HB 1112** (130 Yeas, 12 Nays, 2 Present, not voting)

**HB 3302** (144 Yeas, 0 Nays, 1 Present, not voting)

**SB 313** (141 Yeas, 0 Nays, 2 Present, not voting)

THE HOUSE HAS TAKEN THE FOLLOWING OTHER ACTION:

**HB 3109**

Vote reconsidered by which the House concurred in Senate amendments, prevails. The House then moved to not concur in Senate amendments and appointed the following conferees.

House Conferees: Craddick - Chair / Darby / King, Susan / Lewis / Parker

Respectfully,

/s/Robert Haney, Chief Clerk  
House of Representatives

**RESOLUTIONS OF RECOGNITION**

The following resolutions were adopted by the Senate:

**Memorial Resolutions**

**SR 1208** by Lucio, In memory of Emma Reyna Fuentes of Weslaco.

**SR 1210** by Lucio, In memory of Fernando "Freddy" Ramirez of Raymondville.

**SR 1214** by West, In memory of Boston P. Grant, Jr., of Grand Prairie.

**SR 1217** by Hinojosa, In memory of Alida Salinas Hernandez of McAllen.

**HCR 1** (Uresti), In memory of former Texas governor Dolph Briscoe, Jr.

### **Congratulatory Resolutions**

**SR 1183** by Ellis, Recognizing Robert L. Garner, Jr., founder of the African American National Spelling Bee Championships, Incorporated.

**SR 1184** by Ellis, Recognizing Mary Bello for winning the inaugural African American National Spelling Bee Championships.

**SR 1185** by Ellis, Recognizing Ashley Williams for winning second place honors in the inaugural African American National Spelling Bee Championships.

**SR 1186** by Ellis, Recognizing Niaha Dyson for winning third place honors in the inaugural African American National Spelling Bee Championships.

**SR 1202** by Williams, Recognizing Jennifer and Casey Davis on the birth of their daughter, Kylie Nicole Davis.

**SR 1203** by Van de Putte, Recognizing Fred Carmona for his contributions to the San Antonio community.

**SR 1205** by Wentworth, Recognizing Paul Foerster on the occasion of his retirement after 50 years as a teacher at Alamo Heights High School in San Antonio.

**SR 1207** by Uresti, Recognizing Yolanda Fernandez for winning the H-E-B Excellence in Education Lifetime Achievement Award.

**SR 1209** by Lucio, Recognizing Guadalupe Regional Middle School on the occasion of its 10th anniversary.

**SR 1211** by Van de Putte, Recognizing the men and women who have served our country in the armed forces.

**SR 1215** by Huffman, Recognizing Eric Sermeno on the occasion of his graduation from the Texas School for the Deaf.

**SR 1216** by Huffman, Recognizing Brett Kolaja for his service to the City Council of Missouri City.

### **ADJOURNMENT**

Pursuant to a previously adopted motion, the Senate at 6:51 p.m. adjourned until 10:00 a.m. tomorrow.

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### **APPENDIX**

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### **BILL ENGROSSED**

May 25, 2011

**SB 1929**

**BILLS AND RESOLUTIONS ENROLLED**May 25, 2011

SB 176, SB 218, SB 220, SB 229, SB 349, SB 364, SB 438, SB 460, SB 479, SB 548, SB 701, SB 762, SB 766, SB 802, SB 804, SB 812, SB 917, SB 975, SB 1009, SB 1360, SB 1386, SB 1477, SB 1504, SB 1560, SB 1617, SCR 2, SCR 58, SR 1129, SR 1130, SR 1131, SR 1172, SR 1173, SR 1174, SR 1175, SR 1176, SR 1178, SR 1179, SR 1180, SR 1181, SR 1182, SR 1187, SR 1188, SR 1189, SR 1190, SR 1191, SR 1192, SR 1193, SR 1194, SR 1195, SR 1196, SR 1197, SR 1198, SR 1199, SR 1200, SR 1201

**SENT TO GOVERNOR**May 26, 2011

SB 19, SB 29, SB 43, SB 166, SB 233, SB 234, SB 266, SB 267, SB 304, SB 350, SB 367, SB 422, SB 449, SB 461, SB 471, SB 481, SB 489, SB 554, SB 577, SB 578, SB 609, SB 627, SB 650, SB 682, SB 735, SB 791, SB 792, SB 799, SB 864, SB 889, SB 898, SB 900, SB 901, SB 959, SB 966, SB 987, SB 1020, SB 1030, SB 1044, SB 1046, SB 1106, SB 1133, SB 1167, SB 1176, SB 1220, SB 1231, SB 1273, SB 1308, SB 1322, SB 1330, SB 1342, SB 1368, SB 1438, SB 1441, SB 1480, SB 1484, SB 1493, SB 1521, SB 1522, SB 1557, SB 1596, SB 1681, SB 1737, SB 1787, SB 1789, SB 1807, SB 1812, SB 1857, SB 1875, SB 1880, SB 1915, SB 1928, SCR 35, SCR 51

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